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I. INTRODUCTORY INFORMATION

Analysing the strengths and weaknesses of Albania’s institutional design and practice in the fight against corruption has been a great challenge and responsibility. This first National Integrity System assessment for the country would not have been possible without the precious cooperation and assistance of a number of people.

I would like to express my gratitude to all those in public institutions, civil society, and international organisations who agreed to be interviewed, some of them more than once. While some could not speak openly, I am honoured that they still decided to offer the insights of their experience and expertise under conditions of anonymity. I hope to have deserved their trust and made good use of their contributions.

I am especially grateful to the European Union Delegation, the National Democratic Institute, the Balkan Investigative Regional Network – Albania, and the non-governmental organisation Res Publica for all the support they have provided throughout. In particular, I would like to thank Lora Ujkaj, Ana Kadovic, Dorarta Hyseni, Kristina Voko, Gjergj Erëbara, Besar Likmeta, and Dorian Matlija for their invaluable time, orientation, and insights.

It is this team I would like to finally express my deep gratitude to Conny Abel, Andrew McDevitt, Julia Mager, Giulia Sorbi, and Tinatin Ninua. Thank you for your unwavering trust, guidance, patience and support.

What is best in this assessment I owe to all the named and unnamed contributors above. Its weaknesses are entirely my own.

Adela Halo
Lead Researcher, National Integrity System (NIS) Albania
Interview respondents

Aleksandër Çipa, Chair of the Albanian Union of Journalists, 29 September 2014

Ardian Visha, Lawyer, assisting the ad-hoc parliamentary committee on justice reform, 16 and 24 July 2015

Besar Likmeta, Journalist, BIRN Albania, 21 December 2015 and 16 March 2016

Former civil servant in central administration, 22 December 2015

Civil servant involved in policy making relevant to SOEs, 8 May 2016

David Grise, former OPDAT/US Embassy Officer, 17 July 2015

Dorarta Hyseni, Program Manager, National Democratic Institute, 11 August 2015

Dorian Matlija, Director, Res Publica, 8 April 2015

Eralda Çani, Prime Minister’s Adviser for Public Administration, 23 April 2015

Expert of an international organisation, 25 April 2016

Gent Ibrahimi, Constitutionalist, Anti-corruption and judicial expert, 31 March and 8 April 2015

Gentian Elezi, Expert, 22 March 2016

Gjergj Bojaxhi, former KESH Director and business administrator in the oil sector, 8 April 2016

Gjergj Erëbara, Journalist, BIRN Albania, 21 December 2015 and 16 March 2016.

Gledis Gjipali, Executive Director, European Movement Albania, 1 March 2016

Head of International Organization in Tirana, 21 April 2016

High-ranking official in the Executive, 18 January 2016

Human Rights Activist, 19 February 2016

Igli Totozani, Ombudsman, 25 February 2016

International Expert, 27 October 2015

Judge in Tirana, 23 July 2015

Kathleen Imholz, expert on judiciary, 27 April and 17 July 2015

Laerta Poda, Director, Finance Department of OMJB, 28 July 2015

Luljeta Laze, Head of Office, Management of the Judiciary Budget, 28 July 2015

Luljeta Nano, Secretary General, Supreme Audit Institution, 20 February 2015

Marsida Xhaferllari, Chief Inspector, High Council of Justice, 10 June and 24 July 2015

Mirela Gega, CEC Director of Finance, 6 February 2015

Premto Gogo, Coalition of Domestic Observers, 3 February 2016

Prosecutor in Tirana, 3 November 2015

Public finance expert, 20 November 2015

Remzi Lani, Executive Director, Albanian Media Institute, 14 October 2014

Representative of a trade chamber in Albania, 22 April 2016

Shkëlqim Ganaj, Inspector General, HIDAACI, 12 February and 21 July 2015

Vjollca Meçe, Executive Director, Albanian Helsinki Committee, 18 February 2016

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1 This interview was conducted by the previous Lead Researcher on the project, Ervin Karamuço.
2 This interview was conducted by the previous Lead Researcher on the project, Ervin Karamuço.
List of Abbreviations

ACA – Albanian Competition Authority
ACFA – Assessment of the Anti-Corruption Framework Albania
ADL – Law on Declaration of Assets
AMA – Audio-visual Media Authority
ART – Albanian Radio Television
ASCS – Agency for the Support of Civil Society
BCC – Ballot Counting Center
BEEPS – Business Environment and Enterprise Performance Survey
BIRN – Balkan Investigative Reporting Network
CAP – Code of Administrative Procedures
CCEJ – Consultative Council of European Judges
CDO – Coalition of Domestic Observers
CEAZ – Commission of Electoral Administration Zone
CEC – Central Election Commission
COCS – Commissioner for the Oversight of the Civil Service
CoE – Council of Europe
CoM – Council of Ministers
CPC – Criminal Procedure Code
CSL – Civil Servant Law
CSO – Civil Society Organization
DoPA – Department of Public Administration
DP – Democratic Party
EBRD – European Bank for Reconstruction and Development
EC – European Commission
EMA – European Movement in Albania
EPA – Law on Ethics in Public Administration
ERE – Energy Regulatory Entity
ERRU – Regulatory Entity on Water Supply and Removal and Treatment of Sewage Waters
EU – European Union
FSA – Financial Supervisory Authority
GDP – Gross Domestic Product
GNI – Gross National Income
GRECO – Group of States Against Corruption
HC – High Court
HCJ – High Council of Justice
HIDAACI – High Inspectorate for the Declaration and Audit of Assets and Conflict of Interest
HSC – High State Council
ICS – Internal Control Service
IDM – Institute for Democracy and Mediation
IDRA – Institute for Development and Research Alternatives
UICA – Unit for Internal Control and Anti-Corruption
UN – United Nations
UNDP – United Nations Development Program
VAT – Value Added Tax
VCC – Voting Center Commission
II. EXECUTIVE SUMMARY

This National Integrity System (NIS) assessment analyses whether Albania’s state architecture is designed to operate with and promote integrity, and whether it does so in practice. It offers a comprehensive diagnosis of the capacities, internal governance and the effectiveness of 15 key institutions and sectors, or ‘pillars’. The NIS also examines the broader political, social and economic context in which these pillars operate. In offering this diagnosis, the assessment seeks to identify priorities for an anti-corruption reform agenda.

Context

Albania’s state architecture rests on political, socio-economic and cultural foundations that only moderately support integrity. Multi-religious but marked by religious tolerance, and largely homogeneous in ethnic terms, Albanian society suffers only minor social conflict along these lines. It is nevertheless characterised by deep distrust, polarisation along party lines, and a struggling economy with significant levels of informality.

Alongside partisanship, Albanians also display disillusionment with the political system. Political parties have ranked as the least trusted actors among the public for a number of years now, indicating serious problems of representation. A large majority of citizens do not see their representatives in parliament as respected members of their communities. They see politicians as “out for themselves” and understand political engagement as party engagement. Public opinion of representatives reflects recent debates on the infiltration and promotion of suspected or convicted criminals in public office. Citizens consider elite impunity to be pervasive, but display little readiness to denounce corruption in their workplace. This is most probably related to the low trust in the Judiciary and Prosecution, due to corruption, cronyism and politicisation.

Levels of civic apathy are high, with very few citizens engaging in social organisations, volunteerism, or community work. Nevertheless, surveys indicate that Albanians find corrupt practices objectionable and consider honesty and responsibility to be the primary qualities for public office.

Key findings

The assessment reveals significant gaps and flaws in the legal framework that serve to facilitate – but do not fully justify – the failures of practice. Problems of legal design are most acute in three respects: independence, integrity, and political party financing.

Independence

The law rarely guarantees the full independence of institutions meant to check political power. Overwhelmingly, in a country where the Executive tends to control a majority in Parliament, heads of independent institutions – constitutional or created by law – are appointed by a parliamentary simple majority and on the basis of generic criteria. This is the case for the Supreme Audit Institution (SAI), the Prosecutor General, High and Constitutional Court judges, the Vice Chair of the High Council of Justice, the Inspector General of the High Inspectorate of the Declaration and Audit of Assets and Conflict of Interest (HIDAACI), and others. The Ombudsman is the only exception, appointed by a strong majority of two thirds of Parliament. Even the President – who is also chair of the High Council of Justice – can be and has been appointed by a simple majority.

This has resulted in clearly political appointments in a number of these institutions, amounting to a situation where political actors appoint their own ‘supervisors’. Alternative models, where independence is sought by granting Political Parties a balanced share in appointments – such as in the case of the Central Election Commission or the Audio-visual Media Authority – have also failed.
as party politics have disrupted institutions’ functioning and credibility. Such fundamental flaws must be addressed as a matter of priority, and before institutions’ mandates are expanded, as is expected with HIDAACI through the new Law on Whistleblowers expected to enter into force soon.

**Integrity**

The legal framework for conflicts of interest and gifts and hospitality is inadequate, lobbying regulation is entirely lacking, and post-employment restrictions are only in place for the director of the State Police. Definitions of basic terms – including conflicts of interest and prohibited gifts – are convoluted and erroneous, if not self-defeating. Conflicts of interest legislation is both too complex and fragmented. It is of utmost importance that Albania overhauls its integrity framework through an ad hoc parliamentary committee grounded in a comprehensive and thorough audit of integrity systems in the public sector by the Supreme Audit Institution, with the cooperation of HIDAACI and the Ombudsman.

**Political finance**

The oversight of political party finances is ineffective, as parties are not required to publish information on their funds and expenses during electoral campaigns, other publication deadlines are not clear in law, expenditure thresholds are too high to be relevant, and other rules serve to facilitate the artificial break-up of funds. This is in addition to a politicised Central Election Commission, tasked with managing the audits of political party finances.

Combined, these gaps dramatically undermine oversight of political and other entrusted powers. Politically appointed ‘supervisors’ with significant legal loopholes at hand will not deliver on their missions of identifying, investigating, prosecuting and sanctioning corruption and malpractice.

**Standards and norms**

Legal gaps do not fully justify the underperformance revealed by the assessment. For instance, there is almost no record of conflicts of interest or gifts and hospitality management in Albanian institutions, even though the law prescribes that registers should be kept for both. The research team requested evidence from 14 institutions on their conflicts of interest registers, all of which reported empty records or did not respond at all. While some institutions – such as HIDAACI and the Ombudsman – claim that they prevent situations when a conflict of interest would need to be declared, it is hard to reconcile such a claim across the board with widespread perceptions and anecdotal reports of pervasive corruption and conflicts of interest.

Problems of legal design notwithstanding, the importance of politico-institutional norms conducive to integrity cannot be understated, or simply replaced by extensive and highly restrictive regulation. It is hard to imagine that the solution to the massive turnover and overall abysmal independence of the Police, for example, is the complete removal of the role of the Minister of Interior and Executive, as law enforcement is a key political responsibility of the government. The same applies to the Public Sector and the politicisation observed therein. Legal improvements need to be accompanied by cross-party commitment to instituting meritocracy in these sectors as the foundation of professionalism.

Thus poor performance in a number of pillars is often attributable to inadequate politico-institutional will and norms; and examples abound. Parliament’s inquiry committees have never produced credible results or concrete policy outputs, and its standing committees do not make good use of the work of oversight institutions to hold the government to account, which affects the ability of these institutions to effectively fulfil their roles. MPs also underuse mechanisms such as interpellations. HIDAACI’s full audits have only started to produce results that might be considered more systematic in the past two years. The Inspectorate of the High Council of Justice also only put the system of the professional evaluation of judges to the test in the past two years. In both cases – the HIDAACI and High Council of Justice (HCJ) Inspectorate – institutional performance increased after a change of leadership, rather than dramatic legal changes.
The same applies to the weak governance standards found across non-state actors. The limited financial transparency of non-profits, as well as the failure to adopt and adhere to ethical professional standards in both civil society and the media, for instance, are primarily failures of self-regulation. This clearly undermines both sectors' missions as non-state watchdogs and promoters of the necessary civic pressure for good governance.

The purely rhetorical commitment to integrity and the fight against corruption found in Political Parties is also a question of values and norms, rather than simply legislation or oversight. Emphatically failing to uphold those values, Political Parties have promoted individuals with criminal records to elected and public office. The so-called “decriminalisation” package adopted by Parliament in December 2015, under intense international pressure, is expected to facilitate their removal from office, but also symbolises the weakness of integrity norms within parties. Some of Albania's main parties are led by people who were controversially acquitted of corruption charges; and investigated and adjudicated by a politically appointed High Court and Prosecution.

Even in areas where the legal framework is solid practice lags significantly behind. This is most evident in the case of transparency. With the exception of Political Parties and the Central Election Commission, the legal framework for transparent conduct by most assessed pillars is strong:3 provisions are in place for proactive disclosure of certain categories of information, shorter timeframes for responses to information requests, and a clearer enforcement and oversight mechanism, including the possibility of sanctions for breaches. However, this research revealed that only four institutions generally – though not fully – abide by transparency requirements applicable to them, including the Legislature, the Ombudsman, the Supreme Audit Institution, and HIDAACI. Despite having proposed to Parliament the much-improved Law on the Right to Information in 2014, the Executive is amongst its poorest enforcers, together with the Public Sector and most other institutions.

3 The Civil Society pillar only assesses transparency in practice.
NIS pillars

All 15 institutions and sectors examined are far from constituting strong pillars to fight corruption in Albania. In relative terms, the Supreme Audit Institution and Ombudsman are the system’s better performers, while Civil Society, the Prosecution and Judiciary are among the weakest.

Executive, Legislature and independent institutions

The Executive tends to control a majority in Parliament, and with political promotion tied to relations with party leaders, this has resulted in weak parliamentary oversight of the Executive and politicisation of appointments to independent institutions, which usually require a simple majority. This includes the Prosecutor General and High Court judges, which alone can respectively prosecute and try top officials on criminal charges, such as corruption. Over the years, the Albanian Parliament has appointed Cabinet members of the majorities in power at the time to the Presidency, the Supreme Audit Institution, and the HIDAACI.

Parliament does not generally make much use of the findings of institutions such as the SAI or the Ombudsman to hold the Executive and Public Sector agencies to account. The only successful inquiry committees of Parliament are those established to discharge from office heads or members
of independent institutions, such as two Prosecutor Generals, Parliament-appointed members of the High Council of Justice, and the head of the HIDAACI. The only convictions of MPs – by the High Court and Tirana’s first and second instance courts – have been those of opposition law-makers charged with libel by the current Prime Minister or the children of the former.

**Executive and the Public and Private Sectors**

The Executive is responsible for Public Sector management, and both play a role in the management of SOEs, and in creating a level playing field for Business and SOEs. All four pillars display poor independence, transparency, accountability and integrity in practice.

The Executive is independent and suffers no encroachments from other branches of state power in both law and practice. However, investigative journalists have made strong claims about the abuse of Executive office for particular private interests, and the IMF Representative to Albania recently claimed such interests had been a little too successful in changing tax legislation to benefit a small number of businesses. Unregulated lobbying, a poorly regulated and unenforced conflict of interest regime, weak and compromised state and non-state oversight, and a lack of commitment to integrity from Political Parties that have held power, all facilitate such phenomena.

While tax and customs administrations were recently included in the civil service, cronyism and corruption are widely reported. According to Crown Agents, the company contracted by the government to improve the performance of the customs administration, corruption and smuggling are key reasons for not meeting budget revenue targets. Various sources concur that nepotism in appointments in the Public Sector and SOE management structures, irregular public contracts and abuse of state resources, including SOEs, and partial decision-making have been common features across administrations.

**Police, Prosecution and Judiciary**

The institutions responsible for the investigation, prosecution and adjudication of corruption are all subject to strong political pressure, including through politicised appointments to key leadership positions that affect their entire functioning. Career development is not merit based, and all three are among the most under-resourced public institutions. Thus, only one of five directors of the State Police in the past 13 years has ever come close to finishing the regular five-year mandate and turnover in the State Police is massive, especially after government changes.

The Prosecutorial Council has no real power of accountability over the Prosecutor General, whose appointment is highly vulnerable to politicisation, and who heads a highly centralised Prosecution. In the Judiciary, High Court appointments are both highly vulnerable to politicisation and its members unaccountable, while the Minister of Justice alone can initiate disciplinary proceedings against judges and holds problematic inspection powers vis-à-vis both judges and prosecutors. The High Council of Justice features strong political and crony influences. Though different in their legal means, both the judicial and prosecutorial councils have failed to uphold integrity among their ranks. Judges in particular have come under focus for holding inexplicable wealth, as revealed by investigative journalists and HIDAACI’s audit of asset declarations. However, the High Council of Justice and the Prosecution have responded only reluctantly with few disciplinary measures and prosecutions. This affects the impact of HIDAACI’s role and sustains perceptions of widespread corruption in these bodies.

While relations between the Prosecution and Police are key to the success of investigations and prosecutions, cooperation, trust, and resources are seriously insufficient. Overall, successful investigations, prosecutions and convictions for corruption remain low. Convictions are often unjustifiably lenient and judges have shown poor understanding of key notions in corruption cases, such as benefit, influence, or intent, and have failed to exercise their right to ask for more evidence. They have also decided inconsistently on issues such as the admissibility of evidence, affecting Police and Prosecutors’ confidence in their procedural actions during investigations. No top official has ever been found guilty of corruption.
Central Election Commission and Political Parties

The legal framework generally guarantees political freedom and pluralism, but not oversight. The main majority and opposition parliamentary parties all appoint members to the Central Election Commission (CEC) – the body responsible for election administration and oversight – who then take oaths of impartiality. However, in practice Political Parties have misused their role, causing deadlock or inconsistency in the CEC’s operations, and instability in the lower tiers of election administration. The careers of various CEC members also strongly suggest political patronage, rather than impartiality.

Use of state resources for campaigning, vote-buying and biased media coverage of electoral candidates – all in breach of legal provisions – are widely reported but go unpunished. While some provisions are in place for party finance transparency, deadlines are not fixed, the threshold for campaign expenditure is far too high, and electoral subjects are not obliged to disclose funds and expenditure during the campaigns. Alongside the impact of politicisation, the CEC lacks the resources for effective party finance oversight. In practice, parties significantly under-report their campaign spending.

Non-state actors and political power

Business, Media and Civil Society all emerge as weak pillars in the assessment, unable to operate independently, or hold political power in check – a particularly important role for the latter two.

Business operates amidst legislative instability, significant informality, corruption and arbitrariness in the public administration – including tax and customs – and the Judiciary. Journalists work in highly precarious conditions, mostly without job contracts, in media owned by other businesses vying for political favour to service business ambitions, and with libel both a civil and criminal offence. The business-media-politics link, ascertained by journalists themselves, is evident in public advertising contracts and electoral coverage, which is often skewed but goes unpunished by the CEC, and in politicisation of the Audio-Visual Media Authority. For all of the above reasons, corruption reporting is limited to exchanges of accusations between parties, self-censorship is high, and the nascence of investigative journalism, while a welcome development, is vulnerable.

The watchdog role of non-profit organisations (NPOs) is also weak, due to a combination of inadequate resources and constituency bases, and politicisation. Low governance standards in the sector, such as poor financial transparency, an absence of codes of conduct, and involvement in conflicts of interest scandals are reflected in low public confidence in civil society. As a result, and despite championing important good governance initiatives, efforts remain few and impact is tenuous.
Key recommendations:

- Political Parties in Parliament must adopt justice reform through wide cross-party consensus, ensuring inter alia appropriate independence and accountability for judicial institutions and the Prosecution (see detailed recommendations under respective pillars).

- The government and Parliament should strengthen the independence of oversight institutions by amending their legal framework to ensure qualified majority appointments to the SAI, HIDAACI, and CEC; strengthen mandate terms for some of them; and introduce restrictions on the right to discharge appointees by simple majorities in Parliament and cut their budgets. The appointment formula for members of the Public Procurement Commission should also be reconsidered.

- MPs, Political Parties and civil society should enhance pressure for the quality of appointments in key oversight institutions in the future; seeking candidates capable of garnering cross-party respect and support.

- Parliament should establish an ad hoc committee, balanced in its composition, and assisted by a technical secretariat, to complete and simplify the framework for integrity in public office, with a focus on conflicts of interest, gifts and hospitality, lobbying, and post-employment regulation. A comprehensive and thorough audit of integrity systems in the public sector by the SAI, and the cooperation of HIDAACI and the Ombudsman should underpin the committee’s work. The SAI should conduct an audit of integrity systems in the public sector and spearhead the reform process together with HIDAACI and the Ombudsman, even if the parliamentary ad hoc committee is not deemed feasible at this point in time.

- Parliamentary committees, with the support of parliamentary services, should employ the findings of the SAI, Ombudsman, HIDAACI and other institutions to scrutinise the Executive and Public Sector agencies. Parliamentary committees and MPs should promote good governance by demanding specific reporting on the implementation of integrity-related legislation by institutions on which Parliament has oversight.

- Parliament’s inquiry committee on the Police should agree on and publish a work calendar and eventually a thorough report on career decisions and dismissals in the Police, accompanied by recommendations for the way forward. A parliamentary resolution committing parties to stability and professionalism in the Police should be considered at the end of this process.

- The Prime Minister’s Office should immediately adopt a fully developed transparency programme, and publish all the information required to be proactively disclosed, as envisaged by the Law on the Right to Information.

- All public institutions assessed should regularly update and publish registers of conflicts of interests, and gifts and hospitality.

- Political Parties should pro-actively publish detailed biographies of election candidates, and funds and expenditure at regular intervals during the upcoming 2017 electoral campaign and before Election Day.

- Political Parties should establish strict checks on election candidate backgrounds, introduce selection criteria for election candidates that give weight to public credit, community service, distinct professional achievements, and combine professional and financial backgrounds –
with a view to countering the trend of rising businessmen in office. They should involve communities and party structures in candidate selection.

- The National Judicial Conference and judges’ professional associations should take a more active role in promoting ethical standards within the judicial community, including by identifying and publicly denouncing inappropriate practices.

- The Judicial Inspectorate should conduct a thematic inspection of corruption adjudications as a first basis for improving judicial practice in this area.

- The government and Parliament should significantly enhance the resources of the Judiciary, Prosecution, and Police.

- Journalists’ associations, media development organisations, and NPOs should urgently renew self-regulating efforts in their respective fields; promote ethical and professional standards; and advocate for the enforcement of the Law on Work Contracts and Regular Payments in the Media sector.

- Civil society and donors should shift attention to building stronger constituency bases, improving advocacy skills and watchdog efforts.

- Parliament should exercise higher levels of oversight of SOEs and options should be considered for a separate, public monitoring structure. It should also consider the legal amendments proposed by the SAI on the criteria for appointment in supervisory councils, remuneration and transparency.
III. ABOUT THE NATIONAL INTEGRITY SYSTEM ASSESSMENT

The National Integrity System assessment approach used in this report provides a framework to analyse both the vulnerabilities of a given country to corruption as well as the effectiveness of national anti-corruption efforts. The framework includes all principal institutions and actors that form a state. These include all branches of government, the public and private sector, the media, and civil society (the ‘pillars’ as represented in the diagram below). The concept of the National Integrity System has been developed and promoted by Transparency International as part of its holistic approach to fighting corruption. While there is no blueprint for an effective system to prevent corruption, there is a growing international consensus as to the salient institutional features that work best to prevent corruption and promote integrity.

A National Integrity System assessment is a powerful advocacy tool that delivers a holistic picture of a country’s institutional landscape with regard to integrity, accountability and transparency. A strong and functioning National Integrity System serves as a bulwark against corruption and guarantor of accountability, while a weak system typically harbours systemic corruption and produces a myriad of governance failures. The resulting assessment yields not only a comprehensive outline of reform needs but also a profound understanding of their political feasibility. Strengthening the National Integrity System promotes better governance across all aspects of society and, ultimately, contributes to a more just society.
Definitions

The definition of ‘corruption’ which is used by Transparency International is as follows:

‘The abuse of entrusted power for private gain. Corruption can be classified as grand, petty and political, depending on the amounts of money lost and the sector where it occurs.’

‘Grand corruption’ is defined as ‘Acts committed at a high level of government that distort policies or the functioning of the state, enabling leaders to benefit at the expense of the public good.’

‘Petty corruption’ is defined as ‘Everyday abuse of entrusted power by low- and mid-level public officials in their interactions with ordinary citizens, who often are trying to access basic goods or services in places like hospitals, schools, police departments and other agencies.’

‘Political corruption’ is defined as ‘Manipulation of policies, institutions and rules of procedure in the allocation of resources and financing by political decision makers, who abuse their position to sustain their power, status and wealth.’

Objectives

The key objectives of the National Integrity System assessment are to generate:

- an improved understanding of the strengths and weaknesses of Albania’s National Integrity System within the anti-corruption community and beyond
- momentum among key anti-corruption stakeholders in Albania for addressing priority areas in the National Integrity System

The primary aim of the assessment is therefore to evaluate the effectiveness of Albania’s institutions in preventing and fighting corruption and in fostering transparency and integrity. In addition, it seeks to promote the assessment process as a springboard for action among the government and anti-corruption community in terms of policy reform, evidence-based advocacy or further in-depth evaluations of specific governance issues. This assessment should serve as a basis for key stakeholders in Albania to advocate for sustainable and effective reform.

Methodology

In Transparency International’s methodology, the National Integrity System is formed by 15 pillars

<table>
<thead>
<tr>
<th>CORE GOVERNANCE INSTITUTIONS</th>
<th>PUBLIC SECTOR AGENCIES</th>
<th>NON-GOVERNMENTAL ACTORS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legislature</td>
<td>Public sector</td>
<td>Political parties</td>
</tr>
</tbody>
</table>

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5 Ibid, p.23.
6 Ibid, p.33.
7 Ibid, p.35.
Each of the 15 pillars is assessed along three dimensions that are essential to its ability to prevent corruption:

- its overall capacity, in terms of resources and independence
- its internal governance regulations and practices, focusing on whether the institutions in the pillar are transparent, accountable and act with integrity
- its role in the overall integrity system, focusing on the extent to which the institutions in the pillar fulfill their assigned role with regards to preventing and fighting corruption

Each dimension is measured by a common set of indicators. The assessment examines for every dimension both the legal framework of each pillar as well as the actual institutional practice, thereby highlighting any discrepancies between the formal provisions and reality in practice.

<table>
<thead>
<tr>
<th>DIMENSION</th>
<th>INDICATORS (LAW AND PRACTICE)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capacity</td>
<td>Resources Independence</td>
</tr>
<tr>
<td>Governance</td>
<td>Transparency Accountability Integrity</td>
</tr>
<tr>
<td>Role within governance system</td>
<td>Pillar-specific indicators</td>
</tr>
</tbody>
</table>

The assessment does not seek to offer an in-depth evaluation of each pillar. Rather it seeks breadth, covering all relevant pillars across a wide number of indicators in order to gain a view of the overall system. The assessment also looks at the interactions between pillars, as weaknesses in a single institution could lead to serious flaws in the entire system. Understanding the interactions between pillars helps to prioritise areas for reform.

In order to take account of important contextual factors, the evaluation is embedded in a concise analysis of the overall political, social, economic and cultural conditions – the ‘foundations’ – in which the 15 pillars operate.
The National Integrity System assessment is a qualitative research tool. It is guided by a set of ‘indicator score sheets’, developed by Transparency International. These consist of a ‘scoring question’ for each indicator, supported by further guiding questions and scoring guidelines. The following scoring and guiding questions, for the resources available in practice to the judiciary, serve as but one example of the process:

<table>
<thead>
<tr>
<th>PILLAR</th>
<th>Judiciary</th>
</tr>
</thead>
<tbody>
<tr>
<td>INDICATOR NUMBER</td>
<td>3.1.2</td>
</tr>
<tr>
<td>INDICATOR NAME</td>
<td>Resources (practice)</td>
</tr>
<tr>
<td>SCORING QUESTION</td>
<td>To what extent does the judiciary have adequate levels of financial resources, staffing and infrastructure to operate effectively in practice?</td>
</tr>
<tr>
<td>GUIDING QUESTIONS</td>
<td>Is the budget of the judiciary sufficient for it to perform its duties? How is the judiciary’s budget apportioned? Who apportions it? In practice, how are salaries determined (by superior judges, constitution, law)? Are salary levels for judges and prosecutors adequate or are they so low that there are strong economic reasons for resorting to corruption? Are salaries for judges roughly commensurate with salaries for practising lawyers? Is there generally an adequate number of clerks, library resources and modern computer equipment for judges? Is there stability of human resources? Do staff members have training opportunities? Is there sufficient training to enhance a judge’s knowledge of the law, judicial skills including court and case management, judgment writing and conflicts of interest?</td>
</tr>
<tr>
<td>MINIMUM SCORE (1)</td>
<td>The existing financial, human and infrastructural resources of the judiciary are minimal and fully insufficient to effectively carry out its duties.</td>
</tr>
<tr>
<td>MID-POINT SCORE (3)</td>
<td>The judiciary has some resources. However, significant resource gaps lead to a certain degree of ineffectiveness in carrying out its duties.</td>
</tr>
<tr>
<td>MAXIMUM SCORE (5)</td>
<td>The judiciary has an adequate resource base to effectively carry out its duties.</td>
</tr>
</tbody>
</table>

The guiding questions, used by Transparency International worldwide, for each indicator were developed by examining international best practices, as well as by using our own experience of existing assessment tools for each of the respective pillars, and by seeking input from (international) experts on the respective institutions. These indicator score sheets provide guidance for the Albania assessment, but when appropriate the lead researcher has added questions or left some questions
unanswered, as not all aspects are relevant to the national context. The full toolkit with information on the methodology and score sheets are available on the Transparency International website.

To answer the guiding questions, the research team relied on four main sources of information: national legislation, secondary reports and research, interviews with key experts, and written questionnaires. Secondary sources included reliable reporting by national civil society organisations, international organisations, governmental bodies, think tanks and academia.

To gain an in-depth view of the current situation, a minimum of two key informants were interviewed for each pillar – at least one representing the pillar under assessment, and one expert on the subject matter but external to it. In addition, more key informants, that is people ‘in the field’, were interviewed. Professionals with expertise in more than one pillar were also interviewed in order to get a cross-pillar view.

**The scoring system**

While this is a qualitative assessment, numerical scores are assigned in order to summarise the information and to help highlight key weaknesses and strengths of the integrity system. Scores are assigned on a 100-point scale in 25-point increments including five possible values: 0, 25, 50, 75 and 100. The scores prevent the reader getting lost in the details and promote reflection on the system as a whole, rather than focusing only on its individual parts. Indicator scores are averaged at the dimension level, and the three dimensions scores are averaged to arrive at the overall score for each pillar, which provides a general description of the system’s overall robustness.

