National Security vs. Accountability: Striking the Right Balance

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INFORMATION CLASSIFICATION is an important mechanism which governments use to keep citizens safe and protect national interests. However, when classification regimes produce excessive secrecy, they can both interfere with democratic governance and counterproductively jeopardize national security. As such, on the one hand, 'overclassification' can lead to reduced oversight, transparency, and accountability in the security sector, while on the other, prevent security agencies from sharing information rapidly and detect security threats in due time. In addition, excessive information secrecy might increase institutional integrity risks as it can help shield both institutions and public officials from malpractices or even corruption. Although overclassification is most noticeable within the defense and security sector, it can also occur in other government sectors, particularly when countries fail to uphold laws on the right to information and build an institutional culture which considers openness and transparency as a default approach to a democratic governance.

Hence, is it just as important for security sector agencies as it is for every other public institution to pursue a balanced approach to secrecy: one that strikes the right compromise between protecting national security and delivering good governance by ensuring transparency and accountability.

Commonly agreed tenets emphasizing the need for such balanced approach, were develop under the

Reasons for overclassification in Albania

- **Culture of secrecy of security agencies**
  - o Risk adverse
  - o "Better safe than exposed"
- **Current legislation imposes challenges to oversight and accountability**
- **Inadequate training and monitoring**
  - o Limited specialized training
  - o Weak to non-existent quality control mechanism (monitoring)
  - o Low staff retention
- **Limited conceptual understanding of the role of security institutions in a democracy (strategic level)**
- **Non-existent practices of declassification**

Global Principles on National Security and Right to Information, otherwise known as the Tshwane Principles.1 They help pave the way for officials to set up laws and policies which enable greater public scrutiny and participation in decision-making while ensuring that legitimate national security interests are protected. Unfortunately, in the case of Albania, there still remains a disproportionate emphasis on the need to safeguard national secrets versus the right of citizens to be informed on decisions made on their behalf.

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[1] *Global Principles on National Security and the Right to Information,* "The Tshwane Principles", 12 June 2013, https://tinyurl.com/jzxjzkmu

Overclassifying in Albania

When dealing with classification of information, the commonly accepted principle is that in order for information to be classified, it must be critical to national security. Similarly, a "state secret", in Albania, is information that "threatens national security";[2] or otherwise information that might negatively affect the "independence, territorial integrity, constitutional order, and foreign relations of the Republic of Albania".[3] Yet, recent experience, as reported by public sources and other independent oversight institutions, indicate that classification of information has exceeded its purpose on various occasions. In fact, the tendency to overclassify information has created barriers to the accountability and transparency of the security sector and even government agencies outside the security spectrum, such as the Albanian Roads Authority. There are several examples pointing to this:

- Between 2014 and 2018 the Albanian government has increased the number of classified procurements gradually every year, leading to 76 in 2018. Between 2008 and 2014, the number of classified procurements remained at an average of 5 or 6 per year.[4]
- In their report on the Ministry of Defense, the Supreme State Audit Institution states that several tenders were classified as "secret" when there seemed to be no legitimate justification for it.[5]
- In 2018, the Classified Information Security Directorate refused to release a list of the judges and prosecutors that were supposed to undergo the vetting process in Albania to the nonprofit organization Albanian Helsinki Committee, claiming that it was classified information, even after the Information and Data Protection Commissioner had stated that the information did not qualify as such.[6]

Although these are just few examples, overclassification is pervasive in Albania. In fact, all interviewed institutional experts (throughout the entire security sector), including the head of the Classified Information Security Directorate (NSA), recognize the problem.[7]

Why does overclassification occur?

