

DECONSTRUCTING STATE CAPTURE IN ALBANIA

An examination of grand corruption cases
and tailor-made laws from 2008 to 2020

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Deconstructing State Capture in Albania: An Examination of Grand Corruption Cases and Tailor-Made Laws from 2008 to 2020

Authors: Gjergji Vurmo, Rovena Sulstarova, Alban Dafa (Institute for Democracy and Mediation)

Reviewers: Nieves Zúñiga and Dragan Mihajlović (Transparency International)

Edit: International Correspondents in Education

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EXECUTIVE SUMMARY

The existence of state capture in Albania has long been denied despite strong calls by civil society and independent media to examine what many perceived as clear signs of the phenomenon in the country. Until the European Commission (EC) reported that “several countries in the region continue to show clear symptoms and various degrees of state capture”,¹ the phenomenon was considered an inflated story and an urban legend. In fact, fears of the capture of the judiciary by powerful individuals and corrupt politicians was what motivated the comprehensive reform of Albania’s justice system. However, it is only in recent years that “capture tendencies” have been evidenced beyond the judiciary.

This report and its accompanying databases of grand corruption cases and tailor-made laws represent an important milestone in evidencing the phenomenon of state capture, whereby powerful individuals, institutions, companies or groups within or outside a country conspire to shape a nation’s policies, legal environment and economy to benefit their own private interests at the expense of the public. The report presents the processes through which public officials, the private sector and the judiciary shape the network that enables state capture in Albania. The findings and conclusions are primarily based on the grand corruption cases and tailor-made laws in the database, but they also draw on rule-of-law assessments from international organisations and domestic anti-corruption and investigative reports.

The grand corruption cases examined suggest a strong nexus between public officials, the private sector and the judiciary that has been growing progressively by exploiting public assets and the provision of public goods. While politicians – mainly in central government but also in local government – and the private sector partner to exploit the country’s resources, a corrupt judiciary ensures impunity for these activities and furthers corrupt profit-making schemes.

The Albanian Parliament adopted a comprehensive judicial reform package in June 2016. Despite the need for judicial reform, its implementation has created further legal uncertainties due to its slow progress in the process of re-assessing judges and prosecutors and their eventual replacement with vetted ones. This process has stalled some of the judicial processes of high-profile cases affecting the country’s energy, transportation and defence sectors. Furthermore, the examination of the judiciary’s handling of recent corruption cases suggests that the undue influence of the executive branch over the judiciary is still present, and professionalism and the integrity of judges and prosecutors remain elusive.

Tailor-made laws facilitate grand corruption schemes by essentially legislating for the theft of national resources through special procurement procedures that fail to adhere to principles of transparency, integrity of law-making and parliamentary oversight. Most of the bills originate from the government of Albania, but government documents do not provide comprehensive rationale for the proposals. Furthermore, while vague provisions in the Law on Public Consultation enable the government to bypass consultation procedures, civil society reports suggest that public consultation

¹ European Commission, *2016 Communication on EU Enlargement Policy*, page 3, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20161109_strategy_paper_en.pdf

procedures are inconsistent and recommendations from civil society are seldom taken into consideration.²

Based on the main findings of the examination of grand corruption cases and tailor-made laws, our key recommendations for Albanian stakeholders and the donor community on addressing state capture include the following:

- Policy initiatives must be based on transparency and public consultation, which are essential accountability mechanisms to ensure that the policy-making process is inclusive and that the public has the legal means to examine the implementation of public policies.
- The current regulatory framework on the prevention of conflict of interest should be improved and strengthened by including provisions that ensure the integrity of public officials in regulatory and oversight institutions.
- The capacities of the Albanian Parliament and the integrity of political representation, which are instrumental in ensuring effective parliamentary oversight of government policies, must be improved.
- Court jurisdiction must be clarified to avoid loopholes for political interference and corruption of the judiciary.
- Financial and human resources for the School of Magistrates must increase. The school is essential for the renewal of the judicial system, and increased resources ought to be part of an overall recruitment strategy for judges and prosecutors, the goal of which is to substantially increase the current output of the school.
- Campaign finance reform is an absolute necessity. This should include, among other things, clear provisions that regulate the financing of political parties to prevent money laundering and to identify political party donors.

² Blerjana Bino, Redion Qirjazi and Alban Dafa, *Civil Society Participation in Decision Making in Albania*, March 2020, <https://idmalbania.org/wp-content/uploads/2020/03/CSO-Participation-in-Decision-Making-in-Albania.pdf>

INTRODUCTION

State capture is a corruption challenge that has not been systematically examined in Albania. The term has frequently been used as a tool by various opposition parties to attack the autocratic tendencies and corruption of the governing political parties rather than to highlight the corrupt influence of private entities in the public decision-making process or the illicit cooperation between private actors and public officials. In the last eight years, the public debate on corruption has centred on the Albanian government's privatisation policy – particularly on concessions and public-private partnerships. However, despite the wealth of public records available – including investigative reports, judicial decisions and reports from the Supreme State Audit Institution (SSAI) and the High Inspectorate on the Declaration and Audit of Assets and Conflict of Interest (HIDAACI) – there has been no systemic analysis of corruption.

This report seeks to provide a systemic analysis of state capture in Albania by examining its enabling mechanisms. While corruption in Albania has been documented in various domestic and international reports, corruption involving high-level public officials has received inadequate attention.³ Although there have been numerous investigative reports alleging corruption of public officials through participation in schemes that benefit private interests – either their own or of other private entities – and damage the public good, there has been little research into the nature of cooperation, the weaknesses of the public administration and the current shortcomings of the judiciary that enable state capture in Albania. In addition to influencing government decision-making, private interests in the country can be understood as networks of clientele involving public officials and the private sector whereby the public and private domains become virtually indistinguishable. These corruption schemes are sustained through the impunity provided by a corrupt judiciary.

This report is based on a collection of grand corruption cases that cover both the networks of clientele and corruption in the judiciary and tailor-made laws. It identifies several shortcomings in four main areas: the integrity of public officials, the handling of corruption cases by the judiciary, the corruption of the judiciary, and the integrity of law-making. It is important to note that Albania's judicial system is in the process of a major overhaul that seeks to address systemic corruption and, consequently, the impunity of high-level public officials. This reform entails the re-assessment of judges and prosecutors based on integrity and professional criteria and the establishment of new professional and impartial judicial institutions, thus establishing a system that can deliver justice in an impartial and professional manner.

Meaningful strides have also been made to ensure that the country's public administration is professional and not subject to political pressure.⁴ These reforms have been implemented within the framework of Albania's EU accession process. Although they are indeed a work in progress, our findings indicate that they have not been successful in curbing state capture. Based on the examination of grand corruption cases and tailor-made laws, there has been a noticeable deterioration in the situation. This deterioration has also been noted by the European Commission in

³ See Ministry of Justice, *Inter-sectoral Strategy against Corruption 2015-2020*, https://www.drejtesia.gov.al/wp-content/uploads/2018/06/Inter-sectoral_Strategy_against_Corruption_2015-2020_4.pdf. Transparency International, *Corruption Perception Index (2020)*, <https://www.transparency.org/en/countries/albania>; Gjergji Vurmo, "2020 Albania Country Report" in *Nations in Transit*, Freedom House, 2020, <https://freedomhouse.org/country/albania/freedom-world/2020>

⁴ EU Commission, *Albania 2020 Report*, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/albania_report_2020.pdf

its communications on enlargement from 2016 onwards. It is therefore important to examine these trends closely, provide recommendations on how to improve the effectiveness of reforms and propose new institutional and legal approaches in order to address state capture.

The report is divided into two main sections. The first section focuses on grand corruption cases and identifies the nature of cooperation and exchanges between public officials and the private sector, cooperation between public officials and organised crime groups, as well as corruption in the judiciary. The second section focuses on tailor-made laws and identifies shortcomings in the integrity of law-making, consultation processes, transparency, professionalism and the application of other principles that safeguard public interests in the legislative process.

BACKGROUND OF THE STUDY

This report is one of the research outputs of the EU-funded project *Ending impunity for grand corruption in the Western Balkans and Turkey* to decrease corruption and state capture in Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia, Serbia and Turkey. The project seeks to improve governance, transparency and the accountability of the judiciary and democratic law-making. To do so, Transparency International is looking into how state capture became possible and is sustained by highlighting shortcomings in the criminal justice system when handling grand corruption cases and exposing tailor-made laws created to protect the private interests of a few.

Research is combined with evidence-based advocacy campaigns to push for change in each country. Together with the regional report⁵, the research outputs of the project are seven national reports and two databases.⁶ One database lists corruption cases in the region, specifically grand corruption cases or ones that might represent an entry point to state capture. These cases illustrate the red flags and shortcomings in the judicial systems of these countries when addressing political corruption. The second database includes tailor-made laws, laws that serve to gain and maintain privileged benefits and, in doing so, make state capture legal. It reveals how law-making is used to protect private interests. The databases are not meant to be fully comprehensive. Instead, they use a qualitative approach to both the cases and the laws as tools to understand how the judicial system operates and how law-making is influenced.

This project builds on Transparency International's previous work in the Western Balkans and Turkey. In-depth research⁷ into anti-corruption efforts conducted by Transparency International in Albania, Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro, Serbia and Turkey between 2014 and 2015 found that state capture was a consistent problem across all countries. Subsequent research into cases of state capture in specific sectors⁸ in each country allowed us to better understand the characteristics of capture and where it takes place. Now, an analysis of how each country's judiciary addresses corruption cases that can be an entry point to capture and how undue influence in law-making results in tailor-made laws is allowing us to understand what makes that state capture possible.

To build on our research, we are developing recommendations for effective anti-corruption and rule-of-law reforms in these countries. We are also seeking to promote a broader public debate on the

⁵ Nieves Zúñiga, *Examining State Capture: Undue Influence on Law-Making and the Judiciary in the Western Balkans and Turkey*, Transparency International, 2020,

https://images.transparencycdn.org/images/2020_Report_ExaminingStateCapture_English.pdf

⁶ www.transparency.org/en/projects/grand-corruption-western-balkans-and-turkey

⁷ Andy McDevitt, *Fighting Corruption in the Western Balkans and Turkey: Priorities for Reform*, Transparency International, 2016, https://images.transparencycdn.org/images/NISWBT_EN.pdf

⁸ Dona Dimov, Slagjana Taseva, *State Capture – Illustration through “Skopje 2014” Project*, Skopje, Transparency International Macedonia, 2018, http://www.transparency.mk/en/images/stories/publications/state_capture.pdf.

enabling institutional mechanisms of state capture. This is critically important to shaping the debate on corruption by focusing on institutional shortcomings and building public pressure to establish publicly accountable and transparent institutions.

METHODOLOGY

State capture is a key obstacle to the effectiveness of anti-corruption and rule-of-law reforms in the Western Balkans and Turkey. State capture occurs when private and public actors target certain state organs and functions using corrupt means in an attempt to direct public policy decisions away from the public interest in order to further their own private interests, ultimately for financial gain. Based on this understanding, impunity for corruption and the creation of laws to further the private interests of particular groups or individuals at the expense of the public interest are considered key explanations of the existence and sustainability of state capture.

The analysis in this report considers several sources of information: primary data collected on corruption cases and tailor-made laws, previous assessments on corruption, state capture and the rule of law in the region by Transparency International's National Integrity System, the European Commission, GRECO and UNCAC, official documents, media articles, and specialist literature. Interviews were conducted with investigative journalists who had reported on corruption cases and with other key informants, such as former or current officials, civil society actors, university lecturers and private sector associations.

The collection of original data on cases and laws covered the last 10–12 years in order to identify possible variations caused by changes in government after elections. The cases and laws were selected on the basis of consultations within the Institute for Democracy and Mediation (IDM) and through external consultations with IDM external associates. Additional interviews and exchange with independent oversight institutions, that is the Supreme State Audit Institution or the Ombudsperson, helped the research team validate its findings and identify new suspected cases and laws. The selection of corruption cases followed three criteria. The first one was to include any corruption cases that match Transparency International's definition grand corruption. Transparency International defines grand corruption as offences set out in UNCAC Articles 15–25 when committed as part of a scheme involving a high-level public official and comprising a significant misappropriation of public funds or resources, or severely restricting the exercise of the most basic human rights of a substantial part of the population or of a vulnerable group. However, since a legal definition presents limitations for the exploration of a complex political phenomenon, we expanded the selection criteria to include cases showing a lack of autonomy, independence and impartiality of the judiciary, and cases that serve as an entry point for state capture. The indicators to consider a case as an entry point for state capture include:

- when a member of parliament or official with law- or policy-making power is involved in criminal offences in such a capacity;
- when a top-level decision-maker of a regulatory body is involved in criminal offences in such a capacity;
- when alleged criminal offences committed involve a public official who obtained his/her position through a revolving-door situation;
- the conduct of any of the above three categories of people serves the interest of a legal person or a narrow group/network of connected persons and not the interest of other actors in a sector, group in society or the public interest;
- cases linked to tailor-made laws.

All three criteria have in common the involvement of at least one public official with the power to influence or change policies and regulations. In most cases, those public officials have occupied high-responsibility roles in state-level institutions such as ministries. Nevertheless, considering the political reality in the Western Balkans and Turkey, which is characterised by the power of political parties and party members in certain municipalities, corruption cases involving powerful mayors or other local authorities were also included.

Tailor-made laws are defined as legal acts that are enacted with the purpose of serving only the interests of a natural person, a legal person or a narrow group/network of connected persons and not the interest of other actors in a sector, group in society or the public interest. Although tailor-made laws seem to be generally applicable, they in fact apply only to a particular matter and circumvent potential legal remedies that could be provided by ordinary courts. Based on this definition, the following questions were asked in order to identify potentially tailor-made laws: who is behind the law? Were there any irregularities in the making or the approval of the law? Who benefited from the law or who are its victims?

Regarding their purpose, we considered three types of tailor-made laws: 1) laws that seek to control a sector or industry or protect certain privileges; 2) laws that seek to remove or appoint un/wanted officials; 3) laws that seek to reduce an institution's power to conduct checks and balances by controlling personnel procedures, reducing the monitoring capacity of agencies or audits, preventing accountability, or weakening control by media and civil society organisations.

Far from providing a comprehensive picture of the situation, this report offers a qualitative approach and builds on the best efforts made by Transparency International's chapters and partners in the region in identifying cases and laws and collecting detailed information. Some of the difficulties in data collection have been the reduced accessibility to information especially on suspected tailor-made laws dating from before 2013, state institutions' reluctance to provide detailed information in response to freedom-of-information requests submitted by researchers and the generally non-transparent process of the drafting of laws by the cabinet. These challenges have been addressed by the research team by expanding the number and sources of information. They did not, therefore, affect the analysis presented in this report. However, the scarcity of information has forced the research team to exclude a few cases of suspected tailor-made laws due to the lack of sufficient evidence.