<table>
<thead>
<tr>
<th>Category</th>
<th>Score Range</th>
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<tbody>
<tr>
<td><strong>VERY STRONG</strong></td>
<td>81-100</td>
</tr>
<tr>
<td><strong>STRONG</strong></td>
<td>61-80</td>
</tr>
<tr>
<td><strong>MODERATE</strong></td>
<td>41-60</td>
</tr>
<tr>
<td><strong>WEAK</strong></td>
<td>21-40</td>
</tr>
<tr>
<td><strong>VERY WEAK</strong></td>
<td>0-20</td>
</tr>
</tbody>
</table>

The scores are not suitable for cross-country rankings or other quantitative comparisons, due to differences in data sources across countries applying the assessment methodology and the absence of an international review board tasked to ensure comparability of scores.

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8 http://www.transparency.org/whatwedo/nis
IV. COUNTRY PROFILE: FOUNDATIONS FOR THE NATIONAL INTEGRITY SYSTEM

Foundations of the National Integrity System in Albania

Since the National Integrity System is deeply embedded in the country’s overall social, political, economic and cultural context, a brief analysis of this context is presented here for a better understanding of how these factors affect integrity on the whole. There are four different ‘foundations’ of the system: political-institutional foundations, socio-political foundations, socio-economic foundations, and socio-cultural foundations.

Political-institutional foundations

Score: 50

TO WHAT EXTENT ARE THE POLITICAL INSTITUTIONS IN THE COUNTRY SUPPORTIVE TO AN EFFECTIVE NATIONAL INTEGRITY SYSTEM?

Albania emerged as a new democracy at the beginning of the 1990s after decades of communist rule. Since then the country has been on a quest for democratic governance, a path that was often hindered by the antagonism of ruling elites and the highly polarised nature of politics. In December 2014 the opposition Democratic Party (DP) ended a five-month boycott of Parliament, a tactic previously used by the current governing Socialist Party (SP).

In the last few decades of transition Albania has changed tremendously, both politically and economically. In 2009 it joined NATO and is currently a EU candidate country, awaiting the opening of accession negotiations. Although Albania’s position in the Quality of Democracy Ranking improved in the period 2013-14 compared to 2010-11, it continues to have a relatively low score of 59.7 in a scale from 0, very low quality to 100, very high quality.9

Legislation is largely in line with international and European standards and guarantees respect for civil rights, but infringements are not uncommon. The 2013 parliamentary elections were conducted in a polarised and deeply divided political environment. Despite changes and improvements to the Electoral Code in 2012 and a legal framework generally conducive to democratic elections, the electoral process continues to be marred by shortcomings in implementation and distrust from both smaller parties and citizens.10 The independent conduct of election management bodies hinges on the will of Political Parties, but such will has not materialised. The latest local elections in 2015, while calmer and free of severe instances of malpractice compared to previous ones, marked a number of other long-standing shortcomings, which negatively affected the freedom and equality of all citizens to vote and get elected. Most notably vote buying, political pressure on the public administration,

9 Results of the Quality of Democracy Ranking can be found here: http://democracyranking.org/wordpress/rank/democracy-ranking-2015/
misuse of public resources, politicisation of the election administration and alleged voter intimidation stained the process and raised concerns from both international and domestic observers. The on-going electoral reform has once more brought to the surface deep divisions along party lines with the opposition and the governing party holding often opposite views on amendments to the Electoral Code. A lack of consensus, political will and the predominance of justice reform over electoral reform has delayed the process beyond deadlines set for the work of the ad hoc Parliamentary Committee on Electoral Reform. Domestic groups have raised concerns over the lack of substantial inclusion of civil society organisations and the lack of political will to move forward. Moreover, the legal framework that excludes independent candidates from public funds and the limited access of smaller parties and independent candidates to the media during the electoral campaign seriously undermines their equal participation in elections.

Freedom of expression and association are enshrined in all relevant legislation and international commitments. However, censorship and self-censorship has seriously undermined the independent role of the media due to deeply rooted ties between politics, business and media owners. According to Freedom House and a study by BIRN Albania, the intermixing of political and business interests makes media outlets biased towards one party or the other. The right to association is generally exercised in peaceful protests and gatherings. However, the events of 21 January 2011, which saw four protesters shot by the Guard of the Republic, have not been fully and seriously investigated and adjudicated.

Albania’s quality of democracy was ranked 33 out of 129 countries in the Bertelsmann Transformation Index. Political transformation according to the country report has often been an outlier compared to other post-communist states and marred by political deadlocks and polarisation. A concern that appears frequently in recent years and corrodes the country’s democracy is the vulnerability of the state to private interests, mostly witnessed through the influence of private business on political decision-making, politicians’ control of powerful businesses and connections with illegal businesses and interests, and the clientelistic distribution of public funds. Deep divides between the opposition and government have often hindered the country’s steps forward in democratisation and European integration. Political dialogue and compromise between both sides is not only necessary but has also been called for by all international partners for a long time.

The current government won a decisive victory in the 2013 parliamentary elections, which was later confirmed by the 2015 local elections. Since it took office the ruling coalition has undertakem a number of initiatives and efforts that were welcomed by the international community, such as the administrative-territorial reform now in its implementation phase, a comprehensive justice reform being debated in Parliament, an operation in September 2015 to curb economic informality, and various other operations to fight the cultivation of drugs and electricity theft, etc. As such, the government has the numbers in Parliament and extensive powers to influence its citizens’ lives in issues that are important to them.

The rule of law is not entrenched, but constitutes one of the country’s major reform challenges. In 2015 Albania ranked 53 out of 102 countries in the Rule of Law Index with an overall score of 0.52

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17 Ibid.
on a scale of 0 to 1 (with 1 indicating strongest adherence to the rule of law). In the Rule of Law indicator of the Bertelsmann Transformation Index, the country received its lowest score of 5.0, compared to all other indicators. Moreover, while democratic institutions exist they are often not efficient; they are subject to political interference, or are corrupt. The European Commission 2015 report for Albania emphasises limited progress and the need for extensive efforts in ensuring the rule of law, especially focusing on judicial reform and with a view to establishing “a solid track record of investigations, prosecutions and final convictions in corruption and organised crime at all levels”.

According to the Bertelsmann Transformation Index 2016 the combination of impunity with political appointments in the majority of institutions, especially those intended to be independent, has posed significant challenges to the rule of law. It concludes that Albania’s transition period has been characterised by “weak state institutions, fuzzy checks and balances, politicized “independent” institutions which serve their political masters, rent seeking elites, conflicting politics and a poor society dependent on state employment”. In a telling figure, the majority of citizens surveyed between 2015 and 2016 believed international institutions are the primary aides in the fight against corruption (59 per cent), followed by the Police and Media. Courts ranked last in the list.

**Socio-political foundations**

**Score: 50**

**TO WHAT EXTENT ARE THE RELATIONSHIPS AMONG SOCIAL GROUPS AND BETWEEN SOCIAL GROUPS AND THE POLITICAL SYSTEM IN THE COUNTRY SUPPORTIVE TO AN EFFECTIVE NATIONAL INTEGRITY SYSTEM?**

Albania’s societal characteristics are moderately in favour of a national integrity system. Its religious co-existence has become a trademark of the country in the outside world. In 2014 Pope Francis visited Albania and praised its religious tolerance for a country with a diverse religious demography. According to the 2011 Census 56.7 per cent declared to be Muslim, 10.03 per cent Catholic and 6.75 per cent Orthodox followed by smaller percentages of Bektashi, Evangelist and others. The Interreligious Council in Albania has often gathered leaders of different religious communities together to address issues of common concern. Moreover, religious leaders frequently attend celebrations of other religious groups as a sign of respect.

Albania is a largely homogenous country with an overall climate of tolerance and good inter-ethnic relations. In the 2011 Census 82.58 per cent identified themselves as Albanians, 0.87 per cent as Greek, 0.3 per cent Aromanian, 0.3 per cent Roma, 0.2 per cent Macedonian, 0.12 per cent Egyptian, 0.01 per cent Montenegrin and a considerable 13.96 per cent refused to answer. Despite the generally positive climate, Roma and Egyptian communities continue to be marginalised, with significantly less access to education, healthcare, social services and the labour market. In terms of education, barriers are visible in lower school attendance, higher school dropout and lower levels of educational attainment. Participation in the labour market is also significantly lower for Roma and

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Egyptian citizens distrust Political Parties and their representatives, largely believing they do not represent or work for the aggregate interests of society. A Focus Group of the National Democratic Institute in 2015 revealed that people look at Political Parties as cement bunkers, inaccessible and far from representing their needs. Party politics is perceived poorly and described as conflictual and based on personal rather than citizens’ interests. In his research on political discourse in post-communist Albania, scholar Blendi Kajsiu argues about a crisis of representation, whereby Political Parties have been unable to represent different social groups and articulate their needs. In his analysis, the less representative parties have become, the more society and different groups have defined themselves in opposition to the Political Parties and politicians. Other studies link political elites to the patronage system and explain polarisation a due to the influence of the communist past.

Despite a high number of NPOs registered and/or operating in Albania, civil society continues to suffer from low organisational capacity, declining funding opportunities, and politicisation, which hampers its role as a mediator between society and the political system. Different reports assert that institutions are selective in receiving input from civil society and that impact is generally low. Albanian legislation is largely in line with international and European standards in terms of protecting minorities from discrimination. The government has undertaken a number of legislative steps to ensure empowerment and protection from discrimination due to race and ethnicity. Issues of Roma and Egyptian communities were included in several strategies, such as the Strategy for Social Inclusion, National Strategy for Development and Integration and the National Action Plan for Integrating Roma and Egyptians in the Republic of Albania 2016-2020, approved in December 2015. Despite these positive steps, discrimination against these groups continues and anti-discrimination constitutes one of the key priorities set by the European Commission in the broader topic of human rights. Often Roma and Egyptians face direct and indirect barriers in accessing public services. According to the Commissioner Against Discrimination, this is a result of criteria set in the legislation, which excludes Roma and Egyptians, lack of information or lack of understanding of administrative procedures as well as stigmatisation and continuous discrimination from the rest of the population.

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26 Ibid., p.31.
27 Ibid., p.42.
Patron-client relationships in Albanian society are the rule rather than the exception. These relationships become palpable especially during elections when allegations of vote buying in exchange for money and/or employment continue to be a major obstacle for free and fair elections. Despite its theoretical role as the fourth power in a state’s check and balances the Albanian Media is prone to clientelism and largely dependent on or owned by politics. In an article on who owns the owners in the media market, media analyst Ilda Londo argues that Albania’s seemingly pluralised media environment actually “indicates an artificial maintenance of the levers of influence on political decisions”, where political and business interests prevail over media market regulations and impartial reporting (see Media pillar).

Socio-economic foundations

Score: 25

Albania is an upper-middle-income country with a US$ 4,564 GNI per capita and overall US$13.37 billion GDP. Economic growth is estimated at around 2.6 per cent in 2015 and 3.4 per cent in 2016 according to the World Bank Group. The country was not hit immediately by the global financial crisis, but its economy suffered the impacts of the euro-crisis due to close ties with Italy and Greece where most Albanian immigrants reside. Remittances and financial inflows thus decreased, while poverty reduction halted, making poverty increase from 12.4 per cent in 2008 to 14.3 per cent in 2012. For a long time remittances served as an important contributor to Albania’s economy as before 2008 they occupied 12-15 per cent of GDP, while in 2014 they fell to 5-7 per cent of GDP. In 2016 Albania ranked 97 in the World Bank’s Doing Business report, with a score of 60.5. Starting a business in Albania takes five and a half days and six procedures.

Unemployment varied between 18 and 17 per cent in 2014 and 2015 with slight improvements in the first quarter of 2016. Unemployment has been as high as 32.3 per cent among young people aged 15-29 years old, with slightly higher unemployment rates for women. The European Commission 2015 report acknowledged some progress in terms of economic criteria, but a number of challenges were identified, such as tackling the informal economy and improving the business environment.

According to an estimate by the Albanian government, the informal economy may be as high as 50 per cent of GDP. The European Commission Report concludes that more needs to be done to

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33 Londo, I., ‘Media integrity in Albania: Who owns the owners?’. Media Observatory, 14 July 2014: http://mediaobservatory.net/radar/media-integrity-albania-who-owns-owners-0
40 European Commission, Albania Report, 2015, p.5.
improve the national employment service, employment promotion programmes and to develop a coherent labour market system.  

According to the Living Standards Measurement Survey for 2012 poverty rates are estimated at 14.3 per cent poor and 2.3 per cent extremely poor. Albania remains one of the poorest countries in Europe with relative and extreme poverty rates still high. The figures have gone up compared to 2012 with the gap between rural and urban areas decreasing due to increased poverty levels in urban regions. Those facing difficulties in meeting their basic nutritional needs increased from 1.2 per cent in 2008 to 2.3 per cent in 2012 with extreme poverty increasing both in rural and urban areas (2.2 and 2.3 per cent respectively). According to the Millennium Development Goals report on Albania “the poverty gap, as a proxy of the distance the Albanian households are from the poverty line, also increased over this period, from 2.4–3.0 percent”.  

Regarding inequality, on a scale from 0 (perfect equality) to 100 (perfect Inequality) Albania scored 29 in 2012, the last year when the Gini Index was measured. According to World Bank estimations, inequality has declined, but mostly due to a decline in consumption by the well off. In the Human Development Index 2015 Albania ranked 85 among 188 countries; falling into the high development category with a score of 0.733. However, it lags behind other countries in the region and scores below the average of human development for European and Central Asian Countries.

The share of GDP allocated to education remains the lowest in the region at 3 per cent. While in general literacy rates are higher than the regional average, Roma children have the lowest levels of school enrolment. There is a need for more public expenditure on education as well as research and development in order to adapt to new technologies and improve the investment climate. The 2015 European Commission Report concludes that Albania is moderately prepared in education, identifying challenges in terms of filling the gaps in years of schooling, secondary school enrolment rates, education quality and the market relevance of qualifications. In the latest PISA examination Albania ranked last in the region, and 57 out of 65 participating states, a sign of alarm in the quality of education offered. Differences are visible in terms of enrolment levels for the poor and extremely poor versus non-poor children. The poorest part of society faces many challenges in attaining education due to lack of access and poor economic conditions. According to the Living Standard Measurement Survey (LSMS) in 2012 enrolment rates for poor children were 83.4 per cent and extremely poor 75.1 per cent, versus a 90.7 per cent enrolment rate for the non-poor children. A striking figure related to children is the high levels of child labour: 32 per cent of Albanian children are involved in the labour market and the problem of school dropout has met with weak responses from the government.

According to a 2015 country assessment conducted by the UN, the ability of the state/government to offer social protection especially for the most vulnerable groups is at low levels and needs substantial improvement. Some of the problems of the current social protection scheme include the fact that the scheme does not take into account all the dimensions of poverty and deprivation and it does not address social care and special reintegration social services. In an illustrative figure “75% of children in families in receipt of economic aid are unable to meet any of the five needs considered
to be fundamental – including health and education. Pensioners face multidimensional exclusion from social services. The country assessment concludes that the elderly in Albania can barely afford living and health care services especially in rural areas.

**Socio-cultural foundations**

Score: 25

**TO WHAT EXTENT ARE THE PREVAILING ETHICS, NORMS AND VALUES IN SOCIETY SUPPORTIVE TO AN EFFECTIVE NATIONAL INTEGRITY SYSTEM?**

High levels of societal distrust and apathy suggest weak support for an effective national integrity system. However, surveys suggest that Albanians find corrupt practices objectionable and seek honesty in public office.

Thus, a striking 89.4 per cent of respondents in the European Values Survey from 2008 said people cannot be trusted and caution must be exercised. The European Social Survey fieldwork from 2012 showed similar trends of distrust among citizens, which were even lower compared to other countries included in the study. Among young people trust tends to decrease considerably when passing from family and relatives (99 and 74 out of 100) to neighbours, colleagues and other people (fluctuating between 40 and 50 out of 100).

An Audit of Political Engagement revealed that surveyed respondents were in general disillusioned and apathetic in terms of political and non-political engagement. Informal means of engagement predominate, with “discussing politics” on top. When asked about what they would be prepared to do to address an issue they felt strongly about, the most common answers were contacting a local councillor or municipal officer, discussing it with people, and alerting the media. Respondents felt they generally had no influence at all either at local (59.4 per cent) or national levels (72.8 per cent). Citizens mostly looked at political engagement exclusively as political party engagement, which confirms the highly polarised nature of politics in Albania. The study suggests a strong need to “educate and promote among citizens more diverse and frequent mechanisms for engagement to influence political processes and orient decision-making to public interest”.

This trend showing a lack of social and political engagement has been confirmed throughout the years; painting a dim picture of citizens’ public engagement. The Civil Society Index conducted in 2010 revealed that participation in social organisations, volunteering and community engagement was low with 18.4 per cent, 18.1 per cent and 29.4 per cent respectively. According to the study this “indifference” is common among transition and early stages of post transition countries. The study concluded that civil engagement is the weakest portion of civil society in Albania. On a scale from 0 to 10 (from very unsatisfied to very satisfied) Albanians are closer to being unsatisfied with the way democracy works in the country, scoring 3.8 points.

The issue of integrity has taken primary importance in the Albanian public discourse especially after the general elections of 2013 and local elections of 2015 when individuals either suspected or convicted of crimes were elected as MPs or local representatives. In fact, 65 per cent of

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55 Ibid, p.60.
respondents in the Political Engagement Audit did not find MPs to be respected members of society that work in an ethical manner.\textsuperscript{61} These opinions reflect recent discussions leading to the so-called decriminalisation legal package, adopted in December 2015, which seeks to ensure the integrity of elected and appointed officials and those who work in public administration.

There are indications that citizens object to malpractice and seek integrity in public office. Thus, for 59.7 per cent of respondents in the Public Engagement Audit honesty and responsibility were the most desired qualities in an MP. In addition, a 2015-16 survey of corruption perceptions and experiences saw an overwhelming majority of citizens condemning practices such as bribery and nepotism: 94 per cent of respondents thought that a Minister who received kickbacks from businesses is corrupt and should be punished, while 78 per cent thought the same of the business. When asked about the use of government cars for personal needs and influence to employ relatives, 72 per cent and 68 per cent respectively said these practices were corrupt and should be punished.\textsuperscript{62} However, when questioned about their own willingness to protest against corruption or denounce corruption in their workplaces, citizens showed little readiness to do so.\textsuperscript{63}

\textsuperscript{61} Ducu, V., Dhembo, E., Audit of Political Engagement, Institute for Democracy and Mediation, 2016, p.35.
\textsuperscript{62} IDRA, Corruption in Albania – Perceptions and Experiences, 2015-2016, p.13.
Albania’s ubiquitous corruption poses a key challenge to the country’s democratic development and EU integration aspirations. All sectors of the public sphere are prone to both petty and grand corruption. The culture of impunity, lack of rule of law and rampant corruption are issues to be dealt with urgently. The current government, in power since 2013, has initiated an ambitious reform agenda to fight corruption, which in the words of the Prime Minister is present in every cell of Albanian society.

**Corruption indicators**

Transparency International’s Corruption Perceptions Index 2015 ranks Albania 88 among 168 countries with a score of 36 points on a 0 (highly corrupt) to 100 (highly clean) scale. Despite faring better than in the three previous years it continues to perform worse than the majority of other Balkan countries. Albania’s corruption score in the Freedom House Nations in Transit report has not changed drastically since 2006, ranging between 5 and 5.25 on a scale from 1 (highest level of democratic progress) to 7 (lowest level).

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**Source:** Transparency International, Corruption Perceptions Index 2012-15

Domestic and international public opinion surveys confirm this trend of widespread corruption. Transparency International’s Global Corruption Barometer 2013 revealed that 66 per cent of respondents believed the level of corruption had increased over the past two years, 25 per cent...
thought it had remained the same and only 10 per cent thought it has decreased. The survey showed that institutions perceived to be most affected by corruption are the judiciary (81 per cent), medical and health services (80 per cent), political parties (72 per cent) and education (70 per cent). A recent survey from IDRA showed that Albanians perceive corruption and impunity as the country’s main challenges; with 85 per cent and 75 per cent respectively. Despite these overwhelming percentages only 10 per cent of respondents declared that they had taken measures to combat corruption, such as participating in demonstrations, meeting a public/elected official or signing a petition.

Another study on trust in government revealed that interviewees have personally faced corruption; most often at the local level, with 41 per cent stating that they had witnessed corruption in their municipality. The types of corruption most commonly reported by respondents were abuses/theft of public funds (22 per cent), nepotism (20 per cent) and mismanagement of public funds (18 per cent). A regional report from 2014 revealed that the share of respondents who had experienced either corruption pressure or direct corruption had increased from previous surveys using the same methodology (2001 and 2002), reaching 85 per cent and 74 per cent respectively.

Despite claims of increased prosecutions for corruption cases, an analysis from BIRN Albania found that the majority of cases revolve around petty forms of corruption, not grand corruption from high-level officials. According to the report, 2014 and 2015 saw an increase in the number of officials convicted of corruption, but there were no convictions of high-level officials in these years.

According to the World Bank Governance Indicators for 2013, Albania scored the lowest on Control of Corruption (25.8 percentile) followed by a negative performance of the Rule of Law indicator (35.5 percentile). The Control of Corruption is perceived to have worsened during the last four years, with weak performance in 2013 compared to 2002-2003. Such data confirm that despite improvements in specific years, anti-corruption measures undertaken so far are not effective or sustainable over time.

**Corruption cases**

Although Albania has an almost non-existent track record of investigation, prosecution and conviction of high-profile political corruption, widely held beliefs, allegations and scandals paint a grim picture of widespread corruption at the highest levels of politics. A recently leaked OSCE report summarised a large number of allegations made mainly by the media linking political figures to corruption and crime. Although not the organisation’s official view, it claimed the document was genuine and contains information on wrongdoing by 36 Albanian MPs, including the former and current prime ministers, and current Speaker of Parliament.

Almost all current leaders of important Political Parties have been tried on corruption charges, but later acquitted. Republican Party leader Fatmir Mediu, then Minister of Defence, was in court following the 2008 tragedy in Gerdec where an explosion at a nearby ammunition disposal facility left 26 dead and 300 injured. The High Court dismissed the case in 2012 with the argument that the crime for which Mediu was being adjudicated was part of an amnesty on the occasion of the 100th anniversary of independence.

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anniversary of the Albanian state. Current DP leader Lulzim Basha, Minister of Transport in 2005, was in court in 2008 on two counts of abuse of office and infringements of bidding procedures for the so-called “Nation’s Road”, with an estimated damage of US$337 million to the Albanian state. The case against Basha was dropped on procedural grounds. The Socialist Movement for Integration (SMI) leader, Ilir Meta, was the epicentre of a corruption scandal in 2011, which sparked massive outrage among the public. The scandal led to a widespread protest on 21 January 2011, resulting in the death of four protesters. Meta was later found innocent by the court with the main argument being that the video submitted showing Meta and former deputy Minister of Economy, Trade and Energy talk about a large-scale bribery, was not genuine, despite the contrary opinion of international experts invited to examine the video.

In May this year an MP from SP, also a businessman and media owner, had his mandate removed by the Constitutional Court amid accusations that one of his companies had benefited from public procurement. Two other SP MPs had their mandates sent to the Constitutional Court amid allegations from the opposition that they had benefited from public funds for personal purposes. These cases are still pending.

Another high profile corruption allegation involved the Ministry of Health. The Prosecutor General’s Office initiated a large scale corruption investigation over millions of euros in concessionary contracts after investigative articles were published in the media involving all structures of the Ministry, even the Minister of Health himself. The theft of approximately 5.1 million euro from a security deposit in Albania’s Central Bank in 2014 sent 10 to jail, while the public outrage over the governor’s alleged abuse of office brought his dismissal from office and prosecution. Ten employees were convicted for the crime, but the court cleared the governor from all charges in 2015, and in 2016 it ordered indemnities in his favour of 12 full salaries, while refusing the former governor’s claim to return to office until the end of his mandate.

While a large numbers of high-level corruption accusations have ensued, the country continues to suffer from the impunity of high-level officials and political and economic elites as well as the improper implementation of the legal framework. According to the US Department of State in 2015 the most disconcerting problem faced by Albanian society was corruption; present in every state body. The report identified corruption as being present in all branches of the government, the Judiciary, the Police and educational institutions. While a number of state agencies dealt with corruption cases “limited resources, investigative leaks, real and perceived political pressure, and a haphazard reassignment system hampered the investigations.” Moreover, a European

79 Bogdani, A., Prokuroria nis hetimet per koncesionet multimilioneshe te Beqaj’, (Prosecution initiates investigation for Beqaj’s multimillion concessions), BIRN, Tirana, 13 December 2015: http://www.reporter.al/prokuroria-nis-hetimet-per-koncesionet-multimilioneshe-te-beqaj/
81 Dervishi, I., ‘Korrupzioni i gjithëpërkur hapur në organet shtetërore në Shqipëri, Vlerëson DASH’, (Corruption widespread in state bodies in Albania, State Department evaluates), BIRN, Tirana, 14 April 2016: http://www.reporter.al/korrupzioni-i-gjithaphaelhapur-ne-organet-shtetore-ne-shqiperi-vlereson-dash/
A 2015 assessment of organised crime in Albania lists high-level of corruption among the Police and law enforcement institutions as one of the main causes enabling organised crime to thrive. Lack of public confidence in institutions is closely related to the high level of perceived corruption and ineffective witness protection in the fight against organised crime. The report found that “efforts are made to secure immunity to criminal prosecution through participation in politics and decision-making of businessmen or persons with a dubious past”. Parliament adopted the so-called “decriminalisation” legal packate at the end of 2015, seeking to remove and prevent future election and appointment of individuals with criminal records to public office. One of the most notorious cases was that of Mark Frroku, former MP, for whom Belgian judicial authorities had issued an international arrest warrant on charges of premeditated murder. His mandate was supposed to pass on to his brother, accused of the murder of a chief of commissariat back in 2013. However, the latter fled Albania before the Court of Appeal decision sentenced him to life in prison; he was caught in the Netherlands and is currently awaiting extradition procedures. The most recent case that has linked organised crime to politics is that of a former public official in a southern city of Albania, accused of drug trafficking and named “baron of drugs”, for whom the Greek police have issued an arrest warrant. Despite having prior criminal records he was serving as head of the Transport Directory in Vlora.

Corruption is seen as the second most significant obstacle to doing business, after high taxes, hampering the growth of the private sector and investments. The bribery rate among those businesses that had contact with public officials is 15.7 per cent and bribe-paying businesses report paying an average of 4.6 bribes per year. The results of the 2014 Corruption Monitoring System developed by the SELDI network ranked Albania first in terms of pressure and involvement in corruption among the Western Balkan countries and Turkey, whereby 45.3 per cent of respondents reported having been asked for a bribe and 38.9 per cent had paid a bribe to obtain the service needed.

Political corruption is evident in cases of opaque party funding, misuse of public resources for electoral campaign purposes or incidents of vote buying reported in the media. Despite the aligning of legislation on party funding with GRECO recommendations, its poor implementation in practice is evident in the area of public disclosure and sanctioning. An OSCE/ODIHR report on the 2015 local elections voiced expert concerns over suspicious sources of party finances and lack of proper reporting.

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85 Ibid, p.20.
87 Office of the Prosecutor General, Press Release, 2016:
http://www.pp.gov.al/web/It_is_asked_the_authorization_for_the_arrest_of_MP_Mark_Frooku_accused_by_the_Belgium_authorities_for_the_offense_of_premeditated_murder_769_2.php#Vz15If96LUk
91 Ibid, p.5.
VI. ANTI-CORRUPTION ACTIVITIES

The fight against corruption is high on Albania’s political and reform agenda; prompted both by the country’s democratisation efforts as well as its EU integration bid. The SP-led government vowed to fight Albania’s endemic corruption by introducing a comprehensive reform agenda, most visibly in the justice system. The fight against corruption together with the Judiciary and fight against organised crime are part of the five key priorities the country needs to deliver on in order to open accession negotiations. Despite some progress the European Commission 2015 report identified a number of remaining challenges, such as increasing the independence of institutions in charge of the fight against corruption, which are still vulnerable to political pressure and other undue influence and ensuring a solid track record of investigations, prosecutions and convictions.95

Justice reform is of historical importance and is politically sensitive. At the end of 2014 Parliament appointed a Special Committee for Justice Reform, which is assisted in its work by a panel of high-level experts, both Albanian and international. EU’s EURALIUS programme, the US Embassy’s OPDAT and OSCE presence in Albania have been heavily involved in providing assistance to the comprehensive justice reform, which involves significant constitutional amendments. One of the chapters of the justice reform strategy is entirely dedicated to anti-corruption, listing a number of measures to address corruption in the justice system and the respective changes in legislation, including the Constitution. The reform package proposes a new law on anti-corruption measures and establishing specialised mechanisms to investigate corruption related crimes.96 The work on the justice reform has been blocked and delayed by political forces to the point that the international community has actively interfered by reminding the political class that further delays would harm the country. The EU and US ambassadors have been most vocal in their “warnings” against further delays and the lack of political will to push the process forward. In May 2016 both ambassadors participated in internal meetings of the SP, DP and SMI parliamentary groups and held consultation meetings with all political forces to guarantee their commitment to finalising the justice reform programme.

Albania has ratified most conventions related to the fight against corruption such as the Council of Europe’s Civil and Criminal Law Conventions on Corruption in 2001 and later in 2006 the United Nations Convention against Corruption. In addition, Albania has been a member of the Group of States Against Corruption since April 2001 and has undergone four evaluation rounds with the latest two focusing on party finance and prevention of corruption in MPs, judges and prosecutors. The latest Compliance Report for the Fourth Evaluation Round, published in 2016, noted that the country had satisfactorily completed one recommendation out of 10, prompting the authorities to increase efforts in implementing the remaining recommendations within 18 months (until 2017). In 2009 the European Union provided technical assistance through the Project Against Corruption in Albania (PACA), which aimed at supporting anti-corruption reforms in the areas of legislation and policies, capacity building, awareness raising, providing expert opinion and fight against corruption in education etc.97

While there is not one single entity in charge of anti-corruption policies, in 2013 the newly elected government appointed the National Anti-corruption Coordinator serving simultaneously as Minister of State for Local Affairs. The National Anti-corruption Coordinator (NAC) is the main body in charge of implementing anti-corruption strategies and policies. With some delay, the Albanian government

95 European Commission, Report Albania, 2015, p.4.
97 Council of Europe, Project Against Corruption in Albania (PACA) Summary: http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/Projects/Albania/1917-d-PACAsum-Engfin.pdf
approved the Inter-sectoral Strategy Against Corruption 2015-2020 and the respective Action Plan for 2015-2017.\textsuperscript{98}

In addition to the NAC responsibilities are largely spread among different institutions. The High Inspectorate of the Declaration and Audit of Assets and Conflict of Interest (HIDACCI) and Supreme Audit Institution (SAI) are two auditing and oversight institutions part of the institutional framework of the fight against corruption. The Prosecutor General’s Office has a designated directory for the investigation and prosecution of economic crime and corruption. In February 2016 Parliament passed changes and additions to the Law on State Police in order to create the highly contested National Bureau of Investigation (NBI), overruled in 2015 by the Constitutional Court for duplicating the role of the Prosecution, in contradiction to Article 148 of the Constitution.\textsuperscript{99} The NBI became part of political negotiations between opposition and majority to unblock the reform process, whereby parties reached a consensus in March 2016 to establish the NBI under the Special Prosecution upon receiving recommendations from the Venice Commission.\textsuperscript{100} The justice reform package also foresees the creation of a Special Anti-Corruption Structure to investigate cases of corruption among judges.