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[2] Law No. 8457, date 11.02.1999, "On information classified as 'State Secret'", article 2, commonly referred to as Law on State Secret
[3] Ibid., article 2
[4] Gjergj Erebara, "Government commissions millions of euros in secret contracts", *BIRN Network*, 27 May 2019, accessed from https://www.reporter.al/qeveria-kontraktoi-miliona-euro-shpenzime-me-kontrata-sekrete/
[5] Audit No. 125/5, date 16.03.2015, *Supreme State Audit Institution,* http://www.klsh.org.al/web/KLSH_kallezon_penalisht_12_punonjes_te_Ministrise_se_Mbrojtjes_1609_1-6.php

[6] Erida Skendaj, Fjoralba Caka, and Mirela Bogdani, *Case Study: Monitoring the vetting process of judges and prosecutors between January 2018 – June 2018* http://www.osfa.al/sites/default/files/raport-studimor-monitorimi-i-procesit-te-vettingut-te-gjyqtareve-dhe-prokuroreve_jan17-qer18.pdf
[7] Interviews with over 10 experts from security institutions such as State Intelligence Service, Ministry of Defense and Armed Forces, Classified Information Security Directorate, National Security Committee (Parliament), Ministry of Interior, and former chiefs in these institutions.

A very important first step in ensuring that classification of information is done accordingly, is to ensure that its purpose is well understood. This enables security officials to effectively filter unimportant information from relevant intelligence. However, as institutional experts have noticed, the first reason why institutions overclassify is linked to "*limited conceptual understanding* of officials about which information bears national security relevance and which not".[8] As a result "intelligence analysts which are often the end-of-the-line consumers of classified information, are frequently faced with an overwhelming amount of irrelevant information."[9] Unfortunately, the process can put a strain on the human and logistical resources dedicated to analyzing such information, thus leading to limited work efficiency.

Another reason why institutions have a tendency to overclassify, is their general inclination to be risk adverse, accompanied with a *"you can never be too safe"* mentality. Overclassification is a rather "new" problem that has risen with the influx of information in the digital era. When information is not sifted through properly and classified accordingly, it naturally leads to an increased volume of classified information. As it seems, security institutions do not fully consider the impact of having excessive classified information, which most of the time remains untouched and creating backlog while inhibiting its future use – both for institutional functions or to offer greater public transparency and accountability. In addition, since overclassification is an "unrecognized" issue and that there are no repercussions to doing so, any classification

authority would be inclined to "play it safe" by overclassifying rather than under-classifying.[10]

Culture of secrecy is another important reason why security institutions tent to overclassify. Indeed, this is common to many security agencies worldwide.[11] The culture of secrecy tends to be self-reinforcing as it is seen as a natural *modus operandi*, and a manifestation of the institutions' perceived value of their work (even in comparison to other security agencies); hence the risk of overclassification becomes

> ## Impact of overclassification in Albania
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> - **Damages democratic governance**
>   - Reduces transparency
>   - Undermines oversight and accountability
>   - Damages Albania's political standing among EU and NATO countries
>   - Shields institutional malpractices or integrity violations
> - **Produces institutional inefficiency**
>   - Reduced information sharing due to increased bureaucratic 'red tape'
>   - Hinders knowledge retention and change management within security agencies
> - **Counterproductive to national security – "when everything is secret, the truly secret information loses value"**

almost inevitable.[12] Furthermore, given the highly politicized nature of institutions in Albania, security institutions are inclined to avoid releasing information which might make

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[8]   Interview, Specialist at the Information Collection and Analysis Sector, Intelligence Agency for Security and Defense, 28 October 2020
[9]   Ibid.,
[10]   Discussion with former Director of the Classified Information Security Directorate (NSA), September 2020

[11]   Elizabeth Goitein & Shapiro, David M., "Reducing Overclassification through Accountability", pg. 21, *Brennan Center for Justice,* 2011, accessed from https://pdfslide.net/documents/reducing-overclassification-through-accountability.html
[12]   Discussion with senior official from the State Intelligence Service, November 2020

the government appear incompetent or even complicit of integrity violations.[13]

The **current law and other regulatory framework** around classified information in Albania are relatively outdated and have not been able to effectively regulate aspects related to overclassification or those linked to democratic governance principles such as oversight and accountability. For example, when the law was amended in 2006 – in recognition of the fact that Albanian security institutions had a problem with "exaggerated classification" – a new "level" of classification, *"restricted"*, was adopted to act as a funnel for delegating information which did not have significant relevance for national security purposes; however, "the use of this level is extremely rare, when on the contrary, according to expert analysis of information received, it should be the most commonly used one".[14]

