

MONITORING AND EVALUATION
OF THE SECURITY
GOVERNANCE IN ALBANIA

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LIST OF ABBREVIATIONS

ADL	Anti-Discrimination Law
AF	Armed Forces
AHC	Albanian Helsinki Committee
AHRG	Albanian Human Rights Group
ASP	Albanian State Police
CA	Contracting Authorities
CC	The Civil Code
CDP	Commissioner on Data Protection
CEDAW	Convention for the Elimination of All Forms of Discrimination Against Women
CEF	Committee on the Economy and Finances
CHUFMC	Central Harmonisation Unit for Financial Management and Control
CHUIA	Central Harmonisation Unit for Internal Audit
CLAPHR	Committee on the Legal Affairs, Public Administration and Human Rights
CNS	Committee on National Security
CoM	Council of Ministers
CPC	Criminal Procedure Code
CSO	Civil Society Organizations
DCAF	Centre for the Democratic Control of Armed Forces
DEOFP	Department of Equal Opportunities and Family Policies
DSDC	Department of Strategy and Donor Coordination
ECHR	European Convention on Human Rights
ECHR	European Convention on Human Rights
EO	Economic Operators
EU	European Union
EURALIUS	European Assistance Mission for the Albanian Justice System
FI	Financial Inspection
FIC	First Instance Courts
FIU	Financial Intelligence Unit

GDI/MoI	General Directorate of Inspection
GE	Gender Equality
GEL	Gender Equality Legislation
GP	General Prosecution
H CJ	High Council of Justice
HR	Human Rights
HSC	High State Control
IA	Internal Audit
ICMI	Internal Control of the Ministry of Interior
ICS	Internal Control Service
IG	Inspector General
INSTAT	Institute of Statistics
IPS	Integrated Planning System
LGE	Law on Gender Equality
LIT	Law on the Interception of Telecommunications
LMBS	Law on the Management of the Budgetary System
MF	Ministry of Finances
MIS	Military Intelligence Service
MoD	Ministry of Defence
MoD	Ministry of Defense
MoF	Ministry of Finances
MOI	Ministry of Interior
MoI	Ministry of Interior
MoJ	Ministry of Justice
MOLSAEO	Ministry of Labour, Social Affairs and Equal Opportunities
MP	Member of the Parliament
MTBP	Medium Term Budget Programme
NAO	National Authorising Officer
NAP	National Action Plan
NATO	North Atlantic Treaty Organization
NCGE	National Council on Gender Equality
NIS	National Intelligence Service
NSC	National Security Council
NSDI	National Strategy for Development and Integration
NSGE-GBV&DV	National Strategy for Gender Equality,

OSCE	Gender Based Violence and Domestic Violence Organization for Security and Cooperation in Europe
OSCE	Organization for Security and Cooperation in Europe
PA	Procurement Advocate
PCEF	Permanent Committee on Economy and Finances
PCNS	Parliamentary Commission on National Security
PM	Prime Minister
PP	Prisons' Police
PPA	Public Procurement Agency
PPC	Public Procurement Commission
PPL	Public Procurement Law
PsA	People's Advocate
PSC	Private Security Companies
PU	Procurement Unit
SAA	Stabilization and Association Agreement
SAEC	State Authority on the Exports Control
SAI	Supreme Audit Institution
SCC	Serious Crimes Court
SIC	Service of Interior Control
SICMI	Service of the Internal Control of the Ministry of Interior
SIS	State Intelligence Service
SMI	Special methods of investigation
SP	State Police
TEC	Tender Evaluation Commissions
UHR	Union of Human Rights
UN	United Nations
UN Women	United Nations Entity for Gender Equality and Empowerment of Women (former UNIFEM)

PREFACE

The reform of the security sector has been an important part of the democratic processes in Albania. Reforms in this sector were a highly sensitive issue in the early phase of democratic transformation when the communist era military and security apparatus were depoliticized and placed on statutory basis but ever since have it has remained a central issue in particular with regard to the division of labour and control and accountability towards elected civilian institutions.

Despite the relevance of security sector reforms there exists only limited research on the processes, choices and outcomes of these reforms. Against this backdrop the project ‘Civil Society Capacity Building on Mapping and Monitoring the Security Sector Reform in the Western Balkans: 2009-2011’ provided a unique opportunity as the first effort which sought to provide a comprehensive analysis of the security sector reform in Albania.

The first outcome of the project, ‘Context Analysis and Chronology of the Security Sector Reform in Albania: 1991-2009’, was published in February 2011. This second contribution provides a collection of papers that focus mainly on the analysis of the security sector governance. Although the findings and conclusions provided in the papers are based on data collected in the period from 2009 to 2011, this publication provides a solid basis for understanding and evaluating the governance of the security sector in Albania as well as for further research.

Chapter one provides the methodology that was used for analysing the chosen criteria. The methodology, which is based on indicators that are widely used for measuring the governance of public institutions, was firstly developed by the Belgrade Centre for Security Policy. It was further refined by the network of the research teams of the seven think tank organisations from the Western Balkan countries that implemented the project, in cooperation with the Geneva Centre for Democratic Control of Armed Forces (DCAF). One of the essential refinements consists in the switch from actor based to criteria based analysis, meaning that all security actors are equally examined in each of the papers based on the same fields of observation and indicators. The methodology offers also flexibility in the choice of the criteria, which means that the selected criteria are not the only ones that

can be analysed but the ones that the research teams have considered as more relevant to the region and to the current status of reforms.

Chapter two analyses the Rule of Law as the basic criterion for determining the legal and systemic regulation of the security sector and its actors. This paper focuses on the equality of the security sector before the law and the protection of human rights of citizens and security sector employees.

Chapter three analyses the transparency of security sector. This criterion has been chosen based on the underlying principle that transparency is one of the key preconditions for democratic governance of security institutions. The paper focuses on the freedom of access to information of public importance, protection of personal data and protection of classified information.

Chapter four analyses the control by the executive branch as an integral part of the concept of democratic civilian control of the security sector. This paper focuses on the control by the executive on the legality of actions by security institutions, including human rights, the legality of the budget spending.

Chapter five analyses the parliamentary control and oversight of the security sector by focusing on control and oversight of the budgetary planning and spending, the control and oversight of the compliance of work of the security sector with laws and the respect of human rights, the control and oversight over the implementation of government policies and laws, the control and oversight of bilateral and multilateral security cooperation and integration. The role of the parliament is considered as one of the

Chapter six analyses the financial transparency based on the existence of constitutional and legal framework for ensuring an open and fair process of budgeting and of public procurement in security sector. Corruption in the security sector is not discussed in this paper but it is implied that a high level of transparency is also a key for prevention of corruption.

Chapter seven analyses the representativeness of women and national minorities in the security sector institutions. Ensuring that the security sector respects the principle of equality and non discrimination based on gender and nationality is in focus of this paper.

The Institute for Democracy and Mediation and the research team hope that this publication will be turned into a useful tool for the security sector practitioners, policy makers, media and the wider public but moreover, that it becomes a sourcebook for further and deeper research.



1

METHODOLOGY

1.1 BACKGROUND OF METHODOLOGY

The papers, part of this publication, are based on the methodology that has been initially developed by the Belgrade Centre for Security Policy in cooperation with Geneva Centre for Democratic Control of Armed Forces (DCAF). In the course of the three years project the methodology was peer reviewed and further developed and refined with the contribution of all the members of the seven partner organizations from the Western Balkans. The IDM, as one of the regional partners that form this network of civil society organizations, contributed in the consolidation of methodology.

One of the essential refinements consists in the switch from actor based to criteria based analysis, meaning that all security actors are equally examined in each of the papers based on the same fields of observation and indicators. The methodology offers flexibility in the choice of the criteria, which means that the selected criteria are not the only ones that can be analysed but the ones that the research teams have considered as more relevant to the region and to the current status of reforms. In addition the criteria are tailored not to overlap with each other.

The key elements for the definition of a criterion are the fields of observation. Each criterion developed in this research project has between two to four fields of observation. Each field of observation is analysed following four grading components that are composed of different indicators.

With the exception of the paper on Financial Transparency, which has been slightly updated in order to bringing in new data, the data used in the other papers were mainly collected in the period from 2009 to 2011. All the papers, with the exception of the paper on Legal State, are developed following a common structure as below:



CONSTITUTIONAL AND LEGAL FRAMEWORK

Lack or existence of key (primary) legislation for that criterion which needs to be in line with international standards of democratic civilian control and protection of human rights. In analyzing primary legislation, we limit our analyses to:

- Existence of provisions in Constitution which provide for certain right;
- Existence of key/primary laws for that criterion (e.g. for general transparency primary laws are Law on Freedom of Information, Law on Classification of Data, Law on Personal Data Protection)
- If that criterion was introduced in key laws for actors (e.g. Law on Defence, Law on Police, Law on Civilian Intelligence Service) and public administration legislation (e.g. laws on civil servants, ministries etc.).
- We do not analyze existence of other legislation which is not essential for introducing relevant norm at the system level or which regulates only part of functioning of actors (e.g. Law on Ammunition).
- The existence of key primary laws is discriminatory indicator for grades 1-3. At the Grade 3, primary laws for all fields of observation under one criterion should be adopted.

IMPLEMENTATION

Frequency, quantity and quality of bad/good practice and track record of good practice. In line with this, bad practice can be:

- Frequency: frequent/occasional/exception,
- Quantity: widespread/moderately spread/scarce,
- Quality: serious bad practice (e.g. severe cases of violations of rights) or moderately bad practice or minor cases of bad practice.
- In order to give high mark for good practice, we analyze the same indicators as for bad practice: frequency and quantity, as well as track record (duration/continuity of delivery) of good practice.
- The existence of bad practice is discriminatory indicator for grades 1-3. At the Grade 3, bad practice is scarce, serious bad practice is an exception, while there is a track record of provision of good practice (at least 2 years).

ADMINISTRATIVE AND MANAGEMENT CAPACITY

We analyze if there are preconditions for efficient and effective management of implementation of good practice. Some of indicators are:

- Existence and quality of secondary legislation and internal regulations (by-laws, instructions, procedures, guidebooks, codes etc.). The secondary legislation and internal regulations should be in line with DCAF and HR standards, and there should be procedures in place for effective provision of service in line with democratic governance.
- Existence of tasks in job descriptions/posts/organizational units in charge of provision of service (e.g. units analysing complaints of citizens) or oversight of implementation of criterion (e.g. Ombudsperson in charge of overseeing protection of human rights). For some criteria, we should not look for specific post/organizational unit, but that the task is recognized either as a responsibility in job description (e.g. relationship and cooperation with civil society). This indicator is important to understand who or which units are tasked to provide certain service.
- Adequate allocation and management of material and human resources necessary for implementation of the criterion: Relevant organizational units should be equipped with adequate quantity and quality of material and human resources necessary to perform their role in effective manner.
- In order to institutionalize one criterion in described way, usually there is at least 5 years of implementation necessary.
- This set of indicators is key for higher grades (4 and 5). While some institutional preconditions for implementation of relevant norm might exist in lower grades, it is only at the grades 4 and 5 that the administrative capacity has improved and service delivery became more predictable due to improved management. The key difference between 4 and 5 is that in the latter, management capacity also encompasses proactive practices, knowledge-based management (e.g. greater reliance on analysis, intelligence, strategic planning, evaluation, performance management etc.).



VALUES

Within this set of indicators we analyze:

- If the organizational culture has internalized new norms or it provides resistance and impunity for breaches of DCAF/HR norm. The evidence for this is going to be gathered indirectly through analyses of practice (e.g. number of declined requests by citizens, impunity for higher ranks, choice of sanctions for breach of right, politicisation of certain function) or directly through interviews, focus groups, internal surveys, participant observation. Also, key for analyses of change in organizational culture is to analyse change of values nurtured in training (entry-level, in-service), as well as in the criteria and procedures for promotion and sanctions.
- Attitudes/Perceptions of society. If a society Legitimization of new norm with society at large.
- Fulfilment of this set of indicators requires longer period of time, usually necessary for change of generations within state institutions.
- This is a key indicator for higher grades (4 and 5). It is only at grade 5 that the norms have been fully internalized in organizational culture of relevant state institutions and legitimized with society at large.

1.2 THE GRADING SYSTEM ¹

The data collected for the purpose of this research project were analysed based on 5 grades: 1 (worst) to 5 (best), to mark the progress in different criteria. The grading system has been developed to reflect the differentiation between the first and the second generation of security sector reform.

The *first generation* includes putting constitutional norms in place, basic laws and structures necessary for putting security sector under the control of democratically elected civil authorities². The focus of the reform in the first generation is on the establishment of formal structures of civilian control as well as on a clearer division of competencies among different actors within the security sector, which also sets the foundation for democratic

¹ The structure of the methodology and the grading system provided here has been developed by Sonja Stojanovic, Executive Director of Belgrade Centre for Security Policies.

² Edmunds, T. (2003) 'Security sector reform: concepts and implementation', in German, W. N. and Edmunds, T. (eds.) Towards security sector reform in post Cold War Europe: A framework for assessment (DCAF / BICC), pp. 11-25.

control within the sector. In addition, the demilitarisation and depoliticisation of security sector governance should also take place during the first generation. The key indicators marking completion of the first generation of reforms in Index of SSR are:

- Adoption of key primary laws for all fields of containing provisions in line with international standards of DCAF and HR standards.
- Stopping bad practise, so that bad practice is scarce, serious bad practice is an exception, while there is a track record of provision of good practice. This usually requires at least 2 years of implementation of new primary law.

The *second generation* of reforms coincides with the process of democratic consolidation³. During the second generation, civil society (which has been empowered) will become an active participant of democratic civilian control and oversight, alongside politicians. This contributes considerably to the social legitimization of security institutions in society. As such the second generation reforms are focused in the fundamental democratic values which should in effect become part of the organisational and professional culture of state actors using force. It is therefore necessary, in order to consolidate the first generation reforms, to build adequate administrative capacities of state agencies for the management of resources within the security sector during the second phase.

Therefore, key indicators for the second generation of SSR are marked with grades 4 and 5 that focus on:

- High level of institutionalization of good practice by development of relevant tasks/posts/organizational units, secondary legislation and internal procedures, and allocation of sufficient and adequate material and human resources.
- Changes in the behaviour and attitudes of security sector personnel so that their organizational culture has internalized norms of democratic security governance. This has been recognized by society which is evident from their trust in institutions and lack of fear to address them directly with grievances.

³ Linz, J. & Stepan, A. (1998), 'Problems of democratic transition and consolidation', (Belgrade: Filip Višnjić), p. 6 state five arenas of democracy: (1) an autonomous and valued political society, (2) conditions for the development of a free and lively civil society (3) the rule of law (4) an institutionalised economic society, and (5) a state bureaucracy that is usable by the new democratic government



1.3 THE GRADING TABLE

FIELDS OF OBSERVATION		Field 1	Field 2	Field 3	Field 4	Field 5
GRADE 1 Focus is on legal norms and bad practice	Constitutional and Legal Framework. (Constitution, primary laws for criterion, actors and public administration legislation)	Indicator existence of primary laws: Primary laws for that criterion have not been adopted (e.g. for general transparency primary laws are Law on Freedom of Information, Law on Classification of Data, Law on Personal Data Protection). Indicator contents of primary laws are in line with DCAF and human rights standards: If some primary laws exist, their provisions are not in line with international standards for that criterion, especially standards regarding democratic civilian control and human rights protection. At the same time, if there is a primary law for criterion, it is very likely that the primary laws for actors (e.g. Law on Defence, Law on Police etc.) have not been harmonized with it, so they limit introduction of that criterion in practice.				
	Implementation (results of implementation)	Indicator frequency, quantity and quality of bad practice: There is a widespread bad practice. There are systemic and systematic violations of human rights. Systemic violations refer to those induced by institutions, while systematic violations refer to frequent and great number of violations. Cases of serious bad practice are not unusual.				

	<p>Administrative and management capacity (for implementation)</p>	<p>Indicator existence and quality of secondary legislation and internal regulations (by-laws, instructions, guidebooks, codes etc.): As the key legislation is lacking or is not in line with DCAF and HR standards, relevant secondary legislation is either missing or does not contain provisions which would guarantee provision in service in line with democratic governance.</p> <p>Indicator: Key posts/organizational units in charge of implementation of criterion are either missing or are not performing their role in line with standards of democratic security governance.</p> <p>Indicator adequate allocation and management of material and human resources necessary for implementation of the criterion: Relevant organizational units are not equipped with adequate quantity and quality of material and human resources necessary to perform their role in effective manner.</p>
	<p>Values (of employees in state institutions and wider society)</p>	<p>Organizational (institutional) culture does not stimulate sanctioning violations of human rights. There is active resistance to reforms.</p> <p>Attitudes/perceptions of population: Population is lacking trust in state institutions and therefore does not dare to demand for implementation of criterion (e.g. filing complaint with human rights NGO and not with government authority).</p>
<p>GRADE 2</p>	<p>Constitutional and Legal Framework.</p>	<p>Indicator existence of primary laws: There are a few primary laws, but not all fields of observation have been regulated with primary laws.</p> <p>Indicator contents of primary laws are in line with DCAF and human rights standards: Some primary laws are in line with international standards of DCAF and HR protection, while most primary laws for actors are not providing adequate guarantees for protection of HRs and DCAF.</p>



	Implementation	Indicator frequency, quantity and quality of bad practice: There is still bad practice and attempts of introducing good practice. Serious bad practice is occasional. Good practice has not yet become a regular phenomenon.
	Administrative and management capacity for implementation	<p>Existence and quality of secondary legislation and internal regulations (by-laws, instructions, guidebooks, codes etc.): As there is lack of adoption of norms of DCAF and HRs in primary legislation, secondary legislation and internal regulations DCAF and HR and/or are not implemented.</p> <p>Key posts/organizational units in charge of implementation of criterion are either missing or are not performing their role in line with standards of democratic security governance.</p> <p>Maybe some new bodies were created after the adoption of some of primary laws for observed criterion, but the institutional infrastructure for implementation of criterion is inadequate and not fully functional.</p> <p>Resources have either not been allocated at all or insufficient quantity and inadequate quality of material and human resources is allocated for implementation of the criterion.</p>
	Values	<p>Dominant organizational culture is still undemocratic and there is resistance to reforms.</p> <p>Attitudes/perceptions of population: Population is lacking trust in state institutions and therefore does not dare to demand for implementation of criterion (e.g. filing complaint with human rights NGO and not with government authority) or starts selectively asking for some services but not all they are authorized to demand.</p>

GRADE 3	Constitutional and Legal Framework	<p>Indicator existence of primary laws: Primary laws for that criterion have not been adopted (e.g. for general transparency primary laws are Law on Freedom of Information, Law on Classification of Data, Law on Personal Data Protection).</p> <p>Indicator contents of primary laws are in line with DCAF and human rights standards: If some primary laws exist, their provisions are not in line with international standards for that criterion, especially standards regarding democratic civilian control and human rights protection. At the same time, if there is a primary law for criterion, it is very likely that the primary laws for actors (e.g. Law on Defence, Law on Police etc.) have not been harmonized with it, so they limit introduction of that criterion in practice.</p>
	Implementation	<p>Indicator frequency, quantity and quality of bad practice: There is a widespread bad practice. There are systemic and systematic violations of human rights. Systemic violations refer to those induced by institutions, while systematic violations refer to frequent and great number of violations. Cases of serious bad practice are not unusual.</p>
	Administrative and management capacity for implementation	<p>Key preconditions for start of implementation of all primary laws are in place. This means that:</p> <p>Key secondary legislation/internal regulations have been adopted so to enable the start of implementation of new legislation. Existing posts/organizational units were tasked to perform duties prescribed with the primary laws for that criteria or new posts/organizational units were developed for that purpose. In any case, they have started working and performing their duties.</p> <p>Some resources have been allocated so that posts/units in charge of provision of services for this criterion can start functioning.</p>



	Values	<p>There is no resistance to reforms, but dominant organizational culture has not yet internalized all democratic norms.</p> <p>Attitudes/perceptions of population: Population has started demanding services from state institutions, but selectively and there is still some lack of trust in their fair treatment.</p>
GRADE 4	Constitutional and Legal Framework	<p>There are all primary laws that are in accordance with DCAF.</p>
	Implementation	<p>There is a notable track record of good practice (minimum 5 years). Good practice has become a rule and bad practice is an exception. Bad practice is regularly proportionally sanctioned.</p>
	Administrative and management capacity for implementation	<p>There is a horizontal and vertical harmonization of all legal documents necessary for implementation of criterion. This means that new norm has been introduced not only in primary laws for criterion, but also in primary laws for actors and in relevant public administration legislation. Majority of relevant secondary legislation is adopted.</p> <p>The result of harmonization is that norms in relevant primary legislation are not contradictory and that together with harmonized secondary legislation and internal norms they provide a coherent legal platform for implementation of criterion.</p> <p>The posts/organizational units tasked to perform duties prescribed with the primary laws for that criterion are fully functional and equipped with sufficient resources.</p> <p>If there has been cooperation with CSOs in implementation of criterion, it is no longer carried out on ad hoc basis, but there is institutionalized in set of procedures and practices.</p>

	<p>Values</p>	<p>Democratic values are adopted by the institutions. Bad practice is regularly and adequately sanctioned.</p> <p>Citizens are being informed about their rights and about the results of state institutions' work. The special attention is paid to information of citizens about sanctions applied to those who breached rights or norms of DCAF.</p>
<p>GRADE 5</p>	<p>Constitutional and Legal Framework</p>	<p>There are all primary laws that are in accordance with DCAF.</p>
	<p>Implementation</p>	<p>Significant efforts are invested in preventive and proactive work to diminish opportunities for bad practice. There is a notable track record of good practice (minimum 10 years). Good practice has become a rule and bad practice is an exception. Bad practise is regularly proportionally sanctioned.</p>
	<p>Administrative and management capacity for implementation</p>	<p>There is a horizontal and vertical harmonization of all legal documents necessary for implementation of criterion. The posts/organizational units tasked to perform duties prescribed with the primary laws for that criterion are fully functional and equipped with sufficient and adequate resources.</p> <p>The second generation of reforms has taken place after lessons have been learned from initial years of implementation. These reforms address the issue of more efficient and effective management. Therefore, new procedures and practices have been internalized to allow for strategic planning, performance management, budgeting and management of services required for advance implementation of criterion.</p>
	<p>Values</p>	<p>Security sector institutions have completely internalised democratic values. Citizens have also adopted these values and have recognized that the institutions are functioning in line with democratic governance norms. There are no significant differences between perceptions of majority population and minority/marginalized groups</p>



1.4 GRADES OF ALBANIA AS PRESENTED IN THE FOLLOWING CHAPTERS

CRITERIA	JUSTIFICATION	GRADE
Rule of Law in the Security Sector	<p>The measurement of the Legal state is based on a grading system that varies from 1 which is the worst condition, to 5 as the best. From the evidence found this study grades the legal state criteria in Albania with 3.5. In general the Constitutional and legal framework in security sector is in place although there is still need for further improvements. The biggest challenge and weaknesses remains the enforcement of the legislation which is crucial for a security sector based on the Rule of Law</p>	3.5
General Transparency of the Security Sector	<p>Concerning the general transparency the grade 2.5 is given because it clearly fulfills the criteria that fall under the grade 2, however do not satisfies the criteria for to reach grade 3. In this regards, the legal framework contain provisions in line with international standards of transparency, while there have been efforts and initiatives to consolidate the secondary legislation / internal regulations. However, despite some good practice exists since the law was established in 1999, many cases of bad practice are yet a concern. The administrative capacities are generally in place however analysis reveals that dominant organizational culture has not yet internalized all democratic norms.</p>	2.5
Executive Control of the Security Sector	<p>The executive control of the security institutions over the breach of laws and human rights is only partially based on law. Implementation varies and central coordination is lacking. Administrative capacities are partially in place and their reporting is partial. Protection of human rights is not among the priorities of the executive control.</p> <p>The control of the legality of the budget implementation is well regulated but implementation in accordance with the up to date legislation is in the early stages. As a result, implementation so far has been partial.</p>	2.0

<p>Parliamentary Oversight of the Security Sector</p>	<p>The constitutional and legal framework is partly in place and the existing provisions are not fully consistent and compatible. There is a limited track record with regard to the oversight activity on the use of special investigative measures, respect of human rights and implementation of policies with a rather better performance on the control of the budget. The administrative capacities are limited and suffer from politicisation and frequent turnover. Parliamentary control and oversight has not yet become a democratic value of the Albanian political system</p>	<p>2.0</p>
<p>Judicial Control of the Security Sector</p>	<p>The Albanian judiciary system is in place. It consists of three levels - Court of First Instance, Court of Appeal and the High Court and a Constitutional Court, formally outside the judiciary. The Constitution provides reasonable formal protection of the judiciary independence thanks to the principle of separation of powers enshrined also in the law on the Organization of the Judicial Power in the Republic of Albania. The legal framework concerning fundamental human rights protection is complete. However the implementation of the legal framework is poor as regards to the punishment of abuses by security sector officials. As such lack of capacities and problems of an organizational nature, can be noted in the court system leading to the poor performance of the judiciary oversight of the exercise of law enforcement. The legislation on the use of special investigative measures is in place but it requires further adjustments to provide for a better and more effective involvement of the judiciary. The current legislation allows a rather ambiguous approach by the judiciary in the implementation phase. Administrative capacities need to be further improved to provide for the necessary bylaws to facilitate implementation and adequately staffed and trained human resources.</p>	<p>2.5</p>
<p>Financial Transparency of the Security Sector</p>	<p>The legislation is in line with international standards and implementation has improved but this has not produced any substantial improvement on the financial transparency. Administrative capacities are generally in place but their potential is not fully exploited due to lack of efficient management of resources and lack of full professional independence.</p>	<p>2.5</p>



Representation of Women and Minorities	The overall grade for the assessment of representation of woman and minorities in Albania is 2.5. The constitutional and legal framework is in place and has reached international standards on issues of gender and minorities. Satisfactory level of representation of woman in all security sector institutions is noticed. Exception is the Parliamentary Committee of National Security where no woman is a member. However, a more qualitative representation at the managerial level is still missing. Also mechanism on gender and minority representation is in place.	2.5
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RULE OF LAW*

EXECUTIVE SUMMARY

Constitutional and legal framework on security sector in Albania is in place, providing the foundations for governing the security sector in accordance with the rule of law principles and for the division of powers between the legislative, executive and judicial powers, including a solid basis for the protection of fundamental human rights. Constitutional and legal framework specifies the missions, competences, chain of command and mechanisms for internal and external control and oversight mechanisms, including the establishment and functioning of independent state institutions. The laws governing the security sector in Albania have been regularly amended with the aim to ensure full harmonisation with the Constitution and international laws. However, more needs to be done in order to ensure that the constitutional and legal framework meets the highest standards for a security sector that is fully based on the Rule of Law principle. Full implementation of the legislation also, has remained one of the main challenges.

2.1 INTRODUCTION

This paper analyzes the Legal state in the security sector in Albania. The first part is concerned with the Constitutional and Legal framework (Constitution and primary laws for all the actors, criteria and state administration) for the regulation of the security sector. This part examines if the Constitution maps the actors recognized as part of the security sector and whether it stipulates any criteria for democratic security governance and

* Due to the large amount of legislation consulted and analyzed in the Legal State paper the referencing style Chicago and Harvard will be employed.



provisions that regulate relevant human rights. The second part examines the regulation of security sector actors' competences, missions, tasks and of the civilian chain of command. Within this part, it is examined if primary laws regulate sufficiently the missions and competences of all security actors and if the legislation allows for discretionary actions. The third part examines legal arrangements on democratic civilian control and public oversight in accordance with international norms and protection of fundamental human rights. The fourth part analyses the compatibility and consistency of the legislation with the Constitution. The part on implementation of laws examines whether provisions of the legal documents (Constitution and primary laws) are clear, complete and if they envisage the quality which is crucial for their implementation.

This analysis focuses mainly on the statutory actors that use force; the military, the police and intelligence services. In the concluding part the paper draws some recommendations for improving the legal state in security sector institutions.

2.2 CONSTITUTIONAL AND LEGAL FRAMEWORK (Constitution and primary laws for all the actors, criteria and state administration)

Endeavours to establish the legal framework in security sector in Albania were initiated in 1991 with the adoption of the Law "On Main Constitutional Dispositions" together with additional laws which have regulated different actors in security sector such as the "Law on Public Order Police" of 1991, the Law "On the Armed Forces of the Republic of Albania" of 1995, the Law "On organization of the National Intelligence Service" of 1991 and the Law "On the organization of Justice and some changes in the Penal and Civil Code Procedures of the Republic of Albania" of 1992. With the total vacuum that existed in the legislative field during the communist regime, the adoption of legislation on security sector was indeed one of the most dynamic activities during the period 1991-1997, despite the problems with achieving democratic standards experienced by Albania. In this first part the legal framework will be analyzed - the constitution and primary laws on actors- that regulate the following actors Military, the Police and the Intelligence Services. Also Human Rights legislation in security sector will be examined.

THE CONSTITUTION

The Constitution adopted in 1998 marked a significant progress in strengthening the legal state in security sector in Albania. In the preamble the Constitution gives a crucial role to the principle of the rule of law.¹ As regards the security sector the Constitution lays down sufficient provisions on the Armed Forces and makes reference to the role of the President in this regard. Regarding the State Intelligence Service the Constitution does not lay down provisions on intelligence services, except for the appointment of the Director of National Intelligence Service (NIS). However, this disposition has proved to be important in securing the stability of the NIS and saving it from further politicisation by allowing the leadership of the intelligence service to serve under governments of different political affiliation (Hroni: 2008).