FINDINGS AND DISCUSSION

State capture rests on three pillars: (i) a network of clientele or clientelistic relationships, (ii) corrupt judicial proceedings, and (iii) tailor-made laws. The grand corruption cases examined suggest that clientelistic relationships are established between high-level public officials – at times also their relatives – and private entities. Sometimes, private companies – which are part of a grand corruption scheme – are established as a result of an existing friendship or other close relationship between a private individual and a public official to take advantage of the privatisation of a state asset or service. If there is an investigation into high-level corruption, the exertion of political influence on judicial proceedings and corruption within the judiciary and the prosecution typically lead to soft sentencing or the dismissal of cases. Tailor-made laws legalise state capture by establishing regulations that favour private interests at the expense of the public interest. Such laws are typically approved without prior public consultation and are not based on substantive estimates on sustainable economic growth and development.

GRAND CORRUPTION AND THE JUDICIARY

Justice reform and high-level corruption

Albania's justice system is currently undergoing a comprehensive overhaul after the adoption by Parliament in June 2016 of the justice reform package. The reform has affected more than one-third of the provisions of the constitution. Moreover, about 40 new laws or legal amendments have been drafted and approved within the framework of this reform.

The reform includes two parallel processes: i) the re-assessment of existing judges and prosecutors, known otherwise as the vetting process, and ii) the establishment of the new justice institutions. The first process seeks to remove corrupt and incompetent prosecutors and judges. The second parallel process has seen the establishment of self-governing judicial institutions and special institutions against corruption and organised crime, such as the National Bureau of Investigation, the Special Prosecution Office and the Special Court Against Corruption and Organized Crime. These institutions are responsible for the investigation and judgement of the criminal offences of corruption and organised crime involving high-level public officials.

The implementation of the reform, however, remains a significant challenge. The process of vetting judges and prosecutors is slow. The establishment of new justice institutions was accompanied by delays which negatively affected the functioning of existing justice institutions. Problems exist in terms of citizens' access to justice and juridical efficiency, especially regarding the functioning of the Constitutional Court and the Supreme Court. The failure of the Supreme Court to operate normally because of the dismissal or resignation of its judges has affected access to justice and the efficiency of the adjudication of cases.

The court is currently operating with three judges and has a backlog of more than 30,000 cases that have been waiting to be tried for years.⁹ One example is the "Gërdec" case. Gross mismanagement

⁹ European Commission, *Albania 2019 report*, page 18, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-albania-report.pdf>

and corruption within the Ministry of Defence led to the explosion of an ammunition-dismantling site close to the village of Gërdec that took 26 lives and left more than 4,000 villagers homeless. According to the prosecution, Fatmir Mediu – defence minister at the time – had improperly influenced the outcome of the contract for dismantling Albania's ageing and excessive munitions stock.¹⁰ Mediu had favoured Southern Ammunition Company Inc. (a US company) in its contract bid, and – along with Ylli Pinari, director of the state-owned Military Import-Export Company (MEICO) – had guided the establishment of Alba-Demil Ltd., the Albanian subcontractor.¹¹ Additionally, Mediu had blocked the Albanian army from conducting inspections of the dismantling site.¹² Mediu's case is awaiting trial at the Supreme Court after it was suspended in September 2009 when he regained his parliamentary immunity following the June 2009 parliamentary election.¹³

Similarly, the investigations into two key cases – the sale and operation of the Albanian Refining and Marketing of Oil (ARMO) Company and the exploitation of hydrocarbon resources by Bankers Petroleum – have not progressed.

The "ARMO" case is rather complex. It involves the sale of 85 per cent of the company's shares to Anika Mercuria Refinery Associated (AMRA) – a consortium whose chief executive officer was Rezart Taçi, a businessman with alleged ties to former prime minister Sali Berisha and his family – the collateralisation of the company's assets to underwrite multiple loan agreements and more than €495 million of debt until 2016.¹⁴ The "Bankers Petroleum" case is equally complex. It involves a lack of regulatory oversight of the company's exploration activities, which – according to the citizens of Zharrëz, a village near the exploration area – have led to damages to their homes.¹⁵ Moreover, the General Directorate of Customs fined the company 104 million Albanian leks (approximately €847,000) in September 2017 for fiscal evasion, but this fine was suspended in July 2019 by order of the minister of finance.¹⁶

While the investigation into the "ARMO" case was started in 2018 by the Serious Crime Prosecution Office, the General Prosecutor's investigation into Bankers Petroleum on property damages in the village of Zharrëz resumed in 2017. Both investigations have been crippled by the vetting process. The transfer of files from the former Serious Crimes Prosecution Office to the newly-established Special Prosecution Office takes time and this new structure has not been fully operational. Furthermore, the vetting process undermines the investigation integrity of complex cases since there is a high degree of uncertainty that a prosecutor assigned to such cases is going to continue working instead of being dismissed. The high rate of dismissals among prosecutors and judges and the negligible rate of replacement by new graduates from the School of Magistrates significantly increases the risk that grand corruption cases will continue to be part of the current backlog.¹⁷

¹⁰ Arben Muka, "The prosecution requests Mediu is stripped of his immunity" (article in Albanian), *dw.com*, 26 April 2008, <https://www.dw.com/sq/prokuroria-k%C3%ABrkon-ti-hiqet-imuniteti-mediut/a-3294543>

¹¹ Besar Likmeta, "Indicted politician in new Albanian cabinet", *balkaninsight.com*, 7 September 2009, <https://balkaninsight.com/2009/09/07/indicted-politician-in-new-albanian-cabinet/>

¹² "Mediu, Pinari and Delijorgji caused Gërdec" (article in Albanian), *shqiptarja.com*, 13 March 2012, <https://issuu.com/shqiptarja/docs/13-03-2013/16>

¹³ Supreme Court Decision No. 6 of 14 September 2009

¹⁴ Ola Xama, "The government blessed the illegal sale of ARMO assets" (article in Albanian), *reporter.al*, 7 September 2017, <https://www.reporter.al/qeveria-bekoi-shitjen-e-palqishme-te-aseteve-te-armo/>

¹⁵ "Albanian villagers blame Bankers for earthquakes", *reuters.com*, 18 June 2012,

<https://www.reuters.com/article/albania-bankers-attack/albanian-villagers-blame-bankers-for-earthquakes-idUSL5E8HIHN720120618>

¹⁶ "Anila Denaj suspends decision on Bankers Petroleum. The company is saved from paying 104 million Albanian leks" (article in Albanian), *dosja.al*, 24 August 2020, <https://dosja.al/faksimile-anila-denaj-pezullon-vendimin-per-bankers-petroleum-kompania-shpeton-nga-pagesa-e-104-mln-eurove/>

¹⁷ By June 2020, 62 per cent of the 286 vetted judges and prosecutors had been dismissed. Meanwhile, only 24 new magistrates graduated from the School of Magistrates in 2019. Sixty-eight are currently enrolled for the 2020/2021 academic year, hoping to become judges and prosecutors. See European Commission, *Albania 2020 Report*, pages 5 and 22, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/albania_report_2020.pdf

The vetting delay was reflected in the establishment of the Special Court, the Special Prosecution Office, and the National Bureau of Investigation (NBI). The Special Anti-Corruption Structure (SPAK)¹⁸ along with the NBI investigate and prosecute acts of corruption and other crimes linked with it. SPAK has already started work, albeit not at full capacity. NBI has appointed a head of this institution and is currently in the process of selecting 60 prosecutors that will be part of this structure.

According to the legal provisions that existed prior to judicial reform,¹⁹ corruption cases involving the highest officials of the state – such as the president, prime minister, ministers, members of parliament and judges of the Supreme and Constitutional Courts – were under the jurisdiction of the Supreme Court and the General Prosecution Office. In addition, the Serious Crimes Prosecution Office has been responsible for the investigation of four criminal offences of corruption, namely active and passive corruption of senior state officials or local elected officials as well as for investigation of the active and passive corruption of judges, prosecutors and senior justice officials (since April 2014 until the establishment of SPAK in January 2020). The transitional period for the prosecution and judgement of corrupt senior officials until the establishment of the new justice institutions is not yet well regulated by law (given that the transitional process took longer than stipulated by the law). Until January 2020 (by the time SPAK started work), the power to investigate and criminally prosecute corrupt high state functionaries was vested in the Serious Crimes Prosecution Office. This led to jurisdictional conflicts between courts, particularly between the Supreme Court and the judicial district courts. This was observed in the judicial case of Tom Doshi, a member of parliament who was prosecuted by the General Prosecution Office for refusing to declare, not declaring, concealing or making a false declaration of assets, which is a criminal offence for elected persons and public officials or any other person legally bound to make such declarations. On the basis of the criminal denunciation filed by the High Inspectorate of Declaration and Audit of Assets and Conflict of Interest, the investigation covered assets worth €14 million, fictitious property contracts, suspicious bank transfers without lawful financial resources and the suspicion of laundering €9 million.²⁰ For a period of two years, the case was passed around among several courts in the country.²¹ The case was initially referred to the Supreme Court. In accordance with constitutional amendments, the Supreme Court did not have the original jurisdiction to conduct a trial on the merits on these functionaries, because this authority was now granted to the new justice institutions. This court, based on the lack of substantial competency for the review of this criminal case, decided to transfer the case to the Serious Crimes First Instance Court in Tirana. This was when these courts began declaring that they were not competent to adjudicate the case while the new justice institutions had not yet been established at that time. Eventually, the Criminal Chamber of the Supreme Court referred the case to Tirana Judicial District Court, which dismissed the criminal case against Doshi.

There was a similar incidence of jurisdictional conflict between courts in the case of the supreme court judge Majlinda Andrea, who was accused of passive corruption,²² which led to a dispute between the Supreme Court and the Serious Crimes Court on the responsibility to adjudicate

¹⁸ Law on the Organisation of Special Anti-Corruption Structures (SPAK) adopted by Parliament in 2016

¹⁹ Following the constitutional amendments, the investigation of criminal offences committed by high functionaries (with the previous list being revised to include the prosecutor general, the high inspector of justice, mayors, deputy ministers, members of the High Judicial Council and the High Council of the Prosecution, and the heads of central or independent institutions specified in the constitution or the law) falls now within the powers of SPAK and the Special Court of Organised Crime.

²⁰ HIDAACI Press Release, 15 May 2015, <https://bit.ly/38tiGT1>

²¹ Supreme Court Decision No. 17 of 6 November 2017, Supreme Court Decision No. 70 of 13 February 2019; Serious Crimes First Instance Court (Tirana) Decision No. 47 of 16 January 2018; Tirana District Court Decision No. 5242 of 14 November 2018, and Tirana District Court Decision No. 1724 of 03 July 2019

²² Majlinda Andrea, a Supreme Court judge, was accused by the General Prosecution Office in 2016 of the criminal offence of passive corruption of judges (article 319/ç of the Criminal Code) for being involved in taking a €50,000 bribe in return for a favourable decision in a property issue in Ksamil (Butrint).

corruption cases until the establishment of SPAK and the Special Court of Corruption and Organized Crime. Using this legal uncertainty, the former judge filed a recourse with the Constitutional Court in February 2018, but the Court dismissed her appeal. In 2017, the Supreme Court declared the former judge guilty of the criminal offence and sentenced her to four years in prison. The same court suspended the sentence and substituted it with a probation period of three years.

Legal and procedural deficiencies

Although Albania's domestic criminal legislation does not provide an exhaustive definition of corruption, it does contain provisions that are linked to active and passive corruption among high functionaries. Active corruption includes promising, proposing either directly or indirectly, offering or giving to a person who exercises public functions any irregular benefit for himself/herself or a third person in order to act or not act in relation to his/her duty. Passive corruption includes the direct or indirect solicitation or taking by a person who exercises public functions of any irregular benefit or any such promise either for himself/herself or for a third person, or accepting an offer or promise deriving from an irregular benefit in order to act or not act in the exercise of his/her duty.²³ At present, the Criminal Code contains 22 articles that criminalise and penalise the criminal offence of corruption.²⁴ Albania's criminal legislation is generally aligned with the provisions stipulated in the Criminal Convention of the Council of Europe as well as with the Group of States against Corruption (GRECO) recommendations on the criminal offences of active and passive corruption.

Financial investigations are an effective and proactive tool when investigating and prosecuting economic crimes. They allow for the collection of evidence in corruption investigations. The data obtained from several institutions that have supervisory, controlling or investigative powers – such as the High Inspectorate of Declaration and Audit of Assets and Conflict of Interest (HIDAACI), the Supreme State Audit Institution (SSAI), customs or tax authorities – are used for the investigation and trial of economic or financial crime. In practice, the information from these institutions may come late in an investigative process or may be incomplete and this may lead to investigation deadlines not being kept, thereby damaging the investigation process (Articles 323 and 324 of the Criminal Procedures Code). Deadlines can be extended even further in the case of information obtained from institutions abroad, as corruption proceeds are often deposited or invested abroad. This was the case with the trial of the judge of the Court of Appeals of Tirana, Gjin Gjoni, in 2014. The Prosecution Office initiated criminal proceedings against Gjoni, a judge at the Tirana Court of Appeal, and against his wife, Elona Çausi, for falsification of documents and the refusal to declare assets, on the basis of the denunciation of the High Inspectorate of Declaration and Audit of Assets and Conflict of Interests (HIDAACI). At the time criminal proceedings were initiated, Gjoni held was a member of the High Council of Justice (HCJ), a member of the Board of the School of Magistrates,

²³ Law No. 7895 of 27 January 1995 "Criminal Code of the Republic of Albania" amended

²⁴ The 22 criminal corruption offences include: Article 244 (Active corruption of persons exercising public functions), Article 244/a (Active corruption of a foreign public official), Article 245/1 (Exercising unlawful influence on public officials), Article 248 (Abuse of office), Article 256 (Abuse of contributions given by the state), Article 259 (Passive corruption by persons that exercise public functions), Article 259/a (Passive corruption of foreign public officials), Article 312 (Active corruption of the witness, expert or interpreter), Article 319/a (Active corruption of a judge or official of international courts), Article 319/b (Active corruption of a domestic and foreign arbitrator), Article 319/c (Active corruption of members of foreign court juries), Article 319/ç (Passive corruption of judges, prosecutors and other justice officials), Article 319/d (Passive corruption of a judge or official of international courts), Article 319/dh (Passive Corruption of a Domestic and Foreign Arbitrator), Article 319/e (Passive corruption of members of foreign court juries), Article 164/a (Active corruption in the private sector), Article 164/b (Passive corruption in the private sector), Article 257 (Illegal benefit of interests) and Article 257/a (Refusal to declare, non-declaration, concealment or false declaration of assets, private interests of elected persons and public officials or of any other person that is legally binding for the declaration.), Article 245 (Active corruption of high state officials and local elected representatives), Article 260 (Passive corruption by high state officials or local elected officials), Article 319 (Active corruption of judges, prosecutors and other justice officials) and Article 319/ç (Passive corruption of judges, prosecutors and other justice officials).

vice-chair of the National Judicial Conference and a member of the Electoral College. HIDAACI found discrepancies between the documentation submitted by the subject as part of his asset declaration and official data from state authorities which accounts approximately €2.6 million.²⁵

The case turned into a legal battle between the Prosecution Office of Elbasan and the judge over investigation deadlines and responses to letters rogatory sent to French and German authorities requesting information on the defendant's assets. At the time, the prosecution argued that the information required in the letter was very important for the investigation, as the assets that were suspected as having been falsely declared by the citizen Gjin Gjoni and his wife were declared as the main source of profits from businesses created by the suspect Çausi in collaboration with a German citizen, a former partner in her private activities.