Another area which indicates the limitations of the current legislation, is the limitations imposed on oversight. The legal counsel of the parliamentary Committee for National Security argues that secrecy legislation is drafted through a highly "security oriented" perspective, thus not accounting for the need of effective parliamentary oversight by leaving secrecy loopholes that can be exploited to prevent access to classified documents.[15] These barriers have led to prolonged procedures for reviewing classified information, thus delaying the work of the Assembly or any other independent oversight bodies.[16]

However, *the biggest drawback* of the classification regime in Albania might be its **inadequate training, structures and processes**, to ensure appropriate administration of classified information. These three elements are critical to building a "system around handling classified information… because while training provides knowledge and skills, structures and processes offer support for effective implementation".[17] According to senior intelligence officials, proper understanding of *what* information should be classified and *how* it should be classified increases personnel's competency in distinguishing critical vs. routine information.[18] Furthermore, establishing protocols and checklists for assessing information relevance can strengthen the accuracy of this assessment process.

Currently, the Albanian classification regime requires greater capacities to effectively train and evaluate the implementation of its regulations. Furthermore, experts identify a series of challenges to the current practices of training, evaluating and administering classified information:[19]

- First, there is a lack of specialized training for unique job requirements leading to a pervasive culture of "learning on the job" and "learning through mistakes". This approach produces inefficiency. Training on the particular tasks and responsibilities related to classified information is very rare. When conducted, it is very generic, focusing around the legal requirements and offering

- very little practical guidelines relevant for the day-to-day job
- Second, staff retention in the security

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[13] Discussion with senior auditor of the Supreme State Audit Institution, 8 October 2020

[14] Senior official at the Security Clearance Section, Intelligence Agency for Security and Defense, October 2020

[15] Legal Counsel of the Parliamentary National Security Committee, 6 November 2020.

[16] Ibid.

[17] Discussion with senior intelligence officer, Albanian Armed Forces

[18] Commonly shared opinion among senior intelligence officials throughout all security institutions (7 interviews conducted)

[19] Discussion with experts from security services (Army intelligence officers, Intelligence Agency for Security and Defense, State Intelligence Services, Classified Information Security Directorate)

sector can be rather low, causing consistent gaps in qualified personnel and 'forcing' institutions to rush the process of receiving a security clearance for the newly arrived personnel.

- Finally, there are very few control mechanisms to ensure acceptable level of understanding of classified information

Implications of overclassification

A first drawback of overclassification is that it **damages democratic governance** as it limits the reach of oversight mechanisms, erodes public trust in institutions, and exposes the institution to integrity risks. Auditors from the Supreme State Audit Institution (SSAI) have pointed out that "the Ministry of Defense at times posed resistance to special inquiries from the SSAI, and although ultimately the information was made available, it slowed down the accountability process".[22] On the other hand, increased integrity risks are closely associated with overclassification.

Overclassification gives opportunity for institutional leaders to *shield themselves from public and other institutional scrutiny* by taking advantage of their right to claim "national

Excessive classified information can lead to:
1. Either very critical national security information being treated with less seriousness, as it becomes "mediocre and loses it specialness", or
2. Institutions will spend more resources to properly administer all the classified information

practices.[20]

Ultimately, as per the assessment of a senior expert on classified information, "lack of training and understanding leads to incompetence which breeds insecurity and the tendency to overclassify in order to avoid taking risks".[21]

secret" around particular information. As the Supreme State Audit Institution has confirmed, this has occurred in many occasions, particularly when dealing with security sector procurement. On several occasions, journalists have also found it difficult to access information from the Ministry of Defense that related to logistical tenders or even asset privatization – procedures which would normally not be connected to classified information.[23] In fact, according to investigative Journalist Lindita Cela, "denying any request for information has almost become the default practice for the MoD".[24] The problem with this tendency is that when the power to deny access to information goes unchecked, it can lead

> In one particular occasion, journalist Lindita Cela recalls that the MoD refused to confirm that its Secretary General was working for the MoD, due to fear of damaging his/her reputation, at the time.

to abuse, which may vary from avoiding detection of potential malpractices to protecting the reputation and/or image of government officials.
Furthermore, overclassification may *damage Albania's political standing within the larger*

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[20] An intelligence officer working at the State Intelligence Service pointed out that when conducting refresher training with young diplomats of the Ministry of Foreign Affairs (at the time), he was surprised to see the inadequate preparation that they had on the topic. Yet, they all had high level clearances which meant that at some point their either classified or would classify information without properly weighting its relevance.