The strategy also proposed a Law on Whistleblowers, since the existing framework – the 2006 Law on Public Cooperation in the Fight against Corruption in particular – has been deficient and unenforced.\textsuperscript{101} The new law was passed in principle by Parliament amid strong debates and criticism calling for mechanisms to prevent the abuse of whistleblower protection. Others were critical of the law in the Albanian context mentioning strong government pressure on employees to “spy on those who work”. However, the government claims it will prevent such cases by not providing monetary incentives for whistleblowers, but strong mechanisms to protect them.\textsuperscript{102} Parliament finally adopted the law in full on 2 June 2016, as this report was being finalised.\textsuperscript{103}

Towards the end of 2014 the opposition and ruling majority reached an agreement putting an end to the former’s parliamentary boycott. Part of the agreement was the so-called decriminalisation of public and elected officials, stemming from opposition accusations that incriminated figures had been elected and appointed to public office.\textsuperscript{104} Consensus was reached a year after and the Law on Guaranteeing the Integrity of Individuals Elected, Appointed or Exercising Public Functions was approved unanimously in Parliament with 132 votes.\textsuperscript{105} However, the process was accompanied by mutual accusations between the government and opposition for lack of political will or purposefully delaying the approval.\textsuperscript{106}

Responsibility to gather self-declaration forms is largely spread between different institutions depending on the declaring subject, while the Prosecutor General’s Office is in charge of verification


\textsuperscript{100} Parliament, Ad-hoc Parliamentary Committee on Justice Reform, Meeting of 23 March 2016, discussion of the National Bureau of Investigation, p.5-20: http://www.reformanedrejtesi.al/sites/default/files/procesverbal_date_23.03.2016.pdf


\textsuperscript{102} Shqiptarja.com, ‘Siguria kalon përmes skepticizmit lidhin per mbrojtjen e sinalizuese’ (Security Committee passes amid scepticism law on whistleblower protection), 10 March 2016: http://shqiptarja.com/aktualitet/2731/sigarja-kalon-permerrres-skepticizmit-lidhin-per-mbrojtjen-esinalizuese-344711.html

\textsuperscript{103} Law nr. 60/2016 on Whistleblowing and the Protection of Whistleblowers, approved on 2 June 2016: https://www.parlament.al/wp-content/uploads/2016/06/lig-nr._60-dt._2.6.2016.pdf

\textsuperscript{104} Mero, A., ‘Miratchet me konsensus lidhi per dekriminalizimin’, (Law on decriminalization approved with consensus) Voice of America, 17 December 2015: http://www.zeriamerikas.com/a/3107221.html

\textsuperscript{105} Albanian Assembly, Assembly approves decriminalization package and 2016 budget: https://www.parlament.al/kuvendi-miraton-paketen-e-dekriminalizimit-dhe-buxhetin-per-vitin-2016-2/

and taking legal measures when needed. The Prosecutor General’s Office signed an order in March establishing the Integrity Verification Office. The self-declaration forms revealed that at least five MPs and five mayors have had problems with the justice system, being either convicted, prosecuted and/or arrested for different crimes.

In October 2014 Parliament approved two important laws on transparency and public participation. Law 119/2014 on the Right to Information brought a series of positive changes in enhancing the transparency of public institutions and the government, making it easier for citizens to obtain access to official documents. One of the novelties includes the introduction of the Coordinator on the Right to Information in each public institution, the Commissioner for Personal Data Protection was given extended competencies and named the Commissioner for the Right to Information and Personal Data Protection. The Law also shortens the time at the disposal of public institutions to respond to citizen inquiries and follows a transparency programme, which should be made public. Law 146/2014 on Public Consultation and Notification was initiated and supported by civil society actors and institutionalises public consultation of laws, strategies and policies and aims at involving more citizens and interest groups in governance and decision-making processes.

The government has also used information communications technology as an innovative tool in the fight against corruption. In 2015 it introduced a unique portal as a space for citizens to denounce corrupt practices in 11 areas (www.stopkorrupsionit.al). Additionally, the Ministry of Interior, in cooperation with Vodafone Albania Foundation launched the ‘Digital Commissariat’, a mobile app enabling citizens to denounce corruption, theft, illegal constructions and other forms of law infringements in real time. In 2011 Albania committed to join the Open Government Partnership recognising the need for transparency and citizen participation in the fight against corruption. Within this framework an e-government portal was introduced in 2012 (https://www.e-albania.al/), serving as a tool to fight corruption through transparency and efficiency, and as a unique portal for government services.

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107 Articles 5, point 4 and 8, Law on Guaranteeing the Integrity of Persons who are Elected, Appointed or Exert Public Functions.

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34 NATIONAL INTEGRITY SYSTEM ASSESSMENT ALBANIA
VII. NATIONAL INTEGRITY SYSTEM

LEGISLATURE

Summary

With the exception of transparency, Parliament underperforms in most indicators assessed in this report, with independence, accountability and integrity scoring particularly low. Parliament is fully independent in determining its budget and its resources have seen some improvement. However, the number and qualifications of clerks at the disposal of committees, parliamentary groups and MPs remain largely inadequate. This affects Parliament’s ability to function independently and scrutinise the government – two of the main areas of underperformance.

In addition to resource constraints, other reasons for poor independence and Executive oversight lie more with political culture than the legal framework, which is generally robust in these two areas. However, with regards to regards integrity basics – such as conflicts of interest, and gifts and hospitality – a poorly designed legal framework serves to sustain the absence of good practice.

While the number of businessmen entering Parliament has risen, Albania has no post-employment restrictions or adequate lobbying regulations. Furthermore, concerns of parliamentary integrity far surpass such classic issues. Lately, the ascendancy to parliamentary office of a number of individuals with serious criminal records has brought Parliament into disrepute. The impact of the newly adopted legal reform that seeks to address this issue remains to be seen.

Despite the good record of the Constitutional Court in keeping Parliament in check – especially regarding the constitutionality of MPs’ mandates – the Legislature’s accountability suffers from key design flaws, such as the role of MPs in appointing their own ‘supervisors’. On transparency the Parliament performs better than the law prescribes in some respects – such as the publication of full, rather than summary minutes – but more steps are required to improve the institution’s openness.

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<td>Capacity</td>
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<td>100</td>
<td>50</td>
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<td></td>
<td>Independence</td>
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<td></td>
<td>Accountability</td>
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<td>Integrity mechanisms</td>
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<td>Role</td>
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<td>Legal reforms</td>
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Structure and organisation

Albania has a unicameral Parliament composed of 140 members who serve four-year mandates under a regional proportional system. Parliament appoints its Speaker on its first constitutive meeting by a simple majority. One of the vice speakers must be from the main parliamentary opposition party. Parliament is organised in a Bureau, secretariats, a Conference of Chairs, standing committees and their subcommittees, councils, parliamentary groups, and administrative services.

The Bureau is led by the Speaker and composed of the vice speakers, two budget secretaries (MPs), and four other secretaries (MPs). It oversees and decides on Parliament’s internal functioning and administrative matters. Five secretariats – on the budget, voting and procedures, status of MPs, research, and external relations – operate attached to the Bureau. All have three MPs, except for the Budget Secretariat, which has five. The Conference of Chairs, composed of the Speaker, vice speakers, leaders of parliamentary groups, and committee chairs, decides Parliament’s work programme and calendar of proceedings.

Parliament also has two councils. The Legislation Council, composed of 10 MPs of distinguished experience as lawyers or legislators, acts as an advisory body – if mobilised by other structures – on matters of legislative quality. The Council on Rules of Procedure, Mandates, and Immunity considers proposed changes to Parliament’s Rules of Procedure or matters of interpretation, scrutinises requests to initiate criminal proceedings or arrest an MP, as well as all matters related to MPs’ mandates. Parliamentary groups require a minimum of seven MPs.

Parliament’s Services are divided into five large clusters: legislative, information and documentation, external relations, oversight of independent institutions, and administrative affairs. The Services are headed by and accountable to the Secretary General, Parliament’s top civil servant, appointed by the Bureau from among three candidates resulting from a competition.113

Capacity

Resources (Law)

Score: 100

Parliament determines its own budget. The Budget Secretariat, co-chaired by a member of the ruling majority and one of the opposition’s parliamentary group, prepares Parliament’s draft budget together with the Secretary General and presents it to the Bureau. Upon the Bureau’s approval, the Secretariat presents its assessment of Parliament’s draft budget to the Standing Committee for Economy and Finance during discussions of the State Budget. The State Budget is approved by a simple majority in Parliament, which also has the right to make changes during the year.114

114 Articles 158-160, Constitution; Articles 10/1 and 78-85, Parliament’s Rules of Procedure.
Resources (Practice)

Score: 50

TO WHAT EXTENT DOES THE LEGISLATURE HAVE ADEQUATE RESOURCES TO CARRY OUT ITS DUTIES IN PRACTICE?

Figures for 2012-2016 reveal significant fluctuations in Parliament’s budget. Monitoring by civil society of annual budget discussions in Parliament has shown that the institution tends to approve higher funds for itself than those initially presented in the Draft Budget Bill. However, Parliament’s budget is at 8.7 million euro in 2016, from a little above 10 million euro initially approved for 2012. In addition, mid-year cuts (i.e. 3 and 1 million euro in 2012 and 2015, respectively) and low budget realisation signal problems of financial planning and management.

Interlocutors agree that some aspects of Parliament’s resources have improved over the years, but remain overall insufficient for it to carry out its duties effectively in practice. Thus, experts report that MPs are provided with laptops, and provisions on per diems for their out-of-district work, and telecommunications allowances are effective in practice. IT tools have been introduced to improve recording and live streaming of plenaries. They are still to be developed as regards effective tracking of the legislative process, which remains cumbersome and unreliable. Parliament supports parliamentary groups with offices, and as of 2013, also with one advisor and an administrative secretary. Interlocutors found such support particularly inadequate in its disregard for parliamentary groups’ sizes – currently spanning from seven MPs for the Republican Party to 61 for the Socialist Party.

There are no human resources directly attached to MPs, or financial allowances to enable them to hire staff. Though entitled by law, many MPs with the exception of whips and committee chairs do not have office space in Parliament. Only seven of the 24 employees planned to be recruited to support the work of 12 majority and opposition offices in electoral districts – to serve MPs’ work with their constituency bases – were employed by Parliament in 2015, due to the failure of local governments to provide for office space in many districts.

Despite some improvement, Parliamentary Services (clerks) are generally under-resourced. Shortages, insufficient remuneration, and an unfair burden of work were raised as concerns with respect to the Juridical and Legal Approximation divisions of the Legislative Service. The Service for

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115 See initial and revised Budget Bill tables on the website of the Ministry of Finance: http://www.finanza.gov.al/al/legislacioni/buxheti-thesari-borxhi/buxheti/buxheti-ne-vite
118 Interview with Dorarta Hyseni, Program Manager, National Democratic Institute in Albania, 11 August 2015; Written interview with head of an international NGO, 21 April 2016.
119 Article 17, Rules of Procedure; Interview with Dorarta Hyseni, Program Manager, National Democratic Institute in Albania, 11 August 2015; Written interview with head of an international NGO, 21 April 2016; For the sizes of parliamentary groups see: https://www.parlament.al/deputetet/listim-sipas-grupeve-parlamentare/
Oversight of Independent Institutions has 11 positions, but its work remains obscure to experts. Library and research facilities were noted as examples of inadequate professional capacities.\textsuperscript{122}

\textbf{Independence (Law)}

Score: 75

TO WHAT EXTENT IS THE LEGISLATURE INDEPENDENT AND FREE FROM SUBORDINATION TO EXTERNAL ACTORS BY LAW?

Albania’s Constitution seeks to ensure that the Executive commands at least a simple majority in Parliament, and thus cooperation on its political programme. However, fundamental provisions in place endow the Legislature with a level of independence. The Constitution designates that Parliament elects and discharges its Speaker by a majority of its members. It also approves its own Rules of Procedure, and decides by vote in the plenary on the composition and chairmanships of its committees (upon proposals from the Conference of Chairs and consultations with parliamentary groups).\textsuperscript{123} The Speaker calls extraordinary sessions upon a determined agenda and if required by the President, Prime Minister or one-fifth of MPs.\textsuperscript{124} Changes to the Constitution and a category of fundamental laws – i.e. on the Judiciary and constitutional institutions – require qualified majorities, thus narrowing the space for partisan changes dictated by a simple majority.\textsuperscript{125}

Parliament’s technical staff are mostly civil servants whose recruitment and career development are regulated by the Law on the Status of Civil Servants. Upon the Speaker’s proposal, Parliament’s Bureau elects the institution’s Secretary General from among three candidates short-listed in line with this same law.\textsuperscript{126} Parliament determines its own work programme, for which consensus-building is encouraged. It is obliged to automatically include some acts in its programme, but this practice constitutes an exception to its overall liberty on this matter.\textsuperscript{127} The circumstances of Parliament’s dismissal are few, appropriate, and clearly defined in the Constitution, with two relating to lack of trust in the government or Prime Minister, and one when failing to elect a President in five rounds of voting, with the last two requiring only a simple majority.\textsuperscript{128}

With the 2012 constitutional amendments, MPs no longer enjoy full immunity, including from investigation. The current regime maintains immunity from arrests, and personal or house searches, unless caught in a criminal act. In all other cases, prior authorisation from Parliament is necessary. MPs are also not liable for opinions and votes expressed in Parliament, unless those opinions are defamatory.\textsuperscript{129} Finally, Parliament has a Security Service which operates unarmed and only upon the orders of the Speaker or leader of the session during plenaries. Outside of the plenary, it operates armed and under regulations approved by Parliament’s Bureau. On issues of

\textsuperscript{122} Interview with Dorarta Hyseni, Program Manager, National Democratic Institute in Albania, 11 August 2015; Written interview with head of an international NGO, 21 April 2016; Link to vacancy in parliament’s website: https://www.parlament.al/administrata/vende-te-lira-pune/

\textsuperscript{123} Article 75, Constitution; Article 21, Rules of Procedure.

\textsuperscript{124} Article 74, Constitution.

\textsuperscript{125} Article 81, Constitution.

\textsuperscript{126} Article 11, Rules of Procedure.

\textsuperscript{127} Article 26, Rules of Procedure. The exceptions are some Presidential decrees, appointments of heads of institutions, financial laws, motions, draft acts carried over from the previous programme, and issues related to a state of emergency.

\textsuperscript{128} Articles 87, 96 and 104, Constitution.

\textsuperscript{129} Article 73, Constitution.
administration, finance and professional qualification, the Service is part of what was formerly known as the Guard of the Republic.\(^{130}\)

**Independence (Practice)**

**Score: 25**

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<thead>
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<th>TO WHAT EXTENT IS THE LEGISLATURE FREE FROM SUBORDINATION TO EXTERNAL ACTORS IN PRACTICE?</th>
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<tr>
<td>Overall, there are no reports of encroachments on parliamentary independence by other state authorities and MPs have never been prosecuted without prior authorisation by Parliament. Widespread media reports in 2012 and 2014 – in 2014 citing a leaked secret document from Parliament – claimed that the military and state intelligence services had wire-tapped MPs, under the influence of former Prime Minister Sali Berisha (opposition MP since 2013), but these claims have never been corroborated.(^{131}) In general, Parliament is not seen to sufficiently assert its independence from the Executive. Key means at its disposal, especially legal initiative, but also interpellations, motions for debate, and written questions, are underused.(^{132}) According to SIGMA, Parliament initiated only three laws in 2013 and 11 in 2014 out of more than 180.(^{133}) During this Legislature thus far (2013-): interpellations have varied from four in 2015, to 11 in 2014 (only two of which were with the Prime Minister); motions for debate have varied from only one in 2013 and 2014, to none in 2015; and written questions have varied from 30 in 2013, to 66 in 2014, and 73 in 2015, though it is unclear what share of these questions were directed exclusively at the Executive.(^{134}) All government proposals are approved, mostly within four to six weeks, though in some cases of significant changes to government-proposed laws – such as those to the tax and Budget laws in 2015 – have been noted.(^{135}) Interlocutors emphasise the impact of resources, noting that limited capacities translate into MPs’ reliance on the expertise of government staff, thus tipping the Legislature-Executive balance of power.(^{136})</td>
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130 Article 122, Rules of Procedure. The Guard of the Republic was reformed during 2013-2015 to become the Directorate for the Protection of Personalities and Objects of Special Importance, intended as an autonomous structure under the Minister of Internal Affairs.


132 European Commission, Albania Report, 2015, p.6; and Progress Report, October 2014, p.6-7; Interview with Dorarta Hyseni, Program Manager, National Democratic Institute in Albania, 11 August 2015. Written interview with head of an international NGO, 21 April 2016.


136 Interview with Dorarta Hyseni, Program Manager, National Democratic Institute in Albania, 11 August 2015. Written interview with head of an international NGO, 21 April 2016.
Key appointments – including that of the President in 2012 – have seen Parliament rubber-stamp the will of the Executive. The position of Speaker has been abused in the past, subjecting Parliament’s work programme to particular wills, thus weakening its functioning as an independent institution. Recently, the Prime Minister used forceful language towards the opposition to vote on judicial reform. Overall, politics is highly polarising in both rhetoric and action, spilling over into the functioning of Parliament, with the Executive often dominating and/or the opposition boycotting it.

Last but not least, the liability of MPs for libellous claims, while sound in principle, can play into the hands of the Executive in the context of a weak Judiciary. So far, only opposition MPs have been found guilty of libel, upon charges by members of the Executive or close associates. Thus, the courts fined former opposition MP (current Minister of Interior) Saimir Tahiri for libel in 2012, as charged by the son and daughter of then Prime Minister Sali Berisha. In 2015, the High Court fined current opposition MPs Edi Paloka and Arben Ristani for defamation under charges pressed by current Prime Minister Edi Rama. Shortly after, the Prime Minister also initiated legal changes to introduce prison sentences intended for public officials, including MPs, for libellous claims against other officials, but withdrew the proposal for revision after a strong reaction from the media and international organisations.

Governance

Transparency (Law)

Score: 75

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THAT THE PUBLIC CAN OBTAIN RELEVANT AND TIMELY INFORMATION ON THE ACTIVITIES AND DECISION-MAKING PROCESSES OF THE LEGISLATURE?

While the Constitution lays the groundwork, Parliament’s Rules of Procedure detail requirements of openness in a dedicated section, numerous provisions, and other regulations. In addition, a new Law on the Right to Information adopted in 2014 has significantly improved the legal regime on transparency (see Public Sector pillar).

More concretely, parliamentary proceedings, including those of committees are required to be open, with some exceptions, as defined by law. Upon the motivated request of the President, Prime Minister or one-fifth of MPs, Parliament can decide by a majority of all its members to hold closed


\[139\] Top Channel, ‘Byroja përplas palët në kuvend’ (The bureau causes clashes between parties in Parliament), 4 February 2016: http://top-channel.tv/lajme/artikull.php?id=318763&ref=m

\[140\] SIGMA country assessment reports 2012/7, Albania Assessment Report 2012, p.7-8: http://www.oecd-ilibrary.org/docserver/download/5iz2q8z4mr.pdf?expires=1465143646&id=id&accname=guest&checksum=7197389ED34D12EE6D8565CBF5F6BB4

\[141\] Top Channel, ‘Court of Appeal punishes Saimir Tahiri’, 21 December 2012: http://top-channel.tv/eng/articles/2012/12/21/punishes-saimir-tahiri-47968


\[144\] See Part IV (articles 105-108), and articles 8, 11-12, 27, 34-36, 39, 43-44, 54, 58-60, 84, 77/a-77/b, and 102, Constitution.
plenaries, except for those on the Budget Bill and other related financial laws, which must always be open. Committees can also decide on closed meetings by a majority of all their members.

Parliament’s Rules of Procedure stipulate that openness shall be sought through public participation, the media, the publication of parliamentary documents, the institution’s website, and the internal audio-visual network. In 2013, the Rules of Procedure were amended to include a list of documents and information that must be published online: draft laws and their accompanying reports, the work programme and progress of legal initiatives through the committees, minutes of meetings of the Conference of Chairmen, committees and councils, texts of deposited and approved amendments in committees, and the latter’s reports on laws under their scrutiny. In other provisions, the Rules of Procedure prescribe summary minutes for meetings of the Conference of Chairmen and committees, but require recording and publication in full of debates in the plenaries. Decisions to do the same in committees are at their discretion. Nominal voting is mandatory on confidence and no-confidence motions, presidential nominations to the High Court and Constitutional Court, and can be required in other cases. The Rules of Procedure explicitly prescribe the publication of voting records only in cases when it is nominal.

Parliamentary proceedings are open to the media on the basis of an accreditation process. In 2014, a new regulation on the accreditation of the media representatives was adopted, prescribing a straightforward procedure for journalists (including international and freelance), and other media workers. It is mandatory for the public television to broadcast in full the approval of the government political programme and composition, question time, interpellations, all motions, the reports of inquiry committees, and debates on the revision of the Constitution. Parliament’s Conference of Chairs may ask the public television to broadcast in prime time other plenaries. Provisions are in place for public, including civil society, participation in the law-making process and attendance at parliamentary proceedings.

The publication of Parliament’s financial expenditures and annual reports is at the discretion of the Bureau. MPs’ asset declarations can be obtained upon request from the High Inspectorate for the Declaration and Audit of Assets and Conflict of Interest (see HIDAACI pillar).

Transparency (Practice)

Score: 75

TO WHAT EXTENT CAN THE PUBLIC OBTAIN RELEVANT AND TIMELY INFORMATION ON THE ACTIVITIES AND DECISION-MAKING PROCESSES OF THE LEGISLATURE IN PRACTICE?

There are no reports of media obstruction, though concerns about space do persist, especially in committee rooms, and experts complain of superficiality and sensationalism in coverage of
parliamentary proceedings. In 2014-2015, Parliament adopted a manual on the public’s participation in the legislative process, approved its transparency programme, appointed a coordinator for the right to information and one for civil society, and it now maintains an updated register of requests for information online. Application forms for access and information requests are now available online, on Parliament’s new website launched at the end of 2015. This has helped address previous problems of access to Parliament, amongst others, because of the concentration of permissions in the hands of the Secretary General. Parliament responded fully and timely to Transparency International’s first and simple field tests in 2015, but not fully to the more complex field test in 2016. Specifically, Parliament did not answer questions on its auditing reports and registers of conflicts of interest and gifts (for both MPs and the bureaucracy), deferring them to the SAI and HIDAACI.

While there are some complaints about the slowness and user-friendliness of Parliament’s new website, its substance has improved considerably. Calendars and work plans, draft laws, decisions, resolutions and declarations are now regularly published. Minutes of meetings of committees (including ad hoc and inquiry committees), councils, and plenaries are published in full. Reports of other institutions submitted to Parliament – for oversight or advocacy purposes – are also available online and before their discussion in committees and the plenary, unlike previously. Parliament finally published in 2014 a considerable backlog of the reports submitted by the Ombudsman for its consideration (see Ombudsman pillar). Quarterly financial expenditure reports from 2014 onwards are available.

Some gaps remain, such as the Ombudsman’s reports on public administration (2014 and 2015), those submitted by most institutions of the Executive, those prepared by parliamentary services in support of committees and MPs, or individual budgets and balance reports. Motions, questions and interpellation requests are not always readily available online, or are difficult to find. Voting records are available, but in an unhelpful format according to experts, who also note that there is no effective mechanism in place for the public to track the progress of legal amendments from the beginning to the end of the legislative process. Experts also reported some problems with the regular and timely publication of minutes of the Conference of Chairs meetings, resolutions, and committee reports. However, Parliament’s website is continuously populated with a variety of information, including its own annual activity reports (2014 and 2015 published in May 2016). MPs’ asset declarations are available from the HIDAACI upon request, and have been posted online by civil society.

**Accountability (Law)**

**Score: 50**

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155 Interview with Dorarta Hyseni, Program Manager, National Democratic Institute in Albania, 11 August 2015; Written interview with head of an international NGO, 21 April 2016.
156 Article 54, RoP.
159 Field test 1: Request for information submitted by author via e-mail on 13 February 2015. Full response by Parliament on 23 February 2015. Field test 2: Complex request for information submitted by project assistant via e-mail on 16 May 2016. Response received by post, dated 1 June 2016.
161 For instance, reports by the Ministry of Integration on the fulfilment of EU integration requirements.
162 Interview with Dorarta Hyseni, Program Manager, National Democratic Institute in Albania, 11 August 2015; Written interview with head of an international NGO, 21 April 2016.
163 Parliament’s annual reports can be found here: https://www.parlament.al/administrata/raporte-2/
164 Open Spending Albania, Money and Power: http://spending.data.al/sq/moneypower/list/pos_id/6
Parliament and MPs are subject to a number of checks, but the system is flawed in fundamental ways. Of particular concern is the fact that Parliament has an inappropriate role in appointing its own ‘supervisors’.

Thus, and of immediate relevance to the Legislature’s accountability, the Constitutional Court assesses the compatibility of laws with the Constitution, disagreements of competences between state branches, the discharge from office of the President by Parliament, and issues of electability and compatibility in office of MPs and their mandates.\(^{166}\) Parliament’s Council on Legislation should immediately take into account the decisions of the Court to determine their effects, and make legislative proposals as necessary.\(^{167}\) Also, constitutional amendments in 2012 limited the previously full immunity enjoyed by MPs to protection from arrests and searches, which require prior authorisation from Parliament, unless the MP has been caught in flagrante delicto. Criminal charges against MPs are tried in first and last instance by the High Court, and can only be investigated and pressed by the Prosecutor General’s Office.

However, Constitutional and High court judges, as well as the Prosecutor General, are appointed by the President with the simple majority consent of Parliament, which raises questions about their ability to act as independent checks on Parliament and MPs.\(^{168}\) Furthermore, an assessment concluded that the Criminal Procedure Code changes of March 2014 – needed to make the new immunity regime enforceable – fell short of providing adequate and clear rules to prosecutors on the various other steps in criminal proceedings against MPs. The assessment also warned that the changes give Parliament the opportunity to assess the merits of the case mounted by the Prosecution when requesting to lift the immunity (see Public Prosecutor pillar).\(^{169}\)

Parliament’s Rules of Procedure grant committees a discretionary right to organise public hearings with experts and civil society as part of the law-making process, while a new ‘notice and comment’ law adopted in 2014 establishes an obligation for authorities to consult on laws they initiate and introduces a complaints mechanism in case of breaches.\(^{170}\) When asked about the applicability of this law to Parliament, the institution pointed to the Rules of Procedure and a manual for the consultation of the public.\(^{171}\) Anyone can petition Parliament, which shall consider petitions in its committees and plenaries, unless the sender is anonymous.\(^{172}\)

Parliament’s Rules of Procedure stipulate that the Bureau shall approve and decide on the publication of Parliament’s annual activity reports, as prepared by the Secretary General.\(^{173}\) Financially, Parliament is subject to budgetary reporting requirements to the Ministry of Finance, like all other budgetary institutions, and to the auditing of the SAI. However, the head of the SAI is appointed via a parliamentary simple majority, and the institution is overall accountable to Parliament.\(^{174}\)

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166 Articles 131 and 134, Constitution.
167 Article 87, RoP.
168 Articles 125, 136, and 149, Constitution.
170 Article 36, Rules of Procedure; Articles 11-19, 21, Law no. 146/2014 on Public Notification and Consultation.
171 Request for information submitted by project assistant via e-mail on 16 May 2016. Parliament response by post, prot. 1853, dated 1 June 2016.
172 Articles 104 and 44/3, RoP.
173 Article 11, RoP.
174 Articles 162-165, Constitution.
Accountability (Practice)

Score: 25

Despite some positive developments, the accountability of the Legislature and MPs remains low in practice and a perception of the untouchability of MPs persists. Parliament has never refused a request to lift immunity.

However, there have been only six criminal cases against MPs – while in office – since 2007, three of which for corruption-related charges, but none of them have ended in convictions. Furthermore, rising concerns about MPs with criminal records entering Parliament resulted in the adoption of the so-called "decriminalisation package" at the end of 2015, which introduced constitutional and other legal restrictions and checks on electability. While reports of a number of MPs' criminal pasts have persisted in the media, one MP has been jailed and another has resigned on such claims.

A number of Constitutional Court decisions, including on the validity of MPs' mandates and Parliament's decisions, indicate some ability of the Court to keep the Legislature in check. However, problems have been reported with the enforcement of the Court's decisions, which was an issue included in the parliamentary majority-opposition agreement of December 2014.

On a positive note, over 2014-2015 Parliament has consulted with civil society and various interest groups more frequently than in the past. However, interviewees and other sources note that consultations and overall cooperation with Parliament continues to rely on the drive of particular groups more frequently than in the past. However, problems have been reported with the enforcement of the Court's decisions, which was an issue included in the parliamentary majority-opposition agreement of December 2014. In 2014, Parliament adopted a manual on public participation in its proceedings, and a resolution recognising

the role of civil society in the country’s democratisation and pledging improvements to consultations.182

When asked about petitions, Parliament reported having opened 1,016 ‘entries’ (kartela) in 2014 and 633 in 2015, but this merely indicates protocol registration of letters received by Parliament, including ‘thank you’ letters and other formalities.183 Parliament does not report specifically on petitions in its annual reports, and discussion of only one petition appears on its website.184 Regarding complaints, Parliament responded that it had not received any about MPs or staff in the past three years.185

Parliament’s annual activity reports for 2013 onwards are now public, though there are no records of debates on them in the Bureau or any other relevant structure.186 Parliament regularly publishes its quarterly budget execution reports. The SAI last audited Parliament in the summer of 2013, after the general election and before the current legislature began, and found some irregularities with the payment of visits abroad, annual holiday leave, contract management, and others.187

Integrity mechanisms (Law)

Score: 25

Legislators are subject to constitutional prohibitions from holding any state office other than that of a Cabinet member, and from engaging in any profitable activity linked to state resources.188 There are two main pieces of legislation regulating integrity and applicable to MPs – the Law on the Declaration of Assets (ADL), and the Law on the Prevention of Conflicts of Interest (PCI).