Despite the serious allegations against Gjoni, the High Council of Justice and the Elbasan Court refused to suspend him while he was under investigation. Meanwhile, by filing lawsuits on proceedings, Gjoni hampered the investigations of the Elbasan Prosecutor's Office. Eventually, the court halted investigations before the prosecutors could make a decision on the case. Finally, the case against Gjoni and Çausi was dismissed by the Court of Appeals in Durrës which, after reviewing the appeals of the parties, came to the conclusion that regarding the accusations against the spouses, there was no case to be answered, thereby rendering the case *res judicata*. The investigation was reopened in January 2017. The data requested from Germany and France has since arrived, but it remains unclear whether the new records will have consequences because the investigations against Gjoni and his wife have been closed by a final court decision.²⁶

Upon completion of the process of auditing public institutions, the Supreme State Audit Institution (SSAI) publishes performance audit reports. The prosecution is supposed to use these reports to identify clues that could lead to the initiation of investigations. The decision of the prosecution not to proactively launch a financial investigation is, therefore, relevant in the context of the Albanian justice system. This was observed in "Waste Incinerators" case. In the case of the waste incinerator in Fier, the Prosecution Office of Fier did not intervene *ex officio* even after the SSAI had published three audit reports on the Municipality of Fier (2013–2019).

The Albanian government awarded three contracts to build waste-to-energy incinerators in the municipalities of Elbasan (2014), Fier (2016) and Tirana (2017) through public-private partnership investment schemes. The total value of the three incinerators is approximately €178 million.²⁷ In all three cases, the companies that were awarded the contracts by the Albanian government were the sole bidders. Although formal tendering procedures were followed for the incinerators of Fier and Tirana, the government began the procedures after having received unsolicited proposals from the sole bidders or companies associated with them. Furthermore, key individuals in the three companies are closely associated to each other through formal business partnerships or acquisitions.²⁸ This suggests a grand corruption scheme whereby the same business stakeholders have submitted three proposals to build incinerators and the Albanian government has awarded the contracts without ensuring proper competitive standards have been upheld.

²⁵ HIDAACI Press Release, 23 April 2014, <https://bit.ly/2OoXnLt>

²⁶ Besar Likmeta, "Gjon Gjoni's file is reopened, but the judge is defended by a court decision" (article in Albanian), *reporter.al*, 31 January 2017, <https://www.reporter.al/rihapet-dosja-e-gjin-gjonit-por-qjyqtari-mbrohet-me-vendim-gjykate/>

²⁷ Aleksandra Bogdani, "The controversial incinerator concessions in Albania" (article in Albanian), 23 May 2018, zeriamerikes.com/a/koncesionet-inceneratorret/4406473.html

²⁸ Artan Rama, "Waste management: business profits, government failure" (article in Albanian), *exit.al*, 27 September 2017, exit.al/menaxhimi-i-mbetjeve-deshtim-i-qeverise-parajse-per-bizneset-e-dyshimta/

It is alleged that Mirel Mertiri and Klodian Zoto, two businessmen close to the former minister of finance and economy, Arben Ahmetaj of the Socialist Party – and with connections to the Democratic Party – have conspired with Albanian government officials to award waste incinerator contracts to companies that are run by their associates.²⁹ Furthermore, the SSAI reports identified violations and irregularities related to the implementation of the incinerator project as well as undeclared payments.³⁰ Until October 2020, the Prosecution had not initiated investigations on corruption. Its action was prompted following a criminal report filed with the SPAK by the opposition Democratic Party.³¹

There are similarities between the aforementioned case and the “Health System Procurements” case. The Ministry of Health and Social Welfare procured four important services for the public health system using the public-private partnership model. The procured services, which together were worth at least €289 million, were for health checks for 40–65-year-olds, the sterilisation of hospital equipment, laboratory services and haemodialysis.³² In the form of a number of audit reports, the Supreme State Audit Institution has addressed the merits of the four concessions and their hidden costs. These reports included recommendations for amendments to the terms of the procurements contracts, but have not pushed for any penal procedure.³³ These procurements were opposed by the political opposition and criticised by the media because of their lack of efficiency, their cost, irregularities in the procurement procedure, and the fact that unknown and inexperienced companies were the beneficiaries. The local media outlet BIRN conducted an investigation and revealed that the main person behind the consortium that won the contract for hospital equipment sterilisation had a personal affiliation with Minister of Health Ilir Beqaj.³⁴ The investigation into these health concessions was launched in 2015 by the Serious Crime Prosecution Office. The passivity in the investigation procedures and the lack of transparency in the work of the Serious Crime Prosecution Office generated the suspicion of meddling with the political establishment.

The winner of the haemodialysis concession was the company Evita sh.p.k, which was awarded a 10-year contract worth €71 million. This company was relatively unknown on the pharmaceutical and medical market in Albania. For the surgical equipment sterilisation concession, the winner was the “Servizi Italia Spa” consortium, a merger of three Italian companies: “Servizi Italia”, “Tecnosanimed”, “U.Jet S.r.l”, which is 40% owned by “Investital LLC”, a Kosovo based company. According to the BIRN investigation, the 120 million US\$ for the check-up concession was won by the company 3P Life Logistik, a joint venture between Marketing & Distribution (which previously sold office goods and held 80 per cent of shares in the joint venture) and Trimed sh.p.k, whose main activity was the

²⁹ For a historical review of the connections and activities of Mertiri and Zoto, see Aleksandra Bogdani and Besar Likmeta, “Politics behind the waste [management]: Who is the businessman in the shadows of the incinerator monopoly?” (article in Albanian), *reporter.al*, 17 September 2020, <https://www.reporter.al/politika-pas-plehrave-kush-eshte-biznesmeni-ne-hije-i-monopolit-te-inceneratoreve/>. See also Artan Rama, “Waste management: business profits, government failure” (article in Albanian), *exit.al*, 27 September 2017, <https://exit.al/menaxhimi-i-mbetjeve-deshtim-i-qeverise-parajse-per-bizneset-e-dyshimta/>.

³⁰ “Millions for incinerators. Likmeta: Current concessionary contracts continue to be financed by the state” (article in Albanian), *euronews.al*, 2 October 2020, <https://euronews.al/al/aktualitet/2020/10/02/shperndahen-miliona-per-inceneroret-gazetari-besar-likmeta-tregon-se-kush-eshte-perfituesi>

³¹ “Incinerators – DP files lawsuit with SPAK: Rama and Ahmetaj must be investigated” (article in Albanian), *gazetamapo.al*, 19 October 2020, <https://gazetamapo.al/inceneroret-pd-padit-qeverine-ne-spak-te-merren-ne-hetim-rama-dhe-ahmetaj/>.

³² See Albanian Parliament, “Report on the 2018 budget”, page 119. <http://parlament.al/Files/ProjektLigje/Relacioni-PB-2018.pdf>.

³³ “The prosecution launches investigations into Beqaj’s multimillion-dollar concessions” (article in Albanian), *balkanweb.com*, 13 October 2016, <https://www.balkanweb.com/prokuroria-nis-hetimet-per-koncesionet-multimilioneshe-te-beqaj/>

³⁴ Elton Qyno, “Albanian emigrant wins US\$100 million sterilisation concession” (article in Albanian), *reporter.al*, 24 November 2015, <https://www.reporter.al/emigranti-shqiptar-fiton-koncesionin-100-milion-usd-te-sterilizimi>

sale of pharmaceuticals. The license to build biochemical laboratories was issued two days before the deadline for submission of bids. Moreover, the joint venture's bid was the highest submitted.

When examining the evidence, the court verifies whether the evidence obtained using special investigative techniques was obtained legally, whether it is authentic and whether it proves directly or indirectly the criminal offence (within the meaning of Article 152 of the Criminal Procedures Code).³⁵ Special investigative techniques may include wiretapping or surveillance that takes place before the suspect has committed the crime and video/audio surveillance in private or public venues. The probative force of evidence depends on how that evidence was obtained. For this reason, wiretapping conducted in accordance with the rules of criminal procedure has, for example, a greater probative value than private voice recordings. A study conducted by the Albanian Helsinki Committee (2016) on criminal offences of corruption shows that the inadequate assessment of evidence administered in the judicial process or their insufficiency to build a case due to limited investigations conducted by the Prosecution Office has led to the dismissal of criminal cases or the acquittal of defendants accused of corruption.³⁶ This was also observed in the "Meta-Prifti" court case, where the Criminal Panel of the Supreme Court ruled that defendant Ilir Meta was not guilty after deeming material evidence in the form of audiovisual material obtained by foreign experts to be inadmissible because these experts had not been appointed in accordance with the European Convention on Mutual Legal Assistance in Criminal Matters as well as with relevant provisions of the Criminal Procedures Code and Law No. 10193/2009.³⁷ In 2011, a private national television channel broadcast an audiovisual recording made using a hidden camera and including conversations between two high state officials, Dritan Prifti and Ilir Meta, members of parliament and ex-ministers, concerning the illegal appointment of persons in various public institutions, as well as the favouring of subjects in auction and concession procedures in return for material benefits. The requests for favours included the request that featured in the recording, namely that a certain subject be awarded a concession for the construction of a hydropower plant Egnatia Shushicë, in return for €700,000, 7-per cent of company shares and an additional €1 million for issuing an auction for the sale of gross oil in favour to another subject.³⁸ Ilir Meta is currently serving as president of the Republic of Albania.

The opinion provided by expert witnesses from an American company who specialise in video forensics concluded that the content of the recording had not been altered. The Albanian expert witnesses appointed by the court rejected the conclusion of these foreign expert witnesses. The conclusion of the Albanian experts was that the audiovisual material of the people engaged in the conversation could have been altered. The Albanian experts voiced the opinion that the material had not been proven to be original. The prosecution asked the court to allow a new evidence with new foreign experts but the Court rejected this request. In view of the disputed probative force of the audiovisual recording, the court acquitted the defendant (High Court Decision No. 8 of 16.01.2012).

³⁵ Article 152 of the Criminal Procedural Code of the Republic of Albania "No evidence shall have a value predetermined by law. After examining evidence in its entirety, the court shall evaluate its authenticity and proving value, specifying the reasons providing the basis for its judgement. The existence of a fact cannot be inferred from circumstantial [indicia] evidence, unless such evidence is serious, precise and consistent".

³⁶ Albanian Helsinki Committee, *Study Report on Criminal Offences of Corruption and Forms Abuse of Duty* (text in Albanian), Tirana, 2014, page 47, <https://bit.ly/3teiFdy>.

³⁷ Law No. 10193 of 13 December 2009 on Jurisdictional Relations with Foreign Authorities in Criminal Matters

³⁸ http://www.gjykataelarte.gov.al/web/Vendime_te_Ceshtjeve_Gjykim_Juridiksion_Fillestar_38_1.php

Political interference in judicial proceedings

Impunity for corruption can also be the result of political pressure, especially when it comes to accusations against senior state officials. Political interference in the justice system not only weakens its independence but at the same time undermines its effectiveness. The exertion of political influence on the Albanian judiciary is also addressed in the European Commission Progress Report (2019) and the US Department of State Report (2019). An example of the political pressure put on the performance of the judiciary is the “Tahiri” case. Saimir Tahiri, member of Parliament and former interior minister, was charged with several criminal offences following media reports of the arrest of a group of drug dealers after the wiretapping of this group by the Italian police. Tahiri and Jaeld Çela, former director of the local police station in Vlora, were accused of helping the criminal group. According to the accusation, during the period 2013–2017, the defendants allegedly provided information to the group and removed any possible obstacles from trafficking drugs from Albania to Italy. The Serious Crimes Prosecution Office asked Parliament to remove his parliamentary immunity and to give permission for him to be detained.³⁹ The Parliamentary Committee of Mandates and Immunities failed to reach a consensus and decided to vote in a plenary session. With 75 members voting for the motion and 60 against, the parliament authorised only the investigation and the search of Tahiri’s apartment, but not his arrest. This was the first time that parliament rejected a request from the Serious Crimes Prosecution Office to lift the immunity of one of its members. This decision put the ruling party and the prime minister in a tight corner. As a compensatory measure, the prime minister and his party decided to expel Tahiri from the Parliamentary Group of the Socialist Party and suspend him from party functions until a ruling was made on the case. The evidence put forward by the prosecution included communications where valuable gifts and a 30-per-cent share of narcotics proceeds for Tahiri and his family were discussed. In 2019, the Court of First Instance for Serious Crime declared Tahiri guilty of the criminal offence of abuse of office only and acquitted him of drug trafficking and being part of criminal group. The case was retried by the Special Court of Appeal against Organized Crime and Corruption which decided the rejection of the decision no. 60 date 17.09.2019 of the Court of First Instance for Serious Crime, currently the Special Court against Corruption and Organised Crime, and return for revision of the case in this court.