The existence of such provisions may be seen as a reflection of the security concept of the 1990s which focused mainly on external threats (Dyrmishi: 2009).²

The constitution makes reference to the role of the President and establishes also the National Security Council (NSC) as an advisory entity chaired by the President³. Since the President has no right to initiate laws but in

1 The preamble states: "...to build a social and democratic state based on the rule of law, and to guarantee the fundamental human rights and freedoms"

2 The Albanian constitution was drafted in 1998. By the time due to the disintegration of Yugoslavia and conflictive situation in Kosovo, the territorial integrity and national security were considered at the core of state security. Therefore, it is understandable this reflection in the constitution.

3 The main Presidential powers related strictly to SS in Albania are as follows: Art. 92/e "accords the highest military ranks according to the law;" Art. 92/i "upon proposal of the Prime Minister, he appoints the director of the intelligence service of the state"; Art. 168/2 "The President of the Republic is the General Commander of the Armed Forces"; Art. 168/3 "The National Security Council is an advisory organ of the President of the Republic"; Art. 169, 1. The President of the Republic in peacetime exercises the command of the Armed Forces through the Prime Minister and Minister of Defense. 2. The President of the Republic in wartime appoints and dismisses the Commander of the Armed Forces upon proposal of the Prime Minister. 3. The President of the Republic, upon proposal of the Prime Minister, appoints and dismisses the Chief of the General Staff, and upon the proposal of the Minister of Defense appoints and dismisses the commanders of the army, navy, and air force. 4. The powers of the President of the Republic, as General Commander of the Armed Forces, and those of the Commander of the Armed Forces, their subordination to constitutional organs, are defined by law. Art. 171/1 "In case of armed aggression against the Republic of Albania, the President of the Republic upon request of the Council of Ministers declares the state of war. 2. In case of external threat, or when a common defense obligation derives from an international agreement, the Parliament, upon proposal of the President of the



the framework of NSC can only issue recommendations, it remains unclear how he can exercise his powers since the head of the Executive is the Prime Minister who can undertake policy and legal initiatives. The Constitution does not provide for the existence of strategic documents such as the National Security Strategy (NSS). According to the Albanian Law the NSS must be renewed every three years. The last NSS was amended in 2004 for the period 2004-2007. Arguably, if the Constitution sanctioned the existence as well as the period of amendments of the NSS probably the chances of approval and implementation of this document would increase.

Human Rights

The Constitution lays down important provisions regarding the protection of Human Rights (HR). It provides an in-depth approach to HR protection by devoting a special section asserting that HR stand at the basis of the entire judicial order. The 1998 Constitution obliges all the public institutions of the security sector to respect and fulfil their duties regarding the respect for HR. In a general overview, it provides a complete framework based on the Universal Declaration of Human Rights. Nonetheless, limitations on rights and liberties of the individuals are not excluded in times of peace. In line with international HR standards, the Constitution stipulates that limitations to HR shall be proportional and be conducted for the public interest and protection of others' rights only, and should not affect the essence of HR. The Ministry of Justice is responsible for ensuring not only the compatibility and consistency of the internal legislation but also the approximation of the Albanian law with the international law⁴.

The Constitution stipulates general instructions as to when and how HR limitations can be employed by law⁵ in cases such the state of emergency due to natural disasters or serious threats to public and constitutional order. The

Republic, declares the state of war, decides the state of general or partial mobilization or demobilization.”; Art. 176 “When the Parliament cannot be convened during the state of war, the President of the Republic, with the proposal of the Council of Ministers, has the right to issue acts that have the force of the law, which have to be approved by the Assembly in its first meeting.”

4 The General Directorate for Codification in the Ministry of Justice has the main object of its work to control before all legal drafts are discussed by the Council of Ministers and proposed to the Parliament; <http://www.justice.gov.al/?fq=brenda&kid=105>

5 These limitations are foreseen by law, on the public interest or to protect the right of others and have to be proportionate to the situation

same document guarantees that specific fundamental HR including “equality and non-discrimination of the citizens”⁶, “right to life”, “freedom of religion”, “prohibition of torture and inhuman treatment”, “right for citizenship” etc. should not be limited even during the state of emergency. To further strengthen the protection of HR, in 2010 the Albanian parliament adopted the Anti-discrimination Law which bans all sort of discrimination of Albanian and foreign citizens and establishes the institution of the Commissioner for Protection from Discrimination⁷. However, there are some rights that Albania guarantees only to its own citizens as specified in the Article 16 of the Constitution. Despite this, any distinction based on nationality in those specific situations does not qualify as discrimination.

2.3 REGULATION OF SECURITY SECTOR ACTORS’ COMPETENCES, MISSIONS, TASKS AND REGULATION OF CIVIL CHAIN OF COMMAND

The actors’ legislation that will be discussed in this section regards the Police, the Military and Intelligence Services. As it will be seen the Constitution’s omissions discussed above are addresses in the legislation on the security actors.

The Police

The Police reform started since 1991 in Albania with the first law on police which remained in force until 1999 when the new law was adopted. Although it provided the legal basis for the police functions, it placed police as part of the armed forces and this was a main shortcoming. The later law addressed this, by separating the police from the armed forces and stating clearer goals, mission and status. It recognized the police as public administration service and separated the civilian management under the Minister from the police component under the Director General of the State Police. The new law provided some stability and avoided the frequent structural changes (Dervishi & Selita: 2004, 53). In order to better regulate the functions and competences

⁶ Despite this in Article 18 of the constitution stipulates although, not clearly the possibility for discrimination if there’s a legitimate ground for this action.

⁷ “...for reasons such as gender, race, religion, ethnicity, language, political, religious or philosophical beliefs, economic condition, education, social status, sexual orientation, ...”



of the police, several other laws and normative acts were adopted⁸. In order to further consolidate the division of responsibilities between the Minister and the General Director of the Police, a new law (No. 9749) on States Police was adopted in 2007. One fundamental element of the police independence was the provision to provide Police with a separate budget line from the Ministry of Interior (MoI). The latest law regulates the competences of the Minister and of the General Director of the Police by clearly defining their tasks and competences. The Minister is responsible for ensuring the efficiency of the police work by defining the strategic yearly objectives, request information and reports, without being able to get involved in operational direction of the police which is a competence of the General Director.

The Armed Forces

The competences of the military have been regulated in Albania by the “Law on the Armed Forces of the Republic of Albania” (No.7948) of 1995, which defines the obligations and responsibilities of military staff and prospective soldiers⁹ and the “Law on the Powers and Command Authority and Strategic Direction of the Armed Forces” of 2000, which defines the competences of the Minister of Defence, Chief of General Staff and Commanders of Forces. Regarding the civil chain of command the constitution introduces the essential dispositions that regulate civil military relations and responsibilities in the defence sector. It stipulates that the military be subject to civilian control and political neutrality. Part 15 stipulates that the President of the Republic is the General Commander of the Armed Forces. It also defines the chain of command in peace time where the President of the Republic exercises the command of the Armed Forces through the Prime Minister and Minister of Defence. During war time the President appoints and dismisses the Commander of the Armed Forces upon proposal by the Prime Minister. The constitution requires that the Minister of Defence should be civilian and represents the highest official in peace time of the civil personnel of the armed forces. The civil chain of command is also regulated by the ‘Law on the Powers and Command Authority and Strategic Direction of the Armed Forces’ (2000) which stipulates that the power and command authorities in AF are the Parliament, the President of the Republic,

8 Law No. 8933, date 25.07.2002 for “Supplement to the Law No. 8553, dated 25.11.1999 “State Police”, Law No. 9089, date 26.06.2003 for “Supplement to the Law No. 8553, dated 25.11.1999 “State Police”, Normative Act No. 3, dated 19.09.2003 for “Supplement to the Law Nr. 8553, dated 25.11.1999 “State Police”, Law No. 9247, dated 24.06.2004 for “Supplement to the Law No. 8553, dated 25.11.1999 “State Police”

9 Two additional laws (No. 8183: 1997 & No. 8404:1998) have complemented the Law on the Armed Forces

the Council of Ministers, the Minister of Defence, the Chief of General Staff.

Intelligence Services

The activity and organization of the National Intelligence Service (NIS) in Albania is regulated by the “Law on National Intelligence Service” (No.8391) of 1998. Following the NIS involvement during the 1997 crises, the main goal of the Law was to de-politicize NIS and to regulate the scope of its activity, selection of the personnel, and recruitment criteria based on professionalism¹⁰. It clearly specifies that NIS has no military and police competences. The law on NIS stipulates that it is under the direct control of the Prime Minister, while the President has the competences to nominate and dismiss the Director and Deputy Director of NIS by proposition by the Prime Minister.

In addition to NIS, the Military Intelligence Service (MIS) is also an important intelligence agency. The main competences of MIS are data collection, analysis and management of information concerning activities threatening national security, and provision of assessments to Direction and Strategic Command on possible external and internal threats targeting the AF during the exercise.

2.4 ARRANGEMENT OF DEMOCRATIC CIVILIAN CONTROL AND PUBLIC OVERSIGHT IN ACCORDANCE WITH INTERNATIONAL STANDARDS AND HUMAN RIGHTS PROTECTION

The Constitution of Albania provides for the military to be subject to civilian control. Additional provisions were laid down by the “Law on the Powers and Command Authority and Strategic Direction of the Armed Forces (2000). The Law on NIS provides for the civilian control through the provisions that oblige the Director of NIS to reports to the President to the Prime Minister and to the Parliament.

The Constitution provides for the Parliament as the only institution that approves the laws and oversees the implementation of the laws by the security sector. The Parliament performs this constitutional obligation through the Parliamentary Commission on National Security (PCNS). This role of the Parliament is also recognized by the “Law on the Powers and Command Authority and Strategic Direction of the Armed Forces”. It

¹⁰ Two other Laws were adopted in order to better regulate NIS such as: Law No. 8479 dated 29.04.1999 “For some amendments in the Law No.8391; Law No. 9399 dated 12.05.2005 “For some amendments in the Law No.8391



establishes not only that the parliament controls the activity of the armed forces but it also defines the powers and competences in peacetime, war¹¹ and state of emergency¹².

The legislation provides for the Parliament to exercise Human Rights (HR) protection in security sector. The competences of the parliament in the context of HR are three-folded: legislative functions (initiating and approving laws related to HR); electing functions (election of the Ombudsperson); and controlling functions (monitoring and controlling the implementation of laws by the executive regarding HR). The parliament has the right to establish special investigative committees to inquire specific cases of HR violations. The decisions are not binding for the Courts, but handed to the Prosecution for penal investigation. Apart from the General Prosecution Office (GP) a Permanent Parliamentary Sub-Commission monitors the activity of NIS in regards to HR violations.

The Albanian Constitution has established the normative hierarchy of legal norms¹³ by establishing that all legal norms must be in compliance with the Constitution¹⁴. The superiority of International Law over Domestic Law is clearly accepted. The drafting process of Albanian constitution was assisted by western countries experts and was approved by the Venice Commission of the Council of Europe. It is in compliance with international standards and norms and there is no case of clashes. In this context, Albania is complying with a considerable degree to most of the security and defense international standards of institutions such as NATO, EU, UN, OSCE, and the Council of Europe¹⁵. Nonetheless, the harmonization

11 According to the Albanian constitution Art 171 the state of war is declared “1. In case of armed aggression against the Republic of Albania, the President of the Republic upon request of the Council of Ministers declares the state of war. 2. In case of external threat, or when a common defense obligation derives from an international agreement, the Parliament, upon proposal of the President of the Republic, declares the state of war, decides the state of general or partial mobilization or demobilization.

12 According to the Albanian constitution Art 173 the state of emergency may be declared in cases of danger to the constitutional order and to public security. The Parliament, with request of the Council of Ministers, may decide for a state of emergency in one part or in the whole state territory, which lasts for as long as this danger continues, but not longer than 60 days. The extension of the term of the state of emergency may be done only with the consent of the Parliament, for each 30 days, for a period of time not longer than 90 days.

13 Constitution, Article 116, 1, The Constitution puts the ratified international treaties/ conventions, including HR conventions, below the Constitution and higher than the internal legislation

14 After a detailed analysis of Constitutional provisions especially of articles 4, 5, 116, 121, 122 and 123 International norms ratified by the Parliament prevail in case of inconsistencies with the Albanian legislation.

15 For a list of the most important international agreements where Albania is a signature country

of legislation with international standards means the adoption of legal norms into domestic legislation where the adoption is not a mechanical process but it refers to approximation of standards and ways they are enforced by domestic institutions (Law: 2007). In this regard, the process of harmonization represents a real challenge for Albanian administration, because of the lack of experience, shortage of qualified human resources, inadequate financial support etc (Daci: 2008).

Oversight by Independent Institutions

Several independent state institutions that exercise control and oversight activity of the security sector have been established in Albania. These institutions are the People's Advocate, the Supreme State Audit Institution¹⁶, the Commissioner on Data Protection, the High Inspectorate on Declaration and Audit of Assets, and the Procurement Advocate. Each of these actors have been regulated by a legal framework that provides for the establishment and functioning of these institutions which is generally in line with international standards¹⁷. One of the main achievements is the inclusion in the Constitution of the People's Advocate as an important independent actor for the oversight of the security sector¹⁸. The Constitution (Art. 63, Par3) stipulates that it has the authority to undertake investigations on any institution of the security sector. Although the People's Advocate does not enjoy any jurisdiction over the President, the Prime Minister and over military¹⁹, he/she has the right to obtain official documents categorized as "secret"²⁰. The People's Advocate has the power to recommend changes and improvements of problematic legal acts and laws that potentially infringe HR. These recommendations are addressed to the respective institutions according to the infringement and the institutions are obliged to answer within 30 days from the moment the recommendations are presented²¹. In

see the official website of the Ministry of Foreign Affairs of the Republic of Albania

16 Law No. 8270, dated 23.12.1997, On the High State Control has put the institution in line with international standards

17 For further detailed information look at the paper on "Control And Oversight Of The Security Sector By Independent State Institutions In Albania" part of this publication

18 Constitution of the Republic of Albania, Chapter IV

19 Law No.8454, Art.25, dated 4.2.1999

20 Law No.8454, Art.20

21 According to the Law on the People's Advocate Nr.8454, dated 4.02.1999, art. 22 the respective authorities after the recommendations of the People's Advocate and its request for clarification are obliged to offer explanations on actions taken or not taken on the related issue.



2008, the “National Mechanism for the Prevention of Torture and Inhuman Treatment/Conviction”²² was established inside the People’s Advocate, which is in charge for observing and reporting all the infringements in the detention centres such as Police Stations and Prisons²³.

Public oversight

Neither the constitution nor the primary laws for actors have recognized the role of media and CSOs ²⁴for external oversight of security sector specifically or other aspects of public live. Also the laws Conviction on CSOs and media do not refer at all to their oversight role. Additionally, the interest of the media and civil society organizations (CSO) have been limited and mostly focused on the police thus neglecting the military or other security sectors.

Human Rights Protection

Human rights protection has been introduced not only by the Constitution, but also by primary laws and additional legislation on the functions, activities and competences of security sector actors. The State Police activity is regulated by a cluster of laws. Law on State Police of 2007 provides an elaborated framework regarding the rights of the employees of this body. Additionally, the law on state police provides equal treatment not only to Albanian citizens but to everyone, without discrimination²⁵. Two other laws approved, the “Rules of the Personnel of State Police” and “The Ethical Code of the Police” provided a more complete framework concerning rights of police officers and individuals. They are both binding for all the police personnel and from the first moment the personnel starts the

22 Law No.9888, Art.36

23 This mechanism has the right to enter freely in all the institutions where the individual freedom is limited, request information on each individual, conduct private interviews etc. This mechanism monitors through visits, the treatment to individuals in detention stations, arrested or in prisons and issues recommendation to the respective institution on how to improve their treatment in custody.

24 Law No. 8781, dated 3.5.2001 on “Some Additions and Amendments to the Law No. 7850, dated 29.7.1994 on the Civil Code of the Republic of Albania”; Law No. 8789, dated 7.5.2001 on “The registration of non-profit Organizations in Albania”; and Law No. 8788, dated 7.5.2001 on Non-profit Organizations

25 Art.61;62 &114/2

work in the police has to sign a statement that agrees with both the laws²⁶. To complement the legal framework of the activity of state police in the field of HR, “Rules of Discipline of State Police”²⁷, provides clear definitions and measures on potential abuses of HR by the employers within the State Police.

With regard to the Armed Forces legal framework, the military personnel rights are clearly enshrined in the law “On the Military Discipline”, law “On Military Status” and law “On Military Ranks and Career”. While the first, mostly stipulates the obligations and responsibilities of military staff and prospective soldiers, the others define more clearly the rights of the soldiers, military officers serving in the armed forces as well as those of their families. On the other hand, the law sanctions limitations regarding the right of the military to be organized in unions and also their involvement in political parties. However these limitations are in compliance with international standards. The activity of other related bodies such as the Military Intelligence Service is based on the principles of HR (Art.3). Considering the sensitive activity of the NIS, the HR implications are not mentioned at all in the law “On National Intelligence Services”²⁸.

In case of any violations of security sector employees’ rights, the “Code of Civil Procedures”²⁹ foresees that every person has the right to appeal an administrative act. In cases of serious violations of the laws and legal norms, there are two main legal documents the Penal Code and the Military Penal Code.

2.5 COMPATIBILITY WITH THE CONSTITUTION AND CONSISTENCY AMONG LAWS

Most of the laws governing the security sector in Albania have been amended to be fully aligned with the Constitution and other laws. The primary laws for security actors are harmonized with the “Law on the Status of the Civil Servants”³⁰, the Law on “The Right to be Informed”, and “The Code of Administrative Procedures in the Republic of Albania”³¹. Technically, the Ministry of Justice is responsible for ensuring not only the compatibil-

26 Law No. 8291, Art. 15

27 Decision.786:2008

28 Law.No.8391

29 Law.No.8116:1996

30 Law No. 8549, art 19b, dated 11.11.1999

31 Law No.8485, art 10, dated 12.5.1999



ity and consistency of the internal legislation but also the approximation of the Albanian legislation with the international law³².

However, few discrepancies regarding the compatibility of the legislation are noticed between the Constitution and the “Law on the Powers and Command Authority and Strategic Direction of the Armed Forces”. The Constitution stipulates that the President is the General Commander of the AF, the competences of the Commander of the AF and the relationship with other constitutional institutions are envisaged by law. However, this constitutional provision is not fully in line with the above mentioned Law. Firstly, the competences of the President pursuant to this law in peace time go beyond the constitutional disposition which states that in peacetime the President exercises the command of the Armed Forces through the Prime Minister and Minister of Defence (thus not directly). Secondly, the law does not determine the competences of the Commander of Armed Forces in war time. On the opposite, the law stipulates that the president can become the commander of the AF in war time. Finally, the law does not specify the institutional relationship of the president as the Commander of AF in war time and of the Chief of General Staff with other constitutional authorities such as the Council of Ministers, The Prime Minister, the Minister of Defence, and the Parliament.

2.6 IMPLEMENTATION OF LAWS

All primary laws that regulate the security sector actors provide for disciplinary sanctions in case of breach of laws and administrative units tasked with the enforcement of disciplinary measures and reporting are established. In 2001, the Service of Interior Control (SIC) was established under the Ministry of Interior, which aims to guarantee to the community a responsible and democratic police service in accordance with the legislation. The revised law “On the Service of Interior Control”³³ and the recently established “Regulation of the Personnel of Interior Control Service”³⁴ brought some improvements related to the guarantee and protection of HR by this institution. A similar body; the Internal Control Service (ICS)

³² The General Directorate for Codification in the Ministry of Justice has the main object of its work to control before all legal drafts are discussed by the Council of Ministers and proposed to the Parliament SIC exercises inspection to monitor and evaluate the performance of the state police in accordance with the law (Art 28)

³³ Law No.10002, dated 6.10.2008

³⁴ Decision.637:2009

of the Prison System, was created with the purpose to prevent, detect and investigate criminal activity of the prisons' staff³⁵.

In the case of NIS, the Law provides for the establishment of the General Inspector who is nominated by the Prime Minister³⁶. The General Inspector has the right to exercises controls on the NIS activity and must report to the Prime Minister and the General Director of NIS for lack of compliance with laws and other problems. The General Prosecutor also has the right to control if the NIS activity is conducted in accordance with the procedures envisaged by Law (Art.6).^{37 38}

In the Military the Law "On the Military Discipline" clearly specifies the authorities that are authorised to undertake disciplinary sanctions.

Sanctions are precisely defined in regard to the police. They can range from a disciplinary note, to suspension from work, financial penalties, the suspension from the right to work in state institutions, in the case of Police and Military lower rank subordination, a court trial, to the misdemeanour and criminal sanctions that imply prison sentences.

RECOMMENDATIONS

- The constitution need to be revised in order to provide for a more comprehensive approach to security sector and provide clearer competences for the constitutional authorities..
- A law on the National Security Council should be adopted to clarify the competences of this body and make its decisions enforceable.
- Primary laws should better clarify norms and mechanisms for a more effective enforcement.
- The respective of the Parliament, the Prime Minister, the Council of Ministers need to be revised in order to minimise the potential for discretionary actions.

35 Law.No.9397, dated 05.12.2005

36 Law No. 8391, Art. 12

37 Law on State Police, Art 75-78

38 Law No. 9183 on the Military Discipline in the Armed Forces" of 2004



BIBLIOGRAPHY

PRIMARY SOURCES

- Constitution of the Republic of Albania
- Law No. 7491, dated 29.04.1991 “On Main Constitutional Provisions”
- Law No. 7495, dated 07.02.1991 “On organization of the National Intelligence Service”
- Law No. 7504, dated 30.07.1991 “For State Police”
- Law No. 7504, dated 30.07.1991 “Law on Public Order Police”
- Law No 7574, dated 24.06.1992 “On the organization of Justice and some changes in the Penal and Civil Code Procedures of the Republic of Albania”
- Law No. 7692, dated 31.3.1993 “On a supplement of constitutional provisions”
- Law No. 7978, dated 26.07.1995 “For the Armed Forces of the Republic of Albania”
- Law No. 8003, dated 28.09.1995 ”On Military Penal Code”
- Law No. 8116, dated 29 March 1996, “Code of Civil Procedures”
- Law No. 8183, dated 20.01.1997 “On a supplement to Law No. 7978, dated 26.07.1995 “For the Armed Forces of the Republic of Albania”
- Law No. 8194, dated 2.3.1997 , “On State of Emergency”
- Law No. 8270, dated 23.12.1997, On the High State Control has put the institution in line with international standards
- Law No. 8292, dated 25.2.1998 “On Special Forces and Quick Intervention”,
- Law No. 8291, dated 25.02.1998, “On The Ethical Code of the Police”
- Law No. 8404, dated 15.09.1998 “On a supplement to Law No. 7978, dated 26.07.1995 “For the Armed Forces of the Republic of Albania”
- Law No. 8391, dated 28.10.1998 “On National Intelligent Services”
- Law No. 8436, dated 12. 28. 1998 “On the Organization and Functioning of the Judicial Power”
- Law No. 8454, dated 4.2.1999 “On Ombudsman”
- Law No. 8479, dated 29.04.1999 “For some amendments in the Law No.8391”
- Law No. 8549, dated 11.11.1999, “Law on the Status of the Civil Servants”
- Law No. 8553 dated 25.11.1999. “On State Police”
- Law No. 8485, dated 12.5.1999, Code of Administrative Procedures

- Law No. 8588, dated 15.03.2000, “On the Organization and Functioning of the High Court”
- Law No. 8643, dated 20.07.2000 “On Police Ranks”
- Law No. 8577, dated 10.02.2000, “On the Organization and Functioning of the Constitutional Court (, dated 10.02.2000)
- Law No. 8671, dated 26.10.2000 “On the Powers and Command Authority and Strategic Direction of the Armed Forces”
- Law No. 8781, dated 3.5.2001 on “Some Additions and Amendments to the Law No. 7850, dated 29.7.1994 on the Civil Code of the Republic of Albania”
- Law No. 8770, dated 19.04.2001, “On the Guarding and Physical Security Service”
- Law No. 8678, dated 14.05.2001 “On the Organization and Functioning of the Ministry of Justice”
- Law No. 8811, dated 17.05.2001, “On the Organization and Functioning of the High Council of Justice”
- Law No. 8936, dated 23.05.2001, “On a supplement to Law no. 8770”,
- Law No. 8789, dated 7.5.2001 on “The registration of non-profit Organizations in Albania”
- Law No. 8788, dated 7.5.2001 on Non-profit Organizations
- Order No. 90, dated 16.8.2001, “For the establishment of the inter-ministerial task force for the preparation of the draft law ‘On the State of Emergency’ ”
- Law No. 8919, dated 04.07.2002, “On Amendments of Military Penal Code”
- Law No. 8933, dated 25.07.2002 for, “Supplement to the Law No. 8553, dated 25.11.1999 “State Police”,
- Law No. 9069, dated 15.05.2003, “On the Military Police in the Armed Forces”
- Law No. 9074, dated 29.05.2003 “On the Military Intelligent Service”
- Law No. 9089, dated 26.06.2003 for “Supplement to the Law No. 8553, dated 25.11.1999 “State Police”
- Decision No. 633, dated 18.9.2003 “National Strategy on Improving the Life Condition of Roma People”
- Normative Act No. 3, dated 19.09.2003 for “Supplement to the Law No. 8553 ‘On State Police”
- Law No. 9194, dated 19.02.2004, “On a supplement to Law No. 8671, dated 26.10.2000”



- Law No. 9183 dated 05.02.2004, “For the Military Discipline in the Armed Forces of the Republic of Albania”
- Law No. 9247, dated 24.06.2004 for “Supplement to the Law No. 8553, dated 25.11.1999 “State Police”
- Law No. 9219, Art 19, dated 23.10.2004, “On the Military Status”
- Law No. 9357, dated 17.3.2005 “On the status of SIS employers”,
- Law No. 9363, dated 24.03.2005, “Law on Procedures for Sending Military troops Abroad”
- Law No. 9375, dated 21.04.2005 “On some changes and supplements in the Law No. 8321, dated 2.04.1998 “On Prison Police”
- Decision No. 368, dated 31.5.2005, “ On National Strategy of Children”
- Law No. 9343, dated 10.2.2005, “On some changes in the Law No. 8770
- Law No. 9397, dated 12. 5. 2005, “On Internal Control Service of the Prison System”
- Law No. 9399 dated 12.05.2005 “For some amendments in the Law No.8391”
- Law No. 9399, dated 12.05.2005 “On the Organization and Functioning of the National Judicial Conference”
- Law No. 9669, dated 18.12.2006, “On measures against violence in family relations”
- Decision No. 9, dated 26.2.2007, Constitutional Court
- Law No. 9749 dated 04.06.2007 “Law on State Police”
- Decision No. 148, dated 10.12.2007, “On the establishment of the Sub-Commission ‘On Human Rights’ ”
- Decision No. 804, dated 21.11.2007, “On the Approval of the Rules of Personnel of the State Police”
- Decision No. 913, dated 19.12.2007, “Strategy of Gender Equality and Domestic Violence
- Law No. 9877, dated 02.18. 2008 “Law on the Organization of the Judicial Power”
- Decision No. 786, dated 04.06.2008, “On the Approval of Rules of Discipline in the State Police”
- Law No. 786, dated 04.06.2008 on “Disciplinary Regulation of State Police”
- Law No. 10002, dated 6.10.2008, “On the Service of Interior Control”
- Decision No. 1083, dated 23.7.2008, “National Strategy Against Trafficking of Human Beings”

- Law No. 9970, dated 24.7.2008, “On gender equality”
- Decision No. 14, dated 9.1.2008, “On National Strategy on Community Policing”
- Law No. 9888, dated 10.03.2008 “On some changes in the Law No.8328, dated 16.4.1998 “On the Rights e treatment of the inmates”
- Law No.10032, dated 11.12.2008, “On Prison Police”
- Decision No. 254, dated 02.11.2009, High Council of Justice
- Law No. 10142, dated 15.05.2009, “On Additional Social Insurance of Military of the Armed Forces”
- Directive No. 656, dated 06.10.2009, “On the procedures of Certification and Control of the Activity of Physical Security Protection”
- Decision No. 248, dated 22.06.2009, High Council of Justice
- Decision No. 637, dated 11.06.2009, “On the Service of Interior Control”
- Law No. 10 221, dated 4.2.2010 “On Protection against discrimination”
- Regulation of National Election Commission No. 49, dated 07.06.2001
- Regulation of National Election Commission No. 14, dated 15.10.2004
- Regulation of National Election Commission No. 4, dated 18.06.2002
- Regulation of National Election Commission No. 4, dated 23.09.2006

SECONDARY SOURCES

- Abazi. E, Bumci. A, Hide. E Rakipi. A (2009), Security Sector Reform in Albania, Initiative for Peace Building, ELIMEP, Greece
- American Bar Association, (2008). Judicial Reform Index for Albania. Vol. 4, Available from: www.abanet.org/rol/publications/judicial_reform_index.shtml.
- Daci, Jordan (2008), The European integration of the Albanian legal system, International Conference on Balkan Studies, Available from: <http://epoka.edu.al/new/icbs/2.pdf>
- Dervishi, A and Selita, A , (2004) E drejta e Policise [The Police Law], Tirana : Alb-Shop.,
- Dyrmishi, A, (2009) “Evaluation of National Security Decision-Making Structures”, Institute for Democracy and Mediation, Tirana
- European Council, (2006) European Committee On Crime Problems, Strasbourg.



