

BUILDING THE ALBANIAN PARLIAMENT OVERSIGHT AND CONTROL CAPACITY TOWARDS THE SECURITY SECTOR

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EXECUTIVE SUMMARY

Parliamentary oversight and control over Security Sector in Albania, has continuously had to cope with different challenges. Specific nature, roles and missions of the security institutions, the gaps, still existent in the legal framework concerning both, their functioning and parliamentary control over them, the lack of any consolidated tradition related to security institutions' transparency and democratic control over them; all these factors, being further exacerbated by a highly polarized political climate, make the parliamentary control of the Security Sector very complex, which calls for a non-partisan and comprehensive approach to be rightly addressed.

Legal framework revision, aiming at avoiding the gaps in parliamentary control over the security sector, should be followed by the enhancement of the oversight and control practices of the Legislative over this sector. Increasing transparency of the security institutions should be considered as one of the first priorities of this process.

THE LEGISLATIVE AND THE SECURITY SECTOR IN ALBANIA

The Legislative functioning has been an important component of the Albania's progress towards democracy as a whole, despite the already acknowledged ups and downs of this process, accompanied by a highly politicized climate. Related to a three-level scale for weighing the consolidation of the democratic institutions¹: 1) legal framework; 2) law implementation (administrative capacities and practices) and 3) internalization (individuals/institutions attitudes/stance towards laws and practices) Albania is categorized as still being at

the beginning of "level 2" (implementation), hence far from the "level 3" (internalization).

The role of the Parliamentary Committee of National Security (PCNS) has been more evident with regards to draft-law revisions, but not so much concerning its oversight and control function over the Security Sector. In this regards, PCNS initiatives have been very rare, mostly as reactive actions of the opposition against momentous political developments. As a consequence, despite some tensions, they have been unable to produce any significant result in the security institutions' performance.

Albania's parliamentary elections of 23 June 2013, along with the rotation of power, caused a high turnover of the members of the Parliament and the PCNS. Actually, out of 25 members of the PCNS, 11 members (44%) are new MPs, with no previous parliamentary experience, while 17 members (68%) have not been members of PCNS before.

For a more active role related to legislative and control functions, parliamentarians should:

- Be able to "ask the right questions"
- Request from the Government "to inform, explain and justify" (about what is being done in the Security Sector).
- Decide and follow robust oversight & control procedures and timetables.
- Ensure coordination as well as avoid duplication of efforts with other parliament committees

LEGAL FRAMEWORK AND RELATED GAPS

During the last legislature in Albania, the legislative initiatives related to the Security Sector have been very rare (about 4-5 laws, out of more than 600 laws,² adopted in total during this period). Their quality have often been questioned due to

¹ SIGMA Paper no. 48, 2012, p. 7, at: <http://search.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=GOV/SIGMA%282012%291&docLanguage=En>

² Source: http://www.parlament.al/web/Ligje_te_miratuara_59_1.php

the working calendar which “[...] [has] not always give enough time to standing committees for proper review and for public hearings on draft laws, which, as a result [have often been] adopted in an expedited manner”.³ Some of the laws “[...] have many loopholes, sometimes by design, and do not have adequate implementation mechanisms”.⁴ Furthermore, the long awaited law “On overseeing and controlling of the intelligence services” has not been adopted.

Despite the State Intelligence Service (SIS) and the Security and Defense Intelligence Agency (SDIA)⁵ which have their own organic laws, there are five other intelligence services,⁶ functioning in the Ministry of Interior, Ministry of Finance and Ministry of Justice, whose roles and missions are not regulated by law, which - among other problems - makes unclear how the Parliament and the PCNS can exert their oversight and control role over them. On the other hand, even for the SIS and SDIA, it is unclear how the financial control can be exerted by the Parliament and PCNS, despite through the High State Control (HSC). The Albanian legal framework has no provisions for the Parliament, which would allow asking for information and investigate in important procurement contracts of the Security Sector. That is left to the Government discretion.

During the new legislature (which started in Sep. 2013), in almost one year, there are seven laws adopted for the Security Sector. Despite the positive effect of filling some legal gaps, still there has been an unjustifiable rush which has reduced the time necessary for the reviewing of the drafts by the PCNS and the Civil Society. On the other hand, there is at least one case, where the expertise provided by the latter (namely IDM) has not been considered whatsoever. The opposition boycott of the parliamentary plenary and committee sessions, during the second half of 2014, has not contributed in the scrupulous reviewing of the above-mentioned draft-laws. The legal framework with regards to the parliamentary financial control of the Security Sector has remained almost the same, since 2010. However, it should be mentioned that, the newly adopted law “On the powers and authorities for leading and commanding of the Alba-

nian Armed Forces”,⁷ in contrast with the previous one, does not explicitly provide for the Parliament competence of reviewing and endorsing of the defense budget.⁸

PARLIAMENTARY OVERSIGHT AND CONTROL OF THE SECURITY SECTOR

There has always been a tendency in Albania from the ruling party/coalition to over-control the security institutions, on a partisan basis, while obstructing or weakening/ any control initiative undertaken by the opposition. The technical expertise from the staff has been unsatisfactory and influenced by the ruling majority.