[21] Interview, Specialist at the Information Collection and Analysis Sector, Intelligence Agency for Security and Defense, 28 October 2020.
[22] Erion Habilaj, Security sector auditor at the SSAI, Focus Group discussion, October 2020
[23] Interview with Lindita Cela, investigative journalist, 26 August 2020
[24] Ibid.,

NATO community and the aspiring EU community. Becoming a NATO member has emboldened the Albanian MoD to justify excessive classification of information as "NATO requirement"[25], while ignoring the necessity to ensure accountability and transparency, as also being very important principles of democratic governance within NATO countries. This might be the reason why some experts claim that, "the MoD was more transparent when we were a PfP [Partnership for Peace] country than now – because it had something to prove back then".[26]

Second, overclassification can lead to **excessive bureaucracy, inefficiency and reduced information sharing**. There is a total of 22 security agencies which are authorized to classify information in Albania. Some of them have not traditionally shared information among them. Because the nature of bureaucracy differs among institutions, the culture and methods of handling classified information is also different. Many such documents need not be classified for national security purposes, yet the institutions classifying them, having the overarching authority to do so, classify them under the same category as they would national security related information. This is because the current practices stipulate that even when one specific piece of information is classified, in a long line of document, then the whole chain of information ought to be classified. This tendency to consider everything classified when only a portion of it is truly so, can be directly tied to the nature of overclassification among Albanian institutions, and certainly reduces information sharing though the unnecessary bureaucratic procedures it places.[27]

Third, overclassification can **limit opportunities for institutional transformation.** Institutions improve though reassessing their internal practices and advancing knowledge though lessons learned and experience. Most of the classified information in Albania remains just that, classified. Once a work process is complete, there is very little chance for that information to be used again.[28] This practice of "safeguarding" classified information, rather than putting it to best use denies institutional structures the potential to learn and develop from some of its content. Although procedures exist for the retrieval of classified information, officials within institutions are nonetheless required to undergo a lengthy procedure for acquiring it. The process can discourage many employees from "bothering", especially when it is not a job requirement, or when knowing that most of it is just routine information that bears little *intelligence value*.[29]

Hence an addition problem to the culture of overclassification is the lack of *efficient declassification procedures*. Evidently there is no appreciation for declassifying information. According to a senior official of the State Intelligence Services, declassification is such a foreign concept that he "could not remember the last time the Agency had set one up".[30] Undoubtedly, not being able to access critical information related to the security sectors affects not only the institution's ability to critically assess its own performance and build upon it, but it also limits the societal opportunity to study and learn about the institution.

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[25] Interview with senior Army Planning Directorate (J5) officer, Colonel, 04 November 2020
[26] Ibid.,
[27] Interview with Director of the Classified Information Security Directorate, September 2020

[28] Interview with senior intelligence officer, Albanian Armed Forces
[29] Ibid.,
[30] Discussion with senior intelligence officer from the State Intelligence Service, November 2020

Fourth**, overclassification can lead to reduced national security,** because when everything is

classified as a *very* important as national secret, then little is truly treated as such. This leads to implementing loosely set-up procedures into all levels of classified information (both for information very relevant to national security and for information that is not). According to senior official at the State Intelligence Services, excessive classified information can lead to two

possible scenarios: first, either very critical national security information will be treated with less seriousness – as it becomes "mediocre and loses it specialness"; or second, institutions would have to dedicate more time and resources to properly administer all that 'classified' information, and since resources are always growingly limited, the first scenario is most likely to occur.[31] Therefore, when institutions are faced with the necessity to administer large volumes of classified information, they are constrained to dedicate less time and resources to effectively assess and decide on the implications of that information. On the contrary, "when information is 'sifted through', it allows security institutions to properly classify and dedicate the necessary attention – so sometimes, less is more".[32]

Recommendations

A degree of secrecy is fundamental to protecting national interests, yet, overflow of classified information can be counterproductive to that purpose. First because it dilutes the relevance of truly important classified information, thus leading to less effective security institutions; and second, because it hinders accountability of security institutions and increases their institutional integrity risks. Therefore, it is important that security institutions remain accountable while executing their competencies of maintaining secrecy for the purpose of furthering national interest.