- Ministry of Public Order, Republic of Albania (2008). Achievements of the Ministry of Interior during 2005-2008. Tirana, Albania.
- Ombudsman Office, (2008). Annual Report.
- Organisation for Security and Cooperation in Europe (OSCE), Office for Democratic Institutions and Human Rights (ODIHR) (1996). Observation of the parliamentary elections held in the Republic of Albania – May 26 and June 2 1996. Available at http://www.osce.org/documents/odihr/1996/07/1176_en.pdf.
- OSCE, ODIHR (2001). Final report on parliamentary election in Albania, 24 June - 19 August 2001. Available at http://www.osce.org/documents/odihr/2001/10/1170_en.pdf
- Godet, F. (2002) The Pyramid of Norms in the Security Sector. Legal Issues and Practices in the Field of Democratic Control of Armed Forces and Security Sector: National and International Perspectives, Workshop, 5-6 April, Geneva. Geneva: DCAF, pp. 1-11.
- Hroni, S, (2008) PSI Handbook of Global Security and Intelligence National Approaches, edited by Stuart Farson, Peter Gill Mark Phythian
- International Police Standards (2008): Guidebook on Democratic Policing. Geneva: DCAF. (Available online at: <http://se2.dcaf.ch/serviceengine/FileContent?serviceID=21&fileid=11E10A58-4C7B-37B4-97D1-219244943729&lng=en>)
- Law. D (ed), (2007) Intergovernmental Organisations and Security Sector Reform, DCAF.

3 GENERAL TRANSPARENCY

EXECUTIVE SUMMARY

The efforts to increase transparency of the public institutions in Albania in the last 10 years have been featured with progress and obstacles. The new legal framework although brought important improvements for the transparency practices still needs revisions and clarifications in order to provide a clear scheme of exceptions for the non-disclosure of public information, protection for “whistleblowers” and systems to promote better record maintenance. On the other hand conflicts can be identified in the Law on Access to Official Information and Law “On Information Classified State Secret” as the latter fails to acknowledge the society’s right to know about issues of public interest that might override the government’s classification. Furthermore classification of information as well as the process of declassification of data remains non-transparent and hidden from the public.

Despite the endeavors to promote transparency of the security sector institutions by establishing primary legislation enshrined in the Law on Access to Official Documents, 12 years after the adoption of this law, the vertical harmonization of the legal framework is yet to be accomplished. Rarely organic laws refer to the transparency standards while private bodies exercising public functions such as PSC are not included in the scope of the existing law. The situation is not promising we refer to the implementation of the law on access to official information despite the established administrative capacities in the last years. Although citizens have become more aware of the application of this law, reports witness about problems in obtaining information from public and governmental institutions. As a consequence of the lack of unified institutional standards related to transparency practices in security



INTRODUCTION

This paper would present the state of transparency in the security sector in Albania in regards to the legal framework, administrative capacities, implementation and values it such criteria represents. In this framework the evaluation of the performance in regards to each of the mentioned components will be measured referring to 5 grades: 1 for the best performance, and 5 for the poorest performance.

The principles of transparency and data protection, one of the main pillars of democratic institutions and governmental accountability, were introduced in Albania with the adoption of the constitution in 1998 and later complemented with a cluster of laws that provides the fundamental provisions for access to information, protection of private data, and protection of classified data which will be separately analyzed in this research.

3.1 ACCESS TO OFFICIAL INFORMATION

3.1.1 CONSTITUTIONAL AND LEGAL FRAMEWORK

The Constitution of Albania (Article 23) provides a satisfactory constitutional guarantee on the transparency of governmental bodies, stipulating the right to information as a fundamental right. Nevertheless the constitution does not offer any clear definition on the classification of information as secret raising concerns about its application.

On the virtue of the constitution, the law “On Right to Information over Official Documents” (Nr. 8503) was enacted in June 1999. The law allows any person/subject to request information part of official documents. It provides clear provisions on the public institutions’ obligation to release timely information related to their activity. “Code of Administrative Procedures” as well provides basic obligations for public authorities for transparency towards the public and other independent bodies (Nr. 8485, 12.05.1999).

Despite the novelty that the law represents, it needs to be revised and framed in order to cover different inconsistencies. In this regard the definitions of “information” and “public authorities” remain narrow and do not reflect the international standards stipulated in the International Convention on Access to Official Documents – Tromso 2009¹ which Albania

¹ Council of Europe, Convention on Access to Official Documents, Tromso 2009

has not yet ratified. Some inconsistencies can be noted in the lack of a clear scheme of exceptions for the non-disclosure of public information, controversies on destruction of records, obligations of public authorities to publish specific information etc. (Article 19:2004). One of the most significant problems with the law is the absence of specific provisions which set out in details the exemptions for justifying the withholding of information, the level of harm needed to substantiate the withholding and the balancing of interests that should be considered before something is withheld (OSCE:2006). There are also problems with the scope of the Law's application which lacks a number of important safeguards, such as protection for "whistleblowers" and systems to promote better record maintenance. In the current law, unrevised since 1999, can be noticed the failure to recognize that there are instances where information should be released and prevail for the sake of public interest, even if it may be properly classified. Concerning the issue of 'whistleblowers' The Council of Europe Civil Law Convention on Corruption (CE:1999), which was ratified by Albania in 2000 and entered into force in November 2003, recognizes that employees who disclose information about corruption should not be subject to sanctions (MJ:2009). However such approach is not reflected in the national legal framework in all the levels (constitution, organic laws, regulations etc) constituting a need for the legal framework approximation with EU *acquis communautaire*.

In broader terms, some security sector actors do refer to transparency provisions in their organic legal framework or institutional regulation such as the Ministry of Justice, which has established detailed procedures regarding the distribution of official information and oblige all the officials to respond to official requests for information (Nr.5745:2009). In the same framework the "General Regulation of Prisons" (Nr.303:2009) states the necessity to inform the public on the role of prisons' system and the activity of the personnel. Similarly the General Prosecutor Office in the organic law provides formal commitment for making public all the activity related to this institution (Law Nr.8737).

However what can be considered exceptional in the transparency system of the security sector is that by law (Nr.8391) the activity of Internal Control Service; Military Intelligent Service and Internal Control Service are excluded from the obligations flowing from the Law on Access to Official Information, as other public institutions are bound to living a lot of ambiguities concerning public oversight of these governing bodies.

The legal framework related to PSC seems inappropriate in relation to the



transparency requirements, since as private enterprisers on the one hand they are not obliged to respect the obligations stemming from the “Law on Access to Official documents”, and on the other hand the respective legal framework does not stipulate the role of State Police to make public data and information on Private Security Companies activity. In this regard statutory bodies and private bodies exercising public functions in the security sector do not lie within the scope of the Law² (Art. 19:2004).

3.1.2 IMPLEMENTATION

Implementation of the law on access to official information has been slow and rather problematic but in the last years, positive developments can be noted. For a long time during the past the law was widely unknown³, but in the last years the situation is believed to have changed. Despite

The administration is aware of the law however the will for the application remains low. According to Ombudsman Office, the oversight role of this institution (Law Nr. 8503, Art.18,) for identified infringement of the law is functional and in this regard a low number of the recommendations have not been implemented by the respective institutions. In the same time the hierarchy of administrative measures is deemed to function good by the Ombudsperson (Jaupi:2010). However the authority of this key body in the public oversight of the security sector, is lacking and recommendations are not always fulfilled by the security sector institutions. In this regards the Ombudsperson issued to the Council of Ministers a recommendation to be adopted by all the public institutions in Albania in 2007 on aproving the “Regulation on the right to information”. Nonenthesless this regulation was not adopted, lacking a coomon approach towards the transparency of the security sector institutions.

According to different reports, businesses and citizens complained of a lack of transparency and the failure to publish regulations or legislation that should be basic public information. According to reports citizens often faced serious problems in obtaining information from public and government institutions (US Department:2010)

² For a clear definition of ‘public authority’, please read Article 1 / 2, of Council of Europe Convention on Access to Official Documents, Tromso 2007

³ The Centre for Development and Democratization of the Institutions, reported in 2003 that 87% of the people surveyed working in public authorities did not even know that Albania had a freedom of information law.

Referring to a recent survey (IDRA:2010) conducted in Albania, both the general public and public sector employees perceive that overall transparency in institutions is low. However the public sector employees' perceptions of institutional transparency are better than those of the general public.

3.1.3 ADMINISTRATIVE AND MANAGEMENT CAPACITY

The institution of Ombudsperson in Albania is in charge for monitoring the implementation of the law “On right to Information over Official Documents” (Article 18). The Ombudsperson has fairly extensive powers of investigation and appears to be independent of political influence. It has a consolidated activity with an increasing number of complains year after year⁴.

All the security sector institutions have the “Information Office” as an integral part of their internal structural administration, however the functionality and expertise of staff varies. In addition all the public authorities have a website where they publish information and important data for the public; nonetheless the process of updating the information and relevance of the content varies.

3.1.4 VALUES

Despite the fact that the law on access to information has been adopted since 1999 it has not been properly enforced by respective bodies of the Security Sector. The transparency provisions are not strictly applied, while the performance varies from institution to institution depending on the will of the heads of each body. However the role of Ombudsman as the main warrantor of this law has increased, what can be reflected in the number of recommendations directed to different institutions by this body.

The awareness of the law amongst ordinary people is also very low, particularly outside Tirana. As a result, the number of requests for official documents remains relatively low giving evidence of the little use of this law by the public.

⁴ During the last 10 years Ombudsperson has processed 482 complaints by different subject who claimed that their right of “access to official documents” has been infringed. During 2009 have been 93 requests in total; 80% of which have been resolved in favor of the complainer



3.2 CLASSIFIED INFORMATION AS “SECRET”

3.2.1 CONSTITUTIONAL AND LEGAL FRAMEWORK

The legal framework in regards to the classified information as secret has been developed especially in the last 10 years to be compatible with traditional and new threats that stem from disclosure of information that might affect national and public security. The constitution although explicitly do not refer to classified information, on Article 17 considers potential limitations on the people rights, in order to protect national security. Although the legal framework is complemented with laws and additional decisions aiming to regulate the overall circumstances of classified information such as: accumulation and administration of classified information (Law:8839), certification of classified information, procedures of classification, secret information in communication system (CM, Dec. 387), extermination of secret data (CM: Dec.81), industrial secret (CM, Dec:121) etc.

In regards to the classified information, important institutions of SS, such as State Police (Law Nr.9749:Art 66&4), Military Police (Law Nr.9069: Art.4), and Prisons (CM, Nr.63:Art18) identify the possibility for limitations of public information on the basis of protection of human dignity, national interests etc.

In 2006, the government introduced some changes to the law “On Information Classified as ‘State Secret’”. The bill included a number of changes apparently to synchronize Albanian law with NATO requirements on the security of information. However, the draft goes beyond the apparent NATO standards by creating new restrictions on information which would significantly restrict access to public information in Albania (OSCE 2006).

In May 2006, the Parliament approved amendments to the law to create a new category called “restricted”, for some information that the disclosure would “damage the normal state activity and the interests or effectiveness of the state institutions.” Such approach was strongly criticized by civil society groups and international organizations

In the system of transparency and governmental openness, can be taken into consideration the fact that the Criminal Code punishes the disclosure and dissemination of information and documents that constitute ‘state secrets’ (article 294;295). In this regard the use of legal measures to criminalize the distribution of false information (false news provisions) is neither legitimate under international law, nor positive for the free flow of

information and transparency principles.

The law on Information Classified State Secret does not acknowledge that society's right to know about issues of public interest might override the government's classification. Furthermore the law does not oblige the judiciary to apply the public-interest test to evaluate the government's classification concerns (OSCE 2008). This test might be conducted by National Security Authority through well established guidelines which provide standards of public interest.

In a careful observation can be noted that legal provisions on classified information take prevalence on the law on access to official documents. The law "On Access to Official Information" fails to contain any relevant regime of exceptions, simply leaving the right of access to information, to be restricted by any other law (Article 19:2004).

3.2.2 IMPLEMENTATION

The National Security Authority in the last year has prepared, negotiated and adopted international agreements on the common protection of classified data between different countries and organizations.

One year after NATO membership, the National Security Authority claims that Albania has fulfilled NATO standards related to the protection of classified information (Shyqyri:2010). These standards relates to improvement of legislation, certification of personnel, secure networks etc. However according to reports, NATO structures have not yet shared any "top secret" information with Albania due to safety reasons. (Shqip:2010)

3.2.3 ADMINISTRATIVE AND MANAGEMENT CAPACITY

The Classified Information Security Directorate changed in National Security Authority was established to organize, conduct and control the measures to the classified information protection, classification and administration. The director of this body is nominated by the prime minister who may cause political influences over this activity.

In addition each public institution of the security sector, establishes Commissions of Analyzing Classified Information, for internal purposes. This body has trained personnel on data protection and classification. This body revises and proposes the information that should be classified according to the relevance it has, concerning public and national security



(CM. Nr:123).

For the declassification of data in the archive networks are established “Commissions for the Declassification of Classified Information” with 5 members chaired by the head of the institution. Nonetheless the law, although without much details, gives to National Intelligent Service the right to recommend special procedures for the declassification on specific information, independently from this structure (CM: Nr.124).

3.2.4 VALUES

The procedures and the practices of classification of information in all the levels (“National Security Authority” and “Commissions of Analyzing Classified Information”) remain non-transparent. The same can be noted with the process of declassification of data which remain undisclosed to the public.

3.3 PROTECTION OF PERSONAL DATA

3.3.1 CONSTITUTIONAL AND LEGAL FRAMEWORK

The protection of personal data is recognized since 1993 in the constitutional provisions (Law:7692), and later were included in new constitution adopted in 1998 (art. 35). In this framework protection of personal data allows for individuals to access and correct their personal information held by public and private bodies. Something that is provided by law “On protection of personal data”, which offers a basis that personal data must be processed in a way in order to respects human rights, fundamental freedoms and privacy. Nonetheless a recently adopted decision by the Council of Ministers (Nr1232:2009) provides more space for non-governmental, religious and unionist organization to process personal data only related to their activity, and data related to human resources management of public and private sector. In this regard Albania has ratified the Convention on Protection of Individuals from Automatic Proceeding of Personal Data and its additional protocol, as well as defined the countries with sufficient level of control for personal data.

3.3.2 IMPLEMENTATION

The Commission on Protection of Personal Data is a recently established structure which lacks the heritage and authority to oblige all related bodies to report in regards to the procession of personal data. During 2009, there were 290 requests prepared by CPPD to different bodies to provide information concerning personal data, only 37 have been received (CPPD:2009). No information is available on the measures that CPPD have undertaken against the subjects who have not responded to the issued recommendations and requests.

3.3.3 ADMINISTRATIVE AND MANAGEMENT CAPACITY

In regards to the protection of personal data, the Commissioner for Protection of Personal Data is in charge for safeguarding the application of the law on protection of private data as well as assessing and evaluating the personal data transfer to other subjects. The Commissioner office in cooperation with OSCE has adopted a strategy for 2010 aiming to ensure proper protection of personal data in Albania in particular to enforcement Data Protection, introducing principle of Privacy Enhancing Technologies, Improving organization of CPPD (2010).

3.3.4 VALUES

It is clear that there is a need to continue with enforcing the data protection principles in Albanian society. The enforcement of the Data Protection legislation requires cooperation with all national and international stakeholders. The Commission on Protection of Personal Data despite the capacities and trained staff lacks authority and experience in dealing with the protection of personal data.

3.4 RECOMMENDATIONS

- Revision of the current legislation on access to information in order to provide guarantees in regards to the right of citizens for access to official data, as well as public authorities' obligation to release timely and comprehensive information.
- The current legislation on transparency should be harmonized in the



- organic laws of all the security sector institutions with no exception.
- The institutions of the security sector should apply the public-interest test to evaluate the government's classification concerns while the Law on Access to Official Information should take prevalence: Transparency is the rule, classification is the exception
 - The law "On access to official document" should clarify obligations concerning transparency of statutory private bodies exercising public functions in the security sector.

BIBLIOGRAPHY

PRIMARY SOURCES

- Code of Administrative Procedures Nr. 8485, Date 12.05.1999
- Council of Ministers, Decision Nr. 303, date 25.03.2009, General Regulation of Prisons
- Council of Ministers, Dec. 387, Date 28.6.2007, “On some changes to the Law ‘On the Regulations of Physical Security of Classified Information’”
- Council of Ministers, Decision Nr.63, Date 9.3.2000, Art.18, “On the Prison’s Regulation”
- Council of Ministers, Dec Nr. 123, date 15.3. 2001, “On the rules of classification process if state secret, procedures and identification of state secret, and delegation of classification authority”
- Council of Ministers, Dec. Nr. 124, Date 15.03.2001, Art.13, “On declassification and devaluation of classified information as ‘secret’”
- Council of Ministers, Dec. 121, Date 2.2.2009, “On the security of classified information as ‘state secret’ in industrial field”
- Committee for Personal Data Protection, “Strategy 2010”, 2009
- Commissioner for Personal Data Protection, Strategy for 2010, <http://www.kmdp.al>
- Council of Europe, Civil Law Convention on Corruption, <http://conventions.coe.int/treaty/en/Treaties/Html/174.htm>
- Council of Ministers, Dec. 81, Date 28.1.2008, “On the definition of criteria and procedures for the extermination of classified information”
- Ministry of Justice, “Internal Regulation on the Organization and Function”, Order 5745, date 06.07.09
- Law Nr.8737, date 12.2.2001, “On the Organization and Function of Prosecution in the Republic of Albania”, Article 6/1
- Law Nr.8391, date 28.10.1998, “On the National Intelligent Service”
- Law 8839, Date 22.11.2001, “On the collection, administration and protection of classified information”
- procedures for the extermination of classified information”
- Law Nr. 9749; date 4.6.2007 , “On State Police”
- Law Nr. 9069, date 15.05.2003, “On Military Police in the Armed Forces”
- Law Nr. 7692, Date 31.3.1993, “On some supplements of Constitution-



al Provisions”

- Law Nr. 1232, Date 11.12.2009, “On the definition of exceptional cases from the obligation to report the processing of personal data”.

SECONDARY SOURCES

- Alket Jaupi, Ombudsman Adviser, Interview, May 2010
- Alma Katragjini, State Police Spokesperson Interview, May 2010
- Article 19, Memorandum on the Albanian Law on Right To Information, London September 2004.
- Banisar. David, Comments on Legal Regulations on Access to Information and State Secrets in Albania, OSCE, April 2006, http://www.osce.org/documents/rfm/2006/04/18815_en.pdf
- Dekavelli. Shyqyri, Head of National Security Authority, Interview DW, 25.03.2010
- Gazeta Shqip, “Albania do not fulfill NATO standards”, 26.03.2010.
- General Directorate of Prisons, Answer to Official Request, Nr. 5168, date 7.6.2010
- IDRA, Corruption in Albania, 2010
- OSCE, Access to information by the media in the OSCE, July 2008, http://www.osce.org/documents/rfm/2007/06/24251_en.pdf
- Remzi Ibrahim, Information Office, Internal Control Service – Ministry of Interior, Interview May 2010
- US Department, Human rights Report 2008-2009

4 | EXECUTIVE CONTROL

EXECUTIVE SUMMARY

The constitutional framework for the executive control of the security sector is in place. The control over the breach of laws and human rights is regulated through references in the primary laws of the security actors but there is no legislation to provide for overall arrangements. The laws are implemented through ministerial acts which vary from one institution to the other. Such practice allows for variations in the implementation of laws by different security institutions but with no coordination at the centre of the executive. The administrative capacities in place vary also but in general are the units are understaffed and quality of training varies, with the exception of the Ministry of Interior which has made a good progress in the last few years. With regard to the control over the legality of actions in implementation of the budget, the legislation is rather complete and in line with the EU standards but the up to date legislation has been adopted only recently. Due to lack of legislation up to now the financial inspection and internal audit have overlapped as were performed by the same internal audit units. The development of capacities to implement financial inspection as a separate function from the internal audit is in the early stages.

INTRODUCTION

This paper analyses the executive control of the security sector in Albania. The analysis focuses on the armed forces, the police, the intelligence and security services and the private security companies. The first section examines the control by the executive on the legality of actions by the above mentioned security institutions, including human rights. The control by the executive of the execution of security policy will not be discussed in this paper. The second section examines the legality of the budget spending. The last part draws some recommendations.



The analysis focuses on the constitutional and legal provisions, the implementation of the legislation, the administrative capacities and the extent to which the executive control of the security institutions has become an established democratic value.

4.1 CONTROL OVER BREACH OF LAWS AND HUMAN RIGHTS

4.1.1 CONSTITUTIONAL AND LEGAL FRAMEWORK

BREACH OF LAWS

The Constitution of Albania lays down the basic provisions for the executive control of the security sector. The Prime Minister (PM) is responsible for ensuring the implementation of legislation and policies, as well as coordinating and supervising the work of the members of the Council of Minister (COM) and other institutions of the central state administration (Constitution, Art 102). The Constitution stipulates also that within the principal directions of general state policy the ministers are responsible for specific areas of competence. As part of the Executive the President has control responsibilities over the Armed Forces (AF) (Constitution, part 15).

The primary and supplementary laws of the security institutions lay down specific competences for the President, the CoM, the PM and the ministers. However, in general the legislation on the security institutions lacks provisions for the establishment of distinct control mechanisms by the Executive. The exceptions are the law on the Service of the Internal Control of the Ministry of Interior (SICMI) which clearly provide SICMI with the mandate to inspect the legality of the activity of the State Police (SP) (Law 10002/2008) and the law on the State Intelligence Service (SIS) which provides for the establishment of the Inspector General (IG) (Law 8391/1998).

As a solution to these omission serves the law on the functioning of the COM, which lays down the responsibility of the ministers to issue regulations on the functioning of the respective ministries (Law 9000/2003). Based on this law the ministers have issued regulations, which among others provide for the establishment of control and inspection units and their competences. For the intelligences services regulations on internal control units are issued by the directors. However, due to the lack of further speci-

fications in the law these regulations vary greatly in comprehensiveness and approach.

Another problem identified is that the activity of the three tiers of the executive control, (the PM, the ministers and the heads of the security institutions within the ministries) lacks vertical and horizontal harmonisation. Regarding the access of Minister to operational activities the legislation provide for different solutions. The laws on SP and SICMI prevent the Minister of Interior to get access to certain secret information (Law 9749/2007, Law 10002/2008). The law on MIS do not have such limiting provisions and the not-so-precise wording confers that the Minister of Defence has full control over this service¹. However the inspection mechanisms can access all types of information and report to ministers. The IG in may get access to all information buy has to get the clearance from the Director of SIS first.

A part from the inspection structures all the security institutions have established disciplinary commissions which manly function as appeal bodies to review decisions made by ministers or equivalent officials. For some institutions (Police, SICMI) provisions on the disciplinary procedures and the establishment of commissions are laid down in the primary laws and for others (AF, MIS, SIS) such provisions are found in supplementary legislation (Law 9183/2004, Law 9357/2005, Law 9295/2004). The legislation provides also for sanctioning procedures and appeals.

The Executive controls the private security companies (PSC) through the Ministry of Interior (MoI), the Ministry of Finances (MoF) and the Ministry of Economy (MoE). The MoI is entitled to issue the licences for establishing the company and the scope of its activity, to regulate the recruitment procedures which include qualification and clearance of the staff as well as issue regulations on the equipment and armament (Law 8770/2001). The MoF and the MoE control the economic and financial activity of the PSCs (Law 10081/2009 and Law 10137/2009).

HUMAN RIGHTS

The Constitution stipulates that limitation to the rights and freedoms may be established only by law, in proportional manner and without exceeding the limitations provided for in the European Convention on Human Rights (Constitution, Part 2). Pursuant to this clause the primary laws and

¹ For instance according to the law Minster of Defence is responsible for protecting the sources of information from unauthorised disclosure



supplementary legislation which regulate the activity of the security institutions refer to the respect for human rights as one of the main principles of their activity. However, apart from these basic legal provisions, no other instruments such as law or bylaws have been adopted with the aim to define procedures and responsibilities of different actors and instances within the Executive with regard to human rights protection.

4.1.2 IMPLEMENTATION

All security institutions analysed in this paper have established structures that perform internal control. In spite of minor modifications all these structures have been in place for more than ten years, representing one of the traditional functions of the Executive. The inspection units report directly to the ministers or to the PM, as is the case of the IG for the State Intelligence Service.

The Ministry of Interior has two separate inspection bodies: the SICMI, which performs inspections of the state police, and the General Directorate of Inspection (GDI/MoI), which controls the activity of the entire ministry including the SICMI and the Republican Guard. The GDI/MoI functions in accordance with the regulation issued by the Minister of Interior (Regulation 725/2008). The SICMI is the only inspection structure among all security institutions which is established and functions based on an organic law.

In the Ministry of Defence the inspection is performed by the Directorate of the General Inspection (DGI/MoD) which has two branches. One branch deals with the inspections on the compliance with legislation and implementation of policies by the armed forces and all other entities that are part of the ministry. The one other branch deals with complaints and other types of demands which fall under the jurisdiction of the MoD. The DGI/MoD functions in accordance with the regulation issued by the Minister of Defence.

In the SIS the office Inspector General has been established since 1999. The activity of the IG is regulated by order of the PM (Order 141/2002). However, due to the rivalries between the President and the PM the IG has been seen as the personal political representative of the PM and the function has been rather misunderstood. Since the creation of the IG position five different Inspectors General have served, every time there has been a new Prime Minister.

The Directorate of the Public Security (DPS) in the State Police controls

the activity of the PSC by issuing the licences, by issuing the clearance for the staff and by controlling the armament. In addition the DPS carries out controls on the performance of the PSCs in coordination with the police department of the district where the company operates (Directive 656/2009).

In general the performance of control and inspection bodies is difficult to assess as reports are lacking and information requested was not provided. A positive development in this respect is first publication of the SICMI annual report of 2010 (SICMI Report 2010). The report which contains detailed data on the activity of SICMI since 2006 shows a positive track record.

All security institutions have established disciplinary commissions which are not permanent structures but function on ad hoc basis and summoned in accordance with schedules and procedures regulated by ministerial orders. However these commissions are weak and generally unable or unwilling to challenge decisions made by senior officials.

All the inspection units have told to produce recommendations based on their findings, mainly after each inspection or event.

HUMAN RIGHTS

Except the mention of the respect for basic human rights as one of the core principles, the analysis of the books of rules and other available bylaws, as well as information posted on the websites, there is no evidence that implement the human rights legislation is observed by the inspection and control units. In addition there is no any ministerial or other high executive guideline or regulation on the matter.

4.1.3 ADMINISTRATIVE AND MANAGEMENT CAPACITY

As discussed in the above section, in absence of full legal basis, except the SICMI the fundamental acts that regulate the activity of the control and inspection bodies are the normative acts issued by the ministers, and in the case of the IG in SIS, by the PM. The activity of some of the inspection bodies is based only on such regulations which are very flexible acts and may easily be modified.

Concerning the disciplinary commissions the secondary legislation is in place and consists on regulations issued by the ministers or the director in the case of SIS.



Variations exist in relation to the adequacy of human resources and training and qualifications also. Due to the problem with high levels of police corruption there has been a considerable international assistance to improve the capacities of the MoI. Therefore the MoI structures in general, including inspection, have received continuous trainings to improve their performance (SICMI Report 2010).

Differently to the police, the MoD and SIS lag behind with regard to both training and adequacy of human resources². Only the SICMI has an independent budget and is considered to have enough staff and resources. All the other structures draw from the main operational budget of the institutions in which they operate.

Concerning the control of the PSCs generally the secondary legislation is in place. The Directorate of the Public Security in the State Police is in charge with the coordination of the implementation of the legislation and control of the PSCs. All district police branches have units which deal with the PSCs. Their size depends on the number of PSCs operating in each district.

3.3.4 VALUES

Differently from other areas, which have benefited from international support, the executive control of the security sector has resulted from the concepts and practices of the different governments, which often have been concerned by short-term political agendas. The fragmented and unclear legal provisions and the lack of bylaws indicate that insufficient attention has been paid to the implementation, both prior and after the adoption of the laws. The establishment of accessible and effective channels for filing complaints, the encouragement of professionalism and integrity in producing recommendations and communicating performance results to the public have not become the norm of the Albanian executive. Only the SICMI has introduced the practice to publish yearly activity reports. This reality is reflected in the low transparency rating of the executive in public opinion polls, only 33.1 percent (IDRA Survey 2010).

² Talks with MoD and SIS personnel revealed that the current staffs in the inspection units are able to cover only about one third of the institutions' needs.

4.2 BUDGETARY CONTROL

4.2.1 CONSTITUTIONAL AND LEGAL FRAMEWORK

According to the Constitution, the PM is responsible for ensuring the implementation of legislation and policies as well as coordinating and supervising the work of the members of the CoM and other institutions of the central state administration (Constitution, Art 102). The law on the management of the budgetary system (LMBS), adopted in 2008, establishes the basis for the control by the Executive on the legality of the implementation of the budget. The LMBS provides the general framework for the financial management and control, the internal audit and the financial inspection as three separate activities.

Based on the LMBS a financial inspection may be initiated by the National Authorising Officer (NAO), a new institutional instance introduced by this law, at any time. The law grants the NAO full access to any document related to the financial system. The inspection may be initiated based on information or complaints from the Ministry of Finances (MoF), from the reports on the financial management and control, from the reports of the internal audit, from the reports of the SAI, or from a request of the Minister of Finances. Upon the proposal of the NAO, the Minister of Finances appoints the financial inspector(s) on an ad hoc basis, who are selected from a pool of trained inspectors. After the completion of the inspection, the NAO presents copies of reports to the Minister of Finances and to the State Audit Institution (SAI).

In addition to the LMBS provisions, the law on Financial Inspection (FI), adopted in September 2010 details further such provisions. The law on FI provides for the principles of the financial inspection, the role of the Minister of Finances, the establishment of the Directorate of the Public Financial Inspection as well as its mandate and functioning norms. The implementation of this law however will not begin until the Minister of Finances has issued all necessary bylaws, and resources are put in place. The LFI provides for one year to complete such preparations.

4.2.2 IMPLEMENTATION

The LMBS introduces for the first time the separation of the audit and the inspection as two distinct activities. In addition the LMBS provides for the



adoption of specific laws on both internal audit and the financial inspection. The law on financial inspection was adopted in 2010 and similarly the 2007 law on internal audit was revised in the same year, in order to bring it in line with the LMBS provisions and make the implementation possible.