Compromised integrity of the judiciary and impunity for corruption

There is a culture and a practice of impunity or soft sentencing when it comes to the level of punishment of grand corruption in Albania. The cases examined for the purpose of this study show a tendency of judges to apply alternative sentences to senior officials, as a result of which the convicted do not serve a single day in prison. A clear example of this is the case of the former interior minister Saimir Tahiri. The court decided to suspend Tahiri’s prison sentence for abuse of office and instead put him on probation for three years. The case of former Supreme Court judge Majlinda Andrea had the same outcome. Here, the Criminal College of the Supreme Court decided to suspend his prison sentence and convert it into three years of probation service. Another important issue is the fair and equal implementation of the law. A review of the court cases analysed shows that in most cases, the courts have imposed the minimum and average sentence stipulated in each criminal offence of the Criminal Code. For example, in the Tahiri case, the sentence was reduced by one-third of the measure outlined in the Criminal Procedures Code. Tahiri was consequently sentenced to three years and four months in prison, even though the Criminal Code specifies that the criminal offence of abuse of office is punishable by up to seven years in prison. For the same criminal offence, the Serious Crimes Court sentenced Jaeld Çela, former director of the

³⁹ Armand Mero “Prosecution seeks Tahiri’s arrest” (article in Albanian) Voice of America in Albanian, 19 October 2017 <https://www.zeriamerikes.com/a/4077296.html>.

Vlora Police Directorate, to five years in prison (reduced to three years and four months due to a shortened trial). Unlike Tahiri, Çela's prison sentence was not commuted to probation service.

According to the provisions of the Criminal Code, sanctions for criminal corruption offences vary from six months to three years in prison for various forms of active corruption and four to twelve years for forms of passive corruption.⁴⁰ Referring to the provisions of this code on various criminal offences, the judge may take into account mitigating and aggravating circumstances among other elements (Article 37) when imposing a sentence. In the case of corruption offences, the Criminal Code does not provide for specific aggravating circumstances. It also provides for the case of alternative punishment (Article 59), which implies suspension of the execution of an imprisonment sentence and the placing of the convict on probation, the obligation to appear before the prosecution or a ban on exercising public functions for a specific period.

Impunity of high officials for corruption is related to the professional incompetence and lack of integrity of judges and prosecutors. An example of the poor professional performance of the prosecution is the case of the former minister of energy and infrastructure, Damian Gjikhuri.

In 2015, the Supreme State Audit Institution (SSAI) filed a lawsuit against the minister and the state attorney, claiming that they had failed to safeguard the state's financial interests and had caused financial damage of €479 million when negotiating a settlement between the Albanian government and the Czech energy company CEZ a. s. In 2012, the Albanian government had decided to revoke CEZ's licenses to operate in the country due to the company's gross mismanagement of the electricity distribution system. The company sued the Albanian government under UNCITRAL arbitration rules on 15 May 2013. A negotiating team was appointed by the Albanian prime minister to settle the dispute with the company. The settlement agreement was signed by both parties on 23 June 2014 and was ratified by Parliament on 31 July 2014. SSAI audited the negotiating procedures and found that the team had not kept records of the negotiations it had conducted and that it had failed to safeguard the taxpayer's interests by agreeing to pay a settlement that was not justified by the financial records of CEZ.⁴¹

The General Prosecutor's Office decided to close the investigation of the case in June 2016, arguing that the facts confirmed by the investigation did not amount to abuse of power. The SSAI appealed the prosecution's decision with the High Court, which decided in favour of the prosecution. The High Court decision accepts the prosecution's conclusions by citing procedural acts without a comprehensive analysis of the SSAI findings. The decision fails to explain the legal reasoning of the prosecution to argue that the facts confirmed by the investigation did not amount to a crime, and the legal basis for the High Court's support for the decision taken by the General Prosecutor's Office.⁴²

Similarly, the prosecution failed to investigate the case of the former mayor of Durrës, Vangjush Dako, for vote-rigging and cooperation with organised criminal groups during the 2017 general elections. The local Avdulaj clan allegedly cooperated with Dako – a member of the Socialist Party (SP) steering committee at the time and responsible for the election campaign in Durres – to buy

⁴⁰ Active corruption of persons exercising public functions is punishable by six months to three years in prison, while passive corruption is punishable by two to eight years in prison. Active corruption of senior state officials or local elected officials is punishable by one to five years in prison, while passive corruption is punishable by four to twelve years in prison. Active corruption of judges, prosecutors and other justice officials is punishable by one to four years in prison, while passive corruption is punishable by three to ten years in prison.

⁴¹ Supreme State Audit Institution, "SSAI files charges against the minister of energy and industry and the state's general advocate" (text in Albanian), 14 October 2015, http://klsh.org.al/web/KLSH_kallezon_penalisht_Ministrin_e_Energjise_dhe_Industrise_dhe_Avokatin_e_Pergjithshem_te_Shtetit_1605_1.php

⁴² High Court Decision No. 20 of 24 October 2016.

votes for and coerce public employees to vote for the SP in exchange for favoured treatment in local institutions.⁴³

Key sectors affected and politicisation of oversight and regulatory bodies

The key sectors of the economy that have been affected by grand corruption in the cases we selected included (i) energy, (ii) infrastructure (transportation and waste management), (iii) defence and (iv) healthcare. These are important sectors for the country's security, development and welfare. The privatisation of services and assets has been mired in corruption and mismanagement through contracts that have benefited the private contractor at the expense of societal development.

In the last eight years, closed tendering procedures and classified contracts have increasingly become an issue as they present significant corruption risks.⁴⁴ Among the cases examined, the contract between the Albanian government and Bankers Petroleum Ltd. is confidential due to a mutual agreement between the parties. It is important to note, however, that the government has failed to hold the company accountable for alleged tax evasion and destruction of property. Notwithstanding the corruption of politicians who hold public office, which enables contracts that are drafted to clearly favour private interests and enrich corrupt politicians, the politicisation of oversight and regulatory bodies is an important enabler of grand corruption schemes.

One such regulatory institutions is the Public Procurement Commission. The five members of the Commission – the institution tasked with examining complaints regarding procurement procedures – are nominated by the prime minister and appointed by the Parliament. Furthermore, the selection procedures are approved by the Council of Ministers.⁴⁵ Similarly, the appointment of the director and recruitment of the personnel of the National Agency for Natural Resources are not regulated by the Civil Servant Law. Appointed by the minister in charge of energy policy, the director can also hire the agency's personnel.⁴⁶ The agency is the primary body that oversees natural resource exploitation, including mining, hydrocarbon and energy.

The heads of other important institutions such as the General Directorate of Customs are also political appointees.⁴⁷ Politicisation of these important institutions leads to either no enforcement or selective enforcement of legal provisions, thus fostering theft of public assets and capital, illicit enrichment of public officials and business monopolies, whose stakeholders include former or incumbent government officials.

⁴³ Klodiana Lala, "Wiretaps reveal the role of organised crime on vote-buying in Albania" (article in Albanian), *zeriamerikes.com* (Voice of America), 30 January 2019, <https://www.zeriamerikes.com/a/4765322.html>

⁴⁴ Gjergj Erebara, "Millions of euros spent by the [Albanian] government in secret procurement contracts" (article in Albanian), *reporter.al*, 27 May 2019, <https://www.reporter.al/qeveria-kontraktot-miliona-euro-shpenzime-me-kontrata-sekrete/>

⁴⁵ Article 25, Law no. 162/2020 'On public procurement'. <http://www.app.gov.al/legjislacioni/prokurimi-publik/liqji/>

⁴⁶ See Decision of Council of Ministers No. 547 of 9 August 2006 on the Establishment of the National Agency for Natural Resources, www.akbn.gov.al/vkm-547/. Also the Regulation of the National Agency for Natural Resources, 2018, <http://www.akbn.gov.al/rregullore-e-akbn-perditesuar-ne-korrik-2018/>

⁴⁷ For more information on the politicisation of civil service, see OECD, *Monitoring Report: The Principles of Public Administration: ALBANIA*, Paris, OECD Publishing, 2017, pages 64–65, <http://www.sigmaweb.org/publications/Monitoring-Report-2017-Albania.pdf>

TAILOR-MADE LAWS: DECONSTRUCTING THE MECHANISM

As a post-communist country with a prolonged transition to a market economy, Albania is no stranger to grand corruption and instances of state capture. The European Commission's (EC) 2018 *Strategy for the Western Balkans* articulated for the first time in an official document the long-standing fear of many civil society activists in the Western Balkan (WB) region that state capture would take hold. "Today, the countries [of the western Balkans] show clear elements of state capture, including links with organised crime and corruption at all levels of government and administration, as well as a strong entanglement of public and private interests."⁴⁸ Freedom House's *Nations in transit* report on Albania found that country's "progress made in 2017 to reduce petty corruption was offset by lost ground in the fight against grand corruption and state capture" while the anti-corruption strategy has focused almost exclusively on administrative corruption and neglected political corruption and state capture.⁴⁹ Over the past few years, media investigations and watchdog organisations in Albania have raised serious doubts⁵⁰ over grand corruption through different mechanisms such as concessions⁵¹ and public-private partnerships (PPPs)⁵². While many of these cases involved concerns over the implementation of legal procedures through unethical and corrupt practices, few media investigations shed light on an even more grave form of state capture taking place at the legislative process.⁵³

The subsequent part of the report will analyse the mechanism of Albania's tailor-made laws – the flaws in the system, deficiencies in the drafting and law-making processes and other challenges that have together helped powerful individuals or networks to protect and advance their illegitimate interests through laws.

The principles of high-integrity law-making

To better understand the mechanism of Albania's tailor-made laws, it is essential to examine how successful and high-integrity legislative processes should work. In a parliamentary democracy like Albania, the legislative process develops in two stages: the preparatory phase, which identifies the needs and options for new legislation and concludes with its actual drafting, and the parliamentary scrutiny and adoption of the legislation. While various constitutions allow different actors (for example, a group of members of parliament, citizens etc.) to initiate new legislation, the dominant practice shows that legislative processes develop mostly between the government and Parliament. The vast majority of laws adopted by Parliament in Albania, are in fact proposed by the executive branch.

⁴⁸ European Commission "A credible enlargement perspective for and enhanced EU engagement with the Western Balkans" (COM(2018) 65 final), page 3, https://ec.europa.eu/commission/sites/beta-political/files/communication-credible-enlargement-perspective-western-balkans_en.pdf

⁴⁹ Freedom House, "Nations in Transit" Albania 2018, page 10, https://freedomhouse.org/sites/default/files/NiT2018_Albania_0.pdf

⁵⁰ "Fusha's' project with nearly 90,000-square-metre towers and theatre revealed" (article in Albanian), *reporter.al*, 19 July 2018, <https://www.reporter.al/zbulohet-projekti-i-fushes-me-afro-90-mije-metra-katrore-kulla-dhe-teater/>

⁵¹ "Concession of labs: Pegasus is behind the shell company in the Netherlands" (article in Albanian), *report.al*, 11 May 2017, <https://www.reporter.al/koncesioni-i-laboratoreve-pas-kompanise-quacke-ne-holande-qendron-pegasus/>

⁵² "Neither a concession nor tender, Gjiknuri and Ahmetaj to negotiate the airport with the Turks" (article in Albanian), *report.al*, 29 January 2019, <https://www.reporter.al/as-koncesion-as-tender-gjiknuri-dhe-ahmetaj-do-te-negociojne-aeroportin-me-turqit/>

⁵³ "How did the gambling industry captured the Albanian parliament" (article in Albanian), *reporter.al*, 9 October 2018, <https://www.reporter.al/si-u-kap-parlamenti-shqiptar-nga-industria-e-bixhozit/>

Although Parliament has the exclusive authority to adopt national legislation, the integrity of the legislative process stretches beyond this institution and must encompass all actors and procedures from the inception of the process. A Council of Europe (CoE) assistance mission to the Anti-corruption Strategy of Azerbaijan (2009) outlined a number of key principles for a well-designed and high-integrity legislative process. These include **institutionalisation** (a clear set of rules and organisational procedures for the law-making process), **professionalism** (expert staff assisting the process), **collective decision-making** and consideration⁵⁴ and **justification**⁵⁵. While these principles complement other mechanisms and measures that seek to restrict corruption in the legislative process (for example, conflicts of interests, political party financing), another two principles are of particular importance for the essence of a democratic legislative process:⁵⁶

- **Transparency** is a minimum requirement if there is to be any effective democratic scrutiny of draft legislation. “Transparency means – at a minimum – the publication of government legislative plans, outline proposals for legislation, initial draft laws submitted by an initiator, and drafts approved by the government for submissions to Parliament. However, this is hardly sufficient for citizens or groups with interest in participating in debate on draft legislation to be equipped with sufficient information. In addition, it should be considered whether to make public comments on a draft law which are submitted by institutions within government”⁵⁷. The principle also implies that all parliamentary documents related to the scrutiny of a piece of draft legislation and the voting record of MPs should be made public.
- **Consultation**, which give individuals and groups in society an equal chance to comment on a draft law. Consultation is likely to improve the quality, increase the legitimacy and therefore lower the costs of the enforcement of the law. This instrument is ideal for addressing the danger of unrestricted lobbying. Consultations, targeted and/or open, may take place at all stages of the process – before and after the government approves a draft for submission to Parliament – until its final improvement by Parliament.

The integrity of the legislative process depends not only on the extent to which the above principles are enshrined in the rules regulating the legislative process, but also on the extent to which the democratic culture of actors involved and the law-making process itself reflects these principles in practice.

How does Albanian legislation translate the standards for high-integrity law-making into practice?

⁵⁴ The Parliamentary Rule of Procedure (Article 75) allows every Member of Parliament and the Council of Ministers to submit proposed amendments to law at the plenary session of the Parliament on condition that these amendments are registered up to 24 hours before the plenary session and are shared with other MPs. This means that the amendments proposed by any individual member of parliament 24 hours before the plenary session would not get the opportunity to be collectively discussed by the parliamentary committee, nor would it be possible to get the expert opinion of the committee’s expert staff and advisors (professionalism). This casts serious doubts over the integrity of the law-making process.

⁵⁵ The principle implies that the proposed legislation should be accompanied by a detailed report summarising the current legal framework that identifies and explains the need for a legislative change, why the proposed law or amendment is the optimal solution and other aspects (for example, financial impact and costs).

⁵⁶ Quentin Reed, “Technical Paper: Curbing Corruption by Maximizing Integrity and Efficiency in the Legislative Process: an Overview of the Issues following the Roundtable Discussion on Improving Efficiency and Integrity in the Legislative Process, Milli Majlis of the Republic of Azerbaijan, 11 February 2009”, pages 8–12, prepared as part of the Council of Europe Support to the anti-corruption strategy of Azerbaijan (AZPAC) project, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806ee59b>

⁵⁷ Ibid page 11.

Integrity of law making – the case of Albania

Article 81 of the Constitution of Albania recognises the right of the government, individual members of parliament and 20,000 electors to propose laws.

“The Council of Ministers, every MP and 20,000 electors each have the right to propose laws.”