The balance between *the need for secrecy and the obligation to being accountable sh*ould be the core principle for the functioning of Albania's security apparatus. To achieve this, *security institutions must consider transparency as their default approach* while secrecy being applied only in limited cases. Such approach is not only consistent with international standards such as the Tshwane Principles[33] but is also enshrined into the Albanian legislation on the right to information.[34] The following are a series of recommendations on how to best achieve that.

Regulatory considerations
1. It would benefit both security institutions and the public to *revise* **the legal and regulatory framework** to meet both the security and public accountability criteria. In particular, the Law on State Secret must

include provisions enabling unhindered monitoring and oversight of security institutions in cases when classified information is involved. Further specific

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[31] Interview with senior official from State Intelligence Service, November 2020

[32] Ibid.,

[33] *Global Principles on National Security and the Right to Information,* "The Tshwane Principles", 12 June 2013, https://tinyurl.com/jzxjzkmu

[34] Law 119/2014, "On the right to information", article 17, paragraph 5, https://www.drejtesia.gov.al/wp-content/uploads/2018/08/Ligj_119_2014_18.09.2014.pdf

consideration might be given to Parliamentary oversight.

2. Introduce mechanisms which act as a **"pressure release" valve** to enable security institutions to differentiate between information requiring a certain level of secrecy and other routine official, work related information. It is recommended that the regulatory framework introduces the "official purpose" clause, as to differentiate such information from the one that has national security value.[35]

Institutional practices

3. Establish a **doctrine and training** mechanism around the classification regime in Albania and **monitor** its implementation by the National Security Authority. By virtue of their nature, doctrines are to be centralized in their core principles in order to guide the work of all institutions in accordance with legal and national security prerogatives, while allowing enough flexibility for each security institution to adopt specific *modus operandi*, congruent with their unique characteristics. Doctrine should have a top-down approach in disseminating guidance and monitoring, yet make use of bottom-up feedback to improve on lessons learned in the process of implementation. Although regulations exist, they are loosely applied and rarely monitored.

4. Security institutions must institute **consistent and consolidated training.** Albania's regime of classified information should ensure the delivery of *layered* (based on level of security clearance), *specialized and general trainings* for all personnel administering classified information. Major institutions which are constantly dealing with classified

information (MoI, MoD, intelligence services) should establish *training, monitoring, evaluation and learning units*, to ensure that their institution is continuously transforming and improving the practices of managing classified information. The Classified Information Security Directorate (NSA) should monitor the overall approach of these training units and use the feedback received to improve the overarching policies and regulations around classified information

5. The Classified Information Security Directorate (NSA) should **systematically update trainings, guidance and conduct monitoring operations** to ensure that the legal and technical requirements of the classification regime are met accordingly by security institutions.

6. **Reduce** the number of the Original Classification Authorities to as low as possible. At the moment there is a total of 22 agencies in Albania which can classify information classified as state secret. This has often led to unnecessary bureaucratic roadblocks. Re-assessing the number of agencies might help reduce undue red-tape and help maintain a classification regime which is more monitorable.

7. **Declassification procedures and commissions** should be readdressed in the Albanian legal framework to ensure applicability. Currently, the Albanian law "On information classified as 'State Secret'" makes it very challenging for declassifications commissions to conduct their job because of the high-level representation and bureaucratic procedures involved. Security institutions which are constantly dealing with classified information should establish ***permanent***

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[35] Discussion with former Director of the Classified Information Security Directorate (NSA), September 2020

declassification committees to ensure consistency in judgement, sustainability of practices and faster declassification of information – this will be particularly

helpful with resolving issues of backlog of classified information, which these institutions have all failed to handle in due course.

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