Despite the LMBS provisions for distinct audit and inspection activities, there has been no practical separation of both functions for the 2008 to 2010 periods. Due to the confusion of the concepts, the expectation for the adoption of the law on inspection, and the lack of training the Internal Audit units have continued to perform both the internal audit and the financial inspection. The audit manual that was produced in this framework has been perceived as a manual for inspections rather than audit (SIGMA 2009). The confusion between the IA and the FI has been acknowledged by the ministry's authorities but it has been considered as an interim period until the adoption of the law on financial inspection.

Processing the data has been complicated as inspections were performed by the IA units which were initiated as internal audit missions but were performed with inspections properties also.³ The table below presents the data on the aggregate number of internal audit missions. The inspections may be identified based on the recommendations or measures issued

	2008	2009	2010
MoD	<ul style="list-style-type: none"> - 127 auditing missions - 2940 staffs were found to have violated the financial discipline and called for indemnification, in 278 cases. - 73 disciplinary sanctions, of which 3 expulsions from the civil service. 	<ul style="list-style-type: none"> - 58 auditing missions - 2524 staffs were found to have violated the financial discipline and called for indemnification, in 202 cases. - 11 disciplinary sanctions. 	<ul style="list-style-type: none"> - 67 auditing missions - 2655 staffs were found to have violated the financial discipline and called for indemnification, in 139 cases. - 46 disciplinary sanctions, of which 14 expulsions from the civil service.

³ The data received from the MoF were aggregated with both internal audit and financial inspection. They instructed us to consider as inspections only those ones in which financial losses were identified.

<p>MoI</p>	<ul style="list-style-type: none"> - 67 auditing missions - 2655 staffs were found to have violated the financial discipline and called for indemnification, in 139 cases. - 46 disciplinary sanctions, of which 14 expulsions from the civil service. 	<ul style="list-style-type: none"> - 438 auditing missions - 29011 staffs were found to have violated the financial discipline and called for indemnification, in 2960 cases. - 1251 disciplinary sanctions, of which 11 expulsions from the civil service. 	<ul style="list-style-type: none"> - 742 auditing missions - 18506 staffs were found to have violated the financial discipline and called for indemnification, in 821 cases. - 1349 disciplinary sanctions, of which 22 expulsions from the civil service.
<p>SIS</p>	<ul style="list-style-type: none"> - 36 auditing missions - 36 staffs were found to have violated the financial discipline and called for indemnification, in 7 cases. - 3 disciplinary sanctions 	<ul style="list-style-type: none"> - 31 auditing missions - 40 staffs were found to have violated the financial discipline and called for indemnification, in 29 cases. - 2 disciplinary sanctions 	<ul style="list-style-type: none"> - 37 auditing missions - 70 staffs were found to have violated the financial discipline and called for indemnification, in 23 cases. - 54 disciplinary sanctions

4.2.3 ADMINISTRATIVE AND MANAGEMENT CAPACITY

The LMBS doesn't provide for the establishment of dedicated structures to the financial inspections. The law on Financial Inspections provides for the establishment of the Directorate for this purpose. Given the time it has taken to adopt the law on FI and establish the Directorate of Public Financial Inspection, inspections were performed by the IA units. The main unit is the General Directorate of Internal Audit (GDIA), which is based at the MoF and report to the Minister of Finances⁴ and the director-

⁴ With the amendments of the Law on IA, the General Directorate of Internal Audit will be restructured into the Central Harmonisation Unit for the Internal Audit (CHUIA)



ates for internal audit which exist in all security sector institutions. The IA structures of the security institutions are almost fully staffed as in the table below.

The internal auditors receive continuous training through the Directorate of Methodology and Education in the MoF, but mainly on internal audit modules.

INSTITUTION	Number of auditors/inspectors
MoD	16 out of 20, of whom 7 at the ministry level and 9 on the services. The 4 unfilled positions belong to the services.
MoI	72 out of 73, of whom 13 at the ministry level and 59 on lower structures
SIS	3, based at the headquarters

4.2.4 VALUES

The development of a financial inspection as a separate activity is still at an early stage. except for the quality of the adopted legislation which is considered to be technically advanced (SIGMA 2009), so far it is not possible to adequately assess the implementation this transitory phase.

The complexity of the task, which includes a clear understanding of IA as a management function and the financial inspection as an ex post control, as well as the coordination with the SAI as an independent control, requires strong political will and respect for management procedures. One of the weaknesses is the high turnover of staff, which indicates that political will to adopt modern legislation may not be enough without the will to develop competent and skilled human resources to implement the laws.

4.3 RECOMMENDATIONS

- The legislative should amend the legislation in order to include clear mechanisms and responsibilities for allowing the executive to effectively control the legality of the security institutions and the respect of human rights.
- The executive should enact all the necessary byways to implement the legislation in an independent and professional manner.
- The executive should do more to generate capacities and promote the respect of human rights by the security actors.
- The executive should build capacities for controlling the breach of laws by the security actors at the centre of the government (in the CoM).
- The mission of the anticorruption directorate at the CoM should be broadened and given the mission to coordinate the overall inspection activity of the security institutions (and other ministries too).
- The Ministry of Finances should proceed with the separation of the internal audit and inspection functions and structures.
- The legislation on financial inspection should be amended and provide for the establishment of permanent structures, supported by the MoF with expertise but possibly located at the centre of the government (in the CoM).



BIBLIOGRAPHY

PRIMARY SOURCES

- Constitution of the Republic of Albania, http://www.minfin.gov.al/minfin/pub/manuali_per_menaxhimin_finaciar_dhe_kontrollin_243_1.pdf
- Internal Regulation on the Organisation and functioning of the Ministry of Justice. Issued by Order of the Minister nr. 5745, date 13/08/2008, amended with Order 5588, date 06/07/2009, http://www.justice.gov.al/UserFiles/File/Lista_e_akteve_te_azhornuara/RREGULLORJA_E_BRENDSHME_-_MD%20_2_.pdf
- Internal Regulation of the Ministry of Interior, http://www.moi.gov.al/drupal1/butonat/rregullorja_e_ministrise_brendshme.pdf
- Internal Regulation of the Ministry of Defence, Issued by Order of the Minister nr. 120, date 18/04/2003
- Regulation on the internal functioning of the office of the Inspector General of the Council of Ministers in the State Intelligence Service. Issued by Order of the Prime Minister nr. 141 date 05.06.2002.
- Law Nr.7978, date 26.07.1995, On the armed forces of the Republic of Albania
- Law Nr.8391, date 28.10.1998, On the National Intelligence Service
- Law No. 8671, date 26.10.2000, On Powers and Authorities of the Commanding and Strategic Direction of the Armed Forces of the Republic of Albania, amended by law Nr. 9194, date 19.2.2004.
- Law Nr.8770, date 19.04.2001, On the service of protection and physical security.
- Law Nr.8678, date 14.05.2001, On the organization and function of the Ministry of Justice, amended by law nr. 9112, date 24.7.2003 and law nr. 919694, date 19.3.2007.
- Law Nr.9000, date 30.01.2003, On the organization and function of the Council of Ministers
- Law Nr.9157, date 04.12.2003 On the Interception of the Telecommunications, amended by law Nr.9885, date 03.03.2008, and law Nr.10172, date 22.10.2009
- Law Nr.9069, date 15.05.2003, On the military police in the Armed Forces of the Republic of Albania
- Law Nr.8869, date 22.05.2003, On the Guard of the Republic of Albania

- Law Nr.9074, date 29.05.2003, On the Military Intelligence Service
- Council of Ministers Decision Nr. 345, date 01.06.2004, On approval of the internal auditing procedures manual, ethical code for internal auditors and charter of public internal auditing
- Law Nr.9183, dato 05.02.2004, On the discipline in the Armed Forces of the Republic of Albania
- Law nr. 9295, date 21.10.2004, On the criteria for the admission, career and its interruption in the Military Intelligence Service.
- Law Nr. 9357, date 17.3.2005, On the status of the employees of the State Intelligence Service.
- Council of Ministers Decision Nr. 94, date 15.02.2006, Government Decision Regulation on the functions and procedures for the internal control administrative and anticorruption in the Council of Ministers.
- Council of Ministers Decision Nr.806, date 06.12.2006, On the approval of the methodology on financial audit
- Law Nr. 9749, date 04.06.2007, On the State Police
- Law Nr. 9720, Date 23.04.2007, On the internal audit in the public sector
- Council of Ministers Decision Nr.786, date 04.06.2008, On the approval of the regulation on the discipline in the State Police.
- Law Nr.9917, date19.05.2008, On the prevention of the money laundering and financing of terrorism
- Law Nr.10 002, date 06.10.2008, On the Service of the Internal Control in the Ministry of Interior
- Law Nr.9936, Date 26.06.2008, On the management of the budget system in the Republic of Albania
- Order of the Minister of Interior Nr. 725, date 09.05.2008, On the approval of the internal regulation of the General Directorate of Inspection.
- Law Nr.10 032, date 11.12.2008, On the prisons police
- Law Nr. 10 081, datë 23.2.2009, On the on the licenses, authorisations and permits in the Republic of Albania
- Directive Nr.656, date 6.10.2009, On the procedures of the clearance, licensing and control of the activity of the services/companies of protection and physical security
- Law Nr.10 137, date 11.05.2009, On some amendments on legislation on the licenses, authorisations and permits in the Republic of Albania
- Council of Ministers Decision Nr. Nr. 640 date 11.06.2009, On the approval of the policy paper on the public internal financial control and



- the action plan 2009-2014
- Law Nr. 10 294, Date 01.07.2010, On the public financial inspection
 - Guidance of the Minister of Finances nr. 1 date 21.01.2010, On the implementation of the 2010 budget
 - Law Nr.10 221, date 04.02.2010, On the protection from the discrimination
 - Order of the Minister of Finances Nr. 8980, date 15.07.2010, On the Manual on the financial management and control,
 - Law Nr. 10 296, Date 08.07.2010, On the financial management and control
 - Law Nr.10 318, Date 16.9.2010 On some amendments on the law on the internal audit in the public sector

SECONDARY SOURCES

- Corruption in Albania: Perception and Experience, Survey 2010. Institute for Development Research and Alternatives (IDRA), <http://albania.usaid.gov/spaw2/uploads/files/Corruption%20in%20Albania%202010%20-%20Summary%20of%20Findings.pdf>, Accessed January 2011
- Report on the activity of the SICMI for year 2010, [http://www.moi.gov.al/drupal1/shkb/revista%20SHKB%20shqip\(2\).pdf](http://www.moi.gov.al/drupal1/shkb/revista%20SHKB%20shqip(2).pdf), Accessed April 2011
- Support for Improvement in Governance and Management, Sigma Assessment May 2009, Albania Public Internal Financial Control (PIFC),
- <http://www.oecd.org/dataoecd/30/52/43912500.pdf>, Accessed January 2011
- Support for Improvement in Governance and Management, Assessment Albania 2010, <http://www.oecd.org/dataoecd/22/17/46465284.pdf>, Accessed January 2011

5 | PARLIAMENTARY CONTROL AND OVERSIGHT

EXECUTIVE SUMMARY

Control and oversight of the security sector by the Parliament is partly regulated by the constitution and there is no primary legislation for regulating this process. Control and oversight provisions exist in the laws that regulate the activity of the security actors but their clarity and precision vary. The loose legal provisions and the complex institutional setting allow for wide margins of discretion by the Executive and a by and large ineffective parliamentary control and oversight. Moreover the control and oversight process becomes more complex for that part which the Parliament delegates to independent institutions, such as the People's Advocate, the State Audit Institution, etc.

Parliamentary control and oversight of the security sector is exercised through three permanent committees but their overall coordination is poor. The Parliament performs properly when it comes to the use of ex ante mechanisms, such as the adoption of the legislation and policies, but it seems to lack its own institutional agenda and therefore it adopts formally the Executive's legislation and policy proposals. With regard to reporting on the implementation of the legislation and policies, as ex post oversight mechanisms, the Executive seems out of the range of the Parliament, except for one or two independent agencies which reports are regularly heard and formally adopted through resolutions.



INTRODUCTION

This paper analyses the parliamentary control and oversight of the security sector in Albania. The analysis is based on four fields of observation; the budgetary control that entails the control and oversight of the budgetary planning and spending of the statutory actors of the security sector; the control of compliance of work of the security sector institutions with laws and the respect of human rights covering the control and oversight over the use of special investigative measures, the use of coercive means and exchange of personal data; the control and oversight over the implementation of government policies; and the control and oversight of the state's bilateral and multilateral security cooperation and integration. All four fields of observation will be analysed based on four indicators: the Constitutional and legal framework, its quality and harmonisation, the implementation of the legislation, the administrative capacities and the extent to which parliamentary oversight has become an established democratic value.

5.1 BUDGETARY CONTROL OF THE STATUTORY ACTORS OF THE SECURITY SECTOR

5.1.1 CONSTITUTIONAL AND LEGAL FRAMEWORK

According to the Constitution, the Parliament is the highest authority for controlling the budget of the security institutions. Upon proposal from the Council of Ministers (CoM) the Parliament approves the budget of security actors within the state budget (Albanian Constitution). The draft budget and all other directly related legislation are proposed to the Parliament by the CoM in accordance with a procedure and calendar specified by the law on the Management of Budgetary System.

The deliberation and voting on the budget is conducted in two stages. In the first stage the budget is deliberated and approved in principle by all the established permanent parliamentary commissions. The permanent Committee on National Security (CNS) does so for the security sector institutions. In the second stage, the report is debated in a plenary session and voted in principle, each article separately and integrally.

As for the ex post oversight of the execution of the budget the Constitution empowers the Supreme Audit Institution (SAI) to report to the Parliament

on the implementation of the state budget. The law on the SAI and the law on the Management of Budgetary System provide for the SAI and security institutions roles. The SAI presents the report on the execution of the budget to the permanent Commission on Economy and Finances (CEF), which draws a resolution that is voted by the Parliament in a plenary session (Rules of Procedures of the Parliament).

5.1.2 IMPLEMENTATION

The CNS discusses and approves the draft budget of the Armed Forces, the Police and the State Intelligence Service (SIS). In the process of the budget approval that takes place in autumn, the Minister of Defence, the Minister of Interior and Director of the SIS, are invited by the CNS to bring in their views on the budget. This procedure takes place regularly but the Parliament lacks the necessary information and expertise to properly contribute to this process. Evidence shows that the CNS is not properly involved in the planning process of the budget and the MP's questions mainly stem either from their individual interest or from flatly politicised positions (Minutes CNS budget 2009 and Minutes CNS budget 2010).

The CNS has no ex post role on budgetary issues, as the Parliament's RoP assigns this role to the CEF. The budget spending is scrutinised by the SAI which presents the report of its activity to the CEF in March and sends the report on the execution of the budget to the Parliament in August. The analysis of these reports and the minutes from the discussions of the MPs reveals that the procedure of the SAI reporting to the CEF is rather formal. For instance, while presenting the 2010 budget to the CNS, the Minister of Defence stated that 'because of the election process, during the last two years the MoD has spent only around 1.7% of the total budget of 2% of the GDP'. Although it is not clear how the electoral process relates to the Defence spending this issue was not raised by the SAI nor it was further debated by the MPs (Minutes SAI report 2009 and Resolution SAI report 2010).

Despite the legal provisions that empower the CEF to receive the SAI's report on the spending activity the 'special funds' dedicated to classified operations or procurements (Law on SAI), there is no publicly available information to indicate that such an activity has taken place nor any detail on how the CNS and the CEF manage their resources and coordinate their activity.



5.1.3 ADMINISTRATIVE AND MANAGEMENT CAPACITY

In general the Parliament's structures have been traditionally weak. The main administrative support for the permanent committees and the parliament in general is the Legislative Service which is composed of three units: the Legal Service, the Commissions and Plenary Service and the Legislation Approximation Service. The Legislative Service employs about 25 people. The dedicated unit for supporting the activity of the permanent committees is the Commissions and Plenary Service. Each permanent committee has a number of advisers. The CNS and the CEF have three advisers respectively. However these units are not always fully staffed and there is a frequent turnover of the personnel which so far has impeded the establishment of a solid 'institutional memory' and expertise.

5.1.4 VALUES

The core purpose of the parliamentary control and oversight of the security sector is to serve as a bridge between the public and the executive and therefore the normative expectation is that the public trust for such an institution to be high. There is a low public perception on the honesty of the parliamentarians, which demonstrates that in the long run the Parliament has failed to fulfil this normative expectation (IDRA 2010). Although the Constitution provides for the Parliament as the main body that should elect and control the Executive this function has grown weak. The very rare use of interpellations and the inexistence of confidence or no-confidence motions are inductive of the fact that the ultimate threat of parliamentary dissolution as the main tool for controlling the Executive's drift so far has remained just a theoretical option.

5.2 CONTROL OF COMPLIANCE OF WORK WITH LAWS AND THE RESPECT OF HUMAN RIGHTS

5.2.1 CONSTITUTIONAL AND LEGAL FRAMEWORK

The Constitution stipulates that the limitation of the rights and freedoms may be established only by law, for a public interest or for the protection of the rights of others and without exceeding the limitations provided for

in the European Convention on Human Rights. Similarly the Constitution stipulates that the collection and use of personal data, the limitation on the freedom and secrecy of correspondence or any other means of communication, the searches of the residence and premises that are equivalent to it, have to be provided by law.

Through the above provisions the Parliament is entitled to ensure that the legislation that regulates the activity of the security actors provides the necessary mechanisms for striking the right balance between the respect for the fundamental constitutional rights and the broader public interest. In general the primary legislation that regulates the activity of the security actors that have investigatory powers (such as the Prosecution Office, the State Police (SP), the SIS, the Military Intelligence Service (MIS), the Internal Control of the Ministry of Interior (ICMI), the Financial Intelligence Unit (FIU), the Prison's Police (PP)), and other legislation such as the law on interception of telecommunications, and the law on the protection of personal data, lay down the obligation for respecting the fundamental human rights. Concerning the protection and use of the personal data, only the law on SP (Art.27) and ICMI (Art.123) refer to it specifically¹.

The permanent Committee on the Legal Affairs, Public Administration and Human Rights (CLAPHR) is the principal body in charge of the control and oversight of the activity of the security institutions with regard to respect of the human rights (Rule of Procedures of the Parliament). It hears and appraises the reports of several institutions to which the Parliament has delegated competences of control and oversight. These institutions include the People's Advocate (PsA), the Commissioner on Data Protection (CDP), and the Prosecutor General (PG), and the Minister of Justice (MoJ) who presents the annual report on the findings of the inspections on the activity of the PG (Law on Prosecution). The PG has the mandate to authorise and control use of special investigative measures by the security actors, as provided in their primary legislation and the law on interception of telecommunications. The CLAPHR issues a draft resolution on the report of each of the above actors to the parliament which is voted in plenary session (Rule of Procedures of the Parliament).

¹ This is due to the fact that the Convention for the Protection of Persons Concerning the Automatic Processing of Personal Data was adopted by the Albanian Parliament in 2004 and therefore only the laws adopted after this date refer to the protection of the personal data.



5.2.2 IMPLEMENTATION

All the above mentioned institutions report regularly to the CLAPAHR on annual basis in line with the calendar provided by the Parliament at the beginning of each year. The reporting practice of the PsA and the PG may be considered as well established as it goes on for about ten years. The CDP and MoJ reporting practice is more recent. The CDP has reported twice since it was established and the MoJ has reported only once since the amendment of the law on the prosecution in 2008.

The analysis of the reports of these institutions and the minutes of the MP's questions and discussions in the CLAPAHR reveal a peculiar state of affairs. With the exception of the PsA and the PG reports which deal with the issue of the use of coercive means regarding the respect of arrest and detention procedures, the impression one gets is that either the respect to human rights by the security institutions is not a matter of concern or this problem is overlooked. The issue of compliance of the security actors with regard to the use of special investigative measures and the exchange of personal data is almost inexistent in both the reporting and the parliamentary debate. Even when some discussions have taken place in the CLAPAHR the nature of the arguments makes it hard to assess whether the lack of interest of the MPs derives from the lack of political will or the lack of understanding of the Parliament's mandate and competences in scrutinising the activity of the security actors².

5.2.3 ADMINISTRATIVE AND MANAGEMENT CAPACITY

The CLAPAHR is considered as one of the most important permanent committees. It has four legal advisers, who are part of the Commissions and Plenary Service, but the committee benefits from the support of the Legal Service and the Legislation Approximation Service. In general the staffs have a good education as their recruitment has mainly resulted due to the need for skilled people needed for the approximation of the legislation with the EU law. However, recruitment practices are politicised and therefore their expertise often biased by political parties agendas. On the

² For instance during the reporting session of the PG in front of the CLAPAHR, when an opposition MP asked the Prosecutor General whether physical and electronic surveillance was applied by NIS for monitoring the opposition MPs, the PG replied: 'All NIS activity is classified state secret and I cannot give any answer on that [issue]. I cannot give any information related to this process, which is controlled by the PG, but in principle I can say that, as in any other case, even for this process the law is implemented rigorously'.

other hand their expertise is mainly employed in the process of the adoption of the legislation and very little in the process of ex post oversight.

5.2.4 VALUES

So far the Parliament has failed to emerge as an independent power with its own institutional agenda, as the Constitution provides. Once in power the main figures of the political parties tend to get positions in the Executive, which the junior members in the Parliament find it hard to oppose. In addition there is lack of proper understanding and discussion on human rights issues by institutional and societal actors. Most of the achievements have resulted mostly from the external pressures and often the task is considered completed with the adoption of legislation and establishing of the institutions. As a consequence the control and oversight process has been driven by short term politics which incidentally may have generated some positive output but without producing the necessary outcome and sustainability.

5.3 CONTROL AND OVERSIGHT OVER THE IMPLEMENTATION OF GOVERNMENT POLICIES AND LAWS ADOPTED BY THE PARLIAMENT

5.3.1 CONSTITUTIONAL AND LEGAL FRAMEWORK

The Constitution defines the competences of the Parliament for controlling and overseeing the legislation. The Parliament is the sole authority that can amend the Constitution, approve legislation and ratify legally binding international conventions, treaties and agreements (Albanian Constitution). All legislation related to the organisation and activity of security institutions is deliberated by the CNS and the CLAPHR. But the CEF is also involved as all legislation must be accompanied by a report that justifies the financial expenses of its implementation (Albanian Constitution, Rules of Procedures of the Parliament).

Regarding the adoption of policies, the Constitution stipulates that the Council of Ministers is the authority that defines the principal directions of the general state policy, while the Parliament is responsible for approv-



ing the policy program of the Executive and its members.

With regard to establishing ex post mechanisms the Constitution lacks any binding provision for the Executive to consult with the Parliament, either on its own initiative or upon request. The primary legislation of some security institution or supplementary legislation provides for such mechanisms. The laws on the intelligence service and the military intelligence service specify that their activity is controlled by the Parliament. Similar provision is found on the law on the prosecution which requires that the PG reports to the Parliament at least once in six months. The law on commanding and strategic direction of the armed forces provides that the Prime minister and the Minister of Defence are accountable to the Parliament on the implementation of the defence policy (Law 8671/2000). There are no similar provisions on the law on police or other security institutions.

5.3.2 IMPLEMENTATION

As mentioned the lack of coherent provisions in the Constitution and the fragmented legal provisions have led to a loose control on the implementation of legislation and policies by the security sector. The only institutions that may be assessed because they report yearly to the Parliament are the State Intelligence Service and the Prosecutor General. None of the ministers (of Defence, of Interior, of Justice, and of Finances), who entirely or partly perform security provision tasks report to the dedicated committees on the performance of their institutions, nor the Parliament has asked any of them to report.

Therefore the policy review or legislation of the security actors is commonly initiated by the Executive and usually bears the will of the Prime minister and/or the ruling majority. The fast adoption procedures of the national security and military strategies and the discrepancies that often appear from one version to the other, are another indication of the failure of the Parliament to properly participate in the formulation of the policies as well as oversee their implementation.

5.3.3 ADMINISTRATIVE AND MANAGEMENT CAPACITY

The lack of clear constitutional provisions on ex post control on the implementation of policies may be well considered as motive that the Parliament has not developed dedicated resources to perform this task. In practice this

is done by parliamentary groups on partisan lines and the political parties have developed in-house capacities to live up to their daily performance in the Parliament. In these circumstances, the Service of Parliamentary Research that should supply the MPs and the committees with policy reviews and recommendation products has been of modest use. There are only three people employed in this unit and no one of them is specialised in the security and defence field of research.

5.3.4 VALUES

Due to lack of tradition in reviewing policies and overseeing the implementation of the legislation, as well as due to the lack of resources, there is a selective and incoherent approach by the Parliament. The strategies, which are adopted by law, are seen as non binding documents (Gumi 2003) and therefore are adopted without any debate. In contrast the adoption or amendments to the legislation on police, intelligence and security services, or legislation on the use of special investigative powers have always turned into highly politicized debate. This has led to the situation where these laws are adopted by the ruling majority, without any consent by the opposition, which once in power tends to do the same with the contested legislation.

5.4 CONTROL AND OVERSIGHT OF THE STATE'S BILATERAL AND MULTILATERAL SECURITY COOPERATION AND INTEGRATION

5.4.1 CONSTITUTIONAL AND LEGAL FRAMEWORK

The control and oversight of over the bilateral and multilateral security cooperation is regulated by the Constitution which empowers the Parliament with the exclusive right to adopt international agreements by law (Albanian Constitution). In cases when the international agreement is not ratified by law the Prime Minister should notify the Parliament. The international agreements on military, police, money laundering etc, are negotiated by the Executive and proposed to the Parliament for approval following the same procedure as all other legislation. Based on the nature of the agreement the permanent committees deliberate and approve the



draft which is approved in plenary session. Concerning the deployment of military troops abroad or allowing foreign troops.

The Constitution provides that the approval for sending troops abroad and for allowing foreign troops to be deployed or pass through the Albanian territory should be taken by law approved by simple majority of all members of the Parliament (Albanian Constitution). The law on the deployment of military forces delegates some authority to the Executive, depending on the nature of the mission and the size of the force to be sent or allowed to enter, but only when this is done in the framework of the implementation an agreement adopted by the Parliament (Law on the entry and passage of foreign military forces). After the membership in NATO the law was amended to delegate to the Executive the right to decide sending up to one company abroad and to decide on allowing entering the country up to 1000 military personnel, only when this is done in the framework of implementing an agreement adopted by the parliament.

The law on SIS and MIS provide for these institutions to establish intelligence cooperation with other countries. A Government Decision further specifies the areas and levels of cooperation (Government Decision 194/2004).

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

Concerning the international exchange of the personal data there are no constitutional provisions but the law on personal data protection requires the CDP to report to the Parliament annually (Law on the Protection of Personal Data).

5.4.2 IMPLEMENTATION

Due to the significance of international relations the Parliament has been formally active in adopting international agreements on security cooperation. This has covered military, police, terrorism, money laundering etc. Due to the overall collusion of the majority and the opposition in security cooperation only in rare occasions these agreements have been subject to debate in the Parliament.

One area where the Parliament has been fairly active is the authorisation to allow foreign troops or send troops abroad. However there have been cases when the government has authorised the entry of foreign troops just as an ex post facto and without any approval by the parliament (Mejdani 2009).³

With regard to the arms trade there are no evidences that the parliament plays any active role except for some interest in verifying the conditions of storage of aging ammunition (Minutes CNS Budget 2010).

The report presents by the Director of SIS is not made public so it is not possible to assess whether the Parliament properly oversees this area.

Regarding the international exchange of the personal data, the CDD has not given any evidence or finding on this procedure (CDD Report 2010), nor has the parliament shown any interest in asking questions to the CDD during the annual reporting (Minutes CDD Report 2010).

5.4.3 ADMINISTRATIVE AND MANAGEMENT CAPACITY

As mentioned in the above sections, besides the poor resources the coordination of activities of permanent committees is also poor. This has a negative impact in the overall performance of the Parliament.

5.3.4 VALUES

Differently from other areas, in the field of the international cooperation the parliament has play a more visible role but mainly during the ex ante control. However this too has been mainly driven by the need of the Executive to strictly stick to the constitutional provisions in order not to undermine the validity of the sought agreements. The almost inexistent ex post oversight simply confirms the aforementioned claim. The failure of the parliament to shed light into the murky affair of arms trade that led to the explosion of the army depots in Gërdec is clear evidence (Kulish 2008).

³ In 13 November 2009 the Government approved the transit through the Albanian territory of two Italian military convoys which had entered the country five days earlier, on November 8th



5.3 RECOMMENDATIONS

- The legislation should be amended in order to allow for the MPs to participate in the planning process of the budget of the security actors.
- The number of staff supporting the activity of the permanent committees should be increased and provided with the necessary expertise.
- Legislation should be adopted to provide for the parliament to take a more independent role from the Executive and to be able to call on the Executive for reporting.
- Primary legislation of all the security actors should be upgraded with specific provisions on the obligations to protect personal data.
- The Parliament should do more in scrutinizing the process of the international exchange of the personal data.
- Measures should be taken by the Parliament to upgrade its capacities in order to allow for the MPs to be more aware and determined to scrutinize the human rights issues and their respect from the security actors.
- The parliament should avoid partisan positions with respect to independent oversight institutions.
- The parliamentary research service should function properly and provide the MPs with the necessary input in order for them to be able to review and assess the adopted legislation and policies.
- The legislation should be revised and provide the parliament with a more precise role on the control over the arms trade.
- The permanent committees responsible for the control and oversight of the security actors should be better coordinated.