- Article 81(1) of the Constitution of Albania

According to annual reports of the Parliament of Albania, the Council of Ministers submits an average of 80–85 per cent of all the draft laws that are reviewed by Parliament every year. With almost no cases of draft laws submitted by 20,000 voters over the last three decades,⁵⁸ the remainder of all draft laws are submitted by MPs.⁵⁹ This analysis focuses on the law-making dynamics between the government and Parliament – the rules and procedures, as well as their application.⁶⁰

The rules that regulate the process of law-making between the government and Parliament are detailed in the legislation regulating the work of these two institutions and in various other laws.⁶¹ This process develops through a number of stages at the executive and Parliament. See Table 1 over leaf.

⁵⁸ Until 2019 there has been a legal vacuum regarding the issue of citizens' legislative initiative. The parliament addressed this legal vacuum by adopting the law no 54 / 2019 “On the legislative initiative of electors in the Republic of Albania” in July 2019. By the end of 2020, three citizens' legislative initiatives were underway to gathering 20,000 signatures by electors which, if successful, would have to be considered by the Parliament.

⁵⁹ See Annual reports of the Parliament 2013–2018, <https://www.parlament.al/RaporteStatistika?statusId=1>.

⁶⁰ Considering the weak role of Parliament and the strong position of party leaders, particularly after the 2008 constitutional amendments in Albania, the law-making process over the past decade or so has been largely dominated by the executive branch. “The 2008 constitutional amendments provided for a powerful executive, and an even stronger prime minister and ruling majorities”. See “Nations in Transit 2020 – Albania”, Freedom House 15 July 2020.

⁶¹ Such as Law No. 146/2014 on the Right to Information and Law No. 119/2014 on Notification and Public Consultation

Table 1. Government-initiated draft laws – from drafting to adoption

EXECUTIVE LEVEL (COUNCIL OF MINISTERS) – DRAFTING PROCESS					PARLIAMENTARY REVIEW	
Government ministry/ies propose(s) the draft law						
	The draft law is submitted to other ministries and institutions for opinion. ⁶²					
		The proposing ministry reviews the draft as per the recommendations.				
			The draft law is submitted at a government meeting.			
				The government adopts the draft law and submits it to Parliament		
					Parliamentary committees review the draft.	
						The draft law is adopted at a plenary session.

⁶² The Ministry of Justice is requested to issue an opinion for every draft law prepared by the executive. Depending on the subject matter of the law, the opinion of other ministries is compulsory too (for example, the Ministry of Finance is obliged to give an opinion on draft laws relating to the economy).

The principles of a well-designed, high-integrity legislative process are translated to a varying degree in the rules of Albania's law-making process. As the subsequent analysis shows, their application in practice is even more diverse, depending on the specific stage of the process.

The legal framework regulating the law-making process for laws initiated by the government is not consistent in terms of transparency or consultation, which ensure the integrity of the process. As the next section shows, the Regulation of the Council of Ministers is more concerned with sanctioning the confidentiality of the law-drafting process than with its transparency and inclusiveness. Contrary to the executive's approach, the process of reviewing draft laws at parliamentary level relies more heavily on such principles. Furthermore, the different stages of the law-drafting process at executive level differ quite considerably with regard to the application of these principles – varying from “no application whatsoever” to “very limited application”. Finally, the level of transparency and participation varies considerably not only in theory (the rules themselves), but also in practice (the implementation of those rules) – both at various stages of the law-making process (most often at government level) and even within these various stages.

Drafting laws at executive level – The standards on paper

Articles 23 to 27 of Law No. 9000 of 30 January 2003 on the Organisation and Functioning of the Council of Ministers set out the rules of the legislative drafting process by the government. The process is coordinated at government level, which implies that cabinet ministers and other institutions under the authority of the government may be invited to submit opinions on the draft legislation. Additionally, draft legislation may be jointly drafted by more than one cabinet ministry. Following internal consultations at government level, draft legislation must be submitted at the meeting of the Council of Ministers for approval. The draft law is subsequently officially submitted to Parliament for parliamentary review. With the exception of Article 18 (Guaranteeing the impartiality of the members of Council of Ministers) which elaborates on conflicts of interests of government ministers, the law does not set out any principles for the drafting and review of draft legislation at executive level.

The general guidance provided by Law No. 9000/2003 regarding the first stage of the legislative phase (drafting of the laws at executive level) is elaborated in more detail in the Regulation of the Council of Ministers.⁶³ The main objective of the document is to set rules on the drafting, presentation and review of draft legal acts by the government, and also on the meetings of the Council of Ministers.

As explained in the previous section, the regulation has several deficiencies that prevent the application of the key principles of high-integrity legislation in the process of preparing and reviewing draft laws. The law-making process during the government stage – that is, the preparation and review of draft laws – evolves over a number of steps and phases.

The government's annual analytical programme of draft legislation

Article 7 of the regulation stipulates that each line ministry should prepare and submit to the Council of Ministers in December each year the so-called programme of draft legislation that it intends to prepare and submit for review to the government. The programme must include the list of draft legal acts, deadlines for submission and a detailed justification of the reasons and need for each of the draft acts. Based on these proposals, the government adopts its annual analytical programme of the draft legislation it intends to review and submit to Parliament for approval.

⁶³ Council of Ministers Decision No. 584 of 28 August 2003 on the adoption of the Regulation of the Council of Ministers

This document is of great importance for the improved streamlining and coordinating⁶⁴ of the executive's agenda for drafting legislation and for Parliament as the legislative authority, especially at a time of very high intensity in the law-making process. Over the period 2015–2019, the Parliament of Albania adopted an average 268 legal acts (laws, resolutions, decisions etc.) a year.⁶⁵ Considering that over 80 per cent of these draft laws are proposed by the government, the annual analytical programme of draft laws is a much-needed instrument for the coordination of the legislative process. This instrument also has the potential to be **transformative for the integrity of the legislative process**. The **Government's analytical program is not publicly accessible on the Government's website, unlike the Parliament's legislative plan** which is regularly updated and published online on its website. The government regulation's provisions do not forbid its publication, but neither do they actually prescribe it as a rule.⁶⁶

Quite apart from the need to coordinate with Parliament, transparency and public access to this document is important because it creates the conditions that enable civil society, media and other third parties to get involved in the drafting phase of the legislative process and allows them to hold the government accountable. A number of highly suspicious legislative proposals from the government have come as a complete surprise and were only announced at a very late stage in the process, namely at the adoption of the draft law by the government or its submission to Parliament. This has been the case with the Vlora Airport Law and linked plans to establish the Air Albania Company, the National Theatre Special Law and other legal acts that have prompted public discontent in the forms of protest or petitions. For example, Prime Minister Edi Rama announced for the first time on 17 January 2018 that the government had just received an official unsolicited offer to build an airport in Vlora.⁶⁷ Two weeks later, on 1 February 2018, Parliament adopted Special Law No. 4/2018 of 1 February 2018 on Establishing a Special Procedure for the Negotiation and Signing of Contracts between Albania and the companies CENGIZ CONSTRUCTION and KALYON & KOLIN CONSTRUCTION, for the Planning, Building, Operation, Maintenance and Management of the Airport in the City of Vlora.⁶⁸ This means that in a little over ten working days, the government (1) established a working group to draft the law; (2) the draft law was sent to other ministries and interested institutions for opinion; (3) the proposing ministries received and reflected on such feedback; (4) the government approved the draft law at a meeting and sent it to Parliament for review; (5) Parliament sent it to the respective standing committees; (6) the standing committees held meetings and approved the draft law; and finally (7) Parliament adopted the law at a plenary session. Fourteen calendar days are not enough to allow for a professional process of all these stages and they certainly do not leave room for the minimum time of public consultation required by law to enable interested parties, including the general public, to articulate their recommendations. The lack of transparency has therefore prevented the consultation and participation of the public and interest groups, which would improve the integrity of the process.

However, it seems that the government of Albania did not plan to hold any consultations with the public or interested parties for any of the above-mentioned draft laws (Vlora Airport and for the National Theatre special law). The Analytical Programme for the year 2018, which was adopted by Decision No. 37 of 24 January 2018 of the Council of Ministers, did not include them in the plans for

⁶⁴ Article 27 Point 2 of Law No. 9000/2003 stipulates that the government's annual analytical programmes must be aligned and coordinated with the Parliament's legislative programme.

⁶⁵ Gjergji Vurmo, *Tailor-made laws in the Western Balkans – state capture in disguise*, Center for European Policy Studies – CEPS, No. 2020-12 / May 2020, page 7, https://www.ceps.eu/download/publication/?id=27562&pdf=PI2020-12_GV-State-capture_in_disguise.pdf

⁶⁶ The annual analytical programme is adopted by a decision of the Council of Ministers and is therefore published in the Official Gazette. The 2018 Analytical Programme (text in Albanian) can be accessed at https://qbz.gov.al/share/mchQNlr7RYKq-M_V1DlnFA.

⁶⁷ "Rama: Construction of Vlora Airport to start in June" (article in Albanian), 17 January 2018, shqiptarja.com, <https://shqiptarja.com/lajm/rama-ne-qershor-nis-puna-per-br-ndertimin-e-aerorit-te-vlores-br-br?r=app>

⁶⁸ Official Gazette: <https://qbz.gov.al/eli/ligj/2018/02/01/4-2018>

that year although the government had already started the procedure for at least one of them (Vlora Airport draft law).⁶⁹

Principles of institutionalisation and collective decision-making

Government ministries and agencies that are entitled to initiate draft laws and the different stages within this process should, theoretically, allow for suitable application of the principles for high-integrity law-making.

In fact, the legislative process at the drafting phase by the executive sufficiently applies the principles of **institutionalisation** and **collective decision-making**. For example, Law No. 9000/2003 and the Regulation of the Council of Ministers set out clear rules and procedures that have to be followed by government agencies and the Council of Ministers when drafting legal acts. Furthermore, regardless of which line ministry prepares the specific draft law, the final authority for approving the draft legislation is vested in the Council of Ministers and its collective consideration and decision-making.

Nevertheless, there is still ample room for improving legal rules regulating the process of drafting legislation at executive level and, to an even greater degree, the practical application of the rules.

(Lack of) Transparency in law-making as an issue of concern at executive level

Transparency is the key principle of high-integrity legislative processes that is absent from all of the phases of the drafting process at executive level. As emphasised above, transparency is a precondition both for the involvement of non-state stakeholders in the law-making process and for holding the executive accountable by the public.

The analysis of tailor-made laws in Albania shows that the government's process of drafting laws has not been fully transparent for any of the nine cases of tailor-made laws analysed for this report.⁷⁰ The same holds true for the consultation and involvement of various interest groups by government ministries while drafting the tailor-made laws analysed for this report.⁷¹ According to government representatives, the publishing of the text of draft laws at the www.konsultimipublik.gov.al portal ticks the transparency criterion box. However, interest groups and the general public are faced with a "*fait accompli*" on the public consultation portal, with a draft law that has been drafted by the government behind closed doors and without any access to the analysis or other information disposed by the government ministries while drafting the laws. Such an approach is enshrined in the legal provisions regulating the process of drafting laws at executive level.

Article 17 of Law No. 9000/2003 obliges all members of the cabinet to "avoid any sign of disapproval and to defend and support decisions of the government regardless of whether they have voted for or against them". Related documents such as reports, debates and assessments remain confidential, in other words, the public has no access to them.

The provisions of the Regulation of the Council of Ministers make no reference to the transparency principle either. Even in those few cases where the regulation reads that consultative meetings with

⁶⁹ Council of Ministers Decision No. 37 of 24 January 2018 on the General Analytical Programme of Draft Laws to be Presented for Review at the Council of Ministers during 2018, published in Official Gazette No. 9/2018, 31 January 2018, https://qbz.gov.al/share/mchQNlr7RYKq-M_V1DInFA

⁷⁰ See Appendix 1 for a detailed list and description of tailor made laws.

⁷¹ See Appendix 2.

civil society and non-state experts “may be held”,⁷² there is no mention of transparency and public access to documents related to the preparation of a specific draft law.

Lastly, the provisions of Law No. 119/2014 of 18 September 2014 on **the Right to Information** seem difficult to apply considering the limitation of Article 17 of Law No. 9000 on the Organisation and Functioning of the Council of Ministers, which underscores the principle of confidentiality. Consequently, any document or information related to the process of drafting and reviewing draft legislation at executive level remains confidential, unless some of them are made publicly available by the government itself.

Limited room for consultation with non-government stakeholders and the principle of professionalism

The Regulation of the Council of Ministers allows for quite a limited application of consultations during the preparation of the draft legislation (Articles 14 and 15) and during the last phase of the executive’s law-making process – that of presenting draft laws for review at the Council of Ministers (Article 50).⁷³ However, the regulation specifically allows the expertise of the governmental resources to be used, thereby applying the principle of **professionalism**.⁷⁴ In fact, Chapter V of the regulation (Coordination of draft legal acts) outlines in detail the rules and procedures that apply to the cooperation of line ministries and other governmental agencies in drafting a specific legal act. This process includes the relevant departments of these institutions, most notably their legal departments and the Ministry of Justice, which must provide an opinion on every piece of draft legislation being prepared by the executive. It is, of course, difficult to assess the extent to which the principle of professionalism has been safeguarded given the fact that the procedures followed during this stage of the process are neither transparent nor accessible to the public. Nevertheless, several cases of questionable laws initiated by the government in the past show that the principle of professionalism does not always result in high-quality feedback.

Furthermore, the law-making process at executive level does not properly apply the principle of **consultation**. The first phase of the legislative process at executive level involves the preparation of the draft by one ministry or a group of government ministries. The responsible ministry carries out a preliminary assessment of the legal initiative, offering explanations on the goals and objectives of the draft, how it complies with the government’s analytical programme and compliance with the legislation in force and other measures related to its eventual enactment. The department in charge of drafting the legislation carries out consultations with various state institutions and agencies, “including civil society structures whose activity is linked to the object, goals and implementation of the draft act” (Article 14). Additionally, it may seek the opinion of other experts “inside or outside the ministry” (Article 15).

These passages are not only vague (Article 15) but also leave ample room for subjective interpretation (Article 14) by civil servants and responsible departments in the ministry tasked with drafting the legal act. Indeed, these articles raise several pertinent questions: who are the civil society structures, considering that the Law on Non-profit Organisations (Law No. 8788 of 7 May 2001)⁷⁵ assigns specific names to the forms of formal NGOs? Do they include non-formal civil society groups? Are other interest groups – established on the basis of other laws such as religious groups, academia, business associations etc. – included in the formulation of “civil society

⁷² See Articles 14, 15 and 50 of Council of Ministers Decision No. 584 of 28 August 2003 on the Adoption of the Regulation of the Council of Ministers.