Under the ADL, MPs and related individuals are required to declare their interests at the beginning and end of their tenure, and annually to the HIDAACI, which is mandated to fully audit them every three years. The range of interests to be declared is comprehensive. However, the Head of HIDAACI is appointed and discharged by Parliament’s simple majority, which as has already been noted, grants the institution insufficient independence for its tasks (see also HIDAACI pillar).189

While declarations of interests may serve as a source for the identification of continuous conflicts of interest (i.e. incompatibilities), MPs are also required to disclose and register conflicts of interest on a case-by-case basis, under the PCI.190 They are also subject to a number of prohibitions on private

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184 Minutes of meetings of the Standing Committee on Work, Social Affairs, and Health, on a public hearing with the Minister of Health and a group of doctors from Tiranë’s emergency service to discuss their petition, 3 February 2016: https://www.parlament.al/wp-content/uploads/2016/03/Komisioni-i-Sh-ndet-sis--dat--03-02-2016.pdf
185 Request for information submitted by project assistant via e-mail on 16 May 2016. Parliament response by post, prot. 1853, dated 1 June 2016.
186 The research team submitted an information request (16 May 2016) with Parliament asking, amongst other things, for minutes of meetings of debates on the annual activity reports, to gain insight into the impact of the reports on Parliament’s functioning. Minutes were not provided in Parliament’s response received by post, dated 1 June 2016. SAI, Report on the auditing of the Parliament of Albania, 2013. Received from the SAI via e-mail by the project assistant, 26 May 2016.
187 Article 70, Constitution.
188 Article 11, Law on the Prevention of Conflicts of Interest.
189 Article 12; See also European Commission, Albania Report, 2015, p.16.
190 Article 70; See also European Commission, Albania Report, 2015, p.16.
activities, contracts, external income, and gifts and hospitality.  A previous assessment has deemed these restrictions to be too stringent at times, and key terms in the PCI too vague or inappropriate to be enforceable (see also Public Sector pillar). Concerning transparency, the Parliament and MPs are under no obligation to pro-actively publish interest declarations or registers of conflicts of interest. The ADL and Constitutional Court jurisprudence enable the publication of interest declarations only upon request. The PCI initially regarded registers of conflicts of interests as official documents subject to freedom of information legislation, but this article was rescinded in 2006.

Under the ADL, gifts and hospitality are part of the private interests to be declared to HIDAACI, unless they are under 10,000 ALL (approx. 71 euro), or if two or more gifts from the same person are under this threshold in the period covered by the declaration. The PCI also imposes prohibitions on gifts and preferential treatment. However, its definition of a prohibited gift, and the various exceptions it envisages run against international standards and hinder enforcement (see Public Sector pillar on Integrity).

Parliament’s Rules of Procedure establish general requirements of good manners from MPs – such as prohibitions on offensive language or personal attacks – and corresponding disciplinary measures for breaches. They make reference to a Code of Conduct to govern the behaviour of MPs, but no such Code has ever been approved. A draft Code, prepared with assistance from the OSCE, has been pending in Parliament for more than a year. The draft Code brings together the existing legal provisions relevant to integrity. While its adoption would be beneficial in terms of systematically presenting scattered legal provisions, it would not serve to address any of the issues noted above. Last but not least, no provisions are in place imposing restrictions on or obligations to disclose contacts with lobbyists, or on post-employment cooling-off periods.

Integrity mechanisms (Practice)
Score: 0

TO WHAT EXTENT IS THE INTEGRITY OF LEGISLATORS ENSURED IN PRACTICE?

Various indicators and developments point to very poor integrity among Albanian legislators. In its latest evaluation, GRECO reported that Parliament has no mechanism in place, and there is no common understanding or practice among MPs, for declaring conflicts of interest on a case-by-case basis and withdrawing from the relevant decision-making procedure, as required by law. The research team asked Parliament for scanned copies of the last three entries in its registers of conflicts of interest and gifts, or for an opportunity to see the registers physically, but Parliament deferred the answer to the HIDAACI, which is not responsible for Parliament’s registers. While lobbying remains entirely unregulated, there has been a rising trend of powerful businessmen...

191 Chapter III, Section 2, Law on the Prevention of Conflicts of Interest.
193 Article 34, Law on Declaration of Assets; Decision 16, 11 November 2004 of the Constitutional Court, paragraph 5.
194 Article 1, Law 9475 on some changes and addenda to Law Nr. 9367 on the Prevention of Conflicts of Interest, of 9 February 2006.
197 Chapter 9, Articles 82-85, Rules of Procedure.
198 Article 40, point 3, RoP.
199 See also Council of Europe Group of States Against Corruption, Fourth Evaluation Round: Corruption prevention in respect of members of parliament judges and prosecutors 2013, 27 June 2014, p.10 and 13.
201 Field test 2: Complex request for information submitted by project assistant via e-mail on 16 May 2016. Response received by post, dated 1 June 2016.
entering parliament as legislators, exacerbating extant concerns of conflicts of interest. In 2015-2016 the opposition claimed that three majority MPs had illegally benefited from public funds, in breach of conflicts of interest regulation. It invalidated one mandate, it turned down the second case and it is currently considering the third one.

Since 2014, HIDAACI has fined and/or filed criminal charges with the Prosecution against six sitting MPs – two from the opposition and four from the ruling majority. However, as noted by one interviewee, three of the majority MPs were reported to the Prosecution in 2015 only after significant scandals had erupted in the media – including of their criminal pasts – and the ruling majority had ‘abandoned’ them. In addition to the questions on HIDAACI’s ability to impose the law on MPs – emerging from the timing of its measures – the institution’s general effectiveness in enforcing asset declaration and conflict of interest rules is hampered by poor resources (see HIDAACI pillar).

Last but not least, the integrity of legislators in practice far surpasses classic concerns of conflict of interest, or gifts and hospitality. Allegations and evidence of legislators with present or past links to the criminal world have intensified over the last two years (2014-2015). Two ruling majority MPs went with only minor disciplinary measures – after the High Court denied jurisdiction on the offence – for physically assaulting an opposition MP in 2014, following the latter’s claims that there were criminals in the majority’s ranks. An OSCE internal report leaked by the media in 2015 described widely-held but unverified claims of serious misconduct – from harbouring immense wealth abroad to mafia activity – on the part of 36 Albanian MPs (almost a quarter of Parliament). In 2015, one ruling majority MP was arrested and had his immunity lifted under charges of false testimony after accusing the Speaker of Parliament of plotting his assassination; two others claimed they were resigning their mandates to open way for the clarification of charges of murder and human trafficking; while another was arrested and had his immunity lifted after injuring a second person with a firearm in a brawl within the premises of a police station.

In December 2015, Parliament adopted a new law to establish a vetting process for future elections and appointments, and also current officials. It is designed to address the problem of individuals with criminal records obtaining or holding public office.

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Role

Executive oversight

Score: 50

Parliament can exercise oversight of the Executive through a number of means. All members of the Cabinet are obliged to respond to interpellations and questions of MPs within three weeks, and to report to parliamentary committees upon request, or annually in some cases.\textsuperscript{209} Parliament can establish inquiry committees, and must do so upon request of one-fourth of all its members, thus guaranteeing the exercise of oversight by minorities in Parliament.\textsuperscript{210} Inquiry committees cannot step on the competences of the Prosecution and courts.\textsuperscript{211} A fifth of MPs can also initiate a no-confidence motion, but the right is almost entirely impracticable as it ties the no-confidence vote to the simultaneous proposal and approval of a new Prime Minister.\textsuperscript{212}

In practice, these oversight tools are not sufficiently or effectively employed.\textsuperscript{213} A tradition has been growing of organising public hearings with government representatives after the publication of the European Commission’s progress reports.\textsuperscript{214} However, in 2015, SIGMA reported that Parliament’s scrutiny of government performance on the implementation of specific laws is rare.\textsuperscript{215} Interlocutors pointed out that resources are a significant obstacle here, as MPs and parliamentary groups have limited capacities and so they cannot engage in rigorous oversight. Parliament makes virtually no use of the work of independent institutions – such as the SAI and the Ombudsman – to hold government to account.

A number of inquiry committees have been established over the years – for example, on appointments in public bodies, the involvement of the military in drug trafficking, privatisations, procurement, public works, and others. Generally, though, members of the parliamentary majority tend to undermine these committees by not participating, and they die out with the political moment that led to their establishment. In fact, interlocutors could not think of one inquiry committee that had any concrete impact on regulation or policy. In 2011, following the shooting of four citizens by the Guard of the Republic during a protest, the establishment of an inquiry committee on the protest by the ruling majority was largely seen as an attempt to intimidate the Prosecution in investigating the event.\textsuperscript{216}

Legal reform

Score: 50

\begin{itemize}
  \item \textsuperscript{209} Article 80, Constitution; Article 6, Law on the Civil Servant (on the obligation of the Council of Ministers to report annually to Parliament on civil service policy and enforcement).
  \item \textsuperscript{210} Article 77, Constitution.
  \item \textsuperscript{211} Article 77, Constitution; Article 3/4, Law on Inquiry Committees.
  \item \textsuperscript{212} Article 105, Constitution.
  \item \textsuperscript{213} European Commission, Albania Report, November 2015, p.7; 2014 Progress Report, October 2014, p.6.
  \item \textsuperscript{214} European Commission, Albania Report, November 2015, p.7; 2014 Progress Report, October 2014, p.6.
  \item \textsuperscript{216} SIGMA, Baseline Measurement Report: The principles of public administration, Albania, April 2015, p.32.
\end{itemize}
Especially over the past decade, Parliament has adopted a great number of laws related to the fight against corruption and good governance. Examples include the laws on ethics in public administration, prevention of conflict of interest, asset declarations, money laundering, the right to information, and many others. Parliament finally adopted a law on whistleblowing on 2 June 2016, as this report was being finalised. None of these laws were initiated by Parliament. However, a comprehensive reform of the Judiciary and Prosecution has been the focus of a parliamentary ad hoc committee over the past year.

Legislation aimed at fighting corruption and upholding good governance has by and large failed in its aims. Political will and resources largely explain the quality and enforceability of relevant laws. For instance, legal design repeatedly fails to endow key institutions with the necessary independence to carry out their mandates. At times, laws rely on far too vague or inappropriate terms, such as that on conflicts of interest – one of the worst-performing areas of regulation across institutions and sectors. Legal reform initiatives are often last-minute operations under international pressure, aimed at short-term results in the EU integration process, and therefore poorly thought out. Such was the case of the 2012 constitutional amendments that limited the immunity of high-level officials, but was not accompanied by the necessary changes to the criminal procedural law for two years – changes that are, nevertheless, not certain to have been adequate even when they were finally adopted.

Recommendations

- Parliament should establish an ad hoc committee, assisted by a technical secretariat, on conflicts of interest reform and lobbying regulation, with a mandate to analyse the current framework and practice, and propose changes that complete and simplify the legal framework, strengthen the independence of key institutions, and render enforcement possible. The committee should solicit the assistance of the SAI, Ombudsman, and HIDAACI in this process.

- Parliament should amend and adopt the current draft of the Code of Conduct to include clear provisions on the registration and publication of interests, conflicts of interests, and gifts and hospitality.

- Parliament should regularly update and publish these registers.

- Parliamentary committees, with the support of Parliamentary Services, should employ the findings of the SAI, Ombudsman, HIDAACI and other institutions to scrutinise the Executive.

- Parliamentary committees and MPs should promote good governance by demanding specific reporting on the implementation of integrity-related legislation by institutions on which Parliament has oversight.

- Parliament should improve its human resources, especially for research and support to parliamentary groups.

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EXECUTIVE

Summary

The Executive’s resources have significantly increased over the past two years and are considered adequate, but its strategic organisation and management requires significant improvement. The legal framework for the Executive’s independence is generally in place. However, Albania lacks any regulation of lobbying and practice has shown that the Council of Ministers (CoM) is highly influenced by particular private interests.

While the legal framework for transparency has significantly improved since 2014, the Prime Minister’s Office (PMO) is the worst performing institution regarding its implementation. Accountability of the Executive is weak in practice, even though multiple mechanisms of oversight are in place. Parliament, the SAI, courts and the Prosecution have various powers of oversight on the Executive, but suffer from a combination of inadequate independence from politics, resources and professionalism to effectively hold the Executive to account. The adoption of a Ministerial Code of Ethics in September 2013 has not improved integrity in the Executive. In addition to the complete absence of lobbying regulation, this is also because the Code relies on a weak legal framework on conflicts of interest and gifts and hospitality, and insufficient political will for enforcement.

Despite some important initiatives, the Executive underperforms with regards to developing a well-governed public sector and a legal system that upholds accountability, mainly because of poor strategic planning and low commitment to enforcement.

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Structure and organisation

The Council of Ministers is Albania’s supreme executive body, composed of the Prime Minister, Deputy Prime Minister, and ministers. Albania currently has 19 ministers, three of whom are ministers of state (without portfolio), covering local government issues, relations with Parliament, and innovation and public administration.

The Prime Minister’s Office is the public legal body that supports the work of the Council of Ministers, Prime Minister, Vice Premier, and ministers of state. It is composed of the CoM bureaucracy and the cabinets of the Prime Minister, Vice Premier and ministers of state. The
organisation of the CoM bureaucracy is not public. Ministers have their own cabinets whose members are political functionaries and not part of the ministerial hierarchy.

While the President has a role in the appointment and swearing in of the government, and various other appointments, s/he does not exercise executive power as such and is therefore not part of this pillar. Mayors are directly elected and exercise executive power at the local level, but for the purposes of the NIS the focus is on the supreme decision-making body of the state and local government is not part of the Executive pillar. Thus, by ‘Executive’ this pillar will refer to both the CoM and its bureaucracy – the PMO.

Capacity

Resources (Practice)

Score: 75

TO WHAT EXTENT DOES THE EXECUTIVE HAVE ADEQUATE RESOURCES TO EFFECTIVELY CARRY OUT ITS DUTIES?

The human resources of the Prime Minister’s Office have increased in recent years and are planned to more than double in 2016. According to SIGMA, envisaged staffing is adequate to fulfil key policy, coordination and monitoring functions, but real levels of staffing remain below what was planned. A former civil servant in central administration reported that while there are some gaps in all aspects of resources – human, technical, and financial – the main problem is one of organisation and management, pointing to sharp differences in workloads between various departments and an unclear vision on the organisation of policy-making and enforcement resources. A high-ranking official in the current government considered human and financial resources to be increasing partly due to impulsive initiatives in the absence of a clear organisational strategy, causing overlaps and undermining the effectiveness of government operations.

Independence (Law)

Score: 75

TO WHAT EXTENT IS THE EXECUTIVE INDEPENDENT BY LAW?

In addition to determining the main directions of general state policy, initiating laws, and ensuring policy and law enforcement, the Constitution empowers the government to exercise every state function that has not been assigned to other branches or local government. The checks on government by other branches and organs of the state (i.e. Parliament, the Constitutional Court, Judiciary, SAI, etc.) do not represent an encroachment on its independence, but rather a means of ensuring that the government abides by the law and its political programme.

Draft laws that are not initiated by government but imply an increase in the State Budget expenditures or a decrease in its income cannot be approved without the opinion of the Council of

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221 Interview with a former civil servant in central administration, 22 December 2015.
222 Interview with a current high-ranking official in the Executive, 18 January 2016.
223 Articles 81, 95, 100, Constitution.
Ministers.\(^{224}\) The role of the President in appointing and discharging the Prime Minister and the Council of Ministers is largely formal and not obstructive. Members of the Council of Ministers enjoy the same immunity as members of Parliament, which involves protection from liability for opinions and votes expressed in Parliament (with the exception of defamation), from arrest, and personal or house searches unauthorised by Parliament, unless caught in the act of committing a crime.\(^{225}\)

Members of the Council of Ministers cannot participate in decision-making that involves a personal interest or any cause for “serious impartiality”. Any member can request exclusion from a Council of Ministers meeting of a colleague in the said situation where a conflict of interest is encountered.\(^{226}\) A dedicated Law on the Prevention of Conflicts of Interest (PCI) also applies to the Council of Ministers, but its provisions are far too complex and unclear (see Public Sector pillar on Integrity). Furthermore, the absence of lobbying regulation leaves government members and its decision-making vulnerable to the undue influence of commercial and other interests.

**Independence (Practice)**

Score: 25

### TO WHAT EXTENT IS THE EXECUTIVE INDEPENDENT IN PRACTICE?

In practice, no examples of undue interference in the work of the Executive from other branches or organs of the state have been registered. However, media reports of strong influence of personal and commercial/private interests in government decision-making have persisted for many years, and a high-ranking official in the current government agrees that such influence is perceptible.\(^{227}\) For instance, various journalistic investigations by BIRN have raised strong questions of the role played by the law firms established by Argita Berisha, daughter of former Prime Minister Sali Berisha, in government decisions in a number of sectors, including energy and real estate, soon after her father gained power in 2005.\(^{228}\)

More recently, a series of investigations in the health sector have revealed highly dubious decision-making on concessionary contracts leading to claims of undue influence of personal financial interests of government members on such decisions.\(^{229}\) A confidential OSCE report leaked to the media – said to summarise widely held and reported allegations by the media – included claims about the former and current members of the Executive having strong business links and being involved in illicit activities.\(^{230}\) In a recent interview, the IMF Representative in Albania asserted that changes in taxes and regulation affected a small number of beneficiaries, at the expense of others.\(^{231}\) A former civil servant with considerable experience in

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\(^{224}\) Article 82/2, ibid.

\(^{225}\) Articles 73, 96, 98, and 103, ibid.

\(^{226}\) Article 18, Law on the Council of Ministers; Article 4, Ministerial Code of Ethics, approved on 15 September 2013: http://www.kryeministria.al/al/newsroom/lajme/kodi-etik-ministror&page=99

\(^{227}\) Interview with a high-ranking official in the Executive, 18 January 2016.


\(^{231}\) Monitor, ‘Reinke i FNM: Disa taksa janë ndryshuar për një numër të vogël përfittuesh, në bërë të të tjereve’ (IMF Reinke: Several taxes were changed for a small number of beneficiaries, at the expense of others), Tirana: http://www.monitor.al/reinke-fmn-disa-taksa-jane-ndryshuar-per-rie-numer-te-vogel-perfituesh-ne-barre-te-te-tjereve/
both the past and current administration asserted that such influence has been and remains concentrated at the top level of the Executive.232

Governance

Transparency (Law)

Score: 75

The Constitution sanctions the right to information on the activities of state institutions and requires them to publish information on their income and expenditure. But it also provides for CoM meetings to be closed.233 CoM members are also obliged to protect the confidentiality of discussions in these meetings.234 However, all acts of the CoM and ministers are to be published in the Official Journal in order to enter into force.235

The obligation to provide information to the public is reinforced in the Code of Administrative Procedure.236 A new Law on the Right to Information (LRI) was approved in 2014, widening the scope of the right, shortening deadlines for responses to information requests, introducing a clearer institutional set-up, and obliging the proactive disclosure of information. The law applies to the CoM and requires the proactive disclosure of budgetary data, amongst others (see Public Sector pillar for more detail on this law). Members of the Executive are obliged to declare their assets/interests to the High Inspectorate for the Declaration and Audit of Assets and Conflicts of Interest, which can only publish them upon request and not pro-actively (see HIDAACI pillar).237

Transparency (Practice)

Score: 25

Government decisions are made public following CoM meetings. However, the text of the acts approved by government decisions is often missing. The media has identified times when certain decisions on draft laws and their related texts have not been published at all, such as the recent hydropower plant concession decision, or the draft amendments to the Criminal Code on defamation, which were to affect journalists, too.238 The government was also criticised recently for poor transparency with regard to the 2016 State Budget draft bill package.239 The 2015 Open

232 Interview with a former civil servant in central administration, 22 December 2015.
233 Articles 23, 100/3, and 157/4, Constitution.
235 Article 117/1, Constitution.
236 Articles 5-6, Code of Administrative Procedures.
237 Articles 5 and 34, Law on the Declaration of Assets (amended); Decision no. 16, 11 November 2004 of the Constitutional Court, paragraph 5.
Budget Survey ranks Albania the second lowest in the region on budget transparency, with a score of 38/100.\(^{240}\)

On the implementation of the 2014 Law on the Right to Information, a recent assessment assigned the Prime Minister’s Office to the "hall of shame", as the worst performing institution.\(^{241}\) The PMO responded only partially to the request for information by the research team, and refused to respond to requests for information made by Res Publica, a local organisation, on a number of issues, even after court decisions to that effect.\(^{242}\) The PMO published a transparency programme only in recent months (March-May 2016), with a delay of one year from the legal deadline, and largely incomplete. The programme is marked by notifications such as “test” and “under construction”.\(^{243}\) A Coordinator for the Right to Information is announced online together with the transparency programme, but no electronic address is provided.\(^{244}\) However, contact details for the media and corruption complaints are publicly available.\(^{245}\)

Most of the information that must be proactively disclosed by institutions, including organisational charts, qualifications of staff subject to asset declarations, competences and duties of high officials, decision-making procedures, performance/implementation reports, audit reports, budgetary data, or information on procurement and concessions, are not public on the PMO’s website. Basic legal acts regulating the activity of the Council of Ministers and the PMO are not available on the official website.\(^{246}\)

While the law does not envisage pro-active disclosure of asset declarations, HIDAACI routinely responds to requests for officials’ asset declarations and these are often published in the media. A local NPO, Open Data Albania, recently began publishing asset declaration records online, in a systemised format.\(^{247}\) On the Executive’s internal information system, a former civil servant attested that a new one is up and running, complete with advanced features, but far too complex for the current level of IT know-how of its users.\(^{248}\)

### Accountability (Law)

Score: 50

The Executive is subject to multiple checks with the main ones being from Parliament, the SAI, and the justice system. Government-initiated draft laws must be accompanied by a reasoned report of objectives, constitutionality, foreseeable impact and financing.\(^{249}\) A new law adopted in 2014 requires public notification and consultation of legal and strategic policy initiatives.\(^{250}\)

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\(^{242}\) Ibid., p.35; Information request submitted by project assistant Megi Llubani, on 16 May 2016. Response by PMO via post, prot. 3228/1, dated 21 June 2016.

\(^{243}\) PMO’s Transparency Program: [http://www.kryeministria.al/al/newsroom/programi-i-transparencies](http://www.kryeministria.al/al/newsroom/programi-i-transparencies) [last accessed 2 June 2016].

\(^{244}\) Ibid.

\(^{245}\) See contact details here: [http://www.kryeministria.al/al/kontakt/kontakt-to-me-kryeministrin](http://www.kryeministria.al/al/kontakt/kontakt-to-me-kryeministrin)


\(^{248}\) Interview with former civil servant in central administration, 22 December 2015.

\(^{249}\) Article 68, Parliament’s Rules of Procedure.
The Executive is obliged to answer calls for interpellations and questions by MPs, as well as inform and provide explanations to parliamentary committees on various issues regarding its activity, upon request and/or in line with periodic reporting requirements.\(^{251}\) Parliament can establish inquiry committees on specific issues falling within the remit of its legislative power.\(^{252}\) One-fifth of Parliament can initiate a motion of no confidence against the Prime Minister, but since 2008 the motion needs to be accompanied by a proposal for a new Prime Minister and be voted on together to be successful.\(^{253}\)

On the State Budget specifically, parliamentary oversight is assisted by the obligation of the SAI to present an annual report to Parliament on the execution of the State Budget, and its opinion on the Council of Ministers’ report on expenditures. Upon request from Parliament or on its own initiative, the SAI can present information on any of its audits, or final reports on them.\(^{254}\) The SAI has a wide mandate that now includes performance and IT auditing, but its independence – so necessary for credible oversight of the Executive – is questionable given that the head of the institution is appointed by a simple parliamentary majority (see SAI pillar).

Just like for other state bodies, CoM decisions can be challenged in court. Government members enjoy the same immunity as MPs, which was restricted in 2012 from full immunity to protection from arrest (unless caught in the act) and house or personal searches without the prior authorisation of Parliament.\(^{255}\) Criminal charges against government members can only be investigated by the Prosecutor General’s Office and tried in one instance at the High Court. Both institutions are considered highly vulnerable to politicisation due to the role of Parliament in the appointment of High Court judges and the Prosecutor General (see Judiciary and Public Prosecutor pillars).

**Accountability (Practice)**

Score: 25

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**TO WHAT EXTENT IS THERE EFFECTIVE OVERSIGHT OF EXECUTIVE ACTIVITIES IN PRACTICE?**

Draft laws are routinely accompanied by an account/report of objectives, constitutionality, foreseeable impact and financing, as required by law, but the reasoning set forth is often superficial.\(^{256}\) While some reports on policy enforcement have been made public – such as the first 300-days report – generally, they are superficial or not available at all.\(^{257}\) There is some consultation on strategies, but enforcement of the new Law on Public Consultation is generally weak, particularly on legislation.\(^{258}\)

The government regularly responds to Parliament and MPs’ requests for hearings or interpellations with ministers. Both a current high-ranking official and a former civil servant in central administration agreed that such mechanisms of parliamentary oversight have an impact.\(^{259}\) However, the European Commission noted in 2015 – and a high-ranking official in the current government agreed – that

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\(^{251}\) Article 80, Constitution; Article 18, 36, 89-96, Parliament’s RoP.

\(^{252}\) Article 77, Constitution; Decision no. 20 of the Constitutional Court, of 4 May 2007.

\(^{253}\) Article 105, Constitution.

\(^{254}\) Article 31, Law no. 154/2014 on the Organisation and Functioning of the Supreme Audit Institution.

\(^{255}\) Articles 103/3 and 73, Constitution.


\(^{258}\) Interview with a current high-ranking official in the Executive, 18 January 2016.
interpellations remain underused. In practice, while Parliament has exerted its right to set up inquiry committees, hardly any of them have ever produced policy or had legislative impact.

The SAI last audited the PMO in 2013 and in 2009 before that. Of the three recommendations that the SAI had made in 2009, only one had been implemented by the last audit in 2013, while another – on the PMO’s procurement procedures – had been partially implemented. The SAI audits ministries more often and provides annual reports to Parliament on the execution of the State Budget. Follow-up by both Parliament and the Executive of the SAI’s findings and recommendations is weak and the institution is perceived as highly biased.

The SAI also referred the Minister of Energy and Industry to the Prosecution, which announced the opening of investigations. However, despite persistent allegations of grand corruption and involvement in illicit business activities, there is no record of the successful prosecution and conviction of government members, in or after office (see Public Prosecutor and Judiciary pillars).

Integrity mechanisms (Law)

Score: 50

TO WHAT EXTENT ARE THERE MECHANISMS IN PLACE TO ENSURE THE INTEGRITY OF MEMBERS OF THE EXECUTIVE?

The Constitution prohibits members of the Council of Ministers from holding any other state function or from membership in for-profit companies. The Council of Ministers’ organic law requires that its members are impartial and withdraw from decision-making processes in which they have a personal stake or any other verified cause for bias. The Prime Minister decides on such cases either on his/her own initiative, or upon the request of any CoM member.

A more extensive Law on the Prevention of Conflicts of Interest (PCI) – which includes provisions on gifts and hospitality – also applies to the Council of Ministers. However, its provisions are far too complex, vague, or simply inadequate (see Public Sector pillar). A Code of Ethics approved in September 2013 reiterates many of the provisions of the PCI and existing legislation on integrity, and retains many of the same flaws. For instance, prohibited gifts are those “given because of one’s duty”, when proving such an intention can be very difficult in practice. The Code introduces restrictions on post-ministerial employment, but they are weak and subject to undefined exemptions. Specifically, the Code prohibits ministers from appointment to positions of high management or control of public or private commercial companies for a period of one year, if s/he was “directly implicated/involved in the commercial activity of these companies” in the last two years of the ministerial post. The Ethics Commission – a body to be established by order of the Prime Minister to enforce the Code – can rule on exemptions to this prohibition.

262 European Commission, Albania Report, 2015, p.73; Analysis of the activity of the SAI, presented by the Head of the SAI during its public 2015 performance reporting, 1 February 2016, p.36-38; Interviews with a current high-ranking official in the Executive, 18 January 2016 and a public finance expert, 20 November 2015.
263 SAI Press Release, ‘SAI refers to the Prosecution the Minister of Energy and Industry and the General State Advocate’, 14 October 2015:
http://www.klsh.org.al/web/KLSH_kallezon_penalisht_Ministrin_e_Energjise_dhe_Industrise_dhe_Avokatin_e_Pergjithsh
hem_te_Shtetit_1575_1.php
264 Article 103/2, Constitution.
265 Article 18, Law on the Organisation and Functioning of the Council of Ministers.
266 Reed, Q., Prevention and regulation of conflicts of interest of public officials in Albania: Assessment and recommendations, ACFA assessment report, December 2014, p.3.
Members of the CoM and PMO staff are subject to the Law on the Declaration of Assets. However, the responsible institution for the auditing of such declarations lacks the necessary independence to effectively exercise its mandate (see HIDAACI pillar). The Law on the Cooperation of the Public in the Fight against Corruption does not provide an effective framework for whistleblowing as it lacks clarity and suitable guarantees against retaliation (see Public Sector pillar). Parliament finally adopted the law on 2 June 2016, as this report was being finalised. Parts of the new law enter into force in October 2016, and others in July 2017.269

Integrity mechanisms (Practice)

Score: 0

TO WHAT EXTENT IS THE INTEGRITY OF MEMBERS OF THE EXECUTIVE ENSURED IN PRACTICE?

The research team enquired after the establishment of the Ethics Commission, but the PMO’s response did not provide any evidence that this committee had been established.270 A current high-ranking official of the Executive asserted that the Code had not been heard of since its approval in September 2013. When asked about the declaration of conflicts of interest in practice, and subsequent withdrawals from decision-making in the CoM, the official could not recall any such instance, though he recalled cases when there was cause to suspect that such a conflict existed (see Independence (Practice) above for examples from media investigations).271

The research team also asked for records of conflict of interest declarations in CoM meetings since 2011, but none were provided.272 When asked recently about his attendance in the first row of a basketball match in Miami, the Prime Minister responded that such tickets are “booked by corporations and companies” and someone who had booked a ticket had gifted it to him – without disclosing the name of the person in question.273 The revolving-door phenomenon has been growing in Albania, especially with respect to the Legislature. However, a high-ranking official in the current government notes that it is present in the Executive, too.274 As noted above, there are widely held allegations that top officials – including former and current members of the Executive – have been involved in illicit businesses, abuse of office, and other illicit activities.275

The research team asked the HIDAACI for information on when it had factually conducted full audits of the declarations of members of the CoM, which declarations for which period of time had been fully audited, and what were the results. Such specific information is not part of HIDAACI’s annual reports, and the institution responded generically, referring to legal provisions and its website.276 In 2015, five years after his post as Minister and abandoned by Political Parties, HIDAACI referred former Minister Dritan Prifti to the Prosecution for hiding wealth, false declarations and related offences.277 In addition to concerns on its independence, important resource constraints challenge HIDAACI’s ability to scrutinise power (see HIDAACI pillar).