BIBLIOGRAPHY

PRIMARY SOURCES

- Assembly's Resolution on the Assessment of the Activity of the Commissioner on Data Protection for year 2009, 1 April 2010,
- Assembly's Resolution on the Assessment of the Activity of the Supreme Audit Institution for year 2009, 22 April 2010
- Assembly's Resolution on the Assessment of the Activity of the Supreme Audit Institution, for year 2009, 22 April 2010,
- Assembly's Rules of Procedure, approved by Decision nr.166, date 16.12.2004, amended by Decision Nr. 15, date 27.12.2005, Decision Nr. 193, date 07.07.2008, and Decision Nr. 21, date 27.12.2010
- Constitution of the Republic of Albania, approved by law Nr.8417, date 21.10.1998, and the referendum of 22.11.1998
- Government Decision Nr .194, date 10.4.2004, On the prioritites, areas and level of cooperation of the State Intelligence Service with the intelligence services of foreign countries.
- Law 8270, date 23.12.1997, amended by Law 8599, date 01.06.2000, On the Supreme Audit Institution
- Law No. 8671, date 26.10.2000, On Powers and Authorities of the Commanding and Strategic Direction of the Armed Forces of the Republic of Albania
- Law Nr. 9749, date 4.6.2007, On State Police
- Law Nr.10 002, date 6.10.2008, On the Service of the Internal Control in the Ministry of Interior
- Law Nr.10 032, date 11.12.2008, On the Prisons' Police
- Law Nr.8391, date 28.10.1998, On the National Intelligence Service
- Law Nr.8572, datë 27.1.2000, On the Approval of the Document of the Security Strategy of the Republic of Albania
- Law Nr.8737, date 12.2.2001, On the Organisation and Functioning of the Prosecution in the Republic of Albania, amended with the Constitutional Court Decision Nr. 25, date 13.02.2002, the law Nr. 9102, date 10.07.2003, and the law Nr. 10051, date 29.12.2008
- Law Nr.9074, date 29.5.2003, On the Military Intelligence Service
- Law Nr.9157, date 4.12.2003 On the Interception of the Telecommunications, amended by law Nr.9885, date 3.3.2008, and law Nr.10172, date 22.10.2009
- Law Nr.9322, datë 25.11.2004, On the Approval of the Document of



the Security Strategy of the Republic of Albania

- Law Nr.9363, date 24.3.2005, On the Manner and Procedures of Entry and Passage of Foreign Military Forces in the Territory of the Republic of Albania and on the Sending of Albanian Military Forces Aboard, amended with Law Nr. 10218, date 4.2.2010
- Law Nr.9707, date 5.4.2007, On the State Control of Activity of the Exports of Military Goods and the Goods and Technologies of Double Use
- Law nr.9887, date 10.3.2008 On the Protection of Personal Data
- Law Nr.9917, date 19.5.2008, On the Prevention of the Money Laundering and Financing of Terrorism
- Law Nr.9936 date 26.06.2008 on Management of Budgetary System in the Republic of Albania

SECONDARY SOURCES

- Corruption in Albania: Perception and Experience, Survey 2010, Institute for Development Research and Alternatives (IDRA)
- Gumi, Viktor. (2003) ‘The Parliament and the Security Sector’, in Philipp H. Fluri and. Jan A. Trapans (eds.), Defence and Security Sector Governance and Reform in South East Europe: Insights and Perspectives, Volume 1; Albania; Bulgaria; Croatia; A Self-Assessment Study
- Kulish, Nicholas, “After Munitions Explosion, Albanians Ask Why Danger Was Placed So Near”, New York Times, April 19, 2008, p. 5.
- Mejdani, Rexhep ‘Who is the responsible for the security and the Armed Forces’, in Democratic Control and Civil-Military Relations: Still an unfinished business, IDM December 2009.
- Minutes from the annual reporting ‘On the activity of the Commissioner on Data Protection for year 2009’ in the Committee on the Legal Affairs, Public Administration and Human Rights, date 24.03.2010
- Minutes from the annual reporting ‘On the activity of the People’s Advocate’ for year 2009’, date 31.03.2010 in the Committee on the Legal Affairs, Public Administration and Human Rights,
- Minutes from the annual reporting ‘On the activity of the Supreme Audit Institution for year 2009’ in the Committee on the Economy and Finances, date 29.03.2010
- Minutes from the annual reporting of the Prosecutor General for year 2009, date 25.05.2010, in the Committee on the Legal Affairs, Public

Administration and Human Rights

- Minutes from the discussion of the budget of the MoD, MoI and the NIS for the year 2009 in the Committee on National Security, date 25.11.2008
- Minutes from the discussion of the budget of the MoD, MoI and the NIS for the year 2010 in the Committee on National Security, date 17.11.2009 and date 23.11.2009
- Minutes from the reporting of the Minister of Justice on the inspections carried out to the Prosecution for year 2009, date 01.06.2010, in the Committee on the Legal Affairs, Public Administration and Human Rights



6 | JUDICIAL OVERSIGHT OF THE SECURITY SECTOR

EXECUTIVE SUMMARY

This paper analyses the judicial oversight of the security sector in Albania. As shown by evidence presented in this paper, legally and institutionally, the activity of the security sector actors is subject to judicial oversight with no explicit limitations. The oversight function of the judiciary is underpinned by the principle of independence of the judiciary and equality before the law as enshrined in the Constitution and reflected in relevant legislation. Also, relevantly, the legal framework forbids inhuman treating by state officials and access to justice is guaranteed by law. Nevertheless, lack of administrative capacities in the institutions that oversee law enforcement activity have affected the overall effectiveness of the judicial oversight. During the last years there have been many complains and reports about arbitrary arrests and violence in the process of detention. However few major disciplinary measures and legal punishments have been taken by the competent bodies during the last 5 years.

Albania's legislation for regulating the use of special measures of investigation is largely in place but oversight provisions are lacking. The Criminal Procedure Code provides for the use of special measures of investigation to be used as evidence but the provisions are quite broad and allow for wide margins of discretion. The courts are involved both in the ex ante and ex post oversight processes but the deliberation during the approval of the warrants is rather formal. The law on interception of telecommunications regulates the use of special measures of investigation by intelligence and police for intelligence collection purposes. All intelligence and security agencies warrants on the use special of measures of investigation are approved by the Prosecutor General but the Prosecution is positioned in between the judiciary and the Executive so its power of review can hardly be seen as falling under the judicial control.



INTRODUCTION

Judicial oversight in security sector in this paper is analyzed based in a three section structure: General presentation of the domestic courts, Judicial Oversight of the Exercise of Law Enforcement and Use of special investigative measures.

The first section makes an introduction to the judicial domestic system by addressing the main rules for the organization of domestic courts as provided by law. The second section Judicial Oversight of the Exercise of Law Enforcement has two subsections. The first one is the use of force by law enforcement officials and will assess the use of force during demonstrations and other public gatherings and the use force during other law enforcement actions such as arrest or pursuit. The second one regards the treatment in custody by focusing in issues such as use of force against persons in custody, ill-treatment in detention and respect for legal guarantees sanctioned by the legislation during the investigation stage of criminal proceedings. The third section would be focused on the use of special investigative measures.

These fields of observation will be analysed based on four indicators: the constitutional and legal framework, the implementation of the legislation, the administrative capacities and the value which is considered as the ultimate outcome.

6.1 GENERAL PRESENTATION OF THE ALBANIAN DOMESTIC JUDICIAL SYSTEM

Due to the communist legacy the Albanian judiciary domestic system is in many ways a recent invention and many restructuring decisions taken in the transition period could be explained only bearing in mind the previous system settings. During communism the Judiciary was subject to control by the communist Party. The “telephone justice” with officials from the Communist Party, the Executive branch and the Prosecutors calling judges and instructing them what decision to take, was very common. With the fall of the communism in 1991, the last Communist constitution of 1979 was replaced by the law on “On the major constitutional provisions” (Law No. 7491, dated 29.04.1991). During the first years of transition period efforts to restructure the Judiciary have been consistent. In the framework of these efforts many judges of the communist era were removed from of-

fice and replaced with new graduates. Many of them had attended only six months training course in law and the main goal was to free judiciary by old mentality representatives (SIDA; 2008).

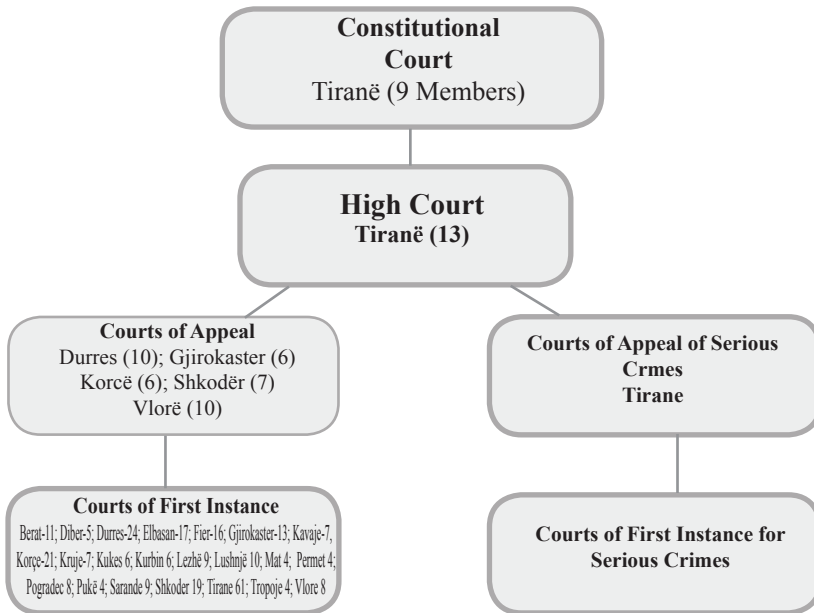
The new Constitution approved in 1998 regulated Judiciary in its part 9 by stipulating formal protection of the judiciary independence and the principle of separation of powers (Art.7). The Albanian Constitution provides reasonable formal protection of the judiciary independence thanks to the inclusion of the principle of separation of powers. The Constitution incorporates clear provisions regarding the independence of judges, the independence of the budget of the courts, the criminal immunity of judges and security of tenure and pay (Art. 137, 138, 144, and 145). The constitution envisages the competences of the High Council of Justice (HCJ), as being the instance in charge of deciding for the appointment, promotion, transfer of judges, and disciplinary responsibility of judges. Also the National Judicial Conference, as a general meeting of all judges to strengthen judicial independence is a significant achievement of the Constitution (Art. 147). It also provides for the existence of a Constitutional Court.

The constitution provides for a judicial system which consists of three levels - Court of First Instance, Court of Appeal and the High Court, and also regulates the general activity and functions of the courts (Art. 135). In addition, it also provides for the existence of a Constitutional Court ¹, formally outside the judiciary, which has the main goal to protect and guarantee compliance with the Constitution (Part Eight; articles 124 – 134). Also “Law on the Organization and Functioning of the Judicial Power” of 1998 (No.8436), repealed by the “Law on the Organization of the Judicial Power in the Republic of Albania” of 2008 (No. 9877) regulates the functioning of the courts. The latter abolished Military courts and stipulated for the creation of administrative courts.

THE FIRST INSTANCE COURTS

The law governing Courts of the First Instance is the law on the organization of the judicial power in the Republic of Albania (Judicial Power Law). These courts are often referred to as Districts Courts and currently sit in

¹ Art. 125/1 “The Constitutional Court is composed of 9 members, who are appointed by the President of the Republic with the consent of the Assembly.”; Art 125/3 “The Chairman of the Constitutional Court is appointed from the ranks of its members by the President of the Republic with the consent of the Assembly for a 3-year term”; Art 134 the President has of the Republic can put into motion the Constitutional Court; Art. 149/1 “The General Prosecutor is appointed by the President of the Republic with the consent of the Assembly”;



21 judicial districts in the country. The number of courts was reduced from 29 to 21 under the reorganization which took place in 2007 by a presidential decree. For the adjudication of administrative, commercial and labour disputes some district courts include special sections. The total number of judges sitting in the first instance courts is 299.

THE APPEAL COURTS

Courts of appeal adjudicate cases in the second instance and sit in six different regions in Albania (Durrës, Gjirokastra, Korca, Shkodra, Tirana, and Vlora). In these courts cases coming from the first instance courts are reviewed both on the fact and the law. Currently there are 75 judges sitting in these courts in Albania.

THE SERIOUS CRIME COURTS

Serious crime courts were established with the endeavour to address the issue of organized crime but also to improve the efficiency of the judiciary, in 2004. There are two instances of the Serious Crime Court: First instance court and the Serious Crime Appellate Court. Both courts are located in

Tirana and hear cases in panels of 5 judges. These courts have jurisdiction on cases such as the establishment of criminal organizations, armed gangs and the crimes they perpetrate – human trafficking, armed robbery, crimes related to terrorism, crimes against humanity etc, and other crimes which are punishable by at least 15 years of imprisonment.

THE HIGH COURT

The High Court is the highest court in Albania and as such it adjudicates decisions of Appeal courts. It takes decisions based only on the law but not on the fact. It also judges over criminal charges against the President of Albania, the Prime Minister, members of the Council of Ministers, deputies of the Assembly, and judges of the High Court and the Constitutional Court. The High court is located in Tirana and has 17 judges. It is divided into civil and criminal colleges of eight judges each. The High court hears cases in panels of 5 judges.

THE CONSTITUTIONAL COURT

The Constitutional Courts although formally outside the judiciary has the main goal to protect and guarantee compliance with the Constitution. This compliance is related not only to internal laws and normative acts, but also to international agreements prior to ratification. Decisions taken by the Constitutional Court are binding for all other courts and can not be reviewed by any other court. The court has 9 judges.

6.2 JUDICIAL OVERSIGHT OF THE EXERCISE OF LAW ENFORCEMENT

6.2.1 CONSTITUTIONAL AND LEGAL FRAMEWORK

In the last years Albania has revised the legal framework concerning fundamental human rights protection. In this regard, access to justice concerning cases of violence, inhuman treatment by security sector officials is guaranteed by law in all the levels and no individual is exempted from the judicial system in case of claims for violation of rights in regards to security sector institutions. Albania has ratified the European Convention of Human Rights with all the additional protocols.



It is the constitution (Article 25) which provides a general provision that torture and inhuman treatment are forbidden in any circumstances. Furthermore Article 28 sets the basis of law enforcement actions during arrests, pursuits, pre-detention and detention, stating the fundamental rights of each citizen such as the right to be defended by a lawyer, the right to appeal against the decision for arrest, the right for translation etc. On the other hand the Albanian Constitution, in Articles 47 and 48, guarantees the right of citizens to peacefully gather, protest or demonstrate. The domestic legislation, Article 5 of the Code of Penal Procedures, stipulates that the freedom of a person might be restricted on security concerns only in the cases that are foreseen by the law, in accordance with Art. 5 of ECHR. The Code of Penal Procedure categorically prohibits the use of torture and ill-treatment with no exceptions. As regards the State Police, the law ("On State Police" Art 101 & 107 & 118) clearly defines and regulates the actions of the law enforcement officials in the course of exercising their competences, authorities and limitations during the arrest, detention, treatment in custody. The activity of State Police is also regulated by the "Regulation of Discipline of State Police" where it provides in details the code of conduct and rules of behaviour for police officers as well as disciplinary measures in case of violation of the law and code of conduct.

Legally and institutionally the activity of security sector actors is subject to judicial oversight with no exemptions. Nevertheless certain high ranking officials such as MP-s, High Court judges etc, enjoy immunity from criminal prosecution. Alleged wrongdoing by these officials is investigated following the lifting of their immunity and is heard and adjudicated following a different procedure through the High Court.

Allegations of serious disciplinary offences involving any Police Officer or other employee of the Police services are subject of investigation of the Internal Control Service. Upon their findings a penal investigation from the prosecution can be opened. Based on the Code of Penal Procedures (Article 58), every citizen claiming the breaching of his civil rights, supported by a legal representative, can bring charges against security sector structures or officials that are reviewed by the court of first instance.

Regarding control of the police activity, depending on the status of the official and the alleged breaches, the law provides different disciplinary measures and bodies in charge for the oversight. For light measures the head of the Prison Police Directorate, the Minister of Interior, and General Director of Prisons, based on internal information can start on their own initiative an investigation and proceed with disciplinary measures for the

officers who have committed a law infringement. For more extreme measures such as ‘dismissal’ for officials from the Prison Police Directorate, is the Ministry of the Justice or the Head of Directorate of Prison Police to undertake disciplinary measures for officials who have taken actions against the law. Nevertheless the punished officials have the right to appeal the decision in the Ministry of Justice – Commission of Appeal for Disciplinary Measures.

Regarding the treatment in custody and detention, based on the law, a person escorted by police to a pre-detention facility shall be interrogated by a prosecutor and within 48 hours is either released or brought in front of a judge who evaluates if the detainee will be kept in pre-detention or released for the time of the investigation. The Custody service is managed by the State Police and the Ministry of Interior. When the court decides for ‘detention in jail’ for the time the investigation is taking place, the detainee is brought to pre-detention centres, where he/she spends the time foreseen until the end of the trial. After the end of the trial, if the person is convicted, he/she is transferred to detention centres (jails). While detention and pre-detention centres are under the authority of the Ministry of Justice, the Custody remains under the authority of the Ministry of Internal Affairs.

The legal framework relevant to the treatment in custody and detention is complete and revised in the last years. “Regulations and Procedures of the work, training, career and disciplinary measures for prison’s officials and police officers”, establishes a clear framework on the daily activities of the police officers and prisons’ police. In addition The Republic of Albania has ratified several relevant international acts such as:

- The Convention “Against torture and other suffering, or cruel, inhuman and degrading treatment”, ratified by Law No7727, dated 30.6.1993
- The European Convention “On the prevention of torture and inhuman or degrading treatment or punishment”, ratified by Law No 8135, dated 31.07.1996
- The European Convention “On the protection of human rights and fundamental freedoms” as well as its additional protocols Nr. 1, Nr. 2, Nr. 4, Nr.7 and Nr.11, ratified by Law No 8137, dated 31.07.1996.

Upon a recommendation from the Ombudsman, the Albanian Parliament, amended “The Criminal Code of the Republic of Albania” (Law No 9686), giving a clear and concise meaning to the criminal act of torture.

The principle of independence of the judiciary and equality before the law



is enshrined in the Constitution and reflected in relevant legislation. Access to justice has been improved by the Law on Legal Aid (Nr.10 039, 22.12.2008), which provides a free legal assistance in civil, criminal and administrative proceedings to different categories of persons. However, there are obstacles to the full independence of judges (EC: 2010) especially in the implementation of the legal framework.

In addition the oversight of the law enforcement officials that use force is conducted by different bodies with a variety of authorities and competences which however are enshrined in the legislation and respective organic laws.

6.2.2 IMPLEMENTATION

Despite the complete legal framework which prohibits arbitrary actions by police such as illegal arrests, maltreatment and power abuse, in the last years complains and reports about arbitrary arrests and detentions, have not been rare (US Department 2008; 2009). The use of force by the law enforcement officials has been subject to wide criticism from national and international institutions monitoring human rights violations. The Albanian Helsinki Committee (AHC) and the Albanian Human Rights Group (AHRG) have reported that police in the past have used excessive force or inhuman treatment during arrests' procedures or pursuit. Furthermore, referring to the US Department Human Rights Reports (2008), there have been cases that the police have maltreated and beaten suspects during interrogation and detention. Evidence has shown that in past years, the police have used threats, violence, and torture to extract confessions.

In an overview of Albanian Helsinki Committee reports during the last 6 years can be revealed different cases that citizens have denounced human rights violations at the hands of the law enforcement officers. The most frequent violations were related to:

- Maltreatment during arrest / detention
- Failure to inform citizens on their rights at the moment of detention / arrest.
- Deprivation of the right to notify family members.
- Failure to provide with an attorney from the start

Nevertheless the proving of such claims has been a difficult task because of the lack of reporting from the victims to the prosecutor office. (AHC 2007). This might be an indicator of the lack of trust from the victims to judicial structures.

Out of 273 identified disciplinary breaches of the police officers issued in 2009, 21 were referred for criminal prosecution and 41 officers were expelled / removed from the police ranks. The rest were considered light breaches. (Albanian answers to EU Questionnaire). Nevertheless no information has been available to show the decisions of the courts regarding breaches of police officers during their activities.

Regarding the activity of the Service for Internal Control as can be noted by the statistics in the last years, the number of the police officers, charged for arbitrary acts is high, while the number of arrested / detained officers remains very low. A quick analysis reveals that very few officers have been detained by the courts despite the large number of criminal prosecutions submitted by the Service for Internal Control, which tells about the difficulties of the courts to punish such cases. (Table.1)

Table 1: Performance of Service of Internal Control

Year	No. of Complain	No. of Employers	Arrested/Detained
2006	35	39	-
2007	42	63	2
2008	38	45	2
2009	35	42	4
2010	11	13	-

Table 2: Police officers reported for criminal prosecution

Year	Total Nr.	Mid- Management	1st line of supervision	Operational
2006	254	16	89	149
2007	221	5	75	141
2008	202	3	76	123
2009	148	2	42	104
2010	145	1	34	110

In the same context the Ombudsperson has identified various cases of human rights breaches from law enforcements institutions during the years². It can be noted an increase in the submitted complains to Ombudsperson during the last 6 years regarding violations by law enforcement officials,

² Refer to the Table 3



particularly by the police. During the last 6 years a total of 1421 complains were directed to the Ombudsperson regarding allegations of abuses by law enforcements officials (police and pre-detention staff). As we can see from the table, despite the fact that a considerable part of such complains were considered 'admissible' by the Ombudsperson, a small fraction was referred for disciplinary proceedings . Furthermore from 21 cases referred to the prosecution office for criminal investigation, few of them resulted in final court verdicts imposing punishments.

Due to lack of resources and the large number of complaints submitted to the Ombudsperson, many of these complains were not processed (Nuni 2011). Because of the same reason the investigations of alleged cases of misconduct by police officers have not been comprehensive and properly conducted. In this regard, mostly the Ombudsperson has not gone beyond recommendations directed to the heads of the institutions under scrutiny, thus falling short of triggering any administrative punishment or penal case. Despite the legal obligations enshrined in the organic laws, the co-operation of the Ombudsperson with related institutions such as Police, General Prosecutor has not been satisfactory.

Table 3: Police officers reported for criminal prosecution

Year	Com-plaints	In Favor	Re-fused	Not based	Pend-ing	Disciplinary measures		Penal Procedures		
								Accepted	Dismissed	Pending
2010	369	N/A	N/A	N/A	N/A					6
2009	173	72	19	73	9	5	2	1	1	-
2008	233	79	36	98	20	8	3	1	1	1
2007	274	83	51	108	32	10	-	5	1	-
2006	215	69	32	92	22	13	-	4	-	-
2005	157	45	19	71	22	8	-	4	1	1

Concerning the treatment in custody and detention centres, on June 2009 AHC together with Ombudsperson Office conducted a survey with juvenile offenders from various police commissariats. The findings revealed that almost all the interviewed juveniles claimed to have been subject to violence by police employers at the time of arrest or questioning. The juveniles claimed that even after reporting such violence in the court room during the judicial hearing or to prosecutor, these bodies failed to follow up such cases and bring before justice the police employees who violated their human rights. No measures were taken, to follow up cases of report-

ed alleged violence against juvenile offenders and to bring to justice the ones responsible for these actions (AHC: 2010).

After these violations were reported by AHC and Ombudsperson to the General Prosecution, some measures took place. General Prosecution sent out a circular notice to all prosecutors in the judicial districts underlining all the measures necessary to be taken to ensure that juvenile offenders were fairly treated according to the law and their role in the investigation of alleged cases of ill treatment. (AHC: Report 2009). Analyzing the progress noted from the Human Rights Reports from different sources, it can be distinguished some improvements related to the activity of the security sector officers however major obstacles and setbacks continue to exist.

The court must decide within 48 hours whether to place the suspect in detention, require bail, prohibit travel, or require the defendant to report regularly to the police. However in practice prosecutors requested and courts routinely ordered detention. (US Department Report 2009) Other problems concerning judicial oversight of the security sector are the cases where judges' offices continue to be shared and overloaded, while public access to court hearings remains a concern (EPR: 2009). Furthermore, generally applicable judicial administration fees were increased substantially in March 2010, limiting access to justice for the least economically advantaged.

6.2.3 ADMINISTRATIVE AND MANAGEMENT CAPACITY

In cases of alleged criminal activity or breaches of human rights by police officers, the prosecution service appoints a special prosecutor who conducts the investigation and eventually brings charges against the accused police officers. The General Prosecutor, by law (Nr.8737) has the power to enquire independently and without interference from other bodies the activity of security sector institutions and to start investigations and, eventually, penal proceedings for crimes committed by security sector representatives. Furthermore, the law empowers domestic courts (penal or civil, as applicable) to oversee the use of force and actions by security forces. In the same perspective all the security sector actors, by law may be subject to judicial oversight with no explicit limitation. Referring to the law "On the rights of Inmates" (Art. 69) an appointed prosecutor is in charge for investigating potential breaches in the detention institutions, periodically and without warning.

The Ombudsperson is also an important factor in safeguarding the rights



of citizens against abuses coming from security sector structures and individuals. The Ombudsman is set in motion by individual complains. However the Ombudsman has no decision making powers, being limited in providing relevant information to the parliament, Ministry of Justice or General Prosecutor for them to take the necessary measure for the punishment and remedy of the identified cases. For this purpose since 2008 the Ombudsman Office established a special Unit on Torture Prevention. In the last years the role of Ombudsman has been weakened due to the shortages in the budget and limited resources and capacities for controlling the activity of the security sector institutions. (Nuni 2011).

Lack of capacities and problems of an organizational nature, can be noted in the court system too, where court management is not in the required standards, due to a lack of human and financial resources, in particular in first instance district courts (EC: 2010). Furthermore the court infrastructure remains poor (EC: 2010), something that is reflected in the limited performance of the courts with regard to the processed cases related to infringements of human rights by the security sector officials.

6.2.4 VALUES

Despite the fact that the legal framework has improved during the last years, lack of improvement has been noted in the implementation and the respect of human rights by the law enforcement structures. Political pressure, intimidation, widespread corruption, and limited resources have prevented the judiciary from functioning independently and efficiently. The enforcement of court decisions is weak, in particular in cases where state institutions are the defendants. (EC: 2010). An increase in the number of complains has not been reflected in the number of disciplinary measures and punishments by the court, which shows that serious flaws characterise the judicial oversight of the exercise of law enforcement.

Despite a decrease in the number of cases related to power abuse and arbitrary actions by security sector officials, the number of punished cases remains low and, overall, little progress has been made regarding the judicial oversight of the security sector.

6.3 USE OF SPECIAL INVESTIGATIVE MEASURES

6.3.1 CONSTITUTIONAL AND LEGAL FRAMEWORK

In the chapter on the fundamental human rights and freedoms, the Constitution of Albania provides for the right to the secrecy of the correspondence and the inviolability of the residence (Articles 36-37). The Constitution provides also that limitations to such rights and freedoms may be established only by law, which in no case should exceed the limitations provided in the European Convention on Human Rights (ECHR) (Article 17). Based on whether the information obtained may be used as evidence in a judicial proceeding, the Parliament has adopted two categories of legislation to regulate the use of special methods of investigation (SMI); the Criminal Procedure Code (CPC) and the law on the interception of telecommunications (LIT).

THE CRIMINAL PROCEDURE CODE

The CPC establishes the grounds on which SMI may be employed, the authorities responsible for issuing a warrant and the right to complaint, as well as the execution of the warrants, the use of information and limitations to it (CPC art. 221-226). Based on the gravity of the offence, as provided by the Criminal Code (CC),³ the CPC distinguishes two categories of SMI: the SMI that yield audio or written evidence, employed for collecting evidence on offences punishable by not less than seven years of imprisonment and, the SMI that yield picture or location evidence, employed for collecting evidence on offences punishable by not less than two years of imprisonment.

The authorities responsible for the collection are all law enforcement agencies which have judicial police powers⁴. However in order to apply for a warrant these agencies have to register the case to the prosecution which may apply for a warrant. The authority responsible for issuing the warrants is the Court. The prosecution or an injured party may apply for a warrant to the Court which has to decide within forty eight hours. The maximal duration of an initial warrant is fifteen days but it may be extended for twenty days (forty days for the serious crimes), as many times

³ Otherwise known as the Penal Code

⁴ More specifically the State Police and the Service of Internal Control in the Ministry of Interior, the Prisons Police in the Ministry of Justice and the General Tax Directorate and the General Directorate of the Customs in the Ministry of Finances, or any other organisation which is given judicial police powers by law.



as it is found necessary by the Court. The warrant may be appealed to the Court of Appeal within ten days by an interested party.

The CPC provides also for use of SMI without a Court warrant in two instances. First, the prosecutor in charge of a case may issue an emergency warrant and inform to the court no later than within twenty-four hours and meantime apply for a warrant to the Court which has to decide within forty eight hours. In case there is no Court warrant, the information collected may not be used as evidence. Second, the prosecutor in charge of a case may issue a warrant with the request and upon agreement of one of the parties subject to surveillance. But the CPC lacks further provision on how the Prosecution interacts with the Court for such cases in dealing with the evidence potentially obtained.

The CPC includes safeguard mechanisms but these are minimal. It includes the prohibition to use information collected through SMI in other proceedings and the prohibition to use information collected on individuals that are bound by professional secrecy.

Upon termination of the warrant the Court is provided with all the material collected through the use of SMI. After hearing the defendant and the prosecution the Court decides on the materials that may not be presented as evidence. The CPC does not provide for any mechanism that allows the Court, directly or by delegating it to other instances, to control the compliance with the procedures in the process of execution of the SMI. So the assessment on the materials that may be presented as evidence is based mainly on their relevance and the safeguards mechanisms. The Appeal Court may review the decisions of the First Instance Courts (FIC), if there is a complaint. Specifications on the use of SMI in accordance with the CPC are found in internal regulations issued by the Prosecutor General (PG), but such acts do not concern or cover the role of the Court in this regard (Regulation, PG: 2006).