⁷³ Although the regulation does not specifically refer to “consultation”, Article 38 mentions “other persons who may help address the issue” in the event of disagreements between government ministries and agencies involved in the phase of the “coordination of draft legal acts”.

⁷⁴ See, for example, Articles 16, 17 and Articles 22 to 27 of the regulation.

⁷⁵ See Article 2 of Law No. 8788 of 7 May 2001 (as amended in 2007 and 2013).

structures”? Lastly and most importantly, which authority defines and decides whether or not the activity of certain civil society structures is linked with the object, goals and implementation of the draft act? Are the last three elements a cumulative condition or would fulfilling one or two of them suffice?

Similar doubts are raised in relation to Article 15 of the regulation, which relates to “experts outside the ministry”. Such vagueness gives the government room for abuse by involving in such closed consultations only those “civil society structures and experts outside the ministry” who favour the government or favour a certain position on issues being regulated by the draft legislation.⁷⁶

Standards of the Law on Public Notification and Consultation

Law No. 146/2014 of 30 October 2014 on Public Notification and Consultation outlines the rules and procedures for transparency and public participation in decision-making. Article 7 of the law established the electronic register of public consultation as the main portal for publication by government institutions of draft legislation and draft strategic documents and the gathering of public feedback for consideration by the government. This law gives government institutions the opportunity to gather “preliminary opinions” and other information from interest groups for the purposes of drafting legislation even before such a draft is ready (Article 12). In addition to online consultations and the gathering of written feedback from the public and interest groups, government institutions may also organise public meetings to discuss draft legislation and gather public feedback.

Law No. 146/2014 has been praised as a game-changer in the legislative process and citizen participation in decision-making. Indeed, the data shows that there have been some improvements in public consultations as a result of Law No. 146/2014. One such an improvement is that nearly 57 per cent of Albanians in 2019 said they are interested in participating in the decision-making processes of public institutions. The percentage of Albanians who feel that there are sufficient opportunities to participate in decision-making at central government has increased from 21 per cent in 2016 to 29 per cent in 2019.⁷⁷

Although the law stipulates that comments and recommendations made in the consultation processes will be reviewed in a transparent way and that draft legislation will be accompanied by a summary of accepted recommendations and reasons for rejecting other public feedback, this provision has not been implemented in practice. In fact, the European Commission’s Reports have repeatedly urged the Albanian government to improve the efficiency of feedback mechanisms.⁷⁸ There are several examples of tailor-made laws that protect private interests by avoiding meaningful public consultations and feedback mechanisms. The community of artists and civil society opposed government plans for a PPP (public-private partnership) arrangement with a private company close to the ruling Socialist party (Fusha SHPK) to demolish the building of the national theatre and build a new theatre from which Fusha SHPK would benefit the right to build private towers next to the theatre on public land.⁷⁹ Despite the protests and serious concerns over corruption in this case, the

⁷⁶ Ivana Dervishi “Artists denounce municipality’s consultations on the national theatre as a farce” reporter.al, 25 July 2018 (article in Albanian), <https://www.reporter.al/artistet-denoncojne-si-farse-konsultimet-me-bashkine-per-teatrin-kombetar/>.

⁷⁷ See the “Trust in Governance 2019” survey report by the Institute for Democracy and Mediation (IDM) 2020), pages 82–83, <https://idmalbania.org/trust-in-governance/>.

⁷⁸ See the European Commission’s “Albania 2019 Report” (page 10) <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-albania-report.pdf> and “Albania 2020 Report” (page 13) https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/albania_report_2020.pdf.

⁷⁹ See full investigation of BIRN Albania at <https://www.reporter.al/zbulohet-projekti-i-fushes-me-afro-90-mije-metra-katrorre-kulla-dhe-teater/> (“Fusha project with nearly 90 thousands sq. meters towers and theatre exposed” 28 July 2018).

government agreed to address only concerns about limited competition raised by the EC⁸⁰ but not the main demand of the community of artists to preserve the building of the national theatre.

The EC's "Albania 2020 Report" also reiterates its call to improve the implementation of the law at local government level and also to extend its scope by including government decisions too. Such challenges have also been reflected in the public perception of the practical side of the consultations. For example, most Albanians are still sceptical about citizen participation and public consultation mechanisms. The data shows that only one in ten Albanians actually participate in public consultations organised by the central government.⁸¹ The public consultation portal (konsultimipublik.gov.al), which was introduced with the Law on Public Notification and Consultations five years ago, still has a very modest reach: only 8 per cent of Albanians used this portal in 2019.⁸²

While there is room to improve the provisions of the law, as suggested by the EC's Albania 2020 Report, it is clear that state institutions and the government still have to improve their performance under the existing provisions too.

Principle of justification

This principle obliges the institutions proposing specific draft legislation to include as part of their draft proposal a detailed report summarising the current legal framework and identifying and explaining the need for a legislative change, why the proposed law or amendment is the optimal solution, and other aspects such as the financial impact, costs of implementation and so on. Indeed, the Regulation of the Council of Ministers is quite strict on this matter. Article 12 of the regulation stipulates that before starting to prepare the draft legislation, relevant departments must prepare a *preliminary assessment*. This assessment must include information on goals and objectives, compliance with government's analytical programme and strategies, compliance with the constitution and other legislation, measures related to its applicability, as well as required budgetary resources and expected financial effects. At the conclusion of the next stage – the preparation of the draft legislation – the proposing institution will submit for opinion to other line ministries the prepared draft law accompanied with an *explanatory report* covering the above aspects in much greater detail.⁸³ Finally, the proposing institution will submit to the Council of Ministers the draft legislation accompanied by the updated explanatory report (Article 45b) for approval.

From a formal point of view, all government draft laws are accompanied by such detailed reports that elaborate on many – but not always sufficiently on all – aspects. Two of the aspects that are least elaborated on in many of the draft laws prepared by the government and later adopted by Parliament are the financial impact of a certain piece of legislation and the costs of its implementation. With regard to the latter, explanatory reports generally state that "no resources from

⁸⁰ Vincent W.J. van Gerven Oei, "European Commission Sides with PM Rama on National Theatre Law", *exit.al*, 16 August 2019, <https://exit.al/en/2019/08/16/european-commission-sides-with-prime-minister-rama-on-national-theater-law/>

⁸¹ See survey report "Trust in Governance 2019", Institute for Democracy and Mediation (IDM 2020), pages 85-86. Annual survey available at <https://idmalbania.org/trust-in-governance/>.

⁸² *Ibid.*, page 87

⁸³ See Articles 18–21 of the Regulation of the Council of Ministers (2003).

the budget are required to implement this law⁸⁴ or, in cases where new bodies and agencies are being established, that financial means for human resources are needed to this or that level.⁸⁵

The government's ability, capacity and will to anticipate and analyse the financial impact on a specific sector of a draft legislation are even more critical. One of the most disturbing examples of tailor-made laws in Albania relate to public-private partnership (PPPs) projects, which were in most cases initiated in response to an unsolicited proposal from a private company and were eventually approved by special laws during the period 2015–2019. The special law adopting the PPP contract for the construction and concession of the Milot–Balldre highway is an ideal example of such a law.⁸⁶ According to the Transport Sector Strategy 2016–2020, construction of the 17-km stretch of road between Milot and Balldre was costed at around €6 million per km (nearly €102 million in total). The value of the PPP contract adopted by special law and awarded to ANK Company, which has close ties to the ruling Socialist government, amounts to €161.5 million.⁸⁷ The EC's Reports on Albania since 2016 have repeatedly urged the government to stop this practice, which exempts public procurement rules and offers unfair advantages to certain companies. These reports have also repeatedly stressed that "although required by law, value-for-money analysis is still not systematically carried out before approval of all PPPs"⁸⁸

Parliamentary review of draft laws

Parliaments are vested with the legislative power and the authority to hold the executive accountable. These two elements highlight the dominant position of a country's legislative body in the framework of the law-making process and the corrective role of the parliament therein. Unfortunately, this has not been the case in Albania. Following in particular the 2008 amendments to the constitution, which provided for a powerful executive and an even stronger PM,⁸⁹ the legislative process in Albania has been traditionally dominated by the government. Considering the fact that the government is formed from a parliamentary majority (elected MPs from party lists that are controlled by the party leader) in the national legislative body, holding accountable the person who put you on the party list in the first place and will decide whether you appear on that list again in the future and correcting his/her actions is virtually unimaginable for someone wishing to pursue political career.

The above suggests that the second stage of the legislative process initiated by the government – namely, the parliamentary review of draft laws submitted by the government – is barely even a formal procedure and does not have much substance. Sometimes, Parliament even tolerates the fact that the government does not comply with formal rules and procedures of the law-making process and parliamentary review.

⁸⁴ See, for example, the explanatory report of the Draft Law on Mental Health. Section IX of the report reads that "the law does not have financial implications". The report is accessible here:

<https://konsultimipublik.gov.al/Konsultime/Detaje/301>. Another example is the draft law on industrial ownership available at <https://konsultimipublik.gov.al/Konsultime/Detaje/298>.

⁸⁵ See Section VIII (page 8) of the explanatory report of the Draft Law on the Support and Development of Start-ups, which establishes an agency and two electronic systems (a portal and register) for the support of start-ups. Source: <https://konsultimipublik.gov.al/Konsultime/Detaje/303>.

⁸⁶ See Appendix 1 for a brief description of Milot-Balldre tailor-made law.

⁸⁷ See "The madness of Milot-Balldre, another €44 million may be added to the cost, with a total cost of €300 million" *Monitor Weekly*, 21 July 2019, <https://www.monitor.al/cmenduria-e-milot-balldren-kostot-mund-te-rriiten-edhe-me-43-mln-euro-totali-shkon-300-milione-euro/>.

⁸⁸ See the European Commission's Albania Reports in 2016 (page 38), 2018 (page 59) and 2019 (page 59).

⁸⁹ See "Nations in Transit 2020 – Albania", Freedom House, 15 July 2020.

Speaker warns that the Parliament will not tolerate any longer the lack of the table of concordance for draft laws submitted by the government:

“If the table of concordance is missing in the future, you must know that we will send back the draft laws, as we cannot as MPs pretend we don’t see, don’t hear or don’t understand at the parliamentary committee’s hearings or at plenary sessions.”

Speaker of the Parliament Gramoz Ruci addressing the Deputy PM Senida Mesi⁹⁰

Parliament has tolerated the government’s deficient documentation about draft laws including missing tables of concordance, which explain the extent to which the draft laws align Albanian legislation with the EU *acquis*, missing tables of public consultations, texts of international agreements that have not been officially confirmed by the Ministry of Justice and other legal conditions that draft laws and accompanying documents must fulfil in order to enter parliamentary review.⁹¹

Nevertheless, despite these shortcomings and Parliament’s weak role in ensuring the integrity of draft laws submitted by the government, the rules and procedures of the parliamentary review reflect much better the principles for high integrity law-making than is the case with the government. In fact for some of the principles, Parliament demonstrated greater integrity, at least formally, even in the case of tailor-made laws. For example, the parliamentary procedure for the review of the tailor-made laws analysed for this report took place in full compliance with the principle of transparency in six out of seven tailor-made laws reviewed by Parliament. In one case only (Vlora Airport), Parliament was not transparent as a result of the accelerated review procedure. In none of the tailor-made laws was the principle of transparency fully respected by the government during the drafting phase.⁹²

As explained in the previous sections, both institutions – government and Parliament – coordinate the legislative agenda using the government’s analytical programme and Parliament’s periodic work plan for the legislative process. Considering the fact that most of the deficiencies that make tailor-made laws possible occur at executive level, during the drafting phase, Parliament appears to be the last filter for ensuring the integrity of the process and the outcomes. In view of this fact, how can the parliamentary review of draft laws correct the shortcomings of the first stage of the process (the drafting of laws at executive level) and ensure the high integrity of the law-making process and laws in Albania?

The Constitution of Albania recognises two kinds of parliamentary procedures for reviewing and adopting laws: the regular procedure and, at the request of either the Council of Ministers or one fifth of MPs, the accelerated procedure (Article 83). The constitution also makes it obligatory for the government to give its opinion on draft laws initiated by MPs or 20,000 voters in case they have budgetary implications such as an increase in budget spending or decrease in revenues (Article 82).

Article 68 of the Regulation of the Parliament details the conditions a draft law must fulfil and the documentation it must be accompanied by in order for a parliamentary review to begin. Draft laws

⁹⁰ See minutes of the chairmen’s conference, of 4 July 2018, <https://www.parlament.al/Files/Procesverbale/20180717091500Konferenca%20%20korrik.pdf>.

⁹¹ See speech of Gramoz Ruci, speaker of the Parliament in the minutes of the chairmen’s conference meeting of 17 September 2019, <https://www.parlament.al/Files/Procesverbale/20190923133515Konferenca%2017%20shtator.pdf>.

⁹² See Appendix 2.

must be accompanied by a detailed report outlining the objectives of the draft law, its compatibility with the Constitution, its alignment with EU acquis, its expected economic, social and, environmental impact and gender sensitivity, the degree to which it fulfils the objectives of the UN's sustainable development goals, how it fits with Albania's obligations under international treaties and organisations, financial impact etc. The regulation stipulates that for laws that require public consultation, the draft law must also be accompanied by a table of public consultations.⁹³

Draft laws submitted by the government that fulfil these criteria are registered and assigned to the responsible parliamentary committees and committees that are obliged to provide an opinion. Following their review by parliamentary committees, draft laws are reviewed at a plenary session of Parliament. There are three consecutive stages to this review: a general review (Article 74), a review and vote on each article (Article 75) and a vote on the law as a whole (Article 77).⁹⁴

In principle, considering the prime minister's influence on his party's majority in Parliament, it is easier to get tailor-made laws accepted by Parliament in those cases that do not require a qualified majority. Interestingly, all cases of tailor-made laws in Albania identified for this report, were adopted by Parliament by simple majority. Parliament plays a bigger role in those cases that require a qualified majority, which in most cases implies that the ruling coalition needs the consent and cooperation of the parliamentary opposition. This makes it more difficult (but not impossible) for tailor-made laws to be passed because the range of private interests protected by the specific law must appeal not only to the leader of the parliamentary majority (the prime minister) but also to other parliamentary party leaders. Nevertheless, draft laws that get broad political support in Parliament do not always result in high-integrity laws.⁹⁵ In both cases, the law-making process fails at one or more stages of the process, be it at executive or parliament level.⁹⁶ Consequently, although Parliament has a better record than the executive in terms of respecting the key principles of high-integrity law-making – such as professionalism, justification, transparency or consultations – the fact that it fails to correct the deficiencies of the government's draft laws still casts doubts over the integrity of the process as a whole.