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270 Information request submitted by project assistant Megi Llubani, on 16 May 2016. Response by PMO via post, prot. 3228/1 dated 21 June 2016.
271 Interview with a current high-ranking official in the Executive, 18 January 2016.
272 Information request submitted by project assistant Megi Llubani, on 16 May 2016. Response by PMO via post, prot. 3228/1, dated 21 June 2016.
273 Opinion, ‘Rama: Shpenzimet në SHBA dhe biletën e ndeshjes I paguam vetë’ (Rama: Expenses in the US and tickets for the game were paid by us), Tirana, 12 January 2016: http://opinion.al/rama-shpenzimet-ne-shba-dhe-biletën-e-ndeshjes-i-paguam-vete/
274 Interview with a current high-ranking official in the Executive, 18 January 2016.
276 Information request submitted by project assistant Megi Llubani, on 16 May 2016. HIDAACI response (e-mail) on 19 May 2016.
Role

**Public sector management (Law and Practice)**

Score: 50

**TO WHAT EXTENT IS THE EXECUTIVE COMMITTED TO AND ENGAGED IN DEVELOPING A WELL-GOVERNED PUBLIC SECTOR?**

In addition to the Department of Public Administration (DoPA), there is currently a Minister of State with a mandate to develop a modern public administration. The DoPA is reported to display a higher commitment to the enforcement of the Law on the Civil Servant, and important tools for human resource management have been introduced. However, problems in the policy framework, coordination, and enforcement follow-up persist, and both the DoPA and the Minister of State are considered to lack the necessary resources to carry out their mandates effectively (see Public Sector pillar).\(^{278}\)

A high-ranking official in the current government noted that beyond limited capacities and the lack of a clear and structured approach to encourage good governance in the public sector, there is also the problem of political will; namely a general resignation that the public administration serves as a resource for electoral support.\(^{279}\) This is particularly evident in the high turnover in the police force (see Law Enforcement pillar). Tools such as transparency awards, financial incentives or monitoring scorecards are generally lacking, according to two interviewees.\(^{280}\)

**Legal system**

Score: 50

**TO WHAT EXTENT DOES THE EXECUTIVE PRIORITISE PUBLIC ACCOUNTABILITY AND THE FIGHT AGAINST CORRUPTION AS A CONCERN IN THE COUNTRY?**

The fight against corruption is pervasive in public political discourse in Albania (see Political Parties pillar). There have been a series of important initiatives aimed at enhancing accountability, including the adoption of a significantly improved Law on Access to Information, the Law on Public Consultation, the proposal of a Law on Whistleblowers, the launch of the corruption notification portal, and others. The Executive has also pushed for an overhaul of the justice system via an ad hoc parliamentary committee, assisted by technical expertise, with a view to fighting corruption and impunity by strengthening the independence and accountability of the justice system. However, the initiatives are yet to bear sustainable results.

The enforcement of adopted laws is generally weak (see also Public Sector pillar), the justice reform package is hostage to political deadlock,\(^{281}\) and implementation of the former Anti-corruption

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\(^{279}\) Interview with a current high-ranking official in the Executive, 18 January 2016.

\(^{280}\) Interviews with a former civil servant in central administration, 22 December 2015 and a current high-ranking official in the Executive, 18 January 2016.

\(^{281}\) Updated up to 3 June 2016.
Strategy and Action Plan was inadequate. Meanwhile, the current Anti-corruption-Action Plan, approved with some delay in March 2015, is already under revision. A high-ranking official in the current government noted that members of the CoM raise the necessity of accountability mechanisms within legislative proposals in CoM meetings, but generally during discussions of draft laws where no major interests lie.

Recommendations

- The PMO should immediately adopt a fully developed transparency programme and publish and proactively disclose all the information required by the Law on the Right to Information.

- The PMO should keep public registers of declarations of interest, conflicts of interest, and gifts and hospitality received by government members.

- Together with the HIDAACI, the SAI and the Ombudsman, the National Anti-corruption Coordinator should establish a working group to initiate amendments to the Law on the Prevention of Conflicts of Interest, in line with the recommendations of the ACFA paper. Together, they should recommend that Parliament establish an ad hoc committee to overhaul Albania’s integrity legislation.

- The same as above should be done to introduce lobbying regulation.

- The National Anti-corruption Coordinator should publish monitoring reports of the Anti-Corruption Strategy and Action Plan.

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283 Interview with a current high-ranking official in the Executive, 18 January 2016.

JUDICIARY

Summary

The Judiciary scores low on both law and practice, with the legal framework on transparency being the only exception. The Judiciary’s capacity to fulfil its role is hampered by insufficient resources and independence. Its governance is marred by very poor accountability, integrity, and transparency in practice. All of these factors serve to explain the poor role the Judiciary plays in holding the Executive to account and sanctioning corruption.

More specifically, resource problems include working conditions, staff, and salaries – in particular of district court judges. Judicial appointments and career decisions are vulnerable to political and crony interests. The system of triennial professional evaluations meant to underpin career decisions is poorly designed and its enforcement only began in 2013. Members of the High Court and three of the High Council of Justice – one of whom becomes its chief executive officer – are appointed via a political process. Both the Council and the Minister of Justice command inspectorates for disciplinary purposes, with the Minister alone able to initiate disciplinary proceedings against judges. The High Court is not part of the disciplinary system. Thus, its members are both dependent on partisan approval in Parliament for their appointment and unaccountable for their performance. This carries ramifications for the entire system given that the High Court alone can unify judicial practice, and try the country's top officials on criminal charges.

Many of the fundamentals of an integrity framework are in place and judges are also subject to asset/interest declarations. However, there are no post-employment restrictions, conflict of interest legislation is too highly complicated to be effective, integrity carries little weight in professional evaluations and its understanding by judges is narrow. In practice, despite strong evidence of inexplicable wealth held by some judges, the High Council of Justice has failed to take disciplinary measures, and the Prosecution has closed most of the files in question. The above mix of politicisation and impunity has led to a series of institutional conflicts, accusatory rhetoric, and very low public trust in the Judiciary.

<table>
<thead>
<tr>
<th>JUDICIARY</th>
<th>Overall Pillar Score: 36.1</th>
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<tbody>
<tr>
<td><strong>Dimension</strong></td>
<td><strong>Indicator</strong></td>
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<tr>
<td>Capacity 37.5/100</td>
<td>Resources</td>
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<td></td>
<td>Independence</td>
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<td>Governance 45.8/100</td>
<td>Transparency</td>
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<td></td>
<td>Integrity mechanisms</td>
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<tr>
<td>Role 25/100</td>
<td>Executive oversight</td>
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<td>Corruption adjudication</td>
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</table>
Structure and organisation

Albania has a three-tier Judiciary. At the first instance, there are 22 district courts of general jurisdiction, one serious crimes court, and six administrative district courts. At the second instance, there are five appeal courts of general jurisdiction, one serious crimes appeal court, and one administrative appeal court.285

The High Court is the last instance of the Albanian Judiciary with both original and appellate jurisdiction. It has original – and final – jurisdiction over criminal charges against the country’s highest officials, including the President, the Prime Minister and other members of the Council of Ministers, MPs, its own judges as well as those of the Constitutional Court. The High Court is also responsible for the unification or change of judicial practice. The Constitutional Court is not part of Judiciary power, but rather stands alone as an independent constitutional institution. However, because of its role of oversight of the Executive, it will be considered here only in that respect (under ‘Role’).

The High Council of Justice (HCJ) governs matters of protection, appointment, transfer, dismissal, professional and ethical evaluation, education, career and accountability of the first and second instance judges. It is composed of 15 members, where nine are judges elected by the National Judicial Conference, three are non-judges (but from the law profession) elected by Parliament, and three others are the President (also chair of the HCJ), the Minister of Justice, and the President of the High Court. Both the HCJ and Ministry of Justice conduct inspections of first and second instance judges. Authority to initiate disciplinary proceedings rests exclusively with the Minister of Justice.286

The Office for the Administration of the Judiciary Budget (OABJ), a collegial body dominated by members of the Judiciary (mostly court presidents), deals with the sector’s budgetary matters.287 A School of Magistrates is established to prepare (initial training programme and continuously train both judges and prosecutors. The School’s Management Council is representative of key institutions in the justice sector, the legal community, and students.288

Capacity

Resources (Law)

Score: 50

TO WHAT EXTENT ARE THERE LAWS SEEKING TO ENSURE APPROPRIATE SALARIES AND WORKING CONDITIONS OF THE JUDICIARY?

The Albanian Constitution prohibits the reduction of judges’ tenure, salaries and other benefits. It also envisages a separate, self-administered budget for the Judiciary.289 However, the overall legal framework does not uphold such constitutional protection adequately and judicial salaries are stable by virtue of being fixed in qualified majority laws and pegged to other official salaries.290 However, provisions to adjust official salaries to levels of inflation, and thus guarantee stability of real wages for judges (or other officials), are lacking.

286 Article 147, Constitution, Articles 11.2, 12.5, 13, 16, 18, 34, Judicial Power Law, Articles 1-3, 11, 28, 31, 33 High Council of Justice Law.
287 Law no. 8363, on the establishment of the Office for the Administration of the Budget of the Judiciary, of 1 July 1998.
288 Article 6, Law 8136, on the School of Magistrates, of 31 July 1996, amended.
289 Articles 138 and 144, Constitution.
290 Article 22, High Court Law; Articles 26 and 27 of Law no. 9877 on the Organization of Judicial Power in the Republic of Albania, of 18 February 2008 amended; Article 3 of Law no. 9584 on Salaries, Honoraria and the Structures of Constitutional Independent Institutions and Other Independent Institutions Created by Law, of 17 July 2006, amended.
Furthermore, the stability of remuneration must be differentiated from its appropriateness, which the legal framework fails to ensure in the case of district and appeal court judges in particular. In salary terms, Albanian law attaches a higher role to all other officials in the scheme of official salaries – including officials of the Radio-Television National Council, Data Protection and Anti-Discrimination commissioners – than to district court judges.\textsuperscript{291} Salary levels of both district and appeal court judges are also lower than those of vice-ministers and the Ombudsman’s chief of cabinet (1,000 euro), and those of district court judges are lower than those of secretary-generals for the President, Assembly, Prime Minister’s Office (921 euro), and those for ministries (842 euro).\textsuperscript{292} Furthermore, salaries of these officials rise by 2 per cent each year, after the first year, while those of district court judges begin to rise by the same percentage after five years in service, and those of appeal court judges after 15 years.\textsuperscript{293}

Legal guarantees for the Judiciary’s budget and the number of judges are inadequate and affect working conditions in general. The Constitution provides for a separate budget for the Judiciary and its independence in proposing and administering it, through the OAJB. However, determination of the Judiciary’s budget is subject to the overall rules governing the drafting of the State Budget, which offer no protection against arbitrary decisions on the budgets of independent institutions by the Executive and Legislature. Such protection would mean envisaging specific circumstances in which Parliament can cut budgets, limits to the degree to which it can do so, or a requirement to thoroughly justify cuts.\textsuperscript{294} Also, the Ministry of Finance sets expenditure ceilings for all institutions whose opinions on the matter it is not bound by.\textsuperscript{295} The risk is exacerbated by the fact that in Albania’s political system the Executive always controls a majority in Parliament, and only a simple majority is needed for budgetary decisions. There is little difference, in this sense, between the Judiciary and a ministry.

The number of judges at first and second instance courts is determined by presidential decree, upon a proposal of the Minister of Justice, who first asks for the opinion of the High Council of Justice but is not bound by it.\textsuperscript{296} In terms of qualifications, judges and prosecutors must complete the School of Magistrates, admission to which is competitive and dependent on previous legal education.\textsuperscript{297} The School’s initial training programme is three years, covering theoretical knowledge, applied work, and an internship in a court or prosecution office. Candidates for judges and prosecutors are assessed at the end of the first two years. The assessments results affect the location of their internship, upon completion of which they receive a final evaluation, which in turn affects their appointment and continuous training is also mandatory. The School’s budget is a separate item in the overall State Budget, and subject to the same rules as described above.\textsuperscript{298}

\textbf{Resources (Practice)}\\

\textbf{Score: 25}

\textsuperscript{291} Figures in EUR are based on an exchange rate of 1 EUR = 140 ALL. Law no. 9584 on Salaries, Honoraria and the Structures of Constitutional Independent Institutions and Other Independent Institutions Created by Law, of 17 July 2006, amended.


\textsuperscript{293} Ibid., Law on Judicial Power.

\textsuperscript{294} Law no. 9936 on the Management of the Budgetary System, of 26 June 2008, related instructions of the Minister of Finance on expenditure ceilings for the 2015-2017 Mid-term Budget. See also Part III of the Parliamentary Rules of Procedure for details of the State Budget approval process (RoP changed with decision no. 95/2014, of 27 November 2014).


\textsuperscript{296} Article 8, Law on the Organization of Judicial Power.

\textsuperscript{297} Articles 16-17, Law on the School of Magistrates; Article 10, Internal Rules of Procedure of the School of Magistrates.

\textsuperscript{298} Article 3, Law on the School of Magistrates.
There is wide agreement that Albania’s Judiciary is seriously under-resourced in all aspects. Albania has persistently had the lowest share of GDP for the courts’ budget in the region.\textsuperscript{299} International comparative assessments report that in gross terms, the difference between the earnings of a judge and an average citizen is higher at the European level than in Albania.\textsuperscript{300} But given Albania’s still largely informal economy with reported salaries significantly lower than real salaries, the gap between judicial salaries and the national average is probably even smaller than indicated by official data.\textsuperscript{301}

All interviewed experts and recent studies fully agree that judicial salaries for district and appeal court judges are insufficient to afford a dignified living standard and shield judges from undue influence.\textsuperscript{302} However, analysis of groups of more or less similar countries reveals no magic formula for the relationship of judicial and national average salaries, as an indicator of appropriate remuneration. In the case of Albania, a review of judicial salaries is necessary, but such a review must take into account the high level of corruption among judges, alongside relations to other official salaries, provisions for regular pay rises, and the level of informality in the country. In order to avoid a situation whereby corrupt judges are awarded with higher official salaries, accountability of the judiciary ought to be strengthened simultaneously with salary reform (see Accountability below).

In terms of human resources, Albania has one of the highest proportions of first instance judges in Europe, but one of the lowest of High Court judges, at only 4.2 per cent of the entire judicial corps. Numbers and qualifications of non-judge staff assisting judges are also deemed low.\textsuperscript{303} Furthermore, real human resources are often lower than budgeted ones due to the often-unjustified delays in the appointment of both administrative and judicial staff. For the first half of 2015, for instance, the OAJB reported 76 vacancies in the sector, of which 41 were judges’ positions that the High Council of Justice had failed to appoint.\textsuperscript{304} The problem is chronic, with the HCJ failing to appoint 34 judges in 2011, 36 in 2012 and 2013, and 35 in 2014.\textsuperscript{305}

\textsuperscript{302} Interviews with Marsida Xhaferllari, Chief Inspector, High Council of Justice, 10 June and 24 July 2015; Ardian Visha, Renowned lawyer, assisting the ad-hoc parliamentary committee on justice reform, 16 and 24 July 2015; Gent Ibrahimi, Constitutionalist, Anti-corruption and judicial expert, 31 March and 8 April 2015; Dorian Mattija, Director, ResPublica, 8 April 2015; Kathleen Imholz, expert on judiciary, 27 April 2015; David Grise, former OPDAT/US Embassy Officer, 17 July 2015; Luljeta Laze, Head of Office, Management of the Judiciary Budget, 28 July 2015; Laerta Poda, Director, Finance Department of OMJB, 28 July 2015; and a judge in Tirana, 23 July 2015; see also Ibrahimi, G., Reed, Q., Corruption Prevention in the Judiciary in Albania: Assessment and Recommendations, ACFA assessment report, January 2015, p.7.
\textsuperscript{303} EU/CoE Support to Efficiency of Justice, In-depth assessment report of the justice system in Albania, 2015, p.13-15.
In terms of judges’ training, experts positively assessed the development and efforts of the School of Magistrates, but pointed to its high reliance on donor funding, as well as training inconsistency in terms of planning and quality.\(^{306}\)

Judicial infrastructure remains poor. Out of 38 courts, only 32 have dedicated buildings; eight need completely new buildings; four need full reconstruction; 16 need new trial rooms; nine need new offices for judges; 16 need new areas for the public; and 11 courts need archival offices.\(^{307}\) Hearings in judges’ offices remain widespread.\(^ {308}\) Overall, the IT infrastructure is poorly developed and it is worth noting that most of the investment in court infrastructure has been donor-funded.\(^ {309}\)

**Independence (Law)**

Score: 50

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**TO WHAT EXTENT IS THE JUDICIARY INDEPENDENT BY LAW?**

Important principles that underpin the independence of judges and the Judiciary as a whole are enshrined in the Constitution. They include subjection to the Constitution and laws alone, liability for interference in the work of judges and that of the Judiciary, security of judges’ tenure, a separate and self-administered budget for the Judiciary, protection of judges from liability for opinions expressed and decisions made in the exercise of duties, as well as immunity from arrests, personal and house searches.\(^ {310}\) However, the legal framework fails to uphold judicial independence in two crucial ways – appointments and career decisions (on budget dependency, see Resources above). Both structures involved and the legal criteria for decisions on judges’ careers allow ample room for undue influence.\(^ {311}\)

The problem is particularly acute in the case of the High Court. The President appoints High Court judges with Parliament’s simple majority consent.\(^ {312}\) Parliament’s role in scrutinising the merits of candidates is based on rather general criteria, and consenting to them without the need for consensus is not the only risk of politicisation. With the 2008 constitutional changes, there are no guarantees that the President – the nominating authority in High Court appointments – is above parties.\(^ {313}\) In 2013 and 2014, efforts to mitigate such risks of politicisation by restricting the choices of the President and Parliament fell short.\(^ {314}\) The “conditions and criteria” for appointments that were introduced remain loose; the impartiality of the Advisory Council established to condition the President is not guaranteed, and the participation of the Minister of Justice in this Advisory Council

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\(^{306}\) Interviews with Dorian Matlija, Director, ResPublica, 8 April 2015; Marsida Xhaferllari, Chief Inspector, High Council of Justice, 10 June and 24 July 2015, Gent Ibrahimi, Constitutionalist, Anti-corruption and Judicial expert, 31 March and 8 April 2015 and Kathleen Imholz, expert on judiciary, 27 April 2015.


\(^{310}\) Part IX, Constitution.


\(^{312}\) Article 136, Constitution; for Parliament’s substantial role in the process, see Constitutional Court Decision no. 23, of 24 April 2015, p.12.

\(^{313}\) Article 87, Constitution; See also Group of High-Level Experts, Ad hoc Parliamentary Committee on Justice Reform, Analysis of the Justice System, June 2015, p.19, 23-24.

\(^{314}\) Articles 3 and 3/1, High Court Law, amended by laws 151/2013 and 177/2014.

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brings the Executive directly into the process of appointing High Court judges.\textsuperscript{315} Given that the High Court is the first and last instance to try criminal charges – including those on corruption – against the President, MPs and other top officials, such politicisation of appointments is particularly problematic.\textsuperscript{316}

On a positive note, premature removal from the High Court requires a two-thirds majority in Parliament and must be motivated by breaches of the Constitution, a crime being committed, acts that seriously discredit the figure of judges, or mental or physical disability. These are all circumstances the Constitutional Court must assess for their veracity. At the end of their nine-year mandates, High Court judges are to be (re-)appointed to appeal courts at their request.\textsuperscript{317}

The President makes district and appeal court appointments, upon proposals of the High Council of Justice.\textsuperscript{318} In line with international standards, judges enjoy a numerical majority in the Council, with nine of the Council’s 15 members elected by the National Judicial Conference.\textsuperscript{319} However, outright political or potentially partisan members have a strong presence in the Council. The President – whose impartiality is not guaranteed – chairs the Council, holding responsibilities over meeting agendas, compliance with the law and decision-making.\textsuperscript{320} The Parliament elects three members to the Council by simple majority and based on the sole requirement of being a “non-judge jurist of no less than fifteen years experience in the profession” – a very loose requirement that leaves ample room for politicisation. The Vice Chair of the Council – who carries key executive duties and is the only full-time member\textsuperscript{322} – is always one of these three members. That leaves the day-to-day administration of the Council, including that of the Inspectorate, vulnerable to undue influence.\textsuperscript{323}

Last but not least, the Minister of Justice sits in the Council and enjoys the right to vote on appointments, as well as the exclusive right to initiate disciplinary proceedings against district and appeal judges (though does not vote in the latter case).\textsuperscript{324}

Furthermore, the criteria to guide key career decisions are either considered inadequate or lacking. Appointments to the appeal or serious crimes courts are tied to judges’ triennial professional evaluations.\textsuperscript{325} The criteria used for evaluations – together with the permanent ranking list of judges that affects career decisions – have been criticised for being abstract and overlapping, or too biased in favour of seniority and to the detriment of ethics.\textsuperscript{326} Decisions on transfers between same level courts, which are often considered career moves if the transfer is to a bigger court, i.e. Tirana, lack any criteria at all.\textsuperscript{327}

\textsuperscript{315} Most members of the Council are appointed through procedures that are also highly vulnerable to politicisation: the Presidents of the Constitutional and High Courts, the Prosecutor General, a High Court judge, and the Vice Chair of the High Council of Justice, who is always one of the three members of the HCJ elected by Parliament, via a simple majority. See article 3’1, High Court Law.

\textsuperscript{316} Article 141, Constitution.

\textsuperscript{317} Articles 136/3 and 140, Constitution; Article 25, High Court Law.

\textsuperscript{318} Article 12, Law on Judicial Power.

\textsuperscript{319} Article 9, National Judicial Conference Law.

\textsuperscript{320} Article 11, Law on the High Council of Justice.

\textsuperscript{321} Article 4/2, Law on the High Council of Justice.

\textsuperscript{322} Among others, the Vice-chair proposes to the HCJ the Chief Inspector and inspectors of the HCJ’s Inspectorate.


\textsuperscript{324} Articles 3 and 25, Law on the High Council of Justice.

\textsuperscript{325} Articles 12 and 13, Judicial Power Law.


Independence (Practice)

Score: 25

The Judiciary is yet to demonstrate its independence in practice. According to a 2015 survey, only 14 per cent of citizens consider judges impartial, with bribes, cronyism and political interests ranked as the key factors determining judicial decisions. Various institutional conflicts are a reflection of the Judiciary’s politicisation and the Executive and the HCJ are currently embroiled in a rhetorical and legal battle, following a judges’ approval of the Prosecution’s request to suspend the General Director of the Police, and the Prime Ministers and Minister of Interior’s public accusations of the judge in question being corrupt and a crook, and the President deliberately choosing him on the case. Parliament has rejected 14 presidential nominations to the High Court since 2008. The HCJ continues to operate without a vice chair due to a conflict between the President and Parliament over the latter’s removal in 2014 of two HCJ members who had been appointed by the previous Parliament; one of them being the former vice chair.

Furthermore, and contrary to the advice of Opinion no.10 of the Consultative Council of European Judges that “active politicians, members of parliament, the executive or the administration” should not be members of judicial councils, one of the two new members elected by Parliament to the HCJ is simultaneously the Parliament’s Secretary General and previous appointments have also overlooked this standard.

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328 Opinion no.10 (2007) of the Consultative Council of European Judges (CCJE) on the Council for the Judiciary at the service of society, paragraph 3; https://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/CCJE-opinion-10-2007_EN.pdf; for concrete cases Elvis Cefa was director general of the Agency for the return and compensation of property in 2012 when he was proposed by then PM Berisha as deputy chair of the HCJ.

329 Rights of citizens consider judges impartial, with bribe, cronyism and political interests ranked as the key factors determining judicial decisions.
Cases have been noted when the HCJ has failed to uphold the inviolability of judges’ tenures. For instance, former High Court President Shpresa Beçaj has not been re-appointed at the appeal level in line with the law at the end of her High Court mandate. Similarly, former Prosecutor General Ina Rama, who was previously a judge and under whose tenure the Prosecution investigated and brought to court a number of incumbent officials, has not been able to resume work in the court system at the appeal level, as the law envisages.

Appointments, promotions and transfers of district and appeal court judges have been generally considered biased and subjective. The Constitutional Court confirmed this view in its decision on the 2014 legal amendments to the Law on High Court, in which it ruled to rescind the newly-introduced requirement that judges aspiring to the High Court must have at least five years’ experience at the appeal level. The Court reasoned that there were no “clear and convincing arguments” that the current career system in the Judiciary guarantees promotions to the appeal level on the basis of objective criteria. In fact, the system of professional evaluation of judges that would underpin objective career decisions was only made functional recently, with the very first round of evaluations, covering 2005-2006, completed in 2014.

A survey of the relevant HCJ minutes of meetings for 2009-2015 reveals chaotic and dubious – if not outright illegal – decision-making on judges’ careers. Examples include: promotions of HCJ members; inclusion in the list of candidates judges previously discharged from the Judiciary; breaches or misinterpretations of the legal requirement that a maximum of 10 per cent of the overall number of judges can be appointed from outside the School of Magistrates system; efforts to bypass the School’s criteria and ranking altogether; and a complete lack of reference to the legal criteria.

The Analysis of the Justice System drafted by the experts attached to the ad hoc Parliamentary Committee on Justice Reform goes further and reports informal payments made to the HCJ for career decisions; these reports were sustained by a number of the interviewees for this assessment.

Furthermore, four interviewees for this assessment made illustrated claims of political intervention in judicial decisions – directly or indirectly through peers – from the highest levels of the Executive and Legislature. They demanded full anonymity on this point. Various indications warrant this concern. Thus, none of the criminal cases against government officials tried at the High Court – while incumbent – have resulted in convictions, with the Courts and the Prosecution blaming each other for the cases’ failures. Politicians who have been found guilty by the Court are only opposition

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**Notes:**


334 See, for example, HCJ meetings of 11 June 2009, 1 April 2010, 7 May 2010, 15 June 2010, and 14 November 2011.

335 Interviews with Marsida Xhaferllari, Chief Inspector, High Council of Justice, 10 June and 24 July 2015, ArdianVisha, Renowned lawyer, assisting the ad-hoc parliamentary committee on justice reform, 16 and 24 July 2015, Gent Ibrahimi, Constitutionalist, Anti-corruption and Judicial expert, 31 March and 8 April 2015, Dorian Matlija, Director, ResPublica, 8 April 2015, Kathleen Imholz, expert on judiciary, 27 April 2015; Constitutional Court Decision no. 40 of 07 July 2014 on High Court Law; Sanders, A., Report on the Individual Evaluation of Judges in Albania, January 2015, paragraph 86.

336 Decision no. 40 of 07 July 2014 of the Constitutional Court, paragraph 29: http://www.gjk.gov.al/web/Vendime_perfundimtare_100_1.php

337 Group of High-Level Experts, Ad hoc Parliamentary Committee on Justice Reform, Analysis of the Justice System, June 2015, p.63.

338 Decision no. 40 of 07 July 2014 of the Constitutional Court, paragraph 29: http://www.gjk.gov.al/web/Vendime_perfundimtare_100_1.php

MPs under charges of defamation by members of the Executive or close associates. Thus, in 2015, the High Court fined current opposition MPs Edi Paloka and Arben Ristani for defamation under charges pressed by current Prime Minister Edi Rama. Other courts fined former opposition MP (current Interior Minister) Saimir Tahiri for libel in 2012, as charged by the son and daughter of the then Prime Minister Sali Berisha.

Governance

Transparency (Law)

Score: 100

The legal framework for transparency of judicial activity is largely adequate. The Constitution requires that all court decisions are reasoned and public. It specifically requires the High Court to publish its decisions together with minority opinions. As a rule, court hearings are open to the public and media, except for in circumstances that require the protection of witnesses or defendants, juveniles’ interests, public morals, state interests, trade secrets, or when the public obstructs order in court. Digital audio recording of court hearings is the standard method of holding minutes of court hearings, unless there are technical problems. The Judiciary, including the High Council of Justice, is subject to the Law on the Right to Information (see Public Sector pillar). Judges are required to regularly disclose their assets and interests to the HIDAACI, but their publication is only possible upon request (see HIDAACI pillar).

Transparency (Practice)

Score: 50

The level of transparency of the Judiciary in practice has improved, but remains inadequate. Digital audio recording has improved the accuracy of the minutes of court hearings, the conduct of judges and the ability of parties to appeal or successfully challenge the judge in instances of behaviour that prejudice the case, and the like. However, digital audio recording has not been introduced in all courts, including administrative courts. By May 2015, the media reported that according to a confidential USAID assessment, only six of 24 monitored courts were fully registering court hearings.

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343 Articles 142 and 146, Constitution.
344 Article 142, Ibid.
345 Articles 339-340, Criminal Procedure Code; Articles 26 and 173, Civil Procedure Code.
346 Instruction of the Minister of Justice no. of 353, 3 September 2013; see also High Court unifying decision no. 2, of 27 April 2015.
348 Rusta, A., ‘Gjykata e Lartë dhe 1 në 3 gjykata nuk regjistrojnë audiot e proceseve’ (High Court and 1 in 3 courts do not register audios of processes), Shqiptarja.com, 7 May 2015.
The practice of holding hearings in judges’ offices persists, and clearly obstructs transparency. Experts raise doubts as to whether the situation is fully justified by insufficient courtrooms. The systematic publication of fully reasoned decisions, within a reasonable timeframe, remains a problem. Court resources, and not necessarily lack of will, play a major part in the inability of courts to publish or deliver decisions. However, while court decisions have gradually become more detailed and longer, it is the presentation of the case that overburdens the decision, with the actual reasoning occupying a minor part. Furthermore, low court capacities and citizens’ education have hampered the use of online solutions for access to judicial decisions. Only a few courts have websites, and only a few of those are easy to use and provide adequate information. The longer such issues remain unaddressed, the more they will serve as a shield for poor performance because of incompetence or worse, corruption.

In 2015, the local NPO Res Publica monitored the implementation of the Law on the Right to Information in 18 courts, amongst other institutions. None of them had adopted the so-called ‘transparency programme’, an essential first step in the law’s implementation. The High Council of Justice has increased the information accessible on its website, and answered the voluminous request for information made by the Transparency International research team. However, there are some gaps in its transparency programme, and its registers of information requests and public procurement are not available online. The Office for the Administration of the Budget of the Judiciary (OABJ), on the other hand, regularly publishes its annual reports, budgetary monitoring reports, and a series of other information required by law.

Accountability (Law)

Score: 25

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THAT THE JUDICIARY HAS TO REPORT AND BE ANSWERABLE FOR ITS ACTIONS?

A disciplinary system for judges is in place, but is fundamentally flawed. District and appeal court judges hold disciplinary responsibility for breaches of law and discrediting their office, but High Court judges are completely exempt from the ordinary disciplinary system administered by the HCJ (see below). Rather, they are subject to Parliament’s control, which can discharge them from office for “breaches of the Constitution, perpetration of a crime, mental or physical disability and acts and

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354 Interview with Dorian Matlija, Director, ResPublica, 8 April 2015 – he cited the case of the Gërdec decision which was 500 pages long.
355 Interviews with Dorian Matlija, Director, ResPublica, 8 April 2015 and Marsida Xhaferllari, Chief Inspector, High Council of Justice, 10 June and 24 July 2015.
356 Group of High-Level Experts, Ad hoc Parliamentary Committee on Justice Reform, Analysis of the Justice System, June 2015, p.79. 81.
357 Interview with Dorian Matlija, Director, ResPublica, 8 April 2015.
361 See OABJ website: http://www.zabqj.gov.al
362 Article 31/2, Law on Judicial Power.
behaviours that seriously discredit judges’ position and image. This power of the Legislature is wisely limited by an approval of two-thirds of its members and the checks of the Constitutional Court. In this sense, this is a mechanism of control that implies extraordinary circumstances capable of mobilising such a wide consensus. It is not a mechanism of ordinary control on the High Court, nor should Parliament as an essentially political body have such a mechanism.