THE LAW ON THE INTERCEPTION OF TELECOMMUNICATIONS (LIT)

The information obtained through the LIT cannot be used as evidence in the Court. The State Police, the State Intelligence Service and all the other intelligence and security services that operate under the ministries of Interior, Defence, Finances and Justice are eligible to use interception of telecommunications under the LIT. The LIT doesn't provide for any powers of review for the Court, neither *ex ante* nor *ex post*. The PG is responsible for issuing the warrants and controlling the compliance with the law by intel-

ligence and police services.

Apart from the interception of telecommunications, the other SMI, such as the interception of letters and parcels, bugging of premises, secret video surveillance, monitoring of content of communications, location information etc, are not regulated by specific legislation. The legal basis for the use of such SMI is found in the primary legislation on police, intelligence and security services. However this legislation either just mentions or very superficially regulates the use of such measures. The PG or a prosecutor in charge of a case has the authority to approve the warrants and control the use of such measures.

The information acquired through the use of LIT or the other SMI mentioned above may not be used as evidence in the Court.

6.3.2 IMPLEMENTATION

THE CRIMINAL PROCEDURE CODE

The use of SMI has been a commonly known practice but it began to be widely used only in by mid 2000s, when the law on interception of telecommunications was adopted and enhanced capacities were installed to this purpose. After 2005 information about and use of SMI began to emerge in the media and the official reporting of the PG in the Parliament (Report PG, 2007, 2008, 2009). Since then the approval of interception warrants by the Courts has become a routine activity and similarly the presentation in trials of evidence collected through the interception of telecommunications and other forms of SMI. Inevitably this has led to increase the effectiveness of the law enforcement agencies, mainly in tackling serious criminal activity (Dyrmishi: 2009)

The CPC provides for both *ex ante* and *ex post* review. Formally the warrants are examined and approved by the Courts which are involved in the process of selecting and presenting the evidence also. However publically available information on the entire process is very limited. The figures on the number of warrants issued are difficult to be obtained and similarly limited information on the deliberation process by the judges. Some facts that emerge from the PG reports to the Parliament as well as some media reports reveal that there is a trend to overuse the SMI, in particular phone tapping. The media has reported for 1300 warrants issued by Tirana District Court during 2008 of which 500 warrants were issued by the Serious



Crimes Court (SCC) (Rryçi: 2009, Manjani: 2009). This number has been considered as being too high by the High Council of Justice (HCJ), which has also suggested amendments to the CPC in order to empower the Appeal Court to monitor the process (Koha Jone: 2009).

Except for phone tapping, there is no information or data available on the number of warrants or related information concerning the use of the other methods mentioned above.

THE LAW ON THE INTERCEPTION OF TELECOMMUNICATIONS (LIT)

As regards the use of SMI for the purpose of intelligence collection pursuant to the LIT, the data is even more limited. In 2007, the PG reported that 1000 warrants were issued by her office during 2006 but he considered this figure to be high (Rama: 2007). The PG reported also that during 2006 the institution had refused 25 percent of the applications from the police and 42 percent of the applications from the intelligence services. The future PG reports have ceased to contain any figure. In addition these reports do not contain any information on the performance of the PG in controlling the implementation of the LIT by the law enforcement, security and intelligence agencies (Dyrmishi, 2010).

6.3.3 ADMINISTRATIVE AND MANAGEMENT CAPACITY

- *THE CRIMINAL PROCEDURE CODE*

There are three categories of authorities that approve warrants on use of SMI; the prosecutors of the district prosecution offices, the PG, the judges of first district courts. Pursuant to the CPC, the PG has issued a regulation which details the way SMI are carried out, rules on the use of the reports produced and the way they are destroyed (Regulation PG, 2006). In 2010, the PG endorsed also the Guidebook to Corruption and Financial Crime Investigation which guides the prosecutors and judicial police officers on the methods and procedures that must be followed in the use of SMI in the investigation of financial crime, which in fact is relevant for the investigation of all sorts of crimes. Under the CPC, the PG issues warrants only in emergency situations, which given their limited number do not pose any considerable administrative load. The number of prosecutors is deemed sufficient and adequate to deal with the workload. This is not the same for the courts. Currently the FIC have 299 judges and are assisted by 341 staff (Decree 2009). However their efficiency is a serious concern (European Commission; 2010), the delayed proceedings

generally affect the quality of judicial decisions (Gjipali; 2010), including the deliberation of warrants.

The execution of the interception of the telecommunication warrants is carried out by the interception unit based in the General Prosecution Office (Report PG, 2008). The Courts have no role in the execution process.

THE LAW ON THE INTERCEPTION OF TELECOMMUNICATIONS (LIT)

The PG issues the warrants pursuant to the LIT. In performing this task the PG is assisted by the Interception Unit which serves as the interface for the bulk of activities with the intelligence and police services (Order PG, 2006). The unit has been constantly under pressure given the high number of applications. The execution of the interception of the telecommunication warrants pursuant to the LIT is carried out by each of the police and intelligence services. Judging by the large number of intercept applications their capacities are considered adequate.

6.3.4 VALUES

Fighting organised crime and corruption has been a priority for several successive governments, in particular in the last ten years. Subscribing to the governments' policy priority, and most likely trying to avoid the risk of being found to counter such priority, the judiciary seems to have accepted the propensity of the law enforcement and security agencies to overuse the SMI, which they see as a most effective tool. Such approach has led the Courts to endorse warrants with no proper deliberation. At least in one particular case, it had to be the High Court to find that information obtained pursuant to the LIT was unlawfully used as evidence by both the FIC and Appeal Courts (Mahmutaj 2010, Case nr. 1630).

6.4 RECOMMENDATIONS

- Implementation of the legal framework relevant to the judicial over-



sight of the security sector must be improved so that the oversight function is performed effectively and independently from political pressures, intimidation, and widespread corruption.

- Administrative capacities of oversight bodies should be increased in order to cover all the potential abuse by law enforcement officials
- The cooperation between related institutions (General Prosecutor, Ombudsperson, should be improved and the activity between security sector institutions of law enforcement should be coordinated in order to prevent and punish breaches of human rights in this sector.
- The Criminal Procedure Code should be revised to provide for an increased role of the judiciary, in particular regarding the control of the compliance with the warrants by the implementing authorities.
- The position of the Prosecution and the Prosecutor General should be clearly defined in order to distinguish between the role in the approval of the warrants and the role in the control of the compliance by the law enforcement authorities pursuant to the law on the interception of telecommunications.
- The Ministry of Justice and the High Council of Justice should be taking a more active role in monitoring the performance of the Judiciary with regard to the authorisation and use of special methods of investigation.

6.4 BIBLIOGRAPHY

PRIMARY SOURCES

- Constitution of the Republic of Albania
- Case no. 1630, Tirana District Court, Prosecution against Agur Sadi-ku, Artan Berberi, Bujar Murati, Festim Bashllari, Ilir Sulo, Jani Gjergjeji, Redi Popescu.
- Decision No. 786, dated 4.6.2008, “On the Disciplinary Regulation of State Police”
- Decree No.6265, Dated 16.9.2009, On the number of the judges in the First Instance Courts and Appeal Courts (The President)
- Decree of the President of the Republic of Albania on the Establishment of Judicial Districts, Definition of Their Territorial Competencies, and their Center of Activity (Decree No. 5350, adopted Jun. 11, 2007)
- Law No. 7491, dated 29.04.1991 “On Main Constitutional Provisions”
- Law No. 8436, dated 28 December 1998. ‘On the Organization of the Judicial Power in the Republic of Albania’.
- Law No. 9877, dated 18.2.2008, ‘On the organization of the judicial powers’
- Law No. 10 039, dated 22.12.2008, “On Legal Aid”
- Law No. 8749, dated 1.3.2001, “On Internal Control Service”
- Law No. 8737, Dated 12.2.2001, “On Organization and Function of Prosecution in the Republic of Albania” (updated)
- Law No. 9749, dated 04.06.2007, ‘On State Police’
- Law No.8391, dated 28.10.1998, ‘On the National Intelligence Service’
- Law No.9074, dated 29.05.2003, ‘On the Military Intelligence Service’
- Law No.9157, dated 04.12.2003 ‘On the Interception of the Telecommunications’ amended by law No.9885, dated 03.03.2008, and law No.10172, dated 22.10.2009
- Law No.10 002, dated 06.10.2008, ‘On the Service of the Internal Control in the Ministry of Interior’
- Law No. 9110, dated 24.7.2003, ‘On the organization and function of the Serious Crimes Court’
- Official Publishing Centre, “Code of Penal Procedure of the Republic of Albania” (updated), October 2004
- <http://www.gjykatatirana.gov.al/>, Accessed January 2011
- European Commission, Commission Opinion on Albania’s application for membership of the European Union, Brussels, 09 November 2010, http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/al_rapport_2010_en.pdf
- Council of Europe, European Convention on Human Rights and its



Five Protocols

- European Commission, Albania Progress Report 2005, Brussels
- European Commission, Albania Progress Report 2006, Brussels
- European Commission, Albania Progress Report 2007, Brussels
- European Commission, Albania Progress Report 2009, Brussels
- European Commission, Albania Progress Report 2008, Brussels
- Ministry of Justice, Annual Statistics 2005-2009, <http://www.justice.gov.al/?fq=brenda&gj=gj1&kid=78>, Accessed February 2011
- Internal Control Service, Annual Report 2010, Ministry of Interior
- Ombudsperson Office, Annual Report 2009, http://www.avokatipopullit.gov.al/?page_id=259, Accessed February 2011
- Ombudsperson Office, Annual Report 2008, http://www.avokatipopullit.gov.al/?page_id=259, Accessed February 2011
- Ombudsperson Office, Annual Report 2007, http://www.avokatipopullit.gov.al/?page_id=259, Accessed February 2011
- Ombudsperson Office, Annual Report 2006, http://www.avokatipopullit.gov.al/?page_id=259, Accessed February 2011
- Ombudsperson Office, Annual Report 2005, http://www.avokatipopullit.gov.al/?page_id=259, Accessed February 2011
- Regulation nr.1 date 21.04. 2006, On the Interceptions (Issued by the Prosecutor General)
- Report of the Prosecutor General for year 2007 presented to the parliamentary Committee on the Legal Affairs, Public Administration and Human Rights, http://www.pp.gov.al/previewdoc.php?file_id=209, Accessed January 2011
- Report of the Prosecutor General for year 2008 presented to the parliamentary Committee on the Legal Affairs, Public Administration and Human Rights, http://www.pp.gov.al/previewdoc.php?file_id=207, Accessed January 2011
- Report of the Prosecutor General for year 2009 presented to the parliamentary Committee on the Legal Affairs, Public Administration and Human Rights, http://www.pp.gov.al/previewdoc.php?file_id=208, Accessed January 2011
- Law No. 9110, dated 24.7.2003, 'On the organization and function of the Serious Crimes Court'
- Official Publishing Centre, "Code of Penal Procedure of the Republic of Albania" (updated), October 2004, <http://www.gjykatatirana.gov.al/>, Accessed January 2011
- European Commission, Commission Opinion on Albania's application

for membership of the European Union, Brussels, 09 November 2010, http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/al_rapport_2010_en.pdf

- Council of Europe, European Convention on Human Rights and its Five Protocols
- European Commission, Albania Progress Report 2005, Brussels
- European Commission, Albania Progress Report 2006, Brussels
- European Commission, Albania Progress Report 2007, Brussels
- European Commission, Albania Progress Report 2009, Brussels
- European Commission, Albania Progress Report 2008, Brussels
- Ministry of Justice, Annual Statistics 2005-2009, <http://www.justice.gov.al/?fq=brenda&gj=gj1&kid=78>, Accessed February 2011
- Internal Control Service, Annual Report 2010, Ministry of Interior
- Ombudsperson Office, Annual Report 2009, http://www.avokatipopullit.gov.al/?page_id=259, Accessed February 2011
- Ombudsperson Office, Annual Report 2008, http://www.avokatipopullit.gov.al/?page_id=259, Accessed February 2011
- Ombudsperson Office, Annual Report 2007, http://www.avokatipopullit.gov.al/?page_id=259, Accessed February 2011
- Ombudsperson Office, Annual Report 2006, http://www.avokatipopullit.gov.al/?page_id=259, Accessed February 2011
- Ombudsperson Office, Annual Report 2005, http://www.avokatipopullit.gov.al/?page_id=259, Accessed February 2011
- Regulation nr.1 date 21.04. 2006, “On the Interceptions” (Issued by the Prosecutor General)
- Report of the Prosecutor General for year 2007 presented to the parliamentary Committee on the Legal Affairs, Public Administration and Human Rights, http://www.pp.gov.al/previewdoc.php?file_id=209, Accessed January 2011
- Report of the Prosecutor General for year 2008 presented to the parliamentary Committee on the Legal Affairs, Public Administration and Human Rights; http://www.pp.gov.al/previewdoc.php?file_id=207, Accessed January 2011
- Report of the Prosecutor General for year 2009 presented to the parliamentary Committee on the Legal Affairs, Public Administration and Human Rights
- -http://www.pp.gov.al/previewdoc.php?file_id=208, Accessed January 2011



SECONDARY SOURCES

- Albanian Helsinki Committee, “On the situation of human rights at police directorates and commissariats”, 2010
- Albanian Helsinki Committee, Annual Report 2009, Tirana 2010
- Albanian Helsinki Committee, Annual Report 2008, Tirana 2009
- Albanian Helsinki Committee, Report on Human Rights 2007, www.ahc.org.al, Accessed February 2011
- American Bar Association, (2008). Judicial Reform Index for Albania. Vol. 4, Available from: www.abanet.org/rol/publications/judicial_reform_index.shtml.
- Dyrmishi, Arjan. Interception of Telecommunications in Albania: Control and Oversight, IDM, 2009, www.idmalbania.org/publications/alb/Bacgrounder_Intercept.pdf, Accessed January 2011
- Dyrmishi, Arjan. Interception of Telecommunications in Albania: Legislation and Practice, IDM, 2010.
- European Commission, Com(2010) 680, Brussels, 9.11. 2010
- Commission Opinion on Albania’s application for membership of the European Union
- http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/al_opinion_2010_en.pdf, Accessed January 2011
- Interview: Assistant Commissioner of Ombudsperson, Sotiraq Nushi, March 1st 2010.
- Gjipali, Gledis. Albania, Nations in Transit 2010, Freedomhouse; www.freedomhouse.eu/images/Reports/NIT-2010-Albania-final.pdf, Accessed January 2011
- Rryçi, Laureta. Shqiptarët, të pambrojtur nga përgjimet e paligjshme Gazeta Albania ,14 Shkurt 2009; <http://www.gazeta-albania.net/news.php?id=13434>, Accessed January 2011
- Manjani, Ornela. Krimet e Rënda, 500 urdhra për përgjime në vit, Gazeta Ballkan14/02/2009
- <http://www.ballkan.com/index.php?page=shownews&newsID=296>, Accessed January 2011
- Koha Jone, Spahiu: Ndryshime ne ligj per pergjimet, 14 Shkurt 2009; http://www.kohajone.com/html/artikull_37663.html, Accessed January 2011
- Koha Jone, “Korce: Policia perdor dhunen, perleshje midis saj dhe protestuesve te opozites”, March 5th 2010, <http://kohajone.com/artikull.php?idm=51890>, Accessed February 2010

-
- Rama, A. Sollaku Shqipëria përgjime sa SHBA, Shekulli 13 Mars 2007
 - <http://www.shekulli.com.al/news/45/ARTICLE/6270/2007-03-13.html>, Accessed January 2011
 - SIDA “Albania Anti-Corruption Study” January 2008
 - Albanian Judicial Map, <http://www.lexadin.nl/wlg/courts/nofr/eur/lxctalb.htm>
 - Ministry of Justice: <http://www.justice.gov.al/?fq=brenda&kid=105>



7 | FINANCIAL TRANSPARENCY OF THE SECURITY SECTOR

EXECUTIVE SUMMARY

Mainly due to the EU integration processes in the last few years there has been a trend to improve financial transparency in Albania but the results have been mixed. Progress has been made in the adoption of the legislation on budget management, which is considered to be generally in line with international standards, but it still lacks provisions for ensuring full transparency along the four stages of the budget process. In addition, the implementation of the legislation has so far failed to fully meet the ambitions of the legislation. The number of the published documents on the budget is limited and the quality of the information released is not satisfactory for meeting high transparency standards. Administrative capacities are generally in place but, the professional qualification and professional independence need to be further addressed. In addition the cooperation among the institutions and structures involved in the four stages of the budget process need to be improved.

Regarding the transparency in the public procurement, the legal framework has been revised, aiming to comply with EU directives. Nevertheless the legislation is only partially approximated with the 'acquis communautaire'. The introduction of new procedures and oversight mechanisms established for the control of the public procurement system brought new developments in regards to institutional transparency related to public procurement. But serious obstacles exist especially in the implementation phase where the transparency of the public procurement applications and evaluation processes remain low. Particularly the legal framework fails to define the transparency and oversight processes related to the public procurements which procedures are classified under national security, leaving room for discretionary actions that may lead to corruptive practices.



INTRODUCTION

This paper analyses the financial transparency of the security sector in Albania as an important norm for the democratic governance of the security sector. Lack of transparency of the security sector is conducive to a range of abuses, may undermine the professionalism of the security forces and bears the risk of allowing security bodies to intervene in the political process (Ball et al: 2003). The level of financial transparency is analysed by examining the budget process and the public procurements through the assessment of the constitutional and legal framework and its implementation, of the administrative capacities and finally through the extent to which financial transparency has become an established democratic value. The level of financial transparency is measured through a grading system where 1 is the lowest score and 5 the highest. Although the focus of this the paper is on security sector, it discusses the transparency of budget and procurement processes in general given that the security sector abides by the same regulatory framework and same practices.

7.1 TRANSPARENCY OF THE BUDGET

This section examines the transparency of the budget in Albania by focusing on four indicators: the legal framework, the level and quality of the implementation of the laws, the administrative capabilities and the extent to which transparency has become an established value.

7.1.1 CONSTITUTIONAL AND LEGAL FRAMEWORK

As in many democracies, the budget cycle in Albania is composed of four stages; preparation, approval, execution and audit. The provisions for regulating the budget are found in the Constitution and law on the management of the budgetary system (LMBS). The Constitution authorizes the executive to prepare the budget and propose it to the parliament. Before scrutinising the draft and ultimately approving the budget the parliament has to consider the report of the State Supreme Audit Institution (SAI). The Constitution makes reference to the transparent execution of the budget by tasking the executive to make public all the incomes and expenditures (Constitution, Articles 157-164).

In line with the constitutional provision which stipulates that the princi-

ples and procedures for the preparation of the budget and its implementing are defined by law (Constitution, Article 159), the LMBS provides for the structure and principles of the budget cycle. The LMBS establishes a clear timetable for the preparation of the budget and provides for the implementation of the legislation on the budget. The main principles of the LMBS are transparency, predictability, comprehensiveness, unity and universality. Transparency is highlighted as one of the main principles of the budget system but the law does not coherently provide how transparency is to be achieved throughout all four stages of the budget cycle. The law provides for fairly detailed provisions concerning the budget formulation and approval of the budget but with regard to the execution of the budget, as well as reporting on the execution of the budget, the law refers to secondary laws. However, considering the government's estimate that it will take three years for the LMBS's provisions to be fully implemented, the harmonisation has been an ongoing process. An essential improvement in the legislation, regarding transparency and division of labour among the executive and the legislature, consists in a greater involvement of the parliament in the preparation stage of the budget. But on the other hand the legislation fails to provide clear procedures for informing the parliament on the execution of the budget by the government.

There are no specific provisions pertaining to the security sector in the legislation so the budget of the security institutions is approved and executed in accordance with the above mentioned legislation.

7.1.2 IMPLEMENTATION

Despite the improvement of the legislation the results with the implementation are mixed. With respect to the formal involvement of the main institutions in the phases of the preparation and approval of the budget, the law is properly implemented and the timelines are respected (See Box 1 in the Annex). The parliament's involvement in the process begins as early as March, when the executive produces and shares with the parliament the macroeconomic forecast. In July the parliament receives the draft of the Medium Term Budget Programme (MTBP) and in November the draft budget. An immediate outcome of such interaction has been the timely approval of the budget.

The budget of the security sector institution is scrutinized and deliberated by the Permanent Committee on National Security (PCNS). In the process of discussing the budget the PCNS holds meetings with representatives



from security sector institutions which include expert level as well as top officials from the Ministry of Defence, the Ministry of Interior and the Intelligence Agency. Rather than seeking for more transparency, generally the position of the PCNS has been to support security institutions to getting more funds. Concerning the spending on goods and services which are classified on national security grounds the parliament is provided with information by the executive but often not all information is provided or it is presented in aggregated manner. The minutes of the PCNS meetings can be found online in the Parliaments webpage.

Not all the documents on the budget are produced or published, as it is the case for the countries with high levels of financial transparency scores (Open Budget survey 2010). The executive produces a pre-budget statement but this document is not published. The mid-year review document also is not published. The budget proposal remains available online at the Ministry of Finance website when the draft budget is presented to the parliament but it is removed after the formal approval of the budget (SIGMA 2009). The budget proposal does not include a citizen's budget as it is not produced. The most comprehensive published document is the law on the budget that is published regularly in the official gazette.

With regard to the transparency of the execution process since 2008 the MF has begun the publication of in-year reports produced every three months by all spending institutions, including security sector. The end-year report is also published. The Supreme Audit Institution (SAI) regularly produces a yearly audit report which is released to the legislature before it approves the budget. This SAI audit report is the most important document on the execution of the budget. A positive indicator is the rate of the implementation of the recommendations issued by the SAI, which has steadily increased in the last years (SIGMA 2009).

7.1.3 ADMINISTRATIVE AND MANAGEMENT CAPACITY

The adoption of the LBMS has been followed by the adoption of the related secondary laws and bylaws. A major achievement of the new legislative package has been the separation of the internal audit and financial inspection as two distinct processes.

The LBMS's provides for structured allocation of specialised units and human resources at the Council of Ministers, the Ministry of Finances and in the security sector institutions. One of the main requirements of the law is the allocation of the resources in accordance with the strategic objectives

of the Council of Ministers. This function is performed by the Department of Strategy and Donor Coordination which ensures that the strategic planning and budgeting processes of the executive are coherent and effectively managed.

The Ministry of Finances is the central institution that deals with the preparation and the execution of the state budget. All security institutions have their own budget directorates that are responsible for the planning and the execution of the budget as well as their audit directorates responsible for the internal financial audit, including security sector institutions.

One of the main deficiencies until the approval of the new legislation has been the lack of financial inspection. As a result the internal audit units have performed both audit and inspection functions. This has undermined the mission of internal audit units as a management tool for the effective and efficient budget execution. In addition the differences in methodology have created confusion and distorted practices.

An ambitious provision of the LMBS is the establishment of the ‘authorising officer’, which is meant to be a tool towards the depoliticisation of the budgetary process as it transfers the responsibilities on financial matters from the minister to the top civil servant. Currently all security sector institution have an authorising officer responsible for the financial management and budget implementation. However the political involvement in the appointment of the top civil servants and the practice to circumvent the ‘authorising officer’ prevents the solid implementation of this clause.

In terms of human resources all institutions involved in the budget cycle have sufficient and qualified staff. The MoD makes exception for having better capacities which were developed in an earlier phase due to the Membership Action Plan requirements on planning and budgeting.

The capacities of the parliament with respect to transparency have improved. Since 2008 regulations and resources have been put in place for transcribing and publishing the minutes of parliaments and committee meetings.

7.1.4 VALUES

In the last few years Albania has made a good progress in adopting advanced legislation on budget management. However this has not produced any immediate improvement as Albania continues to belong to the group of countries that provide minimal information on the budget and ranks last in the region (Open Budget survey 2010). This low level of trans-



parency is reflected also in the perception of the public (Graph 1 and 2). Discrepancies between the quality of the legislation and implementation are also indicative of the poor local ownership of these reforms, which are mainly driven from the conditionality of the EU integration process. On the other hand stronger political will is needed to achieve higher standards of financial transparency.

7.2 TRANSPARENCY OF PUBLIC PROCUREMENT

7.2.1 CONSTITUTIONAL AND LEGAL FRAMEWORK

The public procurement system in Albania recognized steady developments in the last years due to the adoption of a new Public Procurement Law (PPL) in 2006. PPL is based mainly on the provisions of Directive 2004/18/EC. In 2007 Albania ratified the agreement with EU Commission on the rules of cooperation for the assistance in the framework of IPA (Instrument for Pre-Accession Assistance), which provides a general harmonization of the procurement procedures according to the standards of European Commission. The revised law “On Public Procurement” (Nr. 10170), together with the “Procurement Regulations” and the “Procurement Manual”, set out the main administrative framework for public procurement procedures in the country.

The procedures provided for by the PPL are in line with the requirements of the Directive. The same applies to the scope and coverage of the PPL. Nonetheless some gaps can be identified. Although the revision of legal framework is again under process, the PPL so far has not implemented the provisions of Directive 2004/17/EC, coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors. In the same time the review procedures still do not comply with the requirements of the EC Remedies Directives - 89/665/EEC, 92/13/EEC and 2007/66/EC (SIGMA: 2009).

In regards to the secondary legislation, the last report (2010) of Stabilization Association Process monitoring, emphasizes that “legal acts that regulates public procurement, ensure partial approximation with ‘acquis communautaire’ while the alignment process has been slow”.

In details, the Law “On Public Procurement” in article 5 provides a vague framework on defence procurement in the basis of national security or extraordinary situations, such as natural disasters, armed conflicts, mili-

tary operations etc. The law (Art.5) recognizes the use of the “hidden contracts” which are not disclosed to the public or other institutions of oversight, however lacks clear legal definitions on the applications of such provisions. In this perspective, definition of the process and procedures for submitting “hidden contracts” is unclear. Except from National Intelligent Service (Official Document Nr.643) And General Prosecutor Office, no information was made available on the percentage of such contracts from the security sector institutions.

Security sector institutions according to PPL, cannot be subjected to any monitoring procedures for the products and services procured in the framework of classified goods due to national interests. It remains unclear the over-seeing procedures to monitor and investigate the classified procedures of public procurement due to national interests in the field of defence. Furthermore the law fail to foresee any procedures or structures that decide when the public procurement of specific goods or services might fall under the “classified information” category.

An important progress in the procurement process is the fact that since October 2007 (Dec. 659), all the public procurement procedures are conducted electronically. And since January 2009 the public procurement procedures are conducted exclusively online. Such provision has significantly improved the access to information and transparency on bidding opportunities by obliging contracting authorities to publish both procurement notices and tender dossiers (instructions for bidders) on the website of the Public Procurement Agency.

In the last years Albania revised the law “On Concessions” in 2006 and twice in 2009-2010. The changes were mostly concerned with the body in charge for monitoring the implementation of this law. Law 7973/9 calls for two procedures for granting concessions: one is a general procedure (sale by auction), and the other is an exceptional procedure, called “non-pre-determined project procedure”. In the latter, the selection procedures take place though private negotiations and the government selects the project directly on the basis of the specific criteria set by law, such as the relevance of the project on a national basis or its lower costs compared to alternative projects. Although this is a faster procedure (and in fact it is the one used most often), it carries major shortcomings in terms of risks and the lack of administrative transparency. According to European Bank, Albania was ranked in the cluster of European countries with “low compliance/partly conforming” to international concessions standards. (European Bank: 2007). A problematic issue is the fact that there are no provisions for es-



establishing a minimum time limit for the submission of applications. In regards to the secondary legislation, it is mostly represented by “implementing regulations”, based on Council of Ministers decisions.

Another important law that ensures transparent public procurement procedures is the law “On access to official information”, that enables all citizens and organizations to obtain information on the public procurement activity. However this law is poorly implemented by governing bodies

7.2.2 IMPLEMENTATION

The procedures ensuring transparency and accountability of public procurement in the security sector are envisaged by the law and formally respected from the bodies in charge. In this regard the procurement calls are available in PA website and in the daily press, and since 2009, all the procedures are taking place only online, including the publication of rules of procurement procedure(s). Therefore the rules, procedure and terms might be open to all bidders. Furthermore the PPA each month issues “The Public Procurement Bulletin” where publishes all the decisions related to public procurement activities. The possibility of filing a complaint is guaranteed by law however the law does not provide any provisions to ensure a transparent internal audit, in regards to public procurement procedures in the security sector institutions.

In a general overview can be stressed that the problems of the public procurement activities in the security sector are not due to lack of established institutional structures and relevant laws, but in the implementation of the procedures of procurement. The most usual types of violations in the field of procurement that are identified in the security sector refer to improper calculation of the estimated value of contracts, incorrect disqualification of tenders, or improper examination, evaluation and comparison of tenders. Violations of public procurement procedures by budget funds, ascertained by this department as bearing an economic loss, mount to over 50 percent of all violations verified throughout 2008 (SOROS: 2009). In an overall estimation the Albanian Supreme Audit revealed that in 402 monitored procedures, were identified 241 infringements in procurement procedures, constituting about 60% of all the procedures. (Albanian Supreme Audit: 2008)

Most of the irregularities concerning public procurement are related to improper assessment of tender documents and procedures, discriminating criteria for operators, favours to operators which do not fulfil the “winner

criteria”, long procedures in tender applications and complaining system etc. According to PA, a considerable number of complaints were issued by economic operators due to the alleged infringements from the contracting authorities which applied qualifying criteria that conflicts with the standard tender documents. In the same time different public procurement operators in 2009, issued 526 complains out of which 294 were assessed “right” and in 194 cases the advocate asked for annulment of procedures due to encountered infringements. According to head of the PA, very often the participants in the contest that are not qualified are not informed on the conditions and criteria of the winner. (NOA: 2009).