During 2011-2013 timeframe, the Parliament conducted 3 interpellations with the heads of some security institutions (Minister of Justice, Minister of Interior and Minister of Defense). Being requested by the opposition, they could not produce any discernible result, due to the climate of mistrust and political polarization. During the first year of the actual legislature, PCNS conducted two hearings with the Minister of Interior. The one with the SIS Director, requested by the PCNS members from the ruling coalition, has been dragged on for months, because of procedural holdbacks and has not been finalized yet. The hearing with the Minister of Defense, requested by the opposition, has not been conducted so far, due to some postponements followed by the above-mentioned boycott of the opposition. Being reactive rather than proactive, mostly as a response to momentous developments (with the exception of one case), these initiatives have resulted rather in run-ins and political declaration tribunals.

FINANCIAL CONTROL OF THE SECURITY INSTITUTIONS

Parliamentary financial control of the security institutions remains uncovered by the legal framework and unclear by the practical, procedural aspects (despite that exerted by the HSC). On the other hand, the audits conducted by HSC in the security institutions are relatively rare. Thus, out of 158 audits, conducted by HSC during 2010-2012, only one was conducted in the Ministry of Interior

³ European Commission, Albania 2012 Progress Report, p. 7.

⁴ SIGMA, Assessment, Albania, 2012, p. 5.

⁵ The Law “On Security and Defense Intelligence Agency” was adopted in June 2014.

⁶ In total, there are seven intelligence services in Albania. Despite the SIS, they are built in the Ministry of Defense, the Ministry of Interior and Ministry of Justice (one agency per each) and in the Ministry of Finance (3 agencies).

⁷ Law No. 64, dated 26 June 2014, Article 8

⁸ With the argument this is being done “en-bloc” during the state budget revision.

and one in the SIS,⁹ while out of 164 audits, conducted in 2013-2014, only one belonged to the Ministry of Defense and one to the State Police General Directorate.¹⁰

There are only two cases so far, where expensive procurement contracts have been submitted to the Parliament for the final approval, but only one of them, the Ministry of Defense's contract on transport helicopters,¹¹ belongs to the period under this analysis. During 2012, the opposition members of the PCNS, persistently requested to investigate into some procurements done by the Military Intelligence Service, but in the end, the majority managed to bloc this initiative.

Another problem noticed concerning the Security Sector's procurements is some kind of tolerance and relatively moderate penalizations, disproportionate to pertaining legal violations/. Thus, even though, during the 2012, more than 50% of the economic damage in public procurements, incurred in the Ministry of Interior, HSC proposed the dismissal of only one employee, while for the rest of the economic damage, incurred in other institutions, outside the Security Sector, HSC referred to the prosecution office 40 cases, which are linked to 125 employees.¹²

9 HSC, "Annual performance report" (Albanian), 2012, p. 11, at: <http://www.klsh.org.al/>

10 HSC, "Annual performance report" (Albanian), 2014, p. 87, 93, at: http://www.klsh.org.al/web/pub/raporti_performances_se_klsh_2013_1159_1.pdf

11 This 5-years contract was first scrutinized in Parliament in 2011 and again in 2014 (for some amendments).

12 HSC, "Annual performance report" (Albanian), 2012, p. 6

RECOMMENDATIONS

1. The existing legal framework, concerning the Security Sector in Albania, should be revised, in order to avoid legal gaps which inhibit an effective oversight and control from the Legislative (especially in the area of financial control). In that respect, legal improvements/ related to parliamentary control over the intelligence services should be a priority.
2. In order to improve its constitutional role towards the security institutions, the Legislative should enhance its oversight and control practices, regarding methodology, procedures and periodicity.
3. The Parliament and its standing committees should be better supported by the technical expertise.
4. The information concerning the way the public funds are being managed by the Security Sector, not only should be more accessible to the Legislative and civil society, but this transparency should improve, both in quantity and quality.
5. A better cooperation with the civil society will assist the Legislative for a more enhanced oversight and control role over the Security Sector in Albania.

INSTITUTE FOR DEMOCRACY AND MEDIATION

The **Institute for Democracy and Mediation** (IDM) is an independent non-governmental organization founded in November 1999 in Tirana, Albania. It works to strengthen the Albanian civil society, to monitor, analyze, and facilitate the Euro-Atlantic integration processes of the country and to help consolidate the good governance and inclusive policymaking. IDM carries on its objectives through expertise, innovative policy research, analysis, and assessment-based policy options.

IDM's choice of activities to achieve its strategic objectives is an effort to go beyond simple one-time delivery projects. They form part of a continuing struggle to strengthen shared values and efficient interactions across the broad spectrum of political and non-political actors in Albania. IDM is dedicated to developing a profound understanding of contemporary challenges so as to shape sustainable reforming strategies and public policies in key socio-economic and political development pillars and to advance regional cost-effective approaches in support of crosscutting cooperation initiatives of key actors based on comprehensive research, policy assessment and multifaceted analysis.