Transparency

The Parliament of Albania has been rightfully praised by EC reports⁹⁷ for its performance and approach to ensuring the transparency of its work, public access to information and parliamentary documents, public participation in parliamentary work and so on. It has adopted a code of ethics for MPs,⁹⁸ which regulates, among other things, matters relating to conflicts of interest (Col). It has also set out the creation of a Col register.⁹⁹ A detailed code of behaviour for MPs was also adopted in

⁹³ Articles 3 and 4 of Law No. 146/2014 on Public Notice and Consultations define such obligations for most of the laws with the exception of laws relating to national security, international agreements, normative acts, civil emergencies etc.

⁹⁴ See Regulation of the Parliament adopted with Decision No. 166 of 16 December 2004, as amended, Part Two, Chapter I and II, Articles 68–77, <https://www.parlament.al/Files/sKuvendi/rregullorja.pdf>.

⁹⁵ Take, for instance, the Electoral Code, for which Parliament has for decades refused to introduce more strict rules regarding the financing of electoral campaigns.

⁹⁶ Such failures may include, for example, a lack of transparency (not publishing a draft law), a lack of public consultations with interest groups or affected communities, a lack of adequate analysis of the situation the law aims to regulate etc.

⁹⁷ See, for example, the European Commission's *Albania 2020 Report*, pages 10–11, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/albania_report_2020.pdf.

⁹⁸ See Decision No. 61/2018 of 5 April 2018 of the Parliament, <https://www.parlament.al/Files/RaporteStatistika/vendim-nr.-61-dt.-5.4.2018-Kodi-i-Sjelljes.pdf>.

⁹⁹ See sample of the Conflict of interest register at <https://www.parlament.al/Files/RaporteStatistika/rregjistriikonfliktiteinteresitipotesuar.pdf>.

2018,¹⁰⁰ while an electronic register of CSOs¹⁰¹ and a register of lobbyists¹⁰² has been operational for a few years now. An updated Manual for Public Participation in the Decision-making Processes of the Assembly¹⁰³ and other useful information for the public on how draft laws become laws¹⁰⁴ and other functions of Parliament¹⁰⁵ are easily accessible online on the parliament website.

According to the Parliament's Regulation and the Manual for Public Participation in the Decision-making Process of the Assembly, parliamentary committee public hearings and plenary sessions of the parliament are as a rule public. In most cases, draft laws and accompanying documents (for example, explanatory reports) are publicly accessible on the parliament website.¹⁰⁶ Minutes from parliamentary committee meetings are regularly published, as are the results of MP votes on all draft laws in plenary session.¹⁰⁷

Nevertheless, a higher degree of transparency does not necessarily mean better laws or high-integrity processes if other principles are not also implemented to a satisfactory degree.

Public consultation

Interest groups and individual citizens can attend and address parliamentary committee public hearings.¹⁰⁸ Interested parties can submit their recommendations and comments on specific draft laws published by Parliament for public consultations,¹⁰⁹ also in written form. Public consultations at this stage of the process are considered an extra opportunity for interested parties whose suggestions or recommendations were rejected by the government during the consultations organised by the executive. However, this is not very likely to happen for draft laws that require a simple majority in Parliament. Although parliamentary committees, much like the government, are not obliged to address interest groups' recommendations in draft laws, they should explain to contributors why their recommendations were either partially or fully rejected.¹¹⁰ However, this rarely happens in practice, as the EC's Albania Reports have repeatedly noted in recent years.¹¹¹

The executive's strong influence over Parliament and the inability of Parliament to actually exert its powers to ensure the quality of the legislation it adopts is manifested in almost all cases of tailor-made laws analysed for this report. Much like the government, Parliament has ignored the calls of

¹⁰⁰ See Decision No. 19 of 27 September 2018 of the Bureau of the Parliament (the decision making body on administrative and financial matters of the Parliament – See article 8 of the regulation of the Parliament), <https://www.parlament.al/Files/RaporteStatistika/Udhezuesi%20ne%20BYRO-i%20zbardhur-%20e%20hene15%20tetor.pdf>.

¹⁰¹ Electronic register of CSOs available at <https://www.parlament.al/Informacion/Transparenca/1>

¹⁰² Available at <https://www.parlament.al/Informacion/Transparenca/34>

¹⁰³ Manual adopted with Decision No. 17 of 11 November 2014 of the Bureau of the Parliament, available at https://www.parlament.al/Files/Informacione/manuali_i_azhornuar_21298_1.pdf

¹⁰⁴ See <https://www.parlament.al/Kuvendi/ProjektligjLiqj>.

¹⁰⁵ See <https://www.parlament.al/Kuvendi/RoliKuvendit>.

¹⁰⁶ There have in practice been exceptions to this rule, such as the latest amendments to the Electoral Code adopted by Parliament on 5 October 2020. Although there was an intense debate about these amendments – especially on the possibility of introducing open lists in general elections – Parliament did not publish any draft of the amendments or other accompanying documentation.

¹⁰⁷ Available at <https://www.parlament.al/LibrariaAkteve>

¹⁰⁸ See Manual for Public Participation in the Decision-making Process of the Assembly, pages 23-25, available at https://www.parlament.al/Files/Informacione/manuali_i_azhornuar_21298_1.pdf.

¹⁰⁹ In addition to the konsultimipublik.gov.al portal, which serves the law-making process at the first stage (drafting of laws by the government), Parliament also has its own public consultation portal at <http://konsultimi.parlament.al/>.

¹¹⁰ See Manual for Public Participation in the Decision-making Process of the Assembly, page 25, available at https://www.parlament.al/Files/Informacione/manuali_i_azhornuar_21298_1.pdf.

¹¹¹ "It [the Law on Public Consultation] requires reporting on how inputs from civil society organisations (CSOs) are taken into consideration, but there is little evidence of the use and effectiveness of the feedback mechanisms." – European Commission *Albania 2020 Report*, page 13, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/albania_report_2020.pdf.

national and international players such as the IMF or World Bank regarding the VAT threshold.¹¹² The law included small businesses and retailers in the VAT scheme, a move that led many of these businesses to close in the year that followed. The main beneficiaries of this scheme were a small number of supermarket chains, including one owed by a Socialist member of parliament.¹¹³

Professionalism, justification and collective consideration

Parliamentary committees and other bodies continue to struggle with a shortage of qualified staff members to assist them in their daily work and to help them better apply the **principle of professionalism** during the parliamentary review of draft laws. Although the Parliament has dedicated departments for research and legal matters and parliamentary committees are assisted by advisors, there is still a valid need for more qualified staff to help review the content of draft legislation. According to the Manual for Public Participation in the Decision-making Process of the Assembly, parliamentary standing committees can fill the gap and lack of expertise by hiring external experts.¹¹⁴ Needless to say, public consultations and in particular feedback from civil society players represent another source of expertise which could help address Parliament's deficit in this regard.

On the basis of such diverse sources of expertise, the parliamentary review of draft laws should result in an update of the text of the draft law and the explanatory reports (**principle of justification**) and a collective decision should be taken at the standing committee's meeting and, subsequently, at the plenary session of Parliament (**collective decision-making and consideration principle**). While the extent to which such sources are used and the extent to which their feedback is actually reflected in the legislative process depends, among other things, on political will, some deficiencies in the legal framework also pose challenges and constitute obstacles to be overcome in moving towards a high-integrity legislative process. This is, for example, the case with the opportunity to introduce amendments to the draft law during the plenary session. As explained at the beginning of this chapter, Article 75 of the regulation of the Parliament allows every member of parliament and the Council of Ministers to propose amendments to a draft law during the plenary session of Parliament on condition that they are registered up to 24 hours before the plenary session and shared with other MPs. This means that the amendments proposed by any individual member of parliament 24 hours before the plenary session would not get the opportunity to be collectively discussed by the parliamentary committee, nor would there be an opportunity for it to be considered by the committee's expert staff and advisors,¹¹⁵ thereby raising serious concerns over the integrity of the law-making process. Such concerns have in fact been raised in the case of Law No. 155/2015 on Gambling in Albania. The purpose of this draft law, which was submitted by the government, was to prevent negative consequences of gambling from impacting on several aspects of social life. To do so, the draft law introduced rigid conditions that sought to limit the gambling sector. However, 24 hours before the plenary session of Parliament, two MPs submitted several amendments that dramatically changed the main intention of the law and provided instead for an expansion of the gambling sector.¹¹⁶

¹¹² Law No. 107/2017 of 30 November 2017, amending Law No. 92/2014 "On VAT in the Republic of Albania"

¹¹³ See Appendix 1 for a brief description of the tailor made law.

¹¹⁴ See Manual for Public Participation in the Decision-making Process of the Assembly, pages 26–27, available at https://www.parlament.al/Files/Informacione/manuali_i_azhornuar_21298_1.pdf.

¹¹⁵ According to Article 71 of the Regulation of the Parliament, amendments to the draft laws must also be accompanied by a justification and assessment of its compatibility with EU *acquis*.

¹¹⁶ The impact of these amendments was indirectly acknowledged by the prime minister himself as methods that "disrupted" the ruling coalition in its objective of putting an end to what he called a "national madness". See Prime Minister Edi Rama's speech on 9 October 2018 available at <https://www.oranews.tv/article/nga-1-janari-nuk-do-kete-asnje-qepen-bastesh-mediat-24-ore-afat-mbylljen-e-reklamave>.

Improving the integrity of the law-making process: It takes two to tango

An analysis of the legislative process in Albania reveals significant gaps and loopholes that have over the years been used by parties with illegitimate interests and political players to tailor the outcome of the law-making process to meet their needs. In Albania's parliamentary democracy, the constitution grants individual MPs, the executive branch (government) and citizens (20,000 voters) the right to submit a legislative initiative. However, an average of 80–85 per cent of draft laws submitted to Parliament every year are submitted by the government, while the right of voters to do so has never materialized.¹¹⁷ In short, the legislative process is dominated by the government (the main initiator) and Parliament, as the ultimate holder of legislative authority and the ultimate authority for ensuring the quality and integrity of the law-making process.

Parliament's actions during the process of reviewing and adopting legislation appear to be by far more transparent than those of the government when initiating and drafting legislation.¹¹⁸ Draft laws are regularly published and so are the minutes of parliamentary committees' discussions and votes on draft laws. Unlike the government's work plan on new draft legislation, parliamentary activity is announced in advance and published regularly. Despite a few shortcomings, the transparency standards of the legislative body are much higher than the standards on paper of the executive in terms of transparency and prevention of conflict of interest. In fact, the first stage of the law-making process at executive level is characterised by serious deficiencies and gaps that allow for low-quality draft legislation and, most importantly, poor integrity of the process itself. Similarly, Parliament performs better than the executive when it comes to public consultations and opportunities for participation. However, this does not mean that Parliament actually reflects on the feedback obtained during public consultations as a rule. Deficiencies in the application of other principles for high-integrity law-making such as professionalism, collective decision-making and justification have certainly affected both the quality of laws and the integrity of the process.

Although Parliament suffers less from some of the serious ambiguities and concerns of the law-making process than the executive, the primary responsibility of the legislative body is to address such concerns and to ensure the integrity of the law-making process. The analysis conducted for this report found that for a number of reasons, Parliament does not fulfil its quality control function efficiently. These reasons include Parliament's lack of resources and expertise and also the inadequate consideration that is obtained from feedback provided by the public and interest groups in parliamentary hearings. Nevertheless, the influence exerted by the executive over Parliament – which takes the form of the prime minister's control of the parliamentary majority – is a key factor determining parliamentary performance.

Addressing concerns relating to the executive's control over the legislative process and Parliament's inability to fulfil its oversight role in relation to the government will require more complex measures to strengthen checks and balances.¹¹⁹ Both branches of power – the executive and the legislature – must encourage greater access to the law-making process and the participation of civil society and media. Above all, the two institutions must act swiftly to improve the checks and balances that affect the integrity of the law-making process and the conditions for facilitating citizens' right to launch legislative initiatives.

¹¹⁷ By the end of 2020 there were three legislative initiatives registered by civil society organisations aiming to gather 20,000 signatures.

¹¹⁸ See Appendix 2.

¹¹⁹ One such an action would be to restore the importance of the president's veto to legislation adopted by Parliament by requiring a qualified majority to overturn the veto. This will make parliament and also the government more responsible in the law-making process.

CONCLUSIONS

State capture in Albania has increased significantly between 2008 and 2019. Grand corruption continues to be fuelled by the privatisation of the country's assets and services. This has been enabled by insufficient institutional checks and balances and a politicised public administration and has been sustained by a corrupt judiciary that provides impunity to the perpetrators.

The last decade has seen a strengthening of the partnership between politics, business and organised crime which has reached its zenith in the last few years. Government contracts for select businesses with ties to prominent public officials have led to gross mismanagement of public assets, loss of life and debt incurred by the Albanian taxpayer. The cooperation between political parties, public officials and organised criminal groups for the purchasing of votes in local and general elections in exchange for favoured access to public institutions has severely crippled the integrity of the electoral process.

These trends continue unabated despite EU-sponsored reforms that sought to establish a professional public administration and an impartial and professional judiciary. In the case of judicial reform, its slow pace and the vacuum created by the comprehensive vetting of judges and prosecutors have stalled some investigations and prolonged others. Furthermore, the reform has not succeeded in preventing disagreements between prosecutors and courts regarding their competence to prosecute and adjudicate cases. The absence of a functioning Constitutional Court and Supreme Court for over two years (2018–2020) has eroded the institutional checks and balances, benefitting illegitimate interests by guaranteeing impunity. Furthermore, the lack of expertise and the low administrative capacity of parliamentary research and legal services compounded by the opposition's decision in February 2019 to withdraw its MPs *en bloc* from Parliament have facilitated the approval of tailor-made laws.

The concentration of efforts by Albanian and EU stakeholders on the reform of the judiciary over the last five years has diverted attention and resources away from initiatives that are needed to strengthen the independence and integrity of the public administration and independent institutions – for example, the Supreme State Audit Institution – and various regulatory bodies that are in charge of overseeing the government's public procurement and privatisation policy. Additionally, the most important institution in terms of exercising effective oversight over the executive to ensure that public policy serves public interests – the Albanian Parliament – is not fulfilling its constitutional mandate.

Tackling state capture in Albania will continue to be a significant challenge because of the enduring legacy of an autocratic executive that seeks to control the other two branches of government, the uncertainty of the outcomes of judicial reform, and a political process that is plagued by instability. But this challenge could be less painful if good governance and rule of law reforms become more inclusive – through greater civil society engagement – and seek systemic rather than marginal change.