Disciplinary action on other judges may result, amongst others, from inspections, professional evaluations, or the work of other bodies, such as HIDAACI or the SAI. Inspections can be routine or triggered by complaints. The right to complain is extended to everyone. Both the HCJ and MoJ have inspection powers and when an inspection finds grounds for disciplinary action, the HCJ considers the case, but only upon the request of the Minister, who is barred from voting in such cases. The Minister has a year to decide whether to initiate a proceeding or not from the date the breach is noted. Disciplinary measures include written notices of discharge from duty, depending on the gravity of the breach, with the gravest including complete failure to reason a judicial decision, breaches of asset declaration requirements, and gift and hospitality restrictions. One of the measures is a transfer for one to two years to a court outside the district of appointment and has been considered inappropriate by previous assessments. The HCJ Inspectorate can also issue so-called “written reprimands”, a light measure not envisaged in the list of measures pertaining to the disciplinary process, when a complaint is valid but does not constitute sufficient grounds for a disciplinary proceeding. This may be the case, for instance, when a judge has only once committed one of the disciplinary breaches for which a certain frequency is necessary to justify the initiation of a proceeding against him/her, i.e. when s/he has breached mandatory procedural law only once.

Guarantees of due process for judges in disciplinary proceedings are in place and HCJ decisions can be appealed in court.

The Minister’s powers are highly problematic. That both the HCJ and the Minister can conduct inspections, including of the same complaint, is not simply a problem of overlap and coordination – issues that have led to a Memorandum of Cooperation between the two institutions. The Minister’s right to inspect courts and the administration of judicial services is in line with the logic of checks and balances between state powers, but the extension of that right to inspect individual judges, envisaged as part of the disciplinary process, combined with the exclusive discretion – over a year – to decide whether to mobilise the HCJ to consider disciplinary action on a judge leaves significant room for arbitrariness and intimidation. When recommending the initiation of a disciplinary proceeding, the HCJ Inspectorate has no way of appealing against the potential decision of the Minister to not act on that recommendation, so the effectiveness of its work to discipline judges depends on the will of the Minister to act on its referrals. A year is an unnecessarily long time to consider disciplinary action and may give rise to inappropriate pressure on judges interested in avoiding such action.

361 Article 140, Constitution.
362 Article 13, 16 point 2, Law on Judicial Power.
363 Article 34/2, Law on Judicial Power.
364 Articles 32 and 33, Law on Judicial Power.
366 See article 32/2/c of the Law on Judicial Power, which requires such a breach to be repetitive to be considered a “very serious breach”, and article 34/2 of the Rules of Procedure of the HCJ Inspectorate (approved by HCJ decision 195/2/a, of 05 July 2006).
368 Memorandum of Cooperation between the Minister of Justice and the Vice Chair of the High Council of Justice, 13 September 2013. See also HCJ Decision no. 195/2/a on the Organization and Functioning of the Inspectorate of the High Council of Justice, article 27/a, of 5 July 2006.
Judges’ professional evaluations – to be conducted by the HCJ every three years for all district and appeal judges – may also feed the disciplinary process by virtue of covering matters such as clarity of decisions, ethics and so on. The final evaluation of a judge as “incompetent” provides grounds for discharge from office.370 However, experts consider the framework for judges’ evaluations inadequate overall, especially because of its complexity, the weight given to seniority and academic engagement, and the little weight given to ethics and integrity.371 In addition, the HCJ vice chair in 2012 asked court presidents to submit monthly reports covering various aspects of the courts’ and judges’ performance, including enforcement of provisions on reasoned decisions, which provides another means of control.372

Financially, the Judiciary is checked through the powers of the Executive on financial control and management and the mandate of the SAI over all budgetary institutions. Along with other high-state officials, judges are no longer protected from criminal proceedings against them. However, they remain protected from arrest (except for in flagrante delicto), detention, and personal or house searches.373

**Accountability (Practice)**

Score: 25

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Multiple sources concur that corruption and misconduct are widespread in the Judiciary and go unpunished.374 Barely any disciplinary proceedings were initiated over 2009-2013, with figures ranging between zero and three.375 It is only from 2013 onwards that the HCJ Inspectorate in particular stepped up its work. Of the 35 complaints and information from court presidents – corresponding to 16 judges – which the HCJ Inspectorate referred to the Ministry of Justice in 2013 to consider for disciplinary proceedings, about a half (17 complaint files) dated back to 2010-2012.376

The disciplinary proceedings that have taken place in the past two years – 20 in 2015 and 11 in 2015 – are also telling. About a third of the measures proposed by the Minister in these cases were approved by the HCJ, with approximately another third softened, and the rest rejected.377

Disciplinary proceedings on breaches of asset declaration requirements have failed on very questionable grounds. For instance, in 2014, the HCJ rejected three such initiatives – one of them against a member of the HCJ – with the argument that the evidence presented by the Minister of

370 Articles 12-13, Law on Judicial Power Law.
372 Letter no. 146 of the HCJ Vice Chair to all court presidents (except High Court), of 25 September 2012. In 2014, reporting requirements were expanded to include enforcement of provisions on audio registration of court sessions – Letter no. 1400 prot, of 22 April 2014.
373 For High Court judges, authorisation must be sought from the Constitutional Court. For all other judges, it must be sought from the High Council of Justice; Article 137, Constitution. Ibrahimi, G., Assessment of the amendments to the criminal procedure code and rules of procedure of competent authorities on immunities of public officials, ACFA assessment report, July 2014, p.3.
375 Figures are based on analysis of various documents requested by the research team from the HCJ, including minutes of meetings and decisions on disciplinary proceedings from 2009 to July 2015. Information request sent on 20 July 2015 by report author. Response received on 31 July 2015.
Justice was insufficient to prove the breach. However, the HCJ did not take any steps within its power to verify the grounds for the disciplinary proceedings, such as the mobilisation of its own Inspectorate or sustained efforts to obtain relevant information from other institutions, such as the HIDAACI. In fact, local NPO Res Publica requested the documents that the HCJ had claimed could not be obtained from HIDAACI and received them. In October 2014, the High Court rescinded an HCJ decision to discharge a judge based on the HCJ’s failure to mobilise the means and tools available to fully scrutinise the circumstances and facts relevant to the disciplinary proceeding. The High Court asked the HCJ to reconsider the case.

When for the same reasons, an HCJ decision damages the legitimate public interest of accountability and integrity within the Judiciary, there is no party that can effectively appeal against it. The HCJ has at times ignored unethical or suspicious statements of judges during their disciplinary proceedings. In one such case, a judge was asked to justify 59,000 euro in gifts and sponsorships of family holidays from a businessman between 2008 and 2011, amongst other problems noted with his asset declarations. He claimed that the businessman was a very generous man; that he had given money and bought houses for ministers and vice-ministers, too; that he was so rich that he spent 20,000 euro overnight in night-clubs, so it was no problem for him to give to a friend. Despite such highly problematic statements on the part of the judge, the HCJ failed to respond in any adequate way, such as launching an inspection into whether the businessman in question had ever had any case considered by this judge or his wife (also a judge), etc. Instead, it simply rejected the proposal of the Minister.

Furthermore, discussions in the HCJ on the proportionality of measures proposed and decided are often arbitrary and lacking the relevant legal references. For instance, in three disciplinary proceedings in 2014, the measure that was proposed and approved was “notice with warning” – a measure that the law envisages for minor breaches, even though in its reasoning the HCJ explicitly qualified the breaches as “serious” or “very serious.” Judges can appeal an HCJ decision to court, but are unlikely to do so when the HCJ approves a lighter measure than the law envisages. In this sense, the checks on the HCJ are limited to one of the possible hurt parties – the judge – and not the public interest.

The Minister’s role has been highly problematic in practice: experts attest that the Minister has often used the exclusive right to inspect and initiate disciplinary proceedings arbitrarily. The one-year deadline for the Minister of Justice to act on recommendations for disciplinary proceedings has often passed without a reasonable explanation. In 2014-2015, five cases were not sent by the Minister to the HCJ and one failed because it was sent after the deadline. Of the 27 recommendations for disciplinary proceedings made by the HCJ Inspectorate to the Minister of Justice between April and October 2014, the Minister initiated 20, and softened the initially proposed measure in eight cases before the HCJ vote, and in three cases after the HCJ’s rejecting vote (altogether, in 55 per cent of the proceedings). In another case the Minister withdrew from the proceedings altogether based on

378 High Council of Justice, Meeting on 7 July 2014 on disciplinary proceeding of Mr. Gjin Gjoni, p.4; High Council of Justice, Meeting on 7 July 2014 on disciplinary proceeding of Mrs. Klorinda Cela, p.3; Meeting on 7 July 2014 on disciplinary proceeding of Mr. Ken Dhima, p.4.
380 See High Court decision no. 4, of 13 October 2014.
381 Minutes of Meetings, 7 July 2014, Item 10 of the Order of the Proceedings, “Consideration of the disciplinary proceeding against judge K. Dh”.
382 See HCJ Decision no. 102, of 16 July 2014 and decisions 104 and 105 of 21 July 2014.
383 Interviews with Gent Ibrahimi, Constitutionalist, Anti-corruption and judicial expert, 31 March and 8 April 2015; Dorian Matijja, Director, ResPublica, 8 April 2015; Kathleen Imhot, expert on Judiciary, 27 April 2015.
384 See, for instance, HCJ minutes of meetings of 04 February 2015 where the President asks the Minister to inform the Council on why he has not acted on a number of recommendations sent to him between 2013 and 2014 the deadline for which has passed. See also ResPublica, Impunity in Judges’ Disciplinary Proceedings: Analysis of Some Causes that Stimulate Impunity in the Work of the High Council of Justice for 2015, March 2016, p.29.
debateable grounds, and in two other cases failed to propose a different measure after the HCJ had acknowledged the breaches, but rejected his initial measure for being disproportionate.\(^{386}\)

The Inspectorate’s activity in following up complaints – which have ranged between 840 and 883 a year in the past three years – has revealed the difficulty of verifying claims of ethical breaches, but also the need to step up efforts to educate the public on the system of complaints, as only about a quarter of received complaints contain grounds to launch verifications.\(^{386}\) In 2015, for instance, 44 breaches were verified out of 212 complaints that were accepted for verification of the 840 received altogether.\(^{388}\) Of the 44 verified breaches, two were sent to the Minister of Justice to consider for disciplinary action. In the other cases, the Inspectorate issued written reprimands to judges or registered the breach in their professional evaluation file, indicating that the complaints were valid but did not constitute sufficient grounds for disciplinary action.\(^{389}\)

The decision-making on what breach merits a “written reprimand” or the consideration of a full disciplinary proceeding is problematic. In 2013-2014, for instance, the HCJ Inspectorate issued altogether seven “written reprimands” for ethical breaches arguing that the judges had committed them for the first time.\(^{390}\) First, it seems impossible to establish if a breach signalled by a complaint has only been committed once without expanding the inspection beyond the specific complaint. Second, the Law on Judicial Power envisages no specific frequency for “breaches of ethical norms in relations with parties to the judicial process, colleagues, the court president, administrative staff, experts, prosecutors, lawyers”, or for “disrespect of rules of solemnity”. It categorises both as “serious”, and the appropriate measures to be temporary demotion or transfer.\(^{391}\) Last, the Inspectorate’s enforcement of the system of judges’ professional evaluations has revealed a great discrepancy between the very low number of judges who have performed poorly in evaluations, and public perception of the high levels of misconduct in the Judiciary. When asked about this discrepancy, the incumbent HCJ Chief Inspector pointed to the limits of the system, and in particular, the low weight given to ethics.\(^{392}\)

Regarding financial external accountability, the SAI has audited two of the biggest courts recently – the Tirana and Durrës courts – and revealed an alarming situation of financial management and control.\(^{393}\)

Integrity mechanisms (Law)

Score: 50

\begin{center}

TO WHAT EXTENT ARE THERE MECHANISMS IN PLACE TO ENSURE THE INTEGRITY OF MEMBERS OF THE JUDICIARY?

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The Constitution establishes the judicial profession as incompatible with any other state, political or private activity.\(^{394}\) The Law on Judicial Power reconfirms this incompatibility and requires judges to uphold the dignity of their office, judicial institutions and their own reputation in society. It also elaborates further on restrictions, which include the direct or indirect (via representation) administration of commercial companies, public statements on judicial processes or those that

\(^{386}\) Ibid., p.20-22, and 39.


\(^{386}\) HCJ, Annual Report, 2015, p.9-12.

\(^{389}\) See article 32/2/c of the Law on Judicial Power, which requires such a breach to be repetitive to be considered a “very serious breach”, and article 34/2 of the Rules of Procedure of the HCJ Inspectorate (approved by HCJ decision 1952/a, of 5 July 2006).


\(^{391}\) See articles 32 and 33, Law on Judicial Power.

\(^{392}\) Interview with Marsida Xhaferllari, Chief Inspector, High Council of Justice, 10 June and 24 July 2015.

\(^{393}\) SAI, On the Audit of the Tirana District Court, for the 1 January 2013 – 30 June 2014 period. Final report approved by Decision no. 182 of the Head of the SAI, of 26 December 2014.

\(^{394}\) Article 143, Constitution, reflected in article 22, Law on Judicial Power.
violate the impartiality of proceedings. Judges are also subject to asset declaration and conflicts of interest legislation, the latter of which is also covered by the civil and criminal procedure codes as it relates to the judicial process. In addition to provisions on judges’ self-withdrawal due to conflicts of interest, parties to a proceeding can also submit a request to remove a judge from a case on these grounds and court presidents decide on such requests.

Furthermore, judges and judicial personnel are subject to the Code of Judicial Ethics, first adopted by the National Judicial Conference in December 2000, and subsequently amended in December 2006. The Code covers judicial and extra-judicial activities and its implementing body is the standing Ethics Committee of the National Judicial Conference. All judges can request consultative opinions from the Ethics Committee, as can the HCJ Inspectorate. Court presidents are responsible for day-to-day oversight of the discipline and ethics of judges. Their monthly reporting requirements to the HCJ, which were established in 2012, include issues of discipline and ethics. Ethics is also a component of the first-year training programme of the School of Magistrates.

Despite the comprehensive legal provisions on ethics, significant flaws persist. A recent assessment found conflict of interest regulations were unclear and complicated in terms of concepts, readability and structures. An especially pertinent concern is the prohibition of gifts and hospitality received/offered “because of one’s duty”. Such a qualification requires the establishment of motives and intentions, which can be highly impracticable and leaves ample space for abuse. Thresholds for gifts that must be declared and other related standards determined in a government decision do not apply to the Judiciary, and there does not seem to be any similar regulation that does. Ethics is not given sufficient weight in the professional evaluation of judges and post-employment restrictions and cooling-off periods are a concerning gap in the legal framework, especially in a country where the corruption of the Judiciary by both political and financial interests is considered widespread.

**Integrity mechanisms (Practice)**

Score: 25

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**TO WHAT EXTENT IS THE INTEGRITY OF MEMBERS OF THE JUDICIARY ENSURED IN PRACTICE?**

Upholding integrity of judges in practice remains a serious challenge. This is reflected in public opinion, which considers the Judiciary to be the least trusted sector and bribes as the most influential factor in determining a judicial decision, followed by the judges’ business connections, and then politics. In 2014, under its new leadership, the HIDAACI conducted full audits of the interest and asset declarations made by 367 members of the Judiciary, and referred 12 judges to the Prosecution. They included a judge member of the HCJ, the then President of the Tirana Appeal Court, and others accused by the HIDAACI of hiding wealth amounting to millions of euros, way

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395 Article 23, Law on Judicial Power.
396 Articles 15-19 of the Criminal Procedure Code, and articles 72-75 of the Civil Procedure Code.
400 Articles 14 and 17, Decision of the Council of Ministers no. 714, of 22 October 2004. The Decision is a sublegal act meant to enforce the Law no. 9131 on Ethics in Public Administration, of 8 September 2003, which does not apply to elected officials, members of the Council of Ministers, or judges.
Beyond their legal income. The media reported recently that the Prosecution had closed most of these files.  

Analysis of the management of conflicts of interests in courts is difficult in the absence of formal data, though the media has at times reported parties’ accusations of judges conflicts of interest. Oversight of conflicts of interests in judges’ extra-judicial activity is known to be a challenge due to the legal framework and resource problems (identified in the HIDAACI pillar). Concerning gifts and hospitality, the above-mentioned case of a judge who openly justified about 59,000 euro in gifts and sponsorships as a businessman’s generosity demonstrates the difficulties caused by the conditioning of the prohibition of gifts and hospitality to those given “because of one’s duty”.

Even though approved in 2000 and amended in 2006, experts report that awareness of the Code of Judicial Ethics is low among judges and the understanding of ethics is narrow, confined to solemnity and politeness during proceedings. One of the experts noted that this is a particular problem with older judges, who have preceded the School of Magistrates (about half of the judicial corps now) and “cannot get used to new ethical standards” but rather employ irony and banter during proceedings. Tellingly, the Code can be found online only on the website of the National Judicial Conference – a website that was created in 2014. It does not feature in the websites of key institutions, including the High Council of Justice, the High Court, the School of Magistrates or the Tirana District Court (the biggest in the country).

The Code’s enforcement has also been hampered by the long delays in the proper constitution of the National Judicial Conference (NJC). Even though envisaged in the Constitution since 1998 with the important responsibility of electing eight of the 15 members of the High Council of Justice, the Law on the National Judicial Conference was only passed successfully in 2012, when its standing Ethics Committee was created. The Committee was mobilised by the HCJ Inspectorate in 2014-2015 to provide consultative opinions on eight cases under the Inspectorate’s scrutiny. Regarding complaints on ethics, the HCJ Inspectorate has repeatedly reported difficulties in their verification pointing to two main factors: the low level of cooperation of witnesses to the alleged ethical breach, and the insufficient techniques and capacities of inspectors.

Role

Executive oversight

Score: 25

**TO WHAT EXTENT DOES THE JUDICIARY PROVIDE EFFECTIVE OVERSIGHT OF THE EXECUTIVE?**

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405 Interviews with Dorian Matlija, Director, ResPublica, 8 April 2015; Gent Ibrahim, Constitutionalist, anti-corruption and judicial expert, 31 March and 8 April 2015; Marsida Xhaterrli, Chief Inspector, High Council of Justice, 10 June and 24 July 2015; Kathleen Imholz, expert on judiciary, 27 April 2015.  

406 Interview with Dorian Matlija, Director, ResPublica, 8 April 2015.  


The Judiciary’s oversight of the Executive is considered inadequate. Administrative courts are not perceived to be playing their role sufficiently. They are not immune to the problems examined above regarding resources, independence or accountability. Statistics show they are particularly overburdened: one commentator noted that Administrative courts are generally delivering the right decisions on cases when violations from the state are clear, but not when they are minor, or have significant political implications. This situation is further exacerbated by the inadequate level of enforcement of judicial decisions by the state, a problem raised and confirmed by various sources, including the Ombudsman through a special report in 2012, the SAI, the National Chamber of Private Bailiffs, civil society and international actors, and finally the technical experts attached to the ad hoc Parliamentary Committee on Justice Reform.

The Constitutional Court has provided oversight of the executive more effectively than the Judiciary. In 2014-2015 it declared unconstitutional the government’s normative act postponing some of the effects of the new Law of the Civil Servant, the powers of the Central Construction Inspectorate vis-à-vis local government, and the establishment of the National Bureau of Investigation under the Minister of Interior. However, these decisions also suffer inconsistent enforcement (see also Independence (Practice) above).

**Corruption adjudication**

Score: 25

Harmonised statistics on corruption-related offences remain a challenge and efforts are on-going to improve them. According to the analytical document of the ad hoc Parliamentary Committee on Justice Reform, convictions for corruption offences varied from two to 24 a year between 2009-2014, predominantly of low and medium-level offenders in the public sector. Convictions of high-level officials are extremely rare. The High Court has never convicted a top official on corruption charges.

In 2015, the Prosecution sent 79 defendants to court on corruption charges (six core offences), of which 60 were convicted, though it is not clear whether these were final convictions or have been

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410 Interviews with Kathleen Imholz, expert on judiciary, 27 April 2015; Dorian Matlji, Director, ResPublica, 8 April 2015; Ardan Visha, Lawyer, assisting the Ad-hoc Parliamentary Committee on Justice Reform, 16 and 24 July 2015; Gent Ibråimi, Constitutionalist, anti-corruption and judicial expert, 31 March and 8 April 2015.
411 Interview with Dorian Matlji, Director, ResPublica, 8 April 2015.
416 These are six corruption offences considered as such in strict terms, according to the experts of the ad hoc parliamentary committee on justice reform, and specifically, articles 244, 245, 259, 260, 319, and 319bis of the Criminal Code. See Group of High-Level Experts, Ad hoc Parliamentary Committee on Justice Reform, Analysis of the Justice System, June 2015, p.277-279
The conviction rate appears to be 75 per cent for 2015, with a previous study approximating it at 65 per cent for January 2012 to June 2014. One high-level official was taken to court and convicted in 2015. In 2015 the Prosecution registered charges against nine judges and prosecutors for active corruption, and nine for passive corruption, but only three were sent to court, and two were convicted (again, we do not know if these verdicts are final).

According to a recent assessment, judges apply lenient sanctions, using probationary sentences and summary judgements, and failing to justify them in a timely manner, or at all. Furthermore, the assessment found that judges demonstrated poor understanding of key notions in corruption cases, such as benefit, influence, or intent, failed to exercise their right to ask for more evidence, and decided inconsistently on issues such as the admissibility of evidence.

Recommendations

- Parliament should revise the Constitution and all laws on the organisation and functioning of the Judiciary to depoliticise appointments, including those to the Judicial Council. Specifically:
  - If Parliament is to retain a role, than it must be limited to appointing a minority number of members of the Judicial Council, by a strong qualified majority (i.e. two-thirds of MPs), and on the basis of nominations by an impartial body. Parliament should not have a say in High Court appointments. If Parliament is to have a role in dismissals from the Judicial Council or any other judicial institution, its actions must be subject to the checks of the Constitutional Court.
  - Unless the appointment procedure is changed to guarantee independence from politics, the President’s role vis-à-vis the Judiciary should be substantially reduced, if not altogether removed.
  - Nominations and appointments must be anchored in i) clear and specific criteria that emphasise demonstrated professionalism and integrity; ii) a thorough vetting process that includes checks on wealth, integrity, and character.

- Parliament should amend all laws related to the Judiciary to provide for full and real time transparency of processes of nominations and appointments. The Judicial Council should adopt such principles in its internal regulations and demonstrate them in practice.

- Parliament should amend the Law on the Declaration of Assets to strengthen the independence of the HIDAACI, and continue to support the upgrade of the institutions’ resources, as the impartiality and thoroughness of checks on judges’ and candidates’ wealth – envisaged under Article D of the proposed constitutional amendments420 – hinge on both (see recommendations under HIDAACI pillar).

- Parliament should amend the Constitution, judicial power law and all other laws on the organisation and functioning of judicial institutions to strengthen accountability, and in particular:

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419 Ibid, p.21-25.
Liberalise the right to initiate disciplinary proceedings, but cautiously so as to avoid opening up paths of pressure from multiple parties. Institutions to be considered here are the Inspectorate, and perhaps the Ombudsman.

Bring the High Court within the disciplinary system.

Open the right to appeal disciplinary decisions in court – currently limited to judges alone – to other appropriate bodies that might act in the public interest. They may be members of the Judicial Council, or the Ombudsman.

Subject inspectors to stricter appointment criteria – with a stronger emphasis on integrity – and guarantee a motivating status, and targeted training on inspecting ethical breaches.

The National Judicial Conference and judges’ professional associations should take a more active role in promoting ethical standards within the judicial community, including by identifying and publicly denouncing inappropriate practices.

The Judicial Inspectorate should conduct a thematic inspection of corruption adjudications as a first basis for improving judicial practice in this area.

The government and Parliament should significantly enhance the Judiciary’s resources.
PUBLIC PROSECUTOR

Summary

With the exception of transparency and integrity, the Prosecution’s legal framework is not appropriately designed to enable it to fulfil its mission effectively in the fight against corruption. Independence and accountability, but also resources, are particularly weak and affect the service’s performance overall. Few important foundational provisions are in place – such as for prosecutors’ operational independence, or the general rule that only superior prosecutors can check the quality of investigations. However, the importance of such provisions shrinks when faced with the lack of guarantees for the independence and accountability of the Prosecutor General, whose power and impact are vast in a highly centralised structure.

The Prosecutor General is appointed by proposal of the President and only a simple majority in Parliament confirms the post. The Prosecutorial Council is a very formal and weak structure, unable to keep in check the Prosecutor General’s power over prosecutors’ careers and discipline. In practice, parliamentary majorities have unconstitutionally discharged two of the four prosecutor generals from office since 1998, and the mandate of a third was controversially declared finished.

The Prosecution has a high record of non-initiated or dismissed investigations for corruption-related charges, especially for high profile cases – and a dire, if not empty record of upholding integrity within its ranks. Figures indicate that its internal tools of accountability are either inadequate, or inadequately employed. Finally, some legal gaps with respect to powers to investigate corruption and pervasive resource problems have no negligible impact on its performance.

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Structure and organisation

The Prosecution’s core mandate is criminal investigation and prosecution on behalf of the state. Its organisation mirrors the hierarchy of courts. Thus, there are three levels of prosecution offices – district, appellate and the Office of the Prosecutor General (OPG) –
corresponding to the District and Appellate courts, and the High Court. There are also two specialised prosecution offices for serious crimes, one at the district and one at the appeal level, attached to the respective courts of serious crimes.  

Attached to the Judiciary, the Prosecution operates as a centralised structure, including the Prosecutorial Council and the Office of the Prosecutor General under the direction of the Prosecutor General. Centralisation entails the superior power of higher-level prosecutors over lower-level prosecutors on all decisions. Joint Investigative Units (JIUs) are established to strengthen cooperation in the fight against financial and economic crime, which includes corruption-related offences. The JIUs operate under the auspices of district prosecutors and bring them together with the Judicial Police, and tax and customs officers as full time members of the Units. The SAI, Financial Intelligence Unit, HIDAACI, and the State Intelligence Service appoint contact points with the JIUs. Prosecutors from the appeal level are also assigned to these units to follow, at the appeal level, cases that are initiated at the district level by the JIUs. Jurisdiction over offences follows that of respective courts, as determined by the Criminal Procedure Code. Thus, jurisdiction over corruption-related offences varies in line with the offence and the level of public official involved. It is divided between the JIUs, the Serious Crimes Prosecution Office and the OPG, with the latter responsible for the investigation and prosecution of top officials, including the President, Prime Minister, ministers, MPs, and judges of the High and Constitutional courts. A separate directory within the OPG, the Anti-Corruption Task Force, focuses on economic crime and corruption. Judicial Police sections, composed of judicial police officers, agents, and lawyers, are attached to Prosecution offices. They are appointed by the State Police, but are operationally subject and accountable to prosecutors.

The Prosecutorial Council is an advisory body assisting the Prosecutor General, to whom it provides written opinions on appointments, dismissals, promotions, transfers, disciplinary initiatives, yearly inspection plans, the unification of prosecutorial policy, internal organisation, improvements in criminal law, its own Rules of Procedure as well as other acts of the Prosecutor General. The Council also organises the competition for initial appointments, examines the professional evaluations of prosecutors and presents final evaluation reports to the Prosecutor General for approval. The Council is composed of six prosecutors of different levels, elected triennially by the General Meeting/Assembly of Prosecutors, and a representative of the Minister of Justice.

Capacity

Resources (Law)

Score: 50

TO WHAT EXTENT ARE THERE LAWS SEEKING TO ENSURE APPROPRIATE SALARIES AND WORKING CONDITIONS OF PROSECUTORS?

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422 Articles 148-149, Constitution; Article 3, Law on the Organisation and Functioning of the Prosecution.
425 Article 25/b, Criminal Procedure Code.
426 Articles 4 and 8, Law no. 8677 on the Judicial Police, of 2 November 2000, changed; Articles 30-33, Criminal Procedure Code.
427 See OPG’s organisational structure here: http://pp.gov.al/web/Organigrama_43_1.php#.V2KGz67fg-8
428 Articles 10-11, Law on the Organisation and Functioning of the Prosecution.
In terms of its overall budget, the legal provisions to guarantee appropriate resources for the Prosecution are inadequate. Contrary to the case of courts and judges, the Constitution does not establish any principles on the Prosecution’s resources. The Prosecution’s organic law prescribes an “independent budget, drafted, administered and implemented in line with legal provisions in force”. The legal provisions in questions do not discriminate between a ministry and a constitutional independent institution (see Judiciary pillar).

As the salaries of prosecutors and judicial police officers are pegged to those in the Judiciary, in qualified majority laws, they are stable. However, the appropriateness of prosecutorial salaries vis-à-vis those of other state functions – and necessary considerations to shield prosecutors from improper influence – are questionable (see Judiciary pillar).

Legal provisions for the training of prosecutors are overall adequate. Like judges, the School of Magistrates is responsible for the initial and continuous training of prosecutors (see Judiciary pillar). The law allows for up to 10 per cent of the prosecutorial corps to be appointed outside the School of Magistrates, but with previous experience as a judge, prosecutor, or judicial police officer.

Resources (Practice)

Score: 0

TO WHAT EXTENT DOES THE PUBLIC PROSECUTOR HAVE ADEQUATE LEVELS OF FINANCIAL RESOURCES, STAFFING, AND INFRASTRUCTURE TO OPERATE EFFECTIVELY IN PRACTICE?

There is wide agreement that Albania’s Prosecution is seriously under-resourced in all aspects. The unlimited discretion of the Executive and Legislature over the Prosecution’s budget is evident in the frequent fluctuations of this budget over the years. Regarding infrastructure and operational means, the main problems include limited office space, lack of security cameras, deteriorating vehicles, lack of scanners and other IT equipment, and inadequate surveillance equipment. According to a prosecutor, the Prosecution relies entirely on the Police for the latter.