Another issue identified by PA is concerned with the procurement procedures which are not conducted in accordance to the law, causing artificially complicated procedures and unclear situations for the economic operators which are included in the process. During 2009 PA processed 46 cases of potential abuse with public procurement procedures in the security sector institutions. Most complains and violations were noted in the Ministry of Interior – Directorate for Central Procurement with 12 cases / 5 with irregularities, General Directorate of Prisons with 8 cases / 4 violations, State Police 7 cases / 3 violations, Ministry of Defence 7 cases / 3 violations (PA: Report 2009).

7.2.3 ADMINISTRATIVE AND MANAGEMENT CAPACITY

The Albanian system of public procurement is composed of a set of institutions that aim to regulate and monitor the procedures in different levels, nonetheless the extension of competences and tasks between them remain unsettled and sometimes problematic.



Implementing Institution	Human and administrative resources	Authority and competences	Record
Public Procurement Agency (PPA)	In the last years PPA has been strengthened in terms of human resources while the staff including the head of PPA is recruited according to law "On the status of the civil servant". Nevertheless the role of Parliament in the monitoring PPA activity is not regulated by law.	Is a central body reporting directly to the Prime Minister, and is the key institution for the public procurement administration (proposing procurement regulations to the Council of Ministers; presenting annual reports to the Council of Ministers, preparation of standard tender documents, provides legal and technical assistance to contracting authorities etc)	Created in 1995 (Law Nr. 7921) has been the main body for the organization of public tenders. The effectiveness is being increased with the application of online public procurement procedures by this body.
Public Procurement Commission (PPC)	In 2010, the Council of Ministers provided an increase in the budget of PPC, strengthening its human and administrative capacities.	The main purpose of this body is to monitor and investigate the public procurement procedures, stripping these competences from PPA. PPC monitors the activity of implementing bodies such as the Procurement Unit (PU)	Was established in 2006 (Law.9643; Art.19) and is under direct authority of the Council of Ministers. (Dec.184)

<p>Tender Evaluation Commissions (TEC)</p>	<p>The human and administrative capacities vary. Inefficiency can be noted in regards to small personnel institutions of the security sector</p>	<p>Exercise the duties and powers to conduct the evaluation phase. The decisions are reported to the PPA In order to avoid any undue influence during the preparation of tender documents, the Commission is established after the publication of the Contract Notice and tender documents.</p>	<p>Was established in 2006 (Law.9643; Art.19) and is under direct authority of the Council of Ministers. (Dec.184)</p>
<p>Directorate for Central Procurement</p>	<p>The human capacities and administrative resources have been increased while the competences of this body in conducting direct procurement procedures has been extended</p>	<p>In January 2008, the Council of Ministers (Dec. 53) decided to create this centralised procurement body within the Ministry of Interior. This body would carry out for the needs of central administrations, public procurement procedures concerning specific goods and services. (Decision: 53). In 2009 the Council of Ministers (Dec.33) extended the initial list, so that it now contains 17 items. The directorate estimates that centralised procurement provides up to 20% savings in contract prices (Albania Public Procurement System: 2009).</p>	<p>The efficiency and transparency of this body in conducting central procurement procedures remain questioned despite the fact that little information on DCP activity is made available through its web-page</p>



Oversight Institution	Human and administrative resources	Authority and competences	Record
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<p>Procurement Advocate (PA)</p> <p>Internal Audit</p> <p>Public Procurement Commission</p> <p>State Supreme Audit Institution (SSAI)</p>	<p>PA is a new body that remain in the process of capacity building and expertise.</p> <p>The legal framework provides clear provisions on increasing capacities and human administrative resources (Order Nr. 2591)</p>	<p>This independent institution was intended to defend the rights of the candidates in the public procurement procedures. It investigates illegal actions or practices based in the submitted complaints or in its own initiative. PA is appointed by parliament upon a proposal by the Council of Ministers for a five-year term of office (with the possibility of renewal). Nevertheless this body does not have executive powers</p> <p>SSAI remains the highest economic and financial institution that monitors the activity of all the public institutions (including those of security sector) and legal individuals with public status, regarding the usage of state funds in the central and local government.</p> <p>Nonetheless the competences of each monitoring body in regards to each other seem unsettled. Some overlapping and conflict of competences can be noted between the PPA and the PA.</p> <p>Must be stressed that PA has no decision-making powers and his functions duplicate the monitoring tasks of the PA to a large extent. (SIGMA: 2009)</p>	<p>Established in 2006, became fully functional in 2008.</p> <p>On the one hand PA complained about the lack of support from the PPA. Some issues identified in the 2008 report remained unsolved during the 2009 where 15% of the PA decisions were ignored by the PPA (PA Report: 2009).</p> <p>On the other hand PPA has expressed its concerns about the extended competences of PA, impossibility to fulfil the recommendations from PA, delay of the PA decisions while the procurement execution have started etc. (APP: 2009).</p>
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Institution	Human and Administrative Resources	Authority and competences	Record
Agency of Concessions	AC as a new body was subject to capacity building and increased administrative competences. Nonetheless the changing status and competences of this body has caused ambiguity in the activity and resources of this body	This body substituted the PPA competences in verifying, supervising the procedures, investigating the complaints and deciding disciplinary measures for the violations. In May 2010, through a normative act, the government decided to re-change the law dismissing the AC, and giving back to the PPA the competences it used to enjoy. This may constitute evidence that the reform did not succeed.	The changing nature, competences and authority of this body has caused lack of sustainability in the development of this institution.

7.2.3 VALUES

During the last 5 years the public procurement procedures and related institutional structures in the security sector have been reformed, in order to ensure basic principles for a transparent and fair procurement. However the value itself was not internalized, or passed on to lower instances. Bad practices are not properly sanctioned while the public procurement procedures are vulnerable to corruption. With the revision of the legal framework and institutional reforms, can be noted an increasing number of the submitted complains in regards to potential public procurement violations. This shows about the increasing accountability of the economic operators in the system. On the other hand, according to Open Budget Index, in 2008 more than 8% of expenditure in the state budget is dedicated to classified items. But in 2009, according to official sources this number was less than 1% showing a drastic decrease of ‘classified’ tender procedures. But in general there are no available official statistics on the processed procurements, the types, calls, amount, their duration or the number of bidders that participated.



7.3 RECOMMENDATIONS

- The legislation on the budget management system should be revised to include provisions that require the government to publish the pre-budget statement, and the mid-year review as well as produce and publish the citizen's budget.
- The government should improve the quality of information provided in the published documents.
- The parliament should make better use of its powers to and require the executive and the Supreme State Audit Institution to improve financial transparency.
- Revision of the secondary legislation should be focused on ensuring full approximation with *acquis communautaire*.
- The revision of the Law on Public Procurement should clarify the 'classified procedures' of public procurement in the basis of national security.
- Empowerment of the oversight institutions with authority and of the public procurement, to identify and punish potential violations in this area

7.4 BIBLIOGRAPHY

PRIMARY SOURCES

- Albanian State Supreme Audit, Annual Report 2008, June 2009
- Albanian State Supreme Audit, Annual Report 2008, March 2010
- Assembly's Rules of Procedure, approved by Decision nr.166, date 16.12.2004, amended by Decision Nr. 15, date 27.12.2005, Decision Nr. 193, date 07.07.2008, Decision Nr. 21, date 27.12.2010 and Decision Nr. 41, date 24.06.2010, <http://www.parlament.al/>, Accessed August 2010
- Constitution of Albania
- Council of Ministers Decision Nr. Nr. 640 date 11/ 6/ 2009, On the approval of the policy paper on the public internal financial control and the action plan 2009-2014 <http://www.minfin.gov.al/downloads/SHTOJCA%202%20LETER%20POLITIKAT%20KBFP.doc> , Accessed August 2010
- Council of Ministers, Decision No. 184, "On the organization and function of Public Procurement Commission and other changes"
- Council of Ministers, Decision No. 27, dated 19.1.2007, "On the adoption of the rules for the evaluation and granting of concessions".
- Council of Ministers, Decision No. 659, Dated 3.10.2007, "The regulation of public procurement with electronic means".
- Council of Ministers, Decision No. 659, Dated 3.10.2007, "The regulation of public procurement with electronic means".
- Council of Ministers, Decision no.53, dated 21.1.2009, "For the authorization of the Interior Ministry to conduct public procurement procedures, on behalf of the Prime Minister, ministries and the dependent institutions, for some goods and services", as amended.
- Council of Ministers, Decision no.87, dated 16.1.2008, On some adding and amendments to Decision no.27, dated 19.1.2007 of Council of Ministers "On the adoption of the rules for the evaluation and granting of concessions", as amended.
- Council of Ministers, Decision, no.19, dated 1.11.2007, present framework, Law no.7973, dated 26.7.1995 "On Concessions", abrogated with Law no.9663, dated 18.12.2006 "On Concessions".
- European Parliament, Directive 2004/17/EC, 31 March 2004, Official Journal of the European Union, <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:134:0001:0113:en:PDF>



- European Parliament, Directive 2007/66/EC, December 2007, <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:335:0031:0031:EN:PDF>
- European Union Commission, Directive 2004/18, 31 March 2004, <http://www.dkom.si/util/bin.php?id=2004121408020465>
- European Union Council, Directive 89/665/EEC, 21 December 1989, http://eurlex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&numdoc=31989L0665&lg=en
- European Union Council, Directive 92/13/EEC, 25 February 1992, http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=31992L0013&model=guichett
- http://www.dsdc.gov.al/dsdc/pub/ips_handbook_320_1.pdf, Accessed August 2010; http://www.internationalbudget.org/files/2010_Full_Report-English.pdf, Accessed November 2010; [http://www.minfin.gov.al/downloads/Relacioni%20i%20Buxhetit%202009%20\(Revision\)%20-%20\(per%20botim\)%20290909.doc](http://www.minfin.gov.al/downloads/Relacioni%20i%20Buxhetit%202009%20(Revision)%20-%20(per%20botim)%20290909.doc), Accessed August 2010; <http://www.minfin.gov.al/index.php?option=content&task=view&id=770&Itemid=188>, Accessed August 2010; http://www.minfin.gov.al/mtef/MTEF_Shqip_2002-2004.pdf, Accessed August 2010
- Integrated Planning System MANUAL, Department of Strategy and Donor Coordination, Council of Ministers,
- Law 8270, date 23.12.1997, amended by Law 8599, date 01.06.2000, On the State Supreme Audit Institution
- Law No.9840, dated 10.12.2007, For the ratification of “The Framework Agreement Between Council of Ministers of the Republic of Albania and the Commission of the European Communities on the Rules for Cooperation Concerning EC Financial Assistance to the Republic of Albania in the Framework of the Implementation of the Assistance under the Instrument for Pre-Accession Assistance (IPA)”
- Law Nr. 10 294, Date 01.07.2010, On public financial inspection
- Law Nr. 10 296, Date 8.7.2010, On financial management and control
- Law Nr. 9663, “On concessions”, dated 18.12.2006
- Law Nr. 9720, Date 23.04.2007, On internal audit in the public sector
- Law Nr.10 025, date 27.11.2008, On the 2009 budget
- Law Nr.10 170, dated 22.10.2009, “On some adding and amendments to Law no.9643, dated 20.11.2006 “On public procurement”, as amended” (“Law 10170”).

- Law Nr.8379 Date 29.7.1998, On the drafting and implementing of the state budget in the Republic of Albania
- Law Nr.9228, datë 29.4.2004, On accounting and financial statements, amended by law Nr. 9477, date 09.02.2006
- Law Nr.9936, Date 26.6.2008, On the management of the budget system in the Republic of Albania
- Law, no.10 157, dated. 15. 10. 2009, “On some adding and amendments to Law no. 9663, dated 18.12.2006 “On concessions”, amended.
- Law. No. 7973, Dated 26. 07. 1995, “For concessions and the participation of the Private Sector in public service and infrastructure”, as amended.
- Medium Term Budget Programme 2002-2004.
- Medium Term Budget Programme 2008-2010, <http://www.minfin.gov.al/downloads/Programi%20Buxhetor%20Afatmesem%202008-2010.pdf>, Accessed August 2010
- Ministry of Finance, “Guidance of on the implementation of the 2009 budget”, <http://www.minfin.gov.al/downloads/Udhezimi%20i%20Zbatimit%20te%20Buxhetit%209%201%202009.pdf>, Accessed August 2010
- Ministry of Finance, “The procedure for the performance management of the current year products”, <http://www.minfin.gov.al/downloads/udhezimi%20i%20monitorimit%20shqip%20doc%202.pdf>, Accessed August 2010
- Ministry of Finance, Guidance Nr.11 date 27.02.2008, On the preparation of the budget, <http://www.minfin.gov.al/downloads/Udhezimi%20i%20Pergatitjes%20ose%20Buxhetit%20Nr.11%20date%2027.02.2008.pdf>, Accessed August 2010
- Ministry of Finance, Supplementary Guidance nr.11/1, date 10.07.2008, “On the preparation of the budget”.
- Minutes from the discussion of the budget of the MoD, MoI and the NIS for the year 2009 in the Committee on National Security, date 25.11.2008
- National Intelligent Services, Reply of the Request for Information, No. 643, 1.9.2010
- National Strategy for Development and Integration 2007-2013, http://www.dsdc.gov.al/dsdc/pub/skzhi_394_1.pdf, Accessed August 2010
- National Strategy for Development and Integration 2007-2013, http://www.dsdc.gov.al/dsdc/pub/national_strategy_for_development_and_integration_2007_2013_151_1.pdf, Accessed August 2010



- Normative Act, No.1, dated 5.5.2010, “On some adding and amendments to Law no.9663, dated 18.12.2006 “On concessions”, as amended.
- OECD/SIGMA, Albania – Public Procurement System, May 2009,
- Procurement Advocate, Annual Report 2009, <http://www.avp.gov.al/ppadv/AnnualReports.aspx>
- Report on the budget 2009,
- Sectorial Strategy of the Ministry of Defence 2007-2013, www.dsdc.gov.al/dsdc/.../strategjia_sektoriale_e_mbrojtjes_154_1.pdf, Accessed August 2010
- Sigma Assessment May 2009, Albania Public Expenditure Management System, <http://www.sigmaxweb.org/dataoecd/30/50/43912439.pdf>, Accessed August 2010
- The Open Budget Survey 2010.

SECONDARY SOURCES

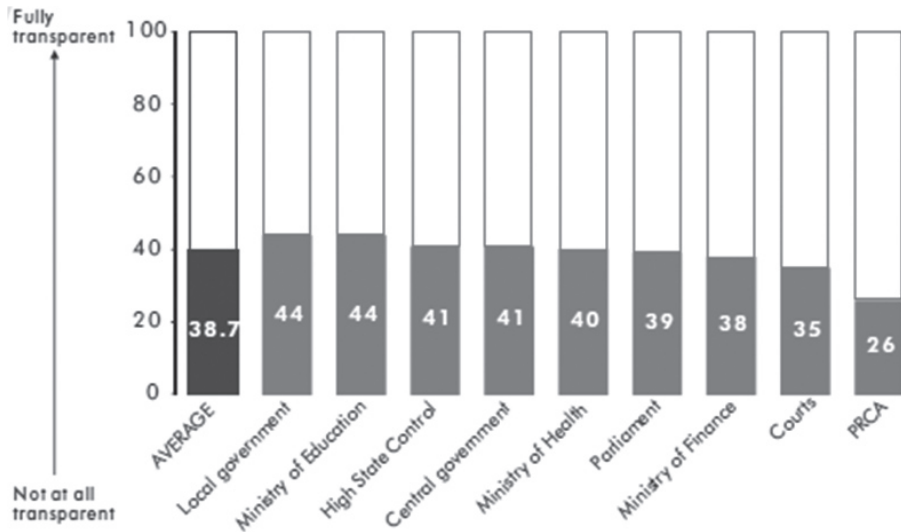
- COMMISSION OF THE EUROPEAN COMMUNITIES, ALBANIA 2009 PROGRESS REPORT; http://ec.europa.eu/enlargement/pdf/key_documents/2009/al_rapport_2009_en.pdf, Accessed August 2010
- David Greenwood, Transparency in Defence Budgets and Budgeting, in (Eds: Todor Tagarev) Transparency in Defence Policy, Military Budgeting and Procurement, DCAF / George C. Marshall Association, 2002.
- Lajthia. R, Procurement Advocate: Online procurements are not transparent, 06.04.2009, NOA, <http://www.noa.al/index.php/ekonomi/90-ekonomi/275-avokati-i-prokurimeve-prokurimet-online-nuk-jane-transparente->
- Nicole Ball; Tsjeard Bouta; Luc van de Goor; Enhancing Democratic Governance of the Security Sector: An Institutional Assessment Framework, Netherlands. Ministry of Foreign Affairs, The Hague 2003
- Open Budget Index 2006, Albania; <http://openbudgetindex.org/files/CountrySummaryAlbania.pdf>, Accessed August 2010
- Open Budget Index 2008, Albania; http://openbudgetindex.org/files/cs_albania.pdf, Accessed August 2010
- Open Budget Index 2010, Albania

-
- Open Society Foundation, Monitoring of the State Budget 2009 Report 1, June 2009; <http://www.soros.al/2010/foto/uploads/File/Buxheti%20Raporti%20I.pdf>, Accessed August 2010
 - The Open Budget survey 2010, http://www.internationalbudget.org/files/2010_Full_Report-English.pdf, Accessed November 2010
 - Sigma Assessment May 2009, Albania Public Expenditure Management System; <http://www.sigmaxweb.org/dataoecd/30/50/43912439.pdf>, Accessed August 2010
 - SIGMA, Support for Improvement in Governance and Management, 'Albania External Audit Assessment May 2009'
 - World Bank, Public Expenditure Management Handbook (Washington, DC: The World Bank, 1998); <http://www1.worldbank.org/publicsector/pe/handbook/pem98.pdf>, Accessed August 2010

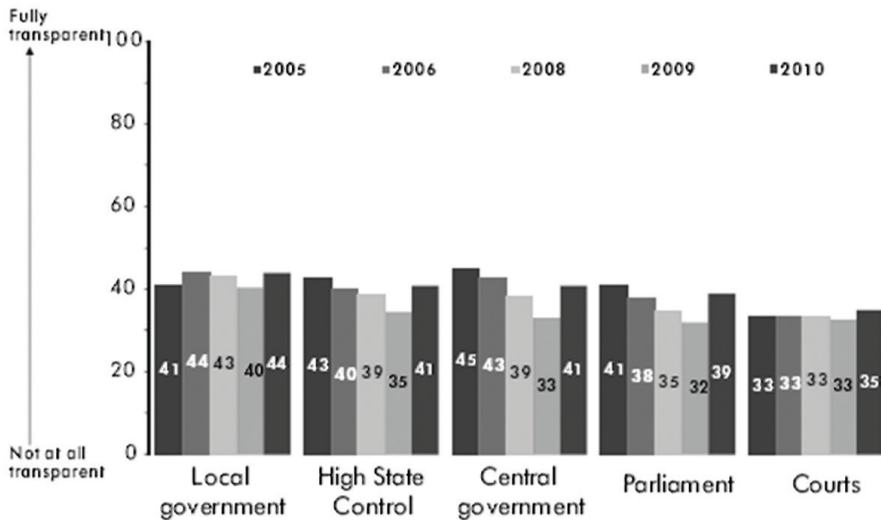


7.5 ANNEX

Annex I. Public Perception on Institutional transparency for 2010



Annex II. Public Perception on Institutional transparency for 2010



8

REPRESENTATIVENESS

EXECUTIVE SUMMARY

The principle of equality and non discrimination on grounds of gender and ethnicity has currently been enshrined in the entire Albanian legislation, and the legal framework is generally conform international standards. However, sluggishness regarding the implementation of legislation remains a challenge. Woman and minorities are better represented in the Judiciary and evident progress has been made regarding the representation of women in Police and the Military. Lack of regularly gathering and preserving of data on minorities' representation in security sector institutions represents a big deficiency. Mechanisms for monitoring, protecting and implementing proper legislation are in place but they are not effective. Therefore discriminatory practices still persist.

Regarding access to jobs and career development opportunities for women the most important legal achievements that occurred recently are the Law on Gender Equality in Society which improved women participation in decision making and the Anti Discrimination Law which introduced the Office of the Commissioner for the Protection against Discrimination. Although generally it is perceived that there is no formal discrimination on entry level for women in Police and Armed Forces, career advancements especially in managerial positions seem to be problematic. There is no specific law that regulates minority issues in general as well as in regard to access to jobs and carrier development opportunities. While the Law on Anti-discrimination introduces positive discrimination measures for achieving equality and protection from any form of discrimination on employment, it does not foresee measures for the territorial application of minority protection.



INTRODUCTION

Representation of women and national minorities in security sector institutions is analyzed based on two sections. Each section focuses on access to jobs and access to career development opportunities. This study defines “access to jobs” as the recruitment and entry level training related to women and national minorities. The analysis of this section include whether the legislation guarantees equal access to jobs, whether hiring policies encourage women and national minorities to apply and if state actors conduct campaigns to promote employment of women and national minorities. The section on access to career development opportunities examines if legal documents provide an equal opportunity system of appointments and promotion, and if woman and national minorities have equal opportunities for accessing training and education necessary for career advancement.

In conclusion, this paper draws recommendations for improving gender and minorities’ representativeness in security sector institutions.

8.1 REPRESENTATION OF WOMEN

- **ACCESS TO JOBS AND CAREER DEVELOPMENT OPPORTUNITIES**

8.1.1 CONSTITUTIONAL AND LEGAL FRAMEWORK

Equal opportunities regarding the access to jobs for women and men (including the security sector) are stipulated in the main legal provisions of Albania. The principle of gender equality is embedded in the current Albanian Constitution (1998). Although it does not have a detailed definition of equality between women and men, it prohibits discrimination based on different grounds including gender¹. Although the Constitution does not make particular reference to security sector, it refers to the equality of all

¹ Art. 18/2 “No one may be unjustly discriminated against for reasons such as gender, race, religion, ethnicity, language, political, religious or philosophical beliefs, economic condition, education, social status, or ancestry”.

the citizens². Moreover, the Constitution stipulates that everyone “is free to choose his profession, place of work, as well as his own system of professional qualifications”³.

The principle of gender equality men regarding access to jobs, remuneration, working conditions and career advancement is also provided for in several laws and strategies adopted within the last seven years and is binding for all security sector institutions. The Law “On Gender Equality in Society”⁴ was firstly adopted in 2004 and further revised in 2008⁵. It aims to achieve equal opportunities for women and men in all the spheres of life including employment, education, media, decision making, and non-discrimination. This law represents an important accomplishment since it provides for equal stands for women and men regarding employment and defines the proper legal punishment in case of infringements. On the other hand, in 2006, the National Strategy on Gender Equality and Domestic Violence 2007- 2010⁶ was adopted aiming to achieve gender equality in society and to minimize gender-based discrimination. In 2010 this strategy was revised prior to the drafting of the new National Strategy on Gender Equality and Reduction of Gender Based Violence and Domestic Violence (NSGE-GBV-DV) 2011-2015 by the Council of Ministers in 2011. The Labour Code⁷ also establishes equal rights for men and women to freely choose their profession and the right to have equal remuneration for equal value of their work. Moreover, the Civil Code⁸ recognizes the legal capacity of women at birth to act the same as men.

Albania has also ratified the United Nations Security Council Resolution 1325 on Women, Peace and Security (hereafter Resolution 1325), adopted in October 2000. It recognized the role of gender in security matters and the need to increase women’s role in decision-making required to all UN members to incorporate gender perspectives at all security institutions and practices. In order to implement it member states have to adopt the

2 The term “gender” used in the main constitutional provisions replacing the term “sex” demonstrates the positive step of the use of concepts through a gender perspective in compliance with international standards.

3 Art. 49, Chapter IV--Economic, Social and Cultural Rights and Freedoms

4 Law No. 9198

5 Law No. 9970

6 The goal of the strategy is “to present the ways and institutional mechanisms for mainstreaming gender issues into public policies, alleviate gender differences, as well as discourage and prevent domestic violence.”

7 Law No.7961

8 Law No.7850: 1994



National Action Plan (NAP). The NAP is not yet being adapted by Albania and the country did not fulfill yet all obligations deriving by the ratifying of this resolution.

Albania has also signed and ratified most of the international conventions towards gender equality⁹. These legislation should impact the status of women in all security sector institutions however it remain to be seen how it will be effectively implemented and how the necessary mechanisms will be put in place.

With regard to Police, the Law on State Police of 2007, in its articles 61 and 62 prohibits any form of discrimination based on gender, race, ethnicity, religion etc. According to this Law there are no gender quotas regarding the inclusion of women in the Police. Additionally, there are no other restrictive forms that could in any way encourage discrimination. Both women and men have the right to take up any position or choose any specialty and receive the same salary. The principles of promotion, training and payroll system are the same within the police for both women and men.

During recent years efforts have been made in Albania to improve participation of women in decision-making and in the labor market. In this regard, important legal provisions were introduced through gender representation quotas by means of the law "On Gender Equality in Society"¹⁰ and by the Electoral Code. A provision regarding the application of a minimal representation quota for both genders (at least 30 percent) in the multi-name lists of candidates for members of parliament in general elections made a positive achievement¹¹. Moreover, the Anti-Discrimination Law¹² approved in April 2010 provides additional framework for their protection. It establishes a new independent mechanism, the Office of the Commissioner for the Protection against Discrimination, which was not envisaged under the Law on Gender Equality.

9 Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) in 1993 and its "Optional Protocol" in 2003; the Beijing Platform for Action in 1995; the Millennium Declaration in 2000, and the Stabilization and Association Agreement (SAA) with the EU in 2006 which although not a convention on discrimination per se states non-discriminative measures and respect for minorities as crucial for Albania's European Integration. More concretely, the articles 77 and 99 the SAA defined the Albania's obligations to align its legislation on equal opportunities of employment for women with the *acquis communautaire*.

10 Law No. 9198

11 The result achieved was positive although far from the target of 30 % stipulated by law

12 Law No.10 221

8.1.2 IMPLEMENTATION

Positive trends can be observed regarding better representation of women in security sector institutions. Within the last 10 years women representation has achieved significant progress also in the Judiciary. According to 2008 estimations 38% of all sitting judges in Albania are women (see Table 1). Since 2006 the number of represented women has increased on the Courts of Appeal (32.2% vs. 33.3%) and on the High Court (26.7% vs. 35.3%) (Judicial Reform Index:2008). The same source states that different interviews reported no gender discrimination regarding appointments in the judiciary. For the first time, Albania has women in the positions of General Prosecutor and as a Chief Judge of the High Court¹³.

Table 1: Gender Composition of the Albanian Judiciary

Court Level	No. of Sitting Judges	No. of Female Judges	% of total
Constitutional Court	9	1	11.1
High Court	17	6	35.3
Courts of Appeal	57	19	33.3
District Courts	281	112	39.8
TOTAL	364	138	37.9

Source: MOJ; OAJB.2008

The 2008 amendments in the Electoral Code introduced gender representation quotas for Parliamentary and local elections. The law positively impacted for increasing the number of women represented in the parliament from 10 MPs in the previous legislature (7.14% of the Parliament), to 23 in the current one (16.42%) from a total of 140 (see Annex 1)¹⁴. However, in practice the level of 30% was not reached. During the Parliamentary elec-

13 In the legal system in general, women comprise approximately 30% of prosecutors, 50% of attorneys, and 50% of law students

14 Annex I shows the number of women represented in the Albanian legislatures from 1945 to date. However it is interesting to see for the purpose of this study the final two in order to have a clear picture of the changes during the last years of transition.



tions of 2009 the law stipulated that the party lists for each constituency should contain at least 30% of each gender or at least one of the three candidates ranked at the top from each gender. Nevertheless, it did not provide a threshold on the number of women candidates that have to be represented in the new parliament. This gap in the legislation affected women candidates by not reaching the quota of 30% in the Parliament. Moreover, none of the 19 MPs members of the actual (2012) Parliamentary Commission for National Security is a woman.

Table 2: Women deputies (MPs) according to Legislatures in the Albanian Parliament

	No of Deputies	No. of Women	No. of Women %
Legislature XV 1997 - 2001	155	11	7.10
Legislature XVI 2001 - 2005	140	8	5.71
Legislature XVII 2005 - 2009	140	10	7.14
Legislature XVIII 2009 - to date	140	23	16.4

Compiled with data from: the Albanian Parliament, OSCE Needs assessment mission report, April 2005

Women representation in Albania's Armed Forces (AF) originates since 1967 when the first women were involved. Although their number has been considerable they have been traditionally underrepresented in higher positions. According to the data available of 2008 in the Armed Forces women constitute 13.42 % (see Table 3). Promotion system procedures in the military are similarly based on seniority and professional qualifications as sanctioned by the Law on Grades and Carriers in the Armed Forces¹⁵. When the criteria are fulfilled women can get promoted in higher positions. However, further investigation and analysis is needed on how criteria's are set and applied. Regardless of lack of formal discrimination in the army, statistics show that women's representation in decision-making process and leading positions is much lower. Only in 2009 one woman received the rank of Colonel, which is the higher rank possessed by women in the Armed Forces. This shows that the Military is still seen as a "male"

¹⁵ Law No. 9171: 2004

profession. Even the ratio for women entry in the Military University is regulated by law. For the academic year 2008-2009 it was established that from a total of 140 students, at least 15-20 % should be women¹⁶.

Table 3: Women participation in the Armed Forces – October 2008

GRADE	Officer in Armed Forces		
	Total	Females (Nr)	Females (%)
Lieutenant-General	1		
Major-General	1		
Brigade-General	5		
Head Admiral	1		
Colonel	79		
Lieutenant-Colonel	350	13	3.71
Major	668	92	13.7
Captain	338	24	7.1
First Lieutenant	728	90	12.3
Sub Lieutenant	325	116	35.6
TOTAL :	2496	335	13.42

Source: Ministry of Ministry of Labour, Social Affairs & Equal Opportunities, 2008

Despite the fact that women are allowed to serve in all Military career fields they are still mostly engaged in logistical and supportive jobs such as in the administrative fields and human resources rather than on operational positions. For instance, only two women participate in the peacekeeping missions in Iraq¹⁷.