RECOMMENDATIONS

State capture is a fundamental challenge for democratic governance. Initiatives to strengthen democratic governance must be based on the following core principles:

- Curtailing the power of the executive by strengthening existing independent government accountability institutions and potentially establishing new ones.
- Strengthening Parliament's powers and building its institutional capacities.
- Building a professional and effective civil service dedicated to public service.
- Building a professional and unbiased judiciary and prosecution.
- Ensuring electoral integrity.

Policy initiatives must be based on transparency and public consultation, which are essential accountability mechanisms that ensure the policy-making process is inclusive and that the public has the legal means to examine the implementation of public policies.

The following recommendations serve to emphasise the main approaches that can be adopted and specific actions that can be taken to address state capture by building democratic governance. They are addressed to both Albanian stakeholders and external stakeholders that finance or provide expertise for assistance programmes that seek to improve good governance and the rule of law.

On state capture

- Enforce existing legal provisions for the prevention of conflict of interest on members of parliament who have a clear conflict of interest by virtue of their ownership of private companies or private company shares.
- Improve and strengthen the current regulatory framework on the prevention of conflict of interest by including provisions that ensure the integrity of public officials in regulatory and oversight institutions.
- Ensure that regulatory institutions that are part of the executive are led and staffed by civil servants.
- Independent oversight institutions and Parliament must work in tandem to improve oversight and accountability mechanisms to prevent waste, fraud and abuse in public institutions. The Albanian Parliament should consider establishing a new government accountability institution that is in charge of overseeing the privatisation of state assets and public-private partnerships.

On the legislative process

- Strengthen transparency of the drafting process at executive level by:
 - publishing annual legislative plans well in advance and provide information on the progress of legal initiatives prepared by the government. This must include not only the government's annual analytical programme of draft legislation, but also the plans of line ministries;
 - publishing the names of the working groups drafting legislation and the names of the experts consulted/hired;

- publishing – unless clearly prohibited by law (for example on security grounds) – the full drafting process, thereby removing the wide and unnecessary application of the so called “confidentiality clause” of Article 17 of Law No. 9000/2003;
- publishing feedback from public consultations and the reasons for the rejection of suggestions/recommendations.
- Improve the capacity of Parliament and the integrity of political representation, which are instrumental in ensuring effective parliamentary oversight of government policies.
- Parliament must establish clear standards for *ex-ante* and *ex-post* impact assessment of legislation.
- Remove the right of MPs and the government to propose amendments 24 hours before the plenary session without these amendments being reviewed by and voted on by respective parliamentary committees (Article 75 of the Parliamentary Rule of Procedure).
- Improve mechanisms for involving civil society and affected groups in the process of drafting legislation at government level.
- Enhance the feedback mechanisms for public consultations taking place at executive level and during the parliamentary review of draft laws.
- Develop an online portal for public consultation and transparency of the parliamentary review of draft laws.
- Parliament and government must encourage both greater access to the law-making process and the participation of civil society and the media and must encourage citizens’ right to launch legislative initiatives.

On the judiciary, vetting process and criminal proceedings

- Court jurisdiction must be clarified to prevent juridical uncertainty as a loophole for political interference and corruption of the judiciary.
- Consider toughening criminal policy on high-level corruption and actions that enable the capture or corruption of institutions and decision-making processes.
- Harmonise the definition of high-level corruption, enhance capacities and promote the cooperation of judicial bodies and independent institutions in the fight against corruption and impunity.
- Strengthen the technical capacities of the judiciary (prosecutors and judges) to ensure their independence in discharging their duty.
- Prioritise filling the vacancies of the Constitutional Court and Supreme Court in accordance with applicable legal requirements and the recommendations of Venice Commission.¹²⁰
- Increase financial and human resources for the School of Magistrates, which is essential for the renewal of the judicial system. Increased resources should be part of an overall recruitment strategy for judges and prosecutors, the goal of which is to substantially increase the current output of the school.
- Provide SPAK with full capacities to investigate and initiate proceedings on criminal offences of corruption of senior officials.
- Transfer the authority to investigate and prosecute petty corruption from SPAK to district prosecution offices and provide SPAK with a clear mandate for organised crime and high-level/grand corruption.
- The financial investigation process requires combined technical expertise including legal-investigative know-how and knowledge in the field of accounting and auditing to investigate

¹²⁰European Commission for Democracy through Law (Venice Commission), Opinion No. 980/2020 “Albania – Opinion on draft amendments to Law No. 97/2013 on the audio-visual media service”, June 2020, <https://rm.coe.int/vc-opinion-albania-0620/16809ec9c9>

fraud and corruption. Therefore, the combination of these capacities in the crime investigation structures would advance the financial investigation process.

- In the fight against corruption, it is important that the responsible public authorities with investigation and oversight competences develop clear and transparent systems to receive and handle reports of corruption.
- Criminalise illicit enrichment. This is one of the outstanding GRECO recommendations that need to be implemented. It will be crucial for the prosecution of judges and prosecutors who have been dismissed because they could not provide proof of income.

On political parties

- The legislation on political parties must be amended to include provisions that ensure internal party democracy and accountability.
- Campaign finance reform is an absolute necessity. This should include, among other things, clear provisions regulating the financing of political parties to prevent money laundering and to identify donors.

ANNEXES

Appendix 1. Suspected tailor-made laws in Albania 2012–2019¹²¹

TITLE	BRIEF DESCRIPTION
<p><i>Law for a Special Procedure for Building a new National Theatre</i></p> <p>--</p> <p><i>(Ref.) National Theatre</i></p>	<p>In early 2018, the government publicly announced its intention to build a new national theatre through a PPP arrangement with Fusha ShPK, a private company that had submitted an unsolicited proposal for this purpose. The European Commission suggested that direct negotiations with a private company was in breach of competition laws. In response, the government amended the draft law to enable other private companies to submit bids. However, even the new draft, which was adopted (Law No. 37/2018), and especially the bylaws, provided for a preferred status of the Fusha ShPK company.</p>
<p><i>Constitutional Court Decision repealing Article 62 of the Law on Audiovisual Media</i></p> <p>--</p> <p><i>Article 62</i></p>	<p>Article 62 of Law No. 97/2013 on Audiovisual Media introduced a media ownership limitation by stipulating that "no physical or legal person can own more than 40% of a stockholding company that holds a national licence for audio or audiovisual broadcasting". Media owners have opposed such a limitation since then. In 2015, the Socialist ruling majority attempted to amend the law and repeal Article 62 of the law. The EU and the OSCE advised the Socialist ruling majority to withdraw its amendment. As a consequence, owners of electronic media companies brought the case to the Constitutional Court, which ruled in their favour by ignoring the public interest argument and favouring instead the economic freedom argument.</p>
<p><i>Law on Gambling</i></p> <p>--</p> <p><i>Law on Gambling</i></p>	<p>The draft law sought to restrict the gambling industry and its negative effects on young people and households by introducing a number of measures such as a 25-per cent tax; limiting the maximum number of stations to a maximum 500 per gambling company; stipulating that gambling establishments must not be opened within 200 metres of religious and education institutions starting from February 2016. However, 24 hours before the plenary session of the parliament, two MPs submitted a number of amendments that dramatically changed the law and provided for a massive expansion (instead of limitation) of gambling in Albania in the two years that followed. The amendments decreased the tax from 25 per cent to under 15 per cent, reduced the stipulated distance criterion, doubled the number of gambling stations (thus</p>

¹²¹ The research into tailor-made laws covered the period 2008–2019. Out of over 30 suspected cases of tailor-made laws analysed as part of this research, a total of nine laws (adopted between 2012 and 2019) were confirmed by analysis and the evidence gathered as being tailor-made.

	decreasing running costs by 50 per cent) and extended the deadline for complying with the law.
<p>Law No. 95/2013 of 4 March 2013 on the Approval of the Licence Agreement for the National Lottery</p> <p>--</p> <p>National Lottery</p>	<p>The law has formalised the procedure of awarding the national lottery licence to a company that appeared to have been pre-selected by the then minister of finance. While the law formalises this process, the auctioning procedure for the national lottery licence as regulated in the Decision of the Council of Ministers No. 25 of 11 January 2012 included suspicious criteria which led to grounded allegations for a pre-selected winner (for example, fixed price, possession of certain licences that did not add any value for the Albanian context). Furthermore, as media reports at the time revealed, the criteria outlined in the Decision of the Council of Ministers No. 25 of 11 January 2012 were based on an assessment that was made prior to the auctioning process by the deputy director of the Austrian company that actually won the bidding procedure. By adopting a special law to formally approve the licence agreement, the winning company gained additional guarantees, especially in view of the fact that the then opposition publicly declared that it would annul the agreement.</p>
<p>The 2015 Amendments to the Law on Concessions and Public Private Partnerships (PPPs)</p> <p>--</p> <p>Concessions and PPPs</p>	<p>In 2013, Albania adopted the Law on Concessions and PPPs, which allowed for a bonus of up to 10 per cent more points for unsolicited proposals for concessions in the energy sector. The 2015 amendments to the law expanded the bonus for unsolicited proposals in all areas subject to the law on concessions and PPPs, including for the first time the same bonus for PPP contracts. This triggered the start of the PPP and concession boom in Albania. While many concession contracts have been reported by the media as highly suspicious, the 2015 amendments marked the start of a series of PPP projects awarded to companies that submitted unsolicited proposals.</p>
<p>Law No. 52/2019 adopting the Milot–Balldre Highway PPP Contract</p> <p>--</p> <p>Milot–Balldre PPP</p>	<p>This law relates to an unsolicited proposal received by the government of Albania (GoA) from a company (A.N.K. SHPK) in early 2018 for the construction of Milot–Balldre highway. Decision of the Council of Ministers No. 387 of 27 June 2018 awarded a bonus of 8.5 per cent more points to the company under the tendering procedure. On 9 October 2018, the Ministry of Infrastructure announced that the contract for the PPP project and the 13-year concession for the Milot–Balldre highways would be awarded to A.N.K. SHPK. Based on the final contract, which was approved by Law 52/2019 – for the construction of a 17.2-km stretch of road – the company will charge €256 million (including VAT); almost €15 million per km, one of the most expensive roads in Europe per km to be built in a relatively favourable geographical landscape.</p> <p>A few other PPP or concession projects have followed the same procedure (adoption by Parliament of a contract via a special law)</p>

	and raise serious concerns of corruption. Such projects include “Orikum Concession” and “Rruga e Arbrit”.
<p>Law No. 107/2017 of 30 November 2017 amending Law No.92/2014 on VAT in the Republic of Albania</p> <p>--</p> <p>VAT Threshold</p>	<p>One of the measures the government claimed was helping to fight the high levels of grey economy activity was the lowering of the VAT threshold. This measure forced small businesses to enter the VAT scheme. This was made possible by closing the gap in the trade chain and forcing small businesses to ask big businesses to write invoices, thereby leading to an increase in declarations from big businesses. This was done through Article 4 of Law No. 107 of 30 November 2017 (amending Law No. 92/2014 on VAT in the Republic of Albania), which stipulates that the minimal threshold for registering VAT is regulated by the decision of the Council of Ministers. In accordance with this article, Article 2 of Council of Ministers' Decision No. 652 of 10 December 2017 set the minimum threshold for VAT registration for companies at 2 million Albanian leks (approximately €16,000) annual turnover. The vast majority of this category of businesses are small retail businesses such as grocery shops. The move was criticised as counterproductive for the objective in question. Some investigative media reports also denounced it as a tailor-made law that served the interests of a few supermarket chains (such as BIG Market chains, which is owned by a member of parliament from the ruling Socialists).</p>
<p>Law No. 4/2018 on the Establishment of a Special Procedure for the Negotiation and Signing of Contracts with the Companies CENGIZ CONSTRUCTION and KALYON & KOLIN CONSTRUCTION, for the Planning, Building, Operation, Maintenance and Management of the Airport in Vlora</p> <p>--</p> <p>Vlora Airport</p>	<p>The law on the special procedure for building the airport in Vlora as a PPP was announced in early 2018 and adopted in an extremely fast procedure. Parliament adopted it only 13 days after it was drafted by the Council of Ministers. It is not only the lack of competition for this major investment but also the many concerns relating to the law itself and the obscured process of preparing this project that indicates serious signs of tailor-made law. For example, the law's purpose is to negotiate the contractual terms with the Turkish company despite the fact that the company was not selected in a bidding procedure or tender procedure.</p>
<p>Air Albania Company</p> <p>--</p> <p>Air Albania Company</p>	<p>The establishing of the Air Albania Company comes in the context of the "Vlora airport" plans. The government of Albania established the company using joint capital from TÜRK HAVA YOLLARI A.O. (Turkish Airlines), Albcontrol (a state company) and a private company (MDN Investment) that was created only a few days before the establishment of the Air Albania company itself. It is not clear why the government chose this private company, what procedure was used and why it refused to open up to the competition.</p>

	The statutes of MDN Investment state that the company will operate with the purpose of developing and managing Vlorë Airport. This suggests that both projects – Vlorë airport and Air Albania – were tailored as a package.
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Appendix 2. How government and parliament reflect inclusiveness and transparency in the law-making process?

	EXECUTIVE LEVEL – PREPARING THE DRAFT LEGISLATION (STAGE 1)		PARLIAMENTARY REVIEW OF DRAFT LAWS SUBMITTED BY GOVERNMENT (STAGE 2)	
	INCLUSIVENESS & CONSULTATION OF INTEREST GROUPS	TRANSPARENCY	TRANSPARENCY	INCLUSIVENESS & CONSULTATION OF INTEREST GROUPS
<i>National Theatre</i>				
<i>Article 62</i>	N/A	N/A	N/A	N/A
<i>Law on Gambling</i>				(unclear)
<i>National Lottery</i>				
<i>Concessions and PPPs</i>				
<i>Milot–Balldre PPP</i>				
<i>VAT Threshold</i>				
<i>Vlorë Airport</i>				
<i>Air Albania Company</i>			N/A	N/A

Yes	No	Somewhat

Institute for Democracy and Mediation
Rr. Shenasi Dishnica, Nd.35, H.1,
1017 Tirana
Albania

Phone +355 - 4 - 240 0241

info@idmalbania.org
www.idmalbania.org

Facebook: /IDMAAlbania
Twitter: @IDM_Albania

Transparency International
International Secretariat
Alt-Moabit 96
10559 Berlin
Germany

Phone: +49 - 30 - 34 38 200
Fax: +49 - 30 - 34 70 39 12

ti@transparency.org
www.transparency.org

Blog: transparency.org/en/blog
Facebook: /transparencyinternational
Twitter: @anticorruption