The salaries of prosecutors are considered too low to afford dignified living and shield them from undue influence. In terms of human resources, previous assessments have concluded they are poor, both in terms of numbers and know-how, and particularly in the area of anti-corruption. Delays in the appointments of budgeted staff, including prosecutors and judicial police officers, indicate that insufficient human resources are not solely due to budgetary constraints, but also to inefficiencies of the appointment process. The Transparency International research team asked

429 Article 57, Law on Prosecution. This is a qualified majority law.
431 Article 52, Law on Prosecution; Article 12/a, Law on Judicial Police.
432 Article 18, Law on Prosecution.
434 Group of High-Level Experts, Ad hoc Parliamentary Committee on Justice Reform, Analysis of the Justice System, June 2015, p.311.
436 Interview with a prosecutor, 3 November 2015.
439 By September 2015, 21 members of staff of the 23 added staff budgeted for 2015 (nine prosecutors, eight administrative staff and four judicial police officers) had not been appointed. See the OPG’s 9-monthly Performance Monitoring Report for 2015: http://www.pp.gov.al/web/9_mujori_998.pdf. In 2014, 15 members of staff had not been
for the reasons behind these delays but did not receive an answer. Specialised training on the investigation and prosecution of corruption, including those provided by the School of Magistrates and foreign donors, are considered inadequate, but also insufficiently exploited and absorbed by Albanian institutions, including the School of Magistrates. In all these aspects – infrastructure and training – experts interviewed noted that the Prosecution is donor-dependent.

**Independence (Law)**

Score: 25

**TO WHAT EXTENT IS THE PUBLIC PROSECUTOR INDEPENDENT BY LAW?**

Important principles for the Prosecution’s independence are overall lacking in the Constitution, as are essential guarantees for the independence of the Prosecutor General, and at key junctions the legal framework is incoherent.

Prosecutors are subject to the Constitution and laws in the exercise of their duties. However, and contrary to the case of judges, the Constitution never explicitly states their independent status or condemns interference in their work. The Criminal Procedure Code explicitly establishes the independence of prosecutors within court proceedings. It also establishes, as a general rule, that the legality of prosecutors’ decisions and the quality of investigations are subject to the checks of higher prosecutors and not the Legislature or Executive. However, the Law on the Prosecution grants the Minister of Justice the right to check “the legality of prosecutors’ activity”. Both laws in question are qualified majority laws, thus enjoying equal status in the hierarchy of legal acts. The Law on the Prosecution also expands the constitutional requirement for the Prosecutor General to report to Parliament on the state of criminality. While it establishes the general rule that reporting on specific cases is not allowed, it does make an exception for those cases referred to the Prosecution by Parliament. These provisions have been criticised for failing to meet European standards for the independence of the Prosecution.


440 Information request submitted by author on 6 November 2015. More than a month later (11 December 2015, letter prot. no. 1453/1) the Prosecution responded to some of our questions and asked for five more days to respond to the other ones. A second response never came.

441 Interviews with David Grise, former OPDAT/US Embassy officer, 17 July 2015; Gent Ibrahimi, Constitutionalist, anti-corruption and judiciary expert, 31 March and 8 April 2015.

442 Article 148/3, Constitution.

443 Compare to article 145/3 of the Constitution, on judges.

444 Article 25/3, Criminal Procedure Code.

445 Article 24/4/5, Criminal Procedure Code; See also Constitutional Court Decision no. 26, of 4 December 2006.

446 Article 56, Law on Prosecution.

447 Before the 2008 constitutional amendments, the PG was required to inform Parliament. Experts believe the change of terminology has changed the relationship with Parliament as reporting ties the Prosecution to the position of the Legislative on its performance. See Zaganjori, Xh., Anastasi, A., and Cani, E., Rule of Law in the Constitution of the Republic of Albania, 2011, p.247; Forumi Civil, Jaho, N., The role and functioning of prosecution in Albania, p.3-4.

448 Article 53/2, Law on Prosecution.


450 Article 149, Constitution. The PG’s mandate was indefinite before the 2008 constitutional amendments.
reputation\textsuperscript{451} can be nominated and appointed Prosecutor General. Thus, the power to appoint (and disapprove) the Prosecutor General is distributed between two partisan institutions,\textsuperscript{452} with the President’s nomination free from demanding criteria, and Parliament’s vote free from the consensus-building requirements of a qualified majority. The Prosecutor General’s brief and renewable mandate provides the wrong incentive to court politics for re-appointment and stands at odds with the stronger mandates of other constitutional independent institutions, such as the Constitutional and High Courts (nine years, non-renewable).\textsuperscript{453}

The President can discharge the Prosecutor General upon Parliament’s motivated proposal.\textsuperscript{454} This procedure lacks two significant protections from politicisation that are afforded to other members of constitutional institutions, such as High Court judges. First, Parliament’s proposal to discharge the Prosecutor General from office requires a simple majority as opposed to the two-thirds required for High Court judges. Second, while in the case of High Court judges the Constitutional Court is required to verify Parliament’s grounds for proposing discharge from office, there is no such check on Parliament’s motives for the Prosecutor General.\textsuperscript{455} The President and the Prosecutor General (as an interested individual) can address the Constitutional Court on such potential action on the part of the Parliament.\textsuperscript{456} However, rather than establishing a general rule, this leaves such an important constitutional check in the hands of subjective and temporary considerations. Given that the Prosecution is a highly centralised service with significant decision-making power concentrated in the hands of the Prosecutor General, legal provisions to safeguard the Prosecutor General’s independence have direct implications for the entire service.

The Prosecutor General proposes to the President for approval the appointment, transfer, promotion and dismissal of prosecutors. Career guarantees for prosecutors – an important aspect of their independence – are generally in place, but there are some notable inadequacies. Appointments are required to be competitive and promotions merit-based and as a rule prosecutors must have completed the School of Magistrates, although up to 10 per cent can be appointed from outside this system based on their experience. Prosecutors cannot be transferred without their consent, unless justified by the requirements of the re-organisation of the Prosecution.\textsuperscript{457}

The law establishes the outline of a system of professional evaluations that affect career decisions. Specific regulation of this system is at the discretion of the Prosecutor General, who is advised but not bound by the opinions of the Prosecutorial Council. Rules on the evaluation of applications for appointments and promotions are also determined by order of the Prosecutor General. In cases when the Prosecutor General decides differently from the advice of the Prosecutorial Council, s/he is required to provide reasons. However, experts have noted that the Prosecutor General’s discretion in such decisions is not subject to judicial review, or to strict requirements for transparency.\textsuperscript{458} Furthermore, the advisory role of the Prosecutorial Council in these processes is further weakened by the position of the Council as subordinate to the Prosecutor General, who determines the Council’s rules of procedure, calls its meetings and sets the agenda.\textsuperscript{459} Overall, the internal independence of prosecutors is not ensured.

\textsuperscript{451} Article 7/1/1, Law on Prosecution.
\textsuperscript{452} In Decision no. 26, of 4 December 2006, the Constitutional Court has considered the distribution of the power to appoint the PG as a guarantee of independence, but that was before the 2008 constitutional amendments, which allow for the election of a President by simple majority. The current President was a high-ranking official of the Democratic Party, and minister for the majority in power that appointed him.
\textsuperscript{453} Articles 125 and 136, Constitution.
\textsuperscript{454} Article 149, Constitution.
\textsuperscript{455} See article 140 of the Constitution on the discharge from office of High Court judges.
\textsuperscript{456} Article 134, Constitution.
\textsuperscript{457} In the latter case, the prosecutor transferred to a lower-level office is entitled to the same payment received until then. See article 24, Law on Prosecution.
\textsuperscript{459} Article 3 of the Law on the Organisation and Functioning of the Prosecution positions the Prosecutorial Council as part of the centralised prosecutorial structures under the leadership of the Prosecutor General. Article 8/2/k establishes the competence of the PG to call the Council’s meetings. Article 12 establishes the right of the PG to determine the Council’s Rules of Procedure. See also articles 12-13 of the Rules of Procedure no. 76, 16 April 2010 of the Prosecutorial Council, as updated on 4 November 2014.
In practice, the ability of the Prosecution to operate independently has been significantly undermined: almost 80 per cent of prosecutors believe that the current appointment formula for the Prosecutor General lacks guarantees of independence and should be changed. Of the four Prosecutor Generals who have held office since the 1998 Constitution, two have been discharged from office through parliamentary investigative committees. Both cases were challenged at the Constitutional Court, which ruled in favour of the Prosecutor General, but those decisions were never enforced. The mandate of the third, Prosecutor General Ina Rama, was declared finished in November 2012 through a highly contested interpretation of her term of office as affected by the 2008 constitutional amendments. Despite legal provisions to the contrary, she has not been re-appointed to an equivalent position to her previous one in the Judiciary (see Judiciary pillar). In addition, the parliamentary inquiry committee on the 21 January 2011 events was also seen as political pressure and obstruction of the Prosecution’s investigations at the time.

In a public statement in June 2016, following the Prosecution’s request and a judge’s verdict to suspend the director of the State Police – a verdict that was attacked by the Prime Minister and Minister of Interior – the Union of Prosecutors complained of political pressure on high profile cases. The media has speculated on the Prosecutor General’s ties to the junior coalition partner in government, but there have also been cases of explicit political pressure. Following the shooting of four demonstrators on 21 January 2011 by the Guard of the Republic, the government refused to execute the Prosecutor General’s arrest warrants for members of the Guard, and Prime Minister Sali Berisha addressed denigrating comments to the Prosecutor General. During an interview, a prosecutor claimed that the Ministry of Justice had abused its inspection powers in order to influence on-going investigations (see Accountability below). Figures on the prosecution of high vs. low-level corruption also suggest undue influence on the Prosecution’s work. For instance, of the four high-level officials registered by the Prosecution as defendants on corruption charges in 2014, none were sent to court, while in 2015 there was only one such case (see also Corruption prosecution below). Altogether in 2015, the Prosecution received 22 referrals of criminal activity by top officials – those that can only be tried by the High Court. As a result, it

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461 See Constitutional Court Decision no. 76, of 25 April 2002 on Parliament’s discharge from office of former PG Arben Rakipi, and Decision no. 26, of 4 December 2006 on Parliament’s discharge from office of former PG Theodhori Sollaku.
465 ResPublica, ‘Kush po e tund Llallën?’, 8 February 2016: http://www.respublica.al/2016/02/09/kush-po-e-tund-llall%C3%AEn/; Lapsi, ‘Llalla, aty ku LSI-a është në koalicion me PD-në’ (Llalla, where SMI is in coalition with DP), 19 January 2016: http://www.lapsi.al/lajme/2016/01/19/lalla-aty-kulsi-%C3%ABsh-%C3%AB-n%C3%AB-koalicion-me-pd-n%C3%AB#V2GlUGoUWUk
467 Interview with a prosecutor, 3 November 2015. For similar claims, see also Group of High-Level Experts, Ad hoc Parliamentary Committee on Justice Reform, Analysis of the Justice System, June 2015, p.136.
registered 12 criminal proceedings and decided non-initiation in 10 cases against MPs, and former MPs and ministers.\textsuperscript{469} Regarding the corruption of other public functionaries, however, the Prosecution registered 59 defendants in this category for active corruption, and 62 for passive corruption and respectively 49 and 26 defendants were sent to court.\textsuperscript{470} In 2015, the European Commission noted that these numbers remain low, and that a number of high-profile cases have “never been seriously investigated”.\textsuperscript{471}

The orders of superiors are reportedly verbal and there is no evidence of lower level prosecutors challenging orders when they believe them to be contrary to the law.\textsuperscript{472} One of the interviewees reported interference from superiors on the independence of case prosecutors during court proceedings contrary to legal provisions.\textsuperscript{473} Career decisions are not considered merit-based\textsuperscript{474} and experts interviewed considered that promotions and other career decisions are frequently motivated by the political influence of outsiders, or at times the subjective considerations of the Prosecutor General. Two international law enforcement experts and a prosecutor concurred in pointing out that seconding is an exception to the usual methods of appointment that has become the rule, and that prosecutors feel “temporary” in their offices.\textsuperscript{475} Also, interlocutors generally considered the role of the Prosecutorial Council as superficial.\textsuperscript{476} The Transparency International research team asked the OPG for information on appointments, transfers and secondments during 2012-2015 in order to assess the situation reported by interviewees, but the Prosecution did not provide any such information.\textsuperscript{477}

The OPG is one of the least trusted institutions with about 85 per cent of Albanians believing that prosecutors do not apply the law equally and are influenced by political and economic considerations in their work.\textsuperscript{478}

### Governance

#### Transparency (Law)

**Score: 75**

**TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THAT THE PUBLIC CAN OBTAIN RELEVANT INFORMATION ON THE ACTIVITIES AND DECISION-MAKING PROCESSES OF THE PUBLIC PROSECUTOR?**

The Prosecution is obliged by law to inform the public of its activities with due care for the protection of the investigation process, personal data, dignity and public morals.\textsuperscript{479}

\textsuperscript{469} Ibid, p.14

\textsuperscript{470} Ibid, p.214, data on articles 244 and 259 of the Criminal Code.

\textsuperscript{471} European Commission, Albania Report, 10 November 2015, p.15.

\textsuperscript{472} Ibid; Interview with a prosecutor, 3 November 2015; Group of High-Level Experts, Ad hoc Parliamentary Committee on Justice Reform, Analysis of the Justice System, June 2015, p.134.

\textsuperscript{473} Interview with international expert on law enforcement, 27 October 2015.

\textsuperscript{474} Group of High-Level Experts, Ad hoc Parliamentary Committee on Justice Reform, Analysis of the Justice System, June 2015, p.132.

\textsuperscript{475} Interview with an international expert, 17 July 2015; an international expert on law enforcement, 27 October 2015; a prosecutor, 3 November 2015.

\textsuperscript{476} Ibid., Interview with Ardian Visha, Lawyer, expert assisting the Ad-hoc Parliamentary Committee for the Judicial Reform, 16 July 2015.

\textsuperscript{477} Information request submitted by author on 6 November 2015. More than a month later (11 December 2015, letter prot. Nr. 1453/1) the Prosecution responded to some of our questions and asked for 5 more days to respond to the other ones. A second response never came.

The Law on the Prosecution requires vacancies to be public, and the opinions of the Prosecutorial Council and the decisions of the Prosecutor General to be reasoned. It does not specify whether such opinions and decisions are to be made public.\(^{480}\) However, the Prosecution is also subject to the Law on the Right to Information, which provides for the pro-active publication of several categories of information, including recruitment and decision-making procedures, control mechanisms that the institution is subject to, and information on the use of public funds.\(^{481}\) Criminal law guarantees the right of hurt claimants to access evidence.\(^{482}\) Prosecutors are also legally required to submit asset declarations to the HIDAACI, which can only publish them upon request.\(^{483}\)

**Transparency (Practice)**

Score: 25

**TO WHAT EXTENT DOES THE PUBLIC HAVE ACCESS TO INFORMATION ON THE ACTIVITIES AND DECISION-MAKING PROCESSES OF THE PUBLIC PROSECUTOR IN PRACTICE?**

Over the past year, the OPG has increased the amount of information published on its website, which now includes its internal Rules of Procedure, and various orders of the Prosecutor General outlining rules on appointments and evaluations.\(^ {484}\) However, a large amount of information remains unpublished, including quarterly reports on the implementation of the Prosecution’s Strategy and Action Plan, the 2014 and 2015 annual reports on the state of criminality, opinions of the Prosecutorial Council, minutes of meetings, agendas, documentation and reasoned decisions on career processes, and reports of the SAI.

The Prosecution has interpreted legal requirements to protect the confidentiality and secrecy of investigations rather liberally.\(^ {485}\) In 2014, the OPG initially considered information requested by a journalist on the number of authorised surveillances in 2012-2014 as “secret”, but eventually declassified the information after the journalist mobilised the Commissioner for the Right to Information. A civil society petition in 2013 pointed to the institution’s repeated refusal to allow access to files for the hurt claimant families in the major Gërdec case involving high-level officials.\(^ {486}\)

Transparency International’s own field test demonstrated low adherence to the Law on the Right to Information on the part of the OPG. The law prescribes three legitimate ways of submitting an information request to a public institution – by e-mail, in person, or via post.\(^ {487}\) In October and November 2015, no e-mail address was available on the OPG website and repeated efforts to obtain one by telephone were unsuccessful. A physical visit to the OPG on 6 November 2015, to submit an information request in a sealed envelope was also unsuccessful as the receptionist claimed an order from the OPG’s Secretary General prohibited the acceptance of such requests – an order that he failed to show when asked. Transparency International then posted the information request that same day, together with a letter to the Prosecutor General raising the concerns about the inaccessibility of the institution. The OPG sent a very partial response to the request for information more than a month later, though the law envisages 15 days. In that response, the OPG asked for five more days to respond to most questions on the information request, but a second

\(^{479}\) Article 6, Law on Prosecution. See also article 103 of the Criminal Procedure Code for prohibitions to the publication of acts.

\(^{480}\) Articles 20, Law on Prosecution.

\(^{481}\) Article 7, Law 119/2014 on the Right to Information.

\(^{482}\) Article 58/3, Criminal Procedure Code.

\(^{483}\) See Constitutional Court Decision no. 16, of 11 November 2004, paragraph 5; Articles 5 and 34, Law on the Declaration of Assets (amended).


\(^{487}\) Article 11, Law on the Right to Information.
response never came. The questions that remained unanswered included those on the 2014 annual report, quarterly implementation reports of the 2015-2017 Strategy, examples of reasoned decisions to not initiate investigations on cases referred to the Prosecution by the SAI and HIDAACI, conflict of interest declarations of prosecutors, minutes of meetings of the Prosecutorial Council, proposals of the Prosecutor General for appointments and other career decisions sent to the President, the Prosecutor General’s orders for secondments of prosecutors, and others.488

Accountability (Law)
Score: 50

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THAT THE PUBLIC PROSECUTOR HAS TO REPORT AND BE ANSWERABLE FOR ITS ACTIONS?

Various external and internal accountability mechanisms are in place. As of 2012, prosecutors are not immune from criminal proceedings. The courts check the Prosecution, including for decisions on dismissals and non-initiation of investigations. In such cases, prosecutors must provide their reasoned decision to the complainants or the party who has referred a case – i.e. HIDAACI or the SAI – who can challenge the decision in court within five days.489 Financially, the Prosecution is accountable to the SAI and the Ministry of Finance.

The Prosecutor General is required to report to Parliament on the state of criminality at least twice annually and when required. As a rule, the Prosecution cannot be asked to report on specific cases, but Parliament can enquire after those specific cases it has itself referred to the Prosecution.490 This legal opening has been criticised for encroaching on the Prosecution’s independence.491 Also, the Prosecution can be held accountable through the Legislature’s right to establish investigative committees, which must heed fundamental constitutional principles, such as due process and division of powers.492 The Prosecutor General’s discharge from office from Parliament also involves the establishment of an investigative committee, the proposal of which is voted in by a simple majority in Parliament’s plenary (see Independence above).

The Executive holds the Prosecution accountable mainly through its role in determining criminal policy and the power of the Minister of Justice to inspect its work. The remit of these inspections goes beyond the enforcement of the Executive’s recommendations on criminal policy and includes checks of the legality and regularity of prosecutors’ activity. Inspections on cases for which preliminary investigations are on-going are prohibited. Inspections may result in recommendations for disciplinary proceedings, sent by the Minister of Justice to the Prosecutor General for consideration. While inspections’ findings are not binding for the Prosecution, they are shared with the president and Parliament.493 Altogether, these arrangements have been criticised for reversing the expected roles between the Prosecution and Executive, whereby the former ought to hold the latter accountable.494

The legal requirement for the President to decree the appointments of prosecutors proposed by the Prosecutor General also offers an opportunity of accountability, albeit a limited and perhaps inappropriate one given the President can be a partisan figure (see Judiciary pillar). If the President does not decree the Prosecutor General’s proposed appointments within 30 days, those proposals

489 Article 291, Criminal Procedure Code.
490 Article 53, Law on Prosecution.
492 See Constitutional Court decision no. 26, of 4 December 2006:
http://www.gjk.gov.al/web/Vendime_perfundimtare_100_1.php
493 Article 56, Law on Prosecution.
are considered rejected. However, there is no specific requirement for a reasoned decision to reject proposals, which would guarantee that rejections are actually a check on the adherence of the Prosecutor General to the rules for appointments, rather than expressions of undue interference.

Internally, the activity of lower prosecutors is subject to the checks of their seniors, whose orders and instructions are to be written and reasoned. Prosecutors can reject orders and instructions that are contrary to the law through written acts of reasoning. However, in such a case, the senior prosecutor whose orders or instructions have been rejected can personally substitute the lower prosecutor or choose another one. The law explicitly exempts from rejection “decisions taken hierarchically to enforce criminal procedural law” and “the orders and instructions of the Prosecutor General”, unless they are clearly in objection with the law. Without a mechanism of evaluation by a third and neutral party of the claims of the lower prosecutor, and in the context of the role of superiors in professional evaluations, this appears to make the whole effort redundant.

Furthermore, prosecutors are subject to general, thematic and individual inspections by the OPG, as well as professional evaluations. General and thematic inspections are planned, while individual inspections may be triggered by complaints or as the result of professional evaluations. All prosecutors must undergo inspection and professional evaluations at least once every three years. Both may form the basis for a disciplinary proceeding; the initiation of which is the sole responsibility of the Prosecutor General. Aspects of due process, such as the right to be heard, are in place for inspections, evaluations, and disciplinary proceedings and decisions of the Prosecutor General on disciplinary measures can be appealed in court. However, none of the other decisions of the Prosecutor General are subject to judicial review, nor are they subject to substantial constraints by the Prosecutorial Council, which carries only advisory functions and is reliant on the Prosecutor General for its mobilisation. In addition, the specific regulation of inspections, evaluations, and disciplinary processes is in the hands of the Prosecutor General. The Law on the Prosecution – a qualified majority law – does not sufficiently regulate the disciplinary process or that of professional evaluations, and it only mentions inspections. The elaboration of key principles of these processes in a qualified majority law, and provisions for a stronger role for the Prosecutorial Council, could check the discretion of the Prosecutor General and provide more stability for the system.

Overall, the Prosecutor General’s extensive powers are not subject to sufficient or appropriate checks and the power granted to superior prosecutors to overrule the decisions of their subordinates is also subject to insufficient checks.

**Accountability (Practice)**

Score: 25

**TO WHAT EXTENT DO PROSECUTORS REPORT AND ANSWER FOR THEIR ACTIONS IN PRACTICE?**

In practice, the accountability of prosecutors is weak and figures on decisions not to initiate, suspend or dismiss/stop prosecution proceedings appear high. The Transparency International research team asked for detailed figures on such decisions for a number of corruption-related offences covering the first nine months of 2015. When the figures on such decisions for active and

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495 Article 21/4, Law on Prosecution.
496 Articles 3/c and 4, Ibid.
497 Article 3/c/4, Ibid.
498 Directors of prosecution offices are by law superior prosecutors to the others in their respective offices. They are responsible for the initial evaluation of their subordinates. See articles 3/b/2 and 42/2, Ibid.
499 Articles 6 and 7, Prosecutor General’s Regulation no. 78, of 16 April 2010.
500 Article 42, Law on Prosecution.
501 Article 34, Law on Prosecution.
502 In addition to the figures provided here, see also Varanese, M., Peer assessment mission to Albania on efficiency of investigations related to organised crime and corruption, 9 April 2014, p.2, and 11-14.
passive corruption of public officials, high and elected officials, judges and prosecutors, as well as those on abuse of office and breaches of asset declarations are put together the following picture emerges: the Prosecution registered 624 cases, decided not to initiate proceedings in 432 of them, stopped proceedings in 350, suspended 12, and sent 161 (~25 per cent) to court.\(^\text{503}\)

For the whole of 2015, the OPG reported overturning 62 decisions of non-initiation and dismissal altogether, on a wide range of offences, as a result of the checks exerted by its Directorate for the Control of Investigations.\(^\text{504}\) However, this figure appears inconsequential given that investigations did not start, or were dismissed or suspended in 794 cases – as noted above – related to a smaller number of corruption offences, and only during the first nine months of 2015. HIDAACI reports that the Prosecution does not provide clear or convincing reasons for the non-initiation or dismissals of prosecutions based on its referrals (see Integrity below).\(^\text{505}\) One interviewee noted that law enforcement agencies also complain constantly of the lack of justification by the Prosecution for dismissals and non-initiations.\(^\text{506}\) The Transparency International research team asked to see samples of such decisions on the part of the OPG to independently assess these claims, but none were provided.\(^\text{507}\)

A recent assessment considers inspections by the Minister of Justice to have been politically motivated in a number of cases, and the Prosecution’s own resources inadequate to guarantee thorough inspections of its own.\(^\text{508}\) A prosecutor interviewed for this assessment partially confirmed this view, providing concrete cases when the Minister of Justice attempted to use the power to inspect as a tool to influence on-going investigations, but also adding that at times the Prosecutor General had also misused power to order inspections.\(^\text{509}\) For 2015, the Minister of Justice reported inspections of 1,995 criminal proceedings (decisions on non-initiation and dismissals) and 32 prosecutors. It recommended disciplinary action for 12 prosecutors, issued six recommendations of a general nature, and one for superior prosecutors to annul non-initiation and dismissal decisions in a few cases. By March 2016, the Minister had reported only one – negative – answer from the Prosecutor General, on the latter recommendation.\(^\text{510}\) The Prosecutor General reported internal checks by OPG prosecutors on 1,854 criminal proceedings of lower prosecution offices and on 895 adjudicated files, as a result of which three decisions were overturned and five prosecutors disciplined.\(^\text{511}\) The number of prosecutions and disciplinary proceedings against prosecutors has been very limited over the years.\(^\text{512}\) For 2013, the Prosecutor General reported five disciplinary proceedings, two of which were still on-going.\(^\text{513}\) Nothing is known of 2014, or of the nature of these breaches.\(^\text{514}\) The implementation of professional evaluations only began in 2013 and the Prosecutor General has implicitly admitted that this first experience has not provided an accurate and realistic picture of prosecutors’ performance.\(^\text{515}\)

The low number of prosecutions after the 2012 reform that lifted the immunity of prosecutors has further highlighted the importance of internal accountability. At the end of 2015, within days of each other, the Prosecution initiated the arrest of two prosecutors on charges of bribery – arrests that the

\(^\text{503}\) Data on articles 244, 245, 248, 257/a, 259, 260, 319, and 319/c of the Criminal Code, received via post by the OPG, letter dated 11 December 2015, prot. no. 1453/1.


\(^\text{505}\) Written response from HIDAACI, 24 July 2015.

\(^\text{506}\) Interview with international expert, 17 July 2015.

\(^\text{507}\) Information request sent by post on 6 November 2015. Response from the OPG dated 11 December 2015, prot. no. 1453/1.

\(^\text{508}\) Group of High-Level Experts, Ad hoc Parliamentary Committee on Justice Reform, Analysis of the Justice System, June 2015, p.136.

\(^\text{509}\) Interview with a prosecutor, 3 November 2015.


\(^\text{511}\) Office of the Prosecutor General, 2015 Report on the State of Criminality, p.20-21. These internal checks are reported separately from those of the Directorate for the Control of Investigations, noted above.

\(^\text{512}\) Group of High-Level Experts, Ad hoc Parliamentary Committee on Justice Reform, Analysis of the Justice System, June 2015, p.137.


\(^\text{514}\) The 2014 Report cannot be found on the page of the OPG or Parliament, and was not provided to the research team by the OPG.

Prosecutor General has considered examples of the justice sector’s ability to purge itself, while some media have treated them with scepticism, interpreting them in the context of the Prosecutor General’s reservations vis-à-vis the currently debated justice reform.516

Parliament’s investigative committees have overstepped the limits of accountability and encroached on the independence of the Prosecution (see Independence above). There is no evidence that the Prosecutor General’s 2014 Report on the State of Criminality has been submitted and discussed in Parliament. The research team asked for the OPG’s report to the SAI on the enforcement of its recommendations, from its last audit in 2012, but it was not provided.517

**Integrity mechanisms (Law)**

Score: 75

**TO WHAT EXTENT ARE THERE MECHANISMS IN PLACE TO ENSURE THE INTEGRITY OF PROSECUTORS?**

Upholding the reputation of their function is part of the prosecutors’ oath of office; the breach of which carries disciplinary liability.518 The Criminal Procedure Code obliges prosecutors to withdraw from cases in which they have a conflict of interest.519 Senior prosecutors in conflicts of interest vis-à-vis their subordinates’ cases are prohibited from issuing written orders or instructions, or influencing their subordinate in any other way.520 Prosecutors are required to disclose their assets regularly, which HIDAACI is authorised to audit. They are also subject to conflict of interest legislation, which has been criticised for its complexity and lack of clarity (see HIDAACI and Public Sector pillars).521

The Prosecutor General approved a new and comprehensive Code of Ethics for Prosecutors in June 2014, after consultation with the Prosecutorial Council and prosecutors. It has replaced the previous one approved by the Association of Prosecutors in 2005. The Code is applicable to all prosecutors, including those in their year of professional internship, and it envisages an Ethics Inspector as enforcer, alongside prosecution office directors.522 The legal framework does not establish post-employment restrictions or cooling off periods.

**Integrity mechanisms (Practice)**

Score: 25

**TO WHAT EXTENT IS THE INTEGRITY OF PROSECUTORS ENSURED IN PRACTICE?**

The regulation of conflicts of interest has hardly been implemented in practice. The Transparency International research team sought to corroborate previous reports on the lack of records of declarations of such conflicts by asking the OPG for samples of such records, but none were

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516 Lapsi, ‘Llalla: Pastrohemi vetë nga të korruptuarit’ (Llalla: We will get rid of the corrupted on our own), 7 December 2015: http://www.lapsi.al/lajme/2015/12/07/lalla-pastrohemi-vet%C3%AB-nga-t%C3%AB-korruptuarit#.V2f13WoUWU;
GazetaDita, ‘Llalla e llogarit me dy prokurorë të arreshtuar luftën ndaj korrupsionit’ (Llalla considers arrest of two prosecutors as the fight against corruption), 21 December 2015: http://www.gazetadita.al/llalla-e-llogarit-me-dy-prokurore-te-arrestuar-lufiten-ndaj-korrupzionit/

517 Information request sent by post on 6 November 2015. Response from the OPG dated 11 December 2015, prot. no. 1453/1.

518 Articles 22/1 and 32/a, Law on Prosecution.

519 Articles 26-27, Criminal Procedure Code.

520 Article 3/c, Law on Prosecution.

521 Reed, Q., Prevention and regulation of conflicts of interest of public officials in Albania: Assessment and recommendations, ACFA assessment report, p.8.

provided. The previous Code of Ethics was not enforced, and the new one entered into force fairly recently. All prosecutors received training on the new Code during the first half of 2015. The OPG did not provide any information on the Code’s enforcement. HIDAACI recently started the full audit of prosecutors’ asset declarations and it referred two prosecutors for asset declaration breaches in 2015, but HIDAACI and other sources have noted that the Prosecution is yet to properly follow-up on its referrals.

Role

Corruption prosecution

Score: 25

TO WHAT EXTENT DOES THE PUBLIC PROSECUTOR INVESTIGATE AND PROSECUTE CORRUPTION CASES IN THE COUNTRY?