Many factors influence this situation but a general one is related to the institutional culture. Although AF representatives declare that there are no problems regarding the recruitment process of women and that their access in education is at satisfactory level, the number of requests to get involved as a professional soldier in the army continue to be higher compared to the quota decided for admission. The problem regards advancement in career in higher positions. In the AF the main criteria for advancing in career are education, experience in key positions and military specialization. In the Albanian army there are no formal restrictions for

¹⁶ Decision: 02.07.2008

¹⁷ Data offered by the Ministry of Defense



women in choosing specializations they would like to endorse. Nevertheless, very few of them choose key specializations such as infantry, artillery etc., due to physical strain and long time engagement on the ground that keeps them away from their families. Therefore, the low rate of women involvement in such key positions influences their career advancement. Another persistent challenge is hidden discrimination related to the institutional culture. As stated by AF representatives although women may fulfill the criteria priority, more advanced qualifications are given to men. According to them women are offered less opportunities for higher trainings as men are considered more suitable for higher and more difficult decision-making positions.

There is considerable improvement regarding the number of women involved in the police sector during the last years. While in 2010 the number of women in police was 867 or 0.9% in 2011 is 930 or 9.6 % (Table 4).

Table 4: Women represented according to grades in the State Police (operational and managerial posts)

Grades	Female	Male		
General Director of Police	0%	100%		
Deputy General Director of Police	20%	80,00%		
First Senior Leader	0%	100,00%		
Leader	9,4%	90,60%		
Prime Commissar	10,7%	89,30%		
Commissar	10,3%	89,70%		
Lieutenant Commissar	11,7%	88,30%		
Prime Inspector	6,5%	93,50%		
Inspector	2,7%	97,30%		
Lieutenant Inspector	8,8%	91,20%		
Civil personnel	53,4%	46,60%		
TOTAL	MALE	in %	FEMALE	in %
9666	8736	90,4%	930	9,6%

Source: General Directorate of the Albanian State Police, 2011

This positive result is due not only to the legislation approved but also to recruitment campaigns, awareness raising through media campaigns, leaflets,

posters, etc. These have proven to be valuable tools for increasing women interest to get involved in this sector. Moreover, these campaigns have also targeted the public opinion aiming to better understand and accept the necessity for including women in police. Police has drafted an Annual Action Plan on Diversity in State Police for 2011-2013 aiming to support all the legislation regarding Gender Equality . The Albanian State Police (ASP), supported by OSCE presence in Albania, is conducting a media campaign for encouraging women's participation in Police. Regarding the recruitment process they are transparent and published in the website of the ASP , in newspapers and media. Additionally, in implementing the law, all police personnel is informed about the new positions and has to sign the information note that the Human Resources department is obliged to circulate. However, the competition often lacks transparency and appointments depend on political affiliation¹⁸.

Although the Labour Code stipulates equal payment for work of equal value this provision is not thoroughly implemented, despite the fact that the law sanctions penal charges for employers that do not ensure the appliance of this provision (WTO General Council Review: 2010). Regardless of the achievements on the legislative level, in practice, women's opportunities for education and jobs are much more limited than those of men. Women still remain in supportive, logistical and administrative positions and their representation in primarily managerial position and decision-making ones is still limited.

One major concern regards the lack of data for each institution in security sector, thus making it difficult the measuring of progress as well as the formulation of further policies and strategies on gender and minority representation. To cope with this problematique the Minister of Labour, Social Affairs and Equal Opportunities has endorsed the "National Set of Harmonized Indicators" an instruction that requires state institutions, including the Institute of Statistics (INSTAT), to collect data annually from the line ministries including Ministry of Defense (MoD) and the Ministry of Interior (MoI) regarding the percentage of women involved in the Police and Armed Forces according to their grades¹⁹.

18 Opinion expressed and shared by all the women police which participated in the focus group

19 Instruction No.1220: 2010



8.1.3 ADMINISTRATIVE AND MANAGEMENT CAPACITY

Following the approval of the Law on “Gender Equality in Society” in 2008, the Directorate for Equal Opportunities and Family Policies was set up. Additionally, a Sub-Commission on Juveniles, Minors and Equal Opportunities was set up within the Standing Parliamentary Commission of Health, Labour, and Social Affairs as well as National Council on Gender Equality. Although the Sub-commission scrutinizes and undertakes legal initiatives, it is questionable whether these mechanisms are effectively working since the legislation on gender quotas is not yet implemented. The failure to achieve the 30% quota in all Public Institutions (including security sector ones) shows that their work in overseeing the implementation of the law is not yet effective. The Anti-discrimination Law establishes a Commissioner for the Protection from Discrimination tasked with receiving and considering citizens’ complaints in this regard (Art. 21-33). However, the practical activity of such structure remains to be seen.

.Although different norms for men and women are applied during the selection procedures for the physical readiness test²⁰, the intelligence test²¹ is the same . Additionally, career development is based on criteria such as qualifications, trainings, testing procedures and experience based in a system of grades . There is no restriction for women participation. Although the Law has sanctioned the obligation for job descriptions for promotional positions in practice there are no job descriptions in Police Force.

A focus group²² organized with women in police showed that women are afraid and unmotivated to participate for promotional positions. The lack of job description and information on specific area of employment discourages them from applying and negatively affects their advancement in leading positions. Despite the recent measures, it is still easier for men compared to women to get promoted in decision-making positions. Yet, men are more willing to take more responsibilities and make more sacrifices in order to get to higher position compared to women.

In the AF there are quotas regarding women involvement. In 2008 the Albanian government decided to abrogate the obligatory military service.

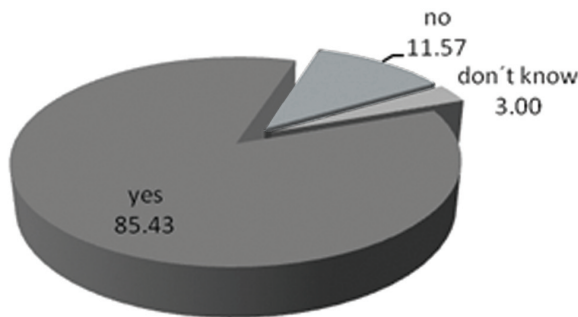
20 Regulation No. 1432: 2007

21 While in the physical test men have better results in the intellectual test evidence shows that women achieve better results.

22 The focus group was held in October 2010 with women representatives of the ASP sampled by a non probability sampling procedure. The aim of targeting experts and key informants was to see the views of persons with specific expertise, experience and knowledge in the area thus increasing also the validity of our findings. A total of 10 women participated in the focus group.

Graph. 5: Women represented according to grades in the State Police (operational and managerial posts).

Are women and men equally capable as police/military officers ?



Source: Research Report "Surveying Public Opinion and Attitudes Regarding Women in Police - 2010"

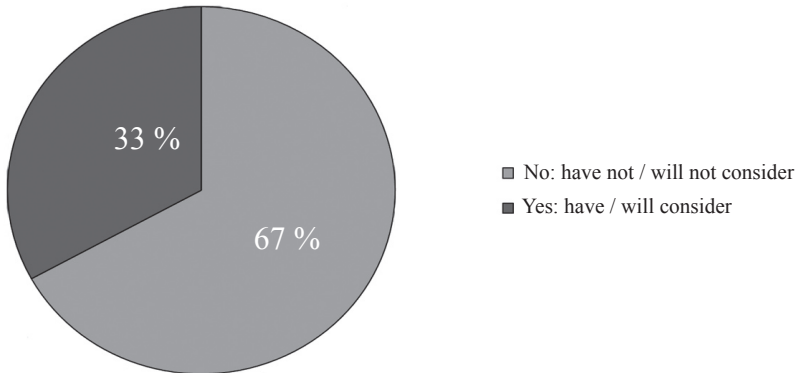
Moreover it set the objective to transform the army into a professional one until 2010. This force will be composed by 3600 professional soldiers and women will account for 12% or 440 of them . Currently there are 300 professional woman solders. It is interesting to note that the request from women to become professional soldiers is higher compared to the defined 12% quota (Shekulli: 2010)²³. Training requirements and career development goals as well as qualifications required by each rank and position, are the same for both genders. The professional career in the Albanian Armed Forces has the same promotion span for men and women. Women are educated and trained in the same way, share the same responsibilities, and get the same salaries. However, there are few promotional or encouraging measures for women to support them to advance in their career in Police and AF. The Judiciary has achieved the highest level of women involvement thanks to criteria such as passing of an exam, performance in law school, other training, experience, professionalism, and reputation in the legal community. While judges on first instance courts and appellate courts are appointed on the above mentioned criteria political elements are involved in the highest levels such as High Court and the Constitutional Court (Judicial Reform Index: 2008).

²³ According to the Lecturer of Defense Academy Ms. Marsela Sinjari the statistics show that the demands for participating as professional soldiers from women are high but not all of them can be employed since there are limited quotas



Graphic 6: Women represented according to grades in the State Police (operational and managerial posts)

Consideration of Police as a Profession for Women?



Source: Research Report "Surveying Public Opinion and Attitudes Regarding Women in Police - 2010"

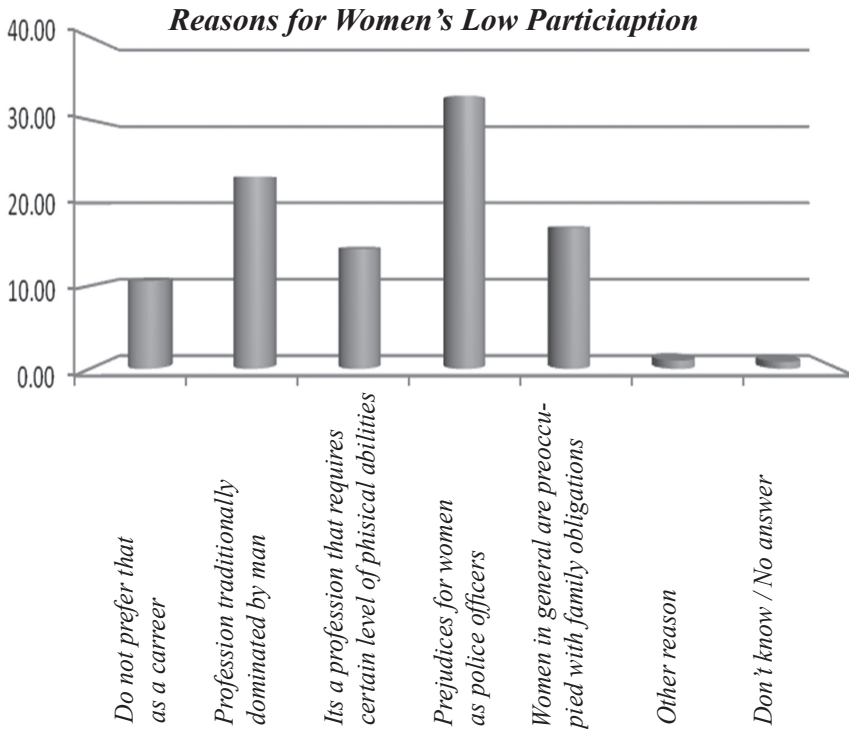
8.1.4 VALUES

During focus group discussions with women employed in the ASP, they state that they do not feel encouraged to apply for career promotions. Although their male colleagues would formally agree to encourage women to enter the police force and to advance in its hierarchy, in practice they prefer to have a male colleague as their partner. Additionally, often women once they have a comfortable job do not prefer to advance in their career or take further responsibility. This reflects the structural societal restrictions that prevent them from career advancement.

The overall findings of the public opinion survey "Surveying public opinion and attitudes regarding women in police" of 20 – 31st of January 2010 showed those Albanian citizens are open-minded and welcome women in policing services. Most of the respondents would encourage women to enter police and would expect the state structures such as: the MOLSAEO, family and education institutions to do the same. When asked "if women are equally capable as men for professions like police or military officers" 85% of the respondents answered 'YES' (See the Graph. 5).

Additionally, when asked about the willingness to get involved in the police only 33% replied they are willing to consider Police as an employment op-

Graphic 7: Reasons for Women’s low participation



portunity (See Grap. 6).

According to the same study the main reasons for the low number of women in police service appears to be related to “prejudices and the persisting impression that such positions are professions for men and dominated by men”. However, important obstacles are the difficulties women face when trying to combine family obligations with professional ones. Apparently, this seems to be the main reason for not choosing energy and time-consuming professions like policing (almost 17% of respondents).



8.2 REPRESENTATION OF MINORITIES

- **ACCESS TO JOBS AND CAREER DEVELOPMENT OPPORTUNITIES**

In this assessment we will use the concept of national minorities (Greek, Macedonia-Slav and Montenegrin) as recognized by the Albanian State, thus neglecting ethno-linguistic minorities (Roma and Aromanian or Vlach). This distinction is made in Albania by law in accordance with United Nations Human Rights System and the Framework Convention of the Council of Europe on the Protection of National Minorities.

8.2.2 CONSTITUTIONAL AND LEGAL FRAMEWORK

Albanian legislation prohibits policies and practices that could discriminate or put in a disadvantaged position members of minorities. The Albanian Constitution sanctions the general principle of equity before the law and protection against discrimination on different grounds including ethnic minorities (See Annex III²⁴) (Art. 18). It further stipulates the principle of protection and promotion of the identity of persons who belong to national minorities (Article 20). In addition, it prohibits the existence of organizations that incites and support racial, religious, regional or ethnic hatred (Article 9).

At the international level, Albania has ratified the Framework Convention of the Council of Europe on the Protection of National Minorities in 1995 which is not legally binding. Also the European Convention on Human Rights (26 November 2004) (the Protocol No. 12) has been ratified. It extends the scope of the prohibition of discrimination, including national minority to all rights. This convention according to the Albanian legal system (Constitution: Article 122) take precedence to the national laws and they are directly applicable. Also the Stabilization and Association Agreement has incorporated as a membership criteria “respect of human rights and protection of national minorities”. However, Albania has still not adopted the European Charter for regional and minority languages.

Further guarantees are provided through legislation such as the Labor

24 According to the last census held in Albania of 1989 estimates about ethnic population in Albania are as follows: ethnic Albanians constituted 95% of the population, the Greeks were the largest minority group, estimated at 3%. Other ethnic groups, including Vlach, Roma, Serbs, Macedonians, and Bulgarians, made up 2% combined.

Code which provides protection from discrimination in public and private sector (Article 9). In the Article 202 the same Code stipulates that in cases of violations of the art. 9 fines should apply. Also the Code of Administrative Procedures of the Republic of Albania” (1999) sanctions that the Public Administration is guided by the principle of equality, meaning that no-one shall be privileged or discriminated against on grounds of gender, race, religion, ethnic origin, language together with the Penal Code . Furthermore, the Law on State Police stipulates in its article 61 & 62 the principle of non-discrimination on the bases of ethnic origin. Despite all these legislation, there is no special Law on minorities which could take into account the complexity of minority issues including the right to access in jobs. Such law could also help to clarify the State’s position vis-à-vis its minorities, including the territorial application of the protection provided to minorities in Albania. A major achievement on this regard is the approval of a comprehensive Law on Anti-discrimination (April 2010). This Law has also included positive discrimination measures for achieving equality as well as measures on protection from any form of discrimination on employment. However, this law does not take particular measures regarding the territorial application of the protection provided to minorities in

Table 4: Representation of Minorities in the Albanian State Police

No.	Rank Name	Female	Greek	Slavic	Aromanian	Roma	Maced
1.	Gen Dir.of Police	0	0	0	0	0	0
2.	Deputy General Director of Police	0	0	0	0	0	0
3.	1st Senior Leader	1	0	0	0	0	0
4.	Leader	10	1	0	0	0	0
5.	Prime Commissar	48	0	0	0	1	0
6.	Commissar	50	0	0	0	0	0
7.	Lieut. Commissar	137	7	0	1	2	2
8.	Prime Inspector	109	1	0	0	2	3
9.	Inspector	106	0	0	0	10	8
10.	Lieut.Inspector	7	0	0	0	0	0
11.	Civil personnel	361	1	0	0	2	1
	Female Total	867	10	0	1	17	14
	Police Total No	9670					



Albania. This is due to the fact that minorities in Albania are territorially focused in the South of Albania .

Although the legal framework regarding protection of minorities in general could be considered positive, secondary legislation is necessary to be adopted in order to enact the constitutional guarantees referring to equality and non-discrimination can be in practice applied.

8.2.2 IMPLEMENTATION

The first major concern on implementation regards the collection of updated data on the extent of minorities represented in security sector institutions in Albania. Very little is known about the situation due to the lack of statistics. Based on the information gathered from various Ministries such as the Office for Minorities within the Ministry for Foreign Affairs which deals with minorities, resulted that these institutions do not have an institutional practice to keep record of representation of minorities in general and on security sector institutions in particular. The only institution we could gather data on the representation of minorities is the State Police. As it can be seen from the table the Greek minority is better situated in the hierarchy of the Albanian State Police while Roma and Macedonians are predominating lower positions as inspectors.

On the other hand there is no evidence that Military and Judiciary keep such statistics on their ethnic composition at all. Indeed, even at the state level, such statistics are difficult to obtain. Therefore, it is necessary to introduce as an institutional practice the collection and updated data on the size of minorities in each of the security sector institutions. This might be a useful tool to trigger the development of inclusion policies and important promotional strategies.

It seems that there are no legal obstacles to prevent ethnic minorities to participate in all security sector institutions. For instance in the Judiciary although several judges are reported of Greek ethnicity, again it is difficult to determine what the exact number is (American Bar Association: 2008). However, minority representation remains limited (European Commission: 2009).

Minorities in Albania are allowed to establish their own party in order to guarantee access to the government and have their rights better represented . They are currently represented in the parliament by the Party of the Union of Human Rights (UHR). Also the main Parties have representatives from minorities. Thus MPs belonging to the minorities in Albania are

six which correspond to 4.28% of the Parliament and belong to Greek minorities.

Regarding mechanisms of implementation, monitoring and protection of minorities, progress can be noticed in Albania. Several institutions are established with competences in the field of combating racial discrimination and protection of minorities, such as the People's Advocate, the State Committee on Minorities, and the Office for Minorities within the Ministry for Foreign Affairs. The institutional capacity of the State Committee on Minorities remains weak. Its role as mediator between the government and minority representatives is necessary to be further strengthened in order to ensure effective participation of minorities in decision-making processes (European Commission: 2009). While the Office for Minorities has as the main objective to monitor the fulfillment of international commitments of Albania with regard to Human rights and minorities. It also coordinates together with other institutions implementation of minorities' policies. Another achievement with the Law Anti-Discrimination is the establishment of another mechanism, an independent Commissioner, who is responsible for dealing with complaints brought forward by individual parties, minorities, women, NGO's or the Government. However, since the Institution is still in the process of setting up it remains to be seen how effective it will be on protection of rights of minorities.

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

8.2.3 ADMINISTRATIVE AND MANAGEMENT CAPACITY

The legal framework (on State Police, Armed Forces but also on Law on Civil Servant) offers equal access to all the candidates despite their ethnic affiliation. Thus the Albanian legislation that regulates the activity of security sector institutions and the recruitment process is based on the citizenship rather than ethnic belonging. The same is applied for the promotion system while the members of national minorities are within the institution. On the one hand, there are no norms of positive discrimination towards minorities in order to increase their presence in security sector institutions. The latest debate concerning police in "minority zones" was raised in 2010 due to an accident



where a person from the Greek minority died in Himara. The leader of the Party the “Union of Human Rights” raised the issue of the restructuring of the police in the areas by including police staff from minorities . However, it is worth mentioning that Greek minority is the most represented in Albania. Currently, the Ministry of MOLSAEO is headed by a member of the Greek minority and in the Albanian parliament there are three MPs. Also the Head of the Minorities State Committee, three general directors, some directors of Directorates in Ministries and in other state administration belong to Greek Minority (Sinani: 2008) .

8.2.4 VALUES

Media has covered the issue of minorities in Albania through debates and programs. However Albanian media seems to be still indifferent to concerns of minorities (Council of Europe: 2008). There is no evidence in public debates on the issue of the necessity of representation of minorities in security sector institutions. Also lack of evidence regards whether minorities’ representatives have interest to work in security sector institutions or it is the institutional set up that prevents members of minorities to be represented and advance in such institutions.

Furthermore, it seems that there is lack of confidence and communication between representatives from minorities and administrative state structures in cases when there is a claim that minority rights have been infringed (Council of Europe: 2010).

8.3 RECOMMENDATIONS

Representation of women

- Ensure that sex-disaggregated data by their grades and positions from Ministry of Interior, Ministry of Defense, Judiciary and other institutions in security sector is gathered. Furthermore, their regular publication will help for studies and evaluation of the current situation to intervene in an appropriate manner to improve the situation;
- It is necessary that research based on clear statistics evaluates the reasons behind the lack of advancement of women in managerial or higher ranks within the security sector institutions;
- Raise awareness in a systematic manner on the importance of the representation of gender issues in security sector institutions;

- Endorse promotional and encouraging measures for women to support them to advance in their career in Police and AF.
- Clear job descriptions including the exact place and type of job must be implemented as a reason for preventing women to participate in promotion jobs
- Strengthening of the capacities of the institutions for monitoring the implementation of legislation regarding equal gender representation and non-discrimination.

Representation of minorities

- It is necessary to initiate an institutional practice of gathering statistics annually on minority composition of security sector institutions according to their grades and ranks;
- It is necessary to establish minimum quotas for insufficiently represented national minorities on access in security sector institutions
- Particular focus should be paid on the representation of members of national minorities in “Minority zones” where their presence seems to be more indispensable;
- It is necessary to assess the reasons why persons belonging to national minorities despite the legislation and national strategies are not represented in the Albanian security sector institutions and wider;
- It is necessary to develop campaigns to make both the general public and national minorities aware of the benefits of the representation of minorities in security sector in dealing with certain problematiques;
- Additional emphasis should be placed on making members of the national minorities aware of the existing instruments and rights for the protection from discrimination and their participation in the public life in Albania;
- Introduction of quotas (positive discrimination) for minorities representation in security sector in proportion with their population must be introduced;
- It is necessary a specific Law on Minorities which covers most of the issues that concerns national minorities in Albania.



8.4 BIBLIOGRAPHY

PRIMARY SOURCES

- Constitution of Albania
- Decision No 786 dated 04.06.2008 “On the Approval of the Disciplinary Regulation of the State Police”
- Decision No 804 dated 21.11.2007 “On the Approval of the Personnel Regulation of the State Police ”
- Decision No. 633, dated 18.9.2003 “For approving the strategy for improvement of living conditions of Roma minority”
- Decision No. 913 dated.19.12.2007 approved by the Council of Ministers “National Strategy on Gender Equality and Domestic Violence 2007-2010”,
- Decision No. 967 dated 02.07.2008 for the approval of the main Quotes of acceptance in the Military University “Skënderbej”, for the academic year 2008-2009, <http://www.keshilliministrave.al/print.php?id=8633>
- Focus group conducted in October 2010 with women representatives from Albanian State Police; <http://www.mpcs.gov.al/strategji-standarte>
- INSTAT, “Quarterly Statistical Bulletin”, 2003
- Instruction No.1220, dated 27.5.2010, “On the definition of evaluation and monitoring indicators on gender equality and violence against women, including domestic violence, oversight, gathering and data processing”
- Law No 8549 dated 11.11.1999 “On the Statues of the Civil Servant”
- Law No. 1019 dated 29.12.2008 “On the Electoral Code of the Republic of Albania”
- Law No. 8580, dated 17.02.2000 “On Political Parties”,
- Law No. 9171, dated 22.1.2004 “For Ranking and Military Carrier in the Armed Forces of the Republic of Albania”
- Law No. 9749, dated 04.06.2007 “On State Police”
- Law No. 9970 dated 24.07.2008 “On Gender Equality in Society” and the Electoral Code of the Republic of Albania, 2009.
- Law No.10 221, dated 04.02.2010 “On Protection against discrimination”
- Law No.7961, dated 12.07.1995 amended with the law no.8085, dated 13.03.1996, and the Law no.9125, dated 29.07.2003.
- Law No.8485 dated 12.05.1999 “The Code of Administrative Procedures of the Republic of Albania”,

- Law No.9970 dated 24.07.2008. “On Gender Equality in Society”
- Qualitative in-depth interview with Col. Suzana Jahollari, 2 February 2011
- Regulation No. 1432, dated 17.09.2007 “On Norms and criteria for physical capabilities”, approved from the Minister
- The Civil Code of the Republic of Albania, approved by Law No.7850, dated 29.7.1994

SECONDARY SOURCES

- Altin Hazizaj (Ed), Albanian Coalition for the Preparation of Alternative Reports – ACPAR, Shadow Report: Albania, Tirana, June 2010
- Albanian Helsinki Committee, Research on Minorities Policies and Funding Strategies in Albania, Tirana 2008
- Aurela Anastasi (2010), “Women rights in the Albanian legislation”, Organisation for Security and Cooperation in Europe,
- Albanian Centre for Population and Development (2009), “Women in Politics and decision-making in Albania: a quantitative and qualitative study”
- Albania: Country Gender Profile, February 2010, <http://www.jica.go.jp/activities/issues/gender/pdf/e10alb.pdf>
- Council of Europe, Advisory Committee on the Framework Convention for the protection of National Minorities, Second Opinion on Albania adopted on 29 May 2008
- Council of Europe, ECRI Report on Albania, 2010, http://hudoc.ecri.coe.int/XML/ECRI/ENGLISH/Cycle_04/04_CbC_eng/ALB-CbC-IV-2010-001-ENG.pdf
- Elona Dhembo, “Challenges to Gender Diversity in Albanian State Police”, Institute for Democracy and Mediation, 2010
- Gender Alliance for Development Centre (2010), “Women rights in the context of Human Rights”, Mediaprint, Tirana
- Gjergj Sinani (2008), “Minorities in Albania and their Participation in Public Life” in Political Parties and Minority Participation, Friedrich Ebert Stiftung, Skopje Institute for Democracy and Mediation (2010), “Challenges to Gender Diversity in Albanian State Police”, Toena, Tirana
- Gender Alliance for Development Centre (2010), “Women’s Labour Rights in Albania”,
- Institute of Statistics, “Female and Male in Albania 2006”, <http://www>.



- instat.gov.al/graphics/doc/downloads/publikime/femrameshkuj2006.pdf
- Index Mundi, Gender Parity in National Parliament, <http://www.indexmundi.com/albania/gender-parity-in-national-parliament.html>
 - NGO Shadow Report to the UN CEDAW Committee, “Shadow Report On The Implementation of the Cedaw Convention in Albania:; Gender Alliance for Development Center (GADC), The Albanian Women Empowering Network (AWEN), The Network Against Gender-Based Violence and Trafficking, June 2010
 - Report for the WTO General Council Review of the Trade Policies of Albania “Internationally Recognized Core Labour Standards in Albania” (Geneva, 28 And 30 April 2010)
 - Marsela Sinjari, (March 2010), “Professional Soldiers: the trend of women”, Gazeta Shekulli, <http://www.shekulli.com.al/2010/03/03/ja-siperzgjidhen-ushtaret-femra.html>
 - OSCE Needs assessment mission report 12-16 April 2005, http://www.osce.org/documents/odihr/2005/04/14094_en.pdf
 - UNDP, Human Development Report, 2007 2008, Albania
 - Valasek, K. (2008) “Security Sector Reform and Gender”. In: Gender and SSR Toolkit. Geneva: Geneva Centre for Democratic Control of Armed Forces.

8.5 ANNEX

Annex 1.

Women deputies (MPs) according to Legislatures in the Albanian Parliament

Legislatures (1945- to date)	No. of MP's	No. of women MP's
Legislature I 1945 - 1950	82	6
Legislature II 1950 - 1954	121	17
Legislature III 1954 - 1958	134	16
Legislature IV 1958 - 1962	186	17
Legislature V 1962 - 1966	214	25
Legislature VI 1966 - 1970	240	39
Legislature VII 1970 - 1974	264	71
Legislature VIII 1974 - 1978	250	88
Legislature IX 1978 - 1982	250	81
Legislature X 1982 - 1986	250	78
Legislature XI 1987 - 1991	250	75
Legislature XII 1991 - 1992	250	10
Legislature XIII 1992 - 1996	140	8
Legislature XIV 1996 - 1997	140	21
Legislature XV 1997 - 2001	155	11
Legislature XVI 2001 - 2005	140	8
Legislature XVII 2005 - 2009	140	10
Legislature XVIII 2009 - to date	140	23



Annex II.

International documents Albania has ratified and applies on women rights

<ul style="list-style-type: none"> • Convention on the Elimination of all Forms of Discrimination against Women CEDAW 1978, ratified by the Albanian Parliament with Law No. 7767 on 9.11.1993.
<ul style="list-style-type: none"> • United Nations Security Council Resolution 1325 on “Women, Peace and Security” approved in 2000
<ul style="list-style-type: none"> • Optional Protocol of CEDAW ratified by the Albanian Parliament with the Law No. 9052, on 17.4.2003
<ul style="list-style-type: none"> • Beijing Platform for Action 1995- The platform determines 12 specific fields, the signatory states are oriented to compile National Platforms and Strategies on women.
<ul style="list-style-type: none"> • According to the Millennium Development Objectives, undersigned in the year 2000, member states are required “to support gender equality and strengthening of women”.

Annex III.

Non Albanian nationality According to censuses years

	1950	1955	1960	54,687	64,816
Total	35,201	47,227	44,570	49,307	58,758
Greek	28,996	35,345	37,282		4,697
Macedonian	2,273	3,431	4,235	66	
Serbian					100
Montenegrin	893	1,613		1,217	782
Aromanian	1,876	4,249	3,053		479
Others	1,163	2,589			

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