While results have begun to emerge with respect to low and mid-level officials, the prosecution of high-level corruption and wrongdoing has repeatedly failed. In 2009, the trial of former Minister Lulzim Basha for his role in an allegedly corrupt highway construction deal failed because the Prosecution breached procedural rules and deadlines. The Prosecution failed to continue the case of former Minister of Defence Fatmir Mediu for his involvement in the 2008 Gërdec explosion, even after immunity for officials was limited in 2012.

In 2013, the Prosecution reported no cases of high-level officials, judges or prosecutors sent to court. In the past two years, the Prosecutor General has frequently warned of high-level investigations and potential arrests of ministers and former ministers, none of which have materialised. As noted under ‘Accountability’, a large number of cases on active and passive corruption of public officials, high-level and elected officials, judges and prosecutors, abuse of office, and breaches of asset declarations are not initiated, or are dismissed or suspended by the Prosecution. The HIDAACI and the Prosecution report different figures on asset declaration referrals and that the Prosecution has no information on the Code’s enforcement. The previous Code of Ethics was not enforced, and the new one entered into force fairly recently.

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526 Information request sent by post on 6 November 2015. Response from the OPG dated 11 December 2015, prot. no. 1453/1.
527 HIDAACI, 2015 Annual Report, p.3.
534 Office of the Prosecutor General, Report on the State of Criminality, 2015, p.9, for the Prosecution’s figure; and HIDAACI, Annual Report, 2015, p.17, for HIDAACI’s figures.
Experts are divided over the causes behind such a poor record, with some pointing to the Prosecution, others to the courts, or implicit political pressure on both. While the impact of the Prosecution’s weak levels of independence and accountability cannot be overestimated, other factors also play an important role, including the availability of human and technical resources, which are inadequate (see Resources above).

The legal framework is another important factor. Despite some key improvements in recent years, it retains some highly consequential gaps. For instance, following the constitutional amendments to limit the immunity of top officials in 2012, not only were the necessary changes to the Criminal Procedure Code delayed by almost two years (March 2014), but according to a previous assessment they also fell short of providing adequate and clear rules to prosecutors on the various steps in a criminal proceeding against an MP. The assessment also warned that the changes give Parliament the opportunity to assess the merits of the case mounted by the Prosecution if a request to lift the immunity of an MP is made.

Furthermore, the timeframe of three months for preliminary investigations – with a possibility of extension over further three-month periods – has been deemed short and inappropriate. Key terms, such as ‘grand’ and ‘petty’ corruption, and ‘high-level official’ are not defined in law, causing problems of jurisdiction, and both prosecution and adjudication.

Recommendations

- Parliament should amend the Constitution to promulgate the independence of prosecutors, and strengthen eligibility criteria for the Prosecutor General, introduce a vetting system, increase the consensus required in Parliament to a strong qualified majority, preferably two-thirds.
- Parliament should amend the Law on the Prosecutor General to strengthen the independence, transparency, and role of the Prosecutorial Council over prosecutors’ careers and discipline.
- Parliament should establish an ad hoc committee to consider amendments to key and related laws for the fight against corruption with a view to rectifying gaps and clarifying terminology.
- The government and Parliament should significantly increase the budget of the Prosecution, on the basis of a thorough needs assessment.


PUBLIC SECTOR

Summary

The legal framework does not sufficiently guarantee the independence, accountability and integrity of the public sector – limited here to the civil service. The new Law on the Civil Servant has introduced a series of procedures that seek to shield the civil service from politicisation, especially in terms of recruitment and career progression. However, the government retains considerable discretion over the determination of bodies that manage recruitment, career and discipline in the civil service, and the law allows a revolving door between the service and political office. In practice, turnover in the civil service still significantly follows political moods and cronyism, as also reflected in the high public bill accumulated over the years for unfair dismissals, as determined by courts.

In terms of accountability, there are several oversight structures and procedures in the Executive, but key external institutions lack the necessary independence to credibly and effectively exercise their oversight roles. These include the Commissioner for the Oversight of the Civil Service, the Public Procurement Commission, and the SAI, with the Ombudsman being an exception. Parliament finally adopted a new Law on Whistleblowing in June 2016, but its entry into force has not begun.

The SAI has persistently claimed that Albania’s legal framework renders it difficult to identify the material responsibility of public employees for damage caused to public funds, and therefore, to obtain indemnification. In practice, investigations and prosecutions of public employees for corruption have increased, but are considered to still be low. The SAI has been impeded from auditing the Directorate General for Taxation, while the auditing it has conducted suggests widespread problems of mismanagement and lack of accountability. Information on the public sector’s success in upholding its own internal accountability is meagre, if not lacking.

The legal framework for integrity suffers from erroneous or unclear definitions of key terms – including ‘conflict of interest’ and ‘prohibited gifts’ – and is poorly harmonised. Despite several efforts, no evidence was found of routine management of conflicts of interest and gifts and hospitality in key institutions. While the framework for transparency has significantly improved, public institutions continue not to comply with requirements. Inadequate resources – and their management – cut across all these issues.

Some commendable efforts notwithstanding, engagement with public education and civil society in the fight against corruption remains superficial. By and large, the framework for public procurement is in place and adequate, but members of the administrative redress institutions – the Public Procurement Commission (PPC) – are government appointees and none have ever finished their five-year mandates. Furthermore, the tariffs applied by the PPC and the possibility of judicial review of PPC decisions being only available in Tirana’s administrative court are discouraging – if not prohibitive – for complainants competing in high value tenders or from distant locations. State-owned enterprises (SOEs), policy, oversight and ownership functions are still not clearly delineated and separated. Privatisations, as well as the growth of concessionary agreements and public-private partnerships have been marred by allegations of gross mismanagement and corruption.
Structure and organisation

The civil service comprises executive, low, middle, and top-level management positions in some bodies of the state administration, independent institutions, and local government.541 Certain aspects of this chapter are by nature broader in application (for example Transparency and Role), and may be seen as applying to the public sector as a whole.

The 2013 Law on Civil Servant (CSL) expanded the service to include a larger part of the public sector (e.g. taxation, customs, and education directorates). The exact share of the civil service in public sector employment is not known, but it is estimated that civil servants now constitute about 20,000 employees, or nearly 23 per cent of the 88,585 public sector employees reported in 2015.542

The employment of civil servants is regulated by the CSL, and special laws in some cases, such as that on the State Police. The Department of Public Administration (DoPA) drafts state policy on the civil service and oversees its implementation in the state administration only. The Commissioner for the Oversight of the Civil Service (COCS), appointed by Parliament, oversees the implementation of this law in all institutions that employ civil servants, including local government and independent bodies.

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541 State administration comprises the Prime Minister’s Office and ministries, their subordinate institutions, ministries’ territorial branches, direct service provision units, autonomous agencies and prefects (see articles 1 and 4, Law no. 90/2012 on the Organisation and Functioning of State Administration). See also articles 2-3, and 19 of Law no. 152/2013 on the Civil Servant (changed) for a list of institutions and offices exempted from the civil service, and the classification of positions in the service.

542 The estimate of ‘about 20,000’ civil servants was provided by the Commissioner for the Oversight of the Civil Service (COCS). The number of public employees was derived from the following table attached to the changes to the 2015 Budget:

Experts consider the overall wage bill for the public sector to be sustainable. SIGMA has assessed salaries and other benefits to be attractive in central administration, but not at the local level. The government reports that the gap between the maximum and minimum wages in public administration narrowed during 2005-2013; salaries decreased in real terms for top management positions, and increased for lower ones. An average of 14.5 applications per civil service vacancy in 2014 was the highest since 2001, although a former civil servant in the central administration argued that interest remains modest due to low trust in recruitment procedures or career prospects.

The skills of civil service candidates are a problem: of 340 applications for 18 mid-management positions reported by the government in October 2015, only 58 were qualified to sit the test. According to a former civil servant, public administration has also failed to retain and develop human capacities adequately. However, the Prime Minister’s adviser Eralda Çani noted that the DoPA’s struggle to fill advertised positions could also be a sign of increased independence from political pressure in appointments (see Independence below).

SIGMA reports that civil service expansion is straining human resource management capacities and that the School of Public Administration’s budget has not increased sufficiently. Institutions charged with management, coordination and oversight lack capacity: the long-planned and already launched Central Personnel Registry is not functional according to the latest reporting of the COCS. When asked by the Transparency International research team, the COCS could not provide the total number of civil servants, but estimated it at around 20,000. In the absence of adequate information technology, its 12 inspectors charged with countrywide oversight of the entire civil service are clearly inadequate and key functions, such as financial control and procurement,
lack sufficient and/or adequately trained staff (see Role below for procurement). According to a former civil servant, poor management compounds resource deficiencies. 554

Independence (Law)
Score: 50

TO WHAT EXTENT IS THE INDEPENDENCE OF THE PUBLIC SECTOR SAFEGUARDED BY LAW?

The Constitution establishes the requirement for competitiveness and security of tenure in public administration. It also requires a qualified three-fifths Parliament majority for the Law on Civil Servant or amendments to it. 555 The new law establishes principles of meritocracy, professionalism, stability, political impartiality, and integrity in the civil service. 556 As a rule, recruitment is through open national competitions for entry-level positions, organised by DoPA, which verifies the eligibility of candidates before a permanent commission for admission evaluates them with written and oral tests. 557 The law gives priority to internal candidates, again on a competitive basis. In exceptional cases, institutions subject to the CSL can hire from outside the civil service for management positions. 558

Despite significant improvements the new law retains significant flaws. The COCS, established at the end of 2014 and whose role it is to ensure enforcement of the CSL is appointed by Parliament by a simple majority for a five-year mandate, renewable once. Conditions for appointment are generic and do not include integrity and impartiality checks. Dismissal also only requires a simple majority in Parliament, 559 and so there is little constraint on the arbitrary will of the ruling majority.

Although the CSL prohibits senior civil servants from political party membership and others from positions in leading party structures, a civil servant who runs for Parliament or local government is suspended from the civil service until election results are available or (if elected) until the expiration of the political mandate. 560 The permanent committees for admissions are appointed and regulated by government decisions, as are conditions/procedures for mobility, transfer and suspension. 561

Independence (Practice)
Score: 25

TO WHAT EXTENT IS THE INDEPENDENCE OF THE PUBLIC SECTOR SAFEGUARDED BY LAW?

The turnover in public administration is high, especially after elections. Although reliable data is lacking, 562 in October 2014 the European Commission reported that around 480 of 1,392 (~34 per cent) civil servants in central institutions had been dismissed, demoted, placed on waiting lists, or resigned over the previous year; two-thirds of those appealing these decisions had won their cases


554 Interview with former civil servant in central administration, 22 December 2015.
555 Articles 81/2.e and 107, Constitution.
557 Article 22, Law on the Civil Servant; Decision of the Council of Ministers no. 143, of 12 March 2014.
558 Articles 12-13, CSL.
559 Articles 37, 54 and 56, CSL. Furthermore, a civil servant can become a cabinet member – a political appointment – and not only be able to return to the civil service, but also have the cabinet post count as experience in the service (Articles 54/1/a and 56/3, CSL).
560 Articles 22/6 and 32/3, CSL. See also Decision no. 243 of the Council of Ministers, of 18 March 2015.
561 Research team requested official information from the Ministry of Finance on 16 November 2015 and the Department of Public Administration on 16 November 2015. None were able to provide data on the exact number of civil servants.
at first instance courts.\(^{563}\)

According to a former civil servant with experience in central administration under both the current and previous government, there are efforts to generally enforce procedures introduced by the new CSL.\(^{564}\) Both he and the Prime Minister’s advisor noted that DoPA is more assertive than before in demanding compliance with the law.\(^{565}\) According to him, the COCS has not made an impact,\(^{566}\) and the perception that top civil servant appointments are politically motivated, nepotistic or a combination of both persists, as does circumvention of the CSL through restructuring or recruitments from outside the service. A link between performance and career advancement remains to be demonstrated in practice, he added.\(^{567}\) Allegations of nepotistic or partisan appointments in the public sector are frequent, for example in tax and customs\(^{568}\) and pressure on public sector employees including civil servants is regularly reported during elections.\(^{569}\)

**Governance**

**Transparency (Law)**

**Score:** 75

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE TRANSPARENCY IN FINANCIAL, HUMAN RESOURCE AND INFORMATION MANAGEMENT OF THE PUBLIC SECTOR?

The Constitution enshrines the right to information on the activity of state institutions, and the obligation of central and local government authorities to publish their revenue and expenses.\(^{570}\) Such principles are reinforced in the CSL, the Code of Administrative Procedure, and public procurement legislation (see Procurement section below).\(^{571}\)

The centrepiece law is the new Law on the Right to Information approved in 2014.\(^{572}\) This applies to all public authorities including any physical or legal person carrying out public functions. They are required to respond within 10 working days to requests for information (defined as “any data registered in any format in the exercise of public function, regardless of whether it was drafted by the public authority”), with a possibility of a five-day extension. The new law requires proactive disclosure of many categories of information including legal acts, policy documents, salaries, strategic work plans and reports, audit reports, and budgetary data, as well as a list and details of procurement and concession contracts.\(^{573}\) While there are limitations on the right to information (e.g.  

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\(^{564}\) Interview with former civil servant in central administration, 22 December 2015.

\(^{565}\) Ibid; Interview with Eralda Çani, Prime Minister’s Adviser for Public Administration, 23 April 2015.

\(^{566}\) For example the COCS reported only 27 complaints during the first four months of its operation, although it was only established at the end of 2014; Minutes of meetings of the standing committee 21 April 2015, p.9.

\(^{567}\) Interview with former civil servant in central administration, 22 December 2015.


\(^{570}\) Articles 23 and 157/4, Constitution.

\(^{571}\) Article 44, CSL.; Articles 5-6, Code of Administrative Procedure.


\(^{573}\) Article 7, Law on the Right to Information.
damage to national security, criminal or administrative investigations, right to privacy) all limitations must be proportional and do not apply in the presence of a higher public interest. The Commissioner for Data Protection and the Right to Information oversees implementation of the law, addresses complaints, and may impose sanctions on institutions/officials breaching the law. Regarding asset declarations (see Integrity), which are required by law from a large number of public officials and their relations, the Constitutional Court has ruled that the requirement to publish declarations only means an obligation to provide them on request, and precludes proactive publication.

Transparency (Practice)

Score: 25

TO WHAT EXTENT ARE THE PROVISIONS ON TRANSPARENCY IN FINANCIAL, HUMAN RESOURCE AND INFORMATION MANAGEMENT IN THE PUBLIC SECTOR EFFECTIVELY IMPLEMENTED?

Transparency in the public sector has seen some improvement, but remains a challenge. Of the 202 institutions across the public sector that it addressed in 2015, the NPO Res Publica reported receiving answers to first requests for information in 52 per cent of the cases, up from 23 per cent in 2013, under the old law. In addition to the improved but still low response rate, a large number of institutions had not enforced other aspects of the new Law on the Right to Information. For instance, 48 of 100 monitored institutions by Res Publica had not adopted transparency programmes, 19 had adopted empty programmes, and only 11 had adopted programmes that were in full or almost full compliance with the law. Similarly, 52 of the monitored institutions had not assigned officials to manage information requests, as the law prescribes.

The research team sent information requests to 10 institutions directly relevant to this pillar: eight ministries, the DoPA and the COCS. Four ministries did not respond at all, the COCS replied in time, but with some gaps, while the DoPA responded with a month delay and significant gaps. Compliance with legal requirements to pro-actively publish implementation reports for strategies and action plans, audit reports, budgetary data, or information on procurement and concessions is low across the public sector. In an interview, Res Publica director Dorian Matlija claimed that most institutions asked about procurement of television advertising had replied with significant delays and mostly inaccurately, as revealed by comparisons with treasury transactions (see Role below for more on public procurement transparency).

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574 Article 17, Ibid.
575 Articles 21, 23, 24, Ibid.
576 See Constitutional Court Decision no. 16, of 11 November 2004.
578 Ibid, p.22-23.
580 The research team monitored the official webpages of 47 institutions and a tiny number of them publish all or a part of such information.
581 Interview with Dorian Matlija, Executive Director of ResPublica, 21 December 2015.
Accountability (Law)

Score: 50

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THAT PUBLIC SECTOR EMPLOYEES HAVE TO REPORT AND BE ANSWERABLE FOR THEIR ACTIONS?

The Code of Administrative Procedures (CAP) governs administrative complaints and has been criticised *inter alia* for vagueness and excessive discretionary powers given to public authorities. A new Code regulating complaints in line with EU standards is due to enter into force in mid-2016. Under this new Code, parties to administrative procedures may lodge complaints against administrative actions or inaction with the authority itself, its superior authority, or another body designated by law. Upon exhausting relevant levels of administrative review, all parties have recourse to the Administrative courts.

A 2006 Law on Cooperation of the Public in the Fight against Corruption has fallen short of providing a coherent framework for whistleblowing for various reasons. They include lack of clarity, too narrow a focus on “corruption”, failure to distinguish denunciations/notifications from the public and those from employees, and inadequate provisions to prevent retaliation.

There are elements of whistleblowing in other, recently revised laws – such as the CSL, the CAP, and the Law on Conflict of Interest – but they retain many of the problems noted above. Parliament finally adopted a new Law on Whistleblowing on 2 June 2016, as this report was being finalised. Parts of the new law enter into force in October 2016, and others in July 2017.

A portal was launched in February 2015 by the National Anti-corruption Coordinator to receive and manage citizens’ notifications (including anonymously) on corrupt practices in state administration institutions. Responsible officers are assigned in each institution to handle notifications. A unit at the Prime Minister’s Office is responsible for coordination and follow-up of notifications. If notifications are unclear, responsible officials request further information, with only a three-day deadline for citizens to respond. If a notification indicates the need for criminal investigation responsible authorities refer the case to the State Police or Prosecution, and classifies the notification as “resolved”.

A Unit on Internal Control and Anti-corruption in the Prime Minister’s Office is charged with the administrative investigation of legal compliance or of notifications of corruption in state administration institutions and state-owned enterprises. The Unit – previously a department – cooperates with the HIDAACI, but is not part of the process of handling complaints received through the portal.

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582 SIGMA, Baseline Measurement Report: The principles of public administration, Albania, April 2015, p.77-78.
583 Articles 3/6, 3/7, 128-140, and 189, Law no. 44/2015, Administrative Procedure Code. “Parties” are limited to physical or legal persons who have a direct legitimate interest in an administrative procedure.
584 Articles 15-16, Law no. 49/2012 on Administrative Courts and Justice, changed.
586 Article 43, CSL; Article 31, Administrative Procedure Code; Articles 10/1 and 26/5, Labour Code.
588 This is the role of the Ministry of State for Local Affairs. The portal: http://www.stopkorrupsiionit.al/
590 Article 7/5/b, Ibid.
In public procurement, a system for appeals and recourse is in place, although it exhibits significant flaws in terms of independence, limited coverage and weak sanctioning provisions (see Role below).

A public financial control system is in place and applicable to the entire public sector. By law, internal audit units, required in all public sector institutions, are functionally and organisationally independent. External audit is exercised by the SAI, which can conduct a variety of audits – including performance audits – on all bodies funded by the State Budget. The SAI’s independence is not sufficiently guaranteed (see the Supreme Audit Institution pillar). The law enables the establishment of inspectorates in central and local government institutions, responsible for overseeing compliance with laws by subjects (whether private or public) falling under the regulatory remit of the institution (e.g. education, environment, construction). A Central Inspectorate subordinate to the Prime Minister is charged with coordination and oversight of state inspectorates.

In civil service employment issues, the DoPA oversees various management processes including recruitment and discipline in the central administration, while the COCS oversees all institutions employing civil servants. The COCS may conduct full administrative investigations to assess the implementation of the CSL, issue warnings, mandate institutions to take remedial action, and impose fines.

Anyone claiming a breach of rights by public authorities can lodge a complaint with the Ombudsman (see Ombudsman pillar). Parliament may hold public sector institutions (and by implication civil servants) accountable through mechanisms such as reporting requirements interpellations of ministers, and inquiry committees. Public sector employees are also criminally liable for a series of acts envisaged in the Criminal Code, including bribery.

**Accountability (Practice)**

Score: 25

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592 Articles 66-68, Law on the Management of the Budgetary System. See also Law on Internal Audit in the Public Sector.
593 Articles 4, 10 and 14 Section 3, Articles 15-17, Law no. 10433, on inspection in the Republic of Albania, of 16 June 2011.
594 See Independence above on lack of independence of the Commissioner.
595 Article 6/1/c, CSL.
596 Articles 248-260, Criminal Code.
was undertaken seriously, but without the necessary legal and practical guidance for institutions at its launch, resulting in poor implementation.\footnote{Interview with former civil servant in central administration, 22 December 2015.}

The research team sought to acquire information on the role and performance of the Anti-Corruption Unit at the Prime Minister’s Office, but none was provided.\footnote{Request for information submitted by the research team on 16 May 2016, asking about the Unit’s staff number, competences, number of inspections carried out per year since 2013, inspected institutions, inspection triggers (i.e., complaints), inspection reports, measures taken, and finally, about the Unit’s role vis-à-vis the anti-corruption portal’s complaints. The PMO responded with some delay on 21 June 2016 (prot. nr. 3228/1), that it found the request was unclear.} Accountability in public procurement has been weak in practice (see \textit{Role} below). In 2016 the IMF repeated concerns of corruption in tax inspections and Crown Agents, a British company hired in 2013 by the Albanian government to improve the management of the custom’s administration, stated in a report that the company failed to meet the projected revenue due to high levels of corruption and smuggling.\footnote{IMF Albania, Staff Concluding Statement of the 2016 Article IV Mission and the Seventh Review Under the Extended Arrangement, 23 March 2016: \url{https://www.imf.org/external/pp/ms/2016/032316a.htm}; Vizion Plus TV, ‘Crown Agents: Doganat të zhytura në korrupsion e kontrabande’ (Crown Agents: Customs submerged in corruption and smuggling), 22 January 2016: \url{http://vizionplus.al/crown-agents-dogana-tzhytura-ne-korrupsion-e-kontrabande-2}; Crown Agents, Assistance program for Albanian customs, Corruption prevention and uncovering: \url{http://all/crownagents.com/docs/default-source/default-document-library/crown-agents-preventing-detecting-corruption-sq-080216.pdf?sfvrsn=2}.}

Internal financial control and audit appears to have become more effective, although it is too early to judge whether this is having any impact. From 2013 to 2014 the number of internal audits fell but the financial value of abuse, poor management, irregularities, etc., increased by 12 times.\footnote{Ministry of Finance, Report on the Functioning of the System of Public Internal Financial Control in General Government Units for 2014, p.7, 27, and 33-34.} The value of financial breaches in procurement and state budget execution, as identified by central internal audit and financial control structures increased from 4,322 million ALL to 20,138 million.\footnote{Directorate of Internal Audit of the Ministry of Finance, Annual Report, 2014, p.5-6; \url{http://www.financa.gov.al/files/userfiles/Direktorite/Direktorita_e_Auditit_te_Brendshem/raporti_vjetor_2014_i_redaktuar.pdf}.} The Ministry of Finance and the Supreme Audit Institution have highlighted a number of deficiencies in internal financial control systems, citing high staff turnover and lack of qualified staff among the main underlying factors.\footnote{Ministry of Finance, Report on the Functioning of the System of Public Internal Financial Control in General Government Units for 2014, p.7, 27, and 33-34.}

The work of the SAI reveals other serious problems in public sector accountability. The General Directorate of Taxation persistently resisted auditing by the SAI from 2010 to 2015.\footnote{Ibid.; SAI, State Budget Report, 2014, p.288-289; \url{http://www.kish.org.al/web/pub/1_raporti_buxhetit_2014_2063_1.pdf}.} The SAI does not conduct a financial audit of the State Budget execution in line with international standards, and it is overall unable to come to an opinion on the financial statements of audited subjects.\footnote{SAI, Report on the Auditing of the General Directorate of Taxation, approved by Decision no. 103 of the Head of the SAI, on 9 August 2013, p.1-2; Minutes of meeting of the Economic and Finance Parliamentary Committee, discussion of the SAI 2014 Annual Performance Report, 15 July 2015, p.43, and on 13 November 2013, p.19; See also SIGMA, Baseline Measurement Report - Albania, April 2015, p.114.} Since 2013, the SAI has been recommending the adoption of a new law on the material responsibility of public employees, arguing that current legislation does not provide for concrete and specific enough procedures to assess and identify responsibilities for damage to public funds and assets.\footnote{SIGMA, Baseline Measurement Report – The principles of public administration Albania, April 2015, p.115; Analysis of the activity of the SAI, presented by the Head of the SAI during its public 2015 performance reporting, 1 February 2016, p.7.} The SAI recommendations on disciplinary action for public officials who cause damage to the state are poorly implemented, indicating the low impact of the SAI on public sector management and conduct.\footnote{SAI, State Budget Report, 2014, p.43-44.}

A former experienced civil servant was unable to recall any measures taken as a result of SAI findings, but also questioned the professionalism and integrity of internal audit structures and the
SAI (see SAI pillar); arguing in particular that internal audit is used arbitrarily by ministers to create conditions to dismiss particular officials, and that accountability mechanisms in general are not implemented on the basis of established standards and criteria, with working plans and implementation reports serving purely formal purposes.\(^{609}\) While the number of investigations and prosecutions of public employees for corruption-related offences have increased over the years, they are still considered low (see Public Prosecutor pillar).\(^{610}\)

According to the SAI, in 2012 the government owed around 1.2 million euro for unfair dismissals from public service in selected institutions audited.\(^{611}\) The media reported that 23.4 million euro were paid out from the State Budget during March to December 2014 alone, with the tax, customs and police incurring the most damage.\(^{612}\)

**Integrity mechanisms (Law)**

**Score: 25**

**TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THE INTEGRITY OF PUBLIC SECTOR EMPLOYEES?**

The legal framework for conflict of interest lacks clarity, is poorly harmonised, and far too complex.

A number of laws regulate key aspects of integrity in the public sector, with the main ones being the Laws on Asset Declarations (ADL), Ethics in Public Administration (EPA),\(^{613}\) and Prevention of Conflicts of Interest (PCI).\(^{614}\) Under the ADL, some public sector employees (including mid- and top-level civil servants) and their immediate family are required to declare their assets to the High Inspectorate for the Declaration and Audit of Assets and Conflicts of Interest (HIDAACI) at the beginning and end of tenure and annually.\(^{615}\) HIDAACI checks all declarations for formal consistency and conducts full audits periodically, depending on the category of officials (for instance, every three years for top civil servants) or whenever it deems necessary.\(^{616}\) The EPA applies to all public sector employees and the PCI applies to all officials participating in decision-making and their relatives for certain provisions.

The EPA establishes definitions and rules on conflicts of interest, external activities, gifts and favours, other in-office obligations and post-employment restrictions based on the Council of Europe Model Code of Conduct for Public Officials.\(^{617}\) It lays down general prohibitions on external activities of officials and the obligation to gain prior consent of superiors for certain activities, while the PCI elaborates in detail the kinds of prohibited activities and interests for different categories of officials. The EPA prohibits the use of confidential information obtained in office for private interests in the future. It also establishes a two-year prohibition on officials from representing individuals or organisations in conflict or trade relations with the public administration, in those areas of responsibility previously covered by the former official.\(^{618}\)

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609 Interview with former civil servant in central administration, 22 December 2015.
612 Erebara, Gj., ‘Pushimet nga puna, 3.3 miliardë lek kosto për taksapaguesit’ (Dismissals, 3.3 billion ALL cost for taxpayers), BIRN Albania, 24 February 2015: http://www.reporter.al/pushimet-nga-puna-3-3-miliarde-lek-kosto-per-taksapaguesit/
613 Law no. 9131, on Ethical Rules in Public Administration, of 8 September 2003.
615 Articles 3, 5/1, 7, 7/1, and 21 Law no. 9049, on the Declaration and Audit of Assets and Financial Obligations of Elected Officials and Public Servants, of 10 April 2003, as amended: http://www.hidaa.gov.al/ligji-nr-
616 Articles 25 and 25/1, Ibid.
618 Articles 16-17, EPA Law.
Concerning conflicts of interest that arise or may arise in office, the EPA obliges officials to declare factual or potential conflicts of interest to their superiors and human resource units, and obey the final decision to withdraw from the decision-making process or relinquish the private interest. Potential conflicts of interest of a candidate-employee are required to be dealt with before appointment, but this law is little known, with the PCI playing a far more important role. The PCI reinforces the obligation to avoid and declare conflicts of interest, seeks to exhaustively define such situations, and imposes sanctions. Unfortunately, the law is highly problematic for a number of reasons: it provides an erroneous definition of conflict of interest and convoluted and overlapping elaboration of different types of conflict, on the clarity of which many other provisions depend; an inadequate definition of “decision-making”; and lax provisions on declaration of certain types of interests.

Concerning gifts and favours, the EPA largely follows the Council of Europe Model Code, with a prohibition on public servants accepting or soliciting gifts or any other favour for themselves, their families, close relatives, persons or organisations related to them that influence or appear to influence the impartial conduct of duty, or that constitute or appear to constitute a reward for the manner of conduct of public duty. A government decision following the EPA set a threshold of 10,000 ALL (~71 euro) for gifts that can be kept without the obligation to declare them and prohibits outright the acceptance of monetary gifts. The PCI reiterates prohibitions on gifts, but it and the government decision undermines their force by restricting the prohibition to gifts or favours “given because of one’s official duty”, making it necessary to prove motivations/intentions behind gifts – a definition clearly not in line with international good practice. The decision goes further and considers an indirectly received gift as one that is given to the official’s close circle “on the basis of the official’s request, recommendation or instruction”, and a gift is not prohibited if it is offered because of an official’s “clan relations, personal acquaintance with the givers, as well as when it is clear that the gift has nothing to do with the position and quality of public official”.

Concerning enforcement, the EPA requires public sector employers to inform employees of the provisions of this law and include them in conditions for employment. Breaches are grounds for disciplinary measures. As specified by the CSL, ethical breaches are minor offences; repeated ethical breaches are serious; and direct or indirect profit from gifts/other favours “given because of one’s duty” are very serious breaches. Measures range from reprimand to dismissal. Responsible authorities (designated officials or units) in institutions subject to the PCI and ADL are charged with day-to-day implementation of the two laws. HIDAACI can impose administrative fines for breaches both by officials and institutions, although these fines have been criticised as much too low.

Following an internationally mediated agreement between the government and opposition, in December 2015 Parliament adopted the so-called “decriminalisation package”, a law and constitutional amendments meant to remove persons with criminal records from office and guarantee integrity in future appointments, through a vetting process.

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621 Article 4, Ibid.
623 Ibid., p.9-12; See also articles 3/4, 5/1/d, 5/1/dh, and 7/4, PCI.
624 Articles 10-11, EPA. The Council of Europe Model Code is possibly worded slightly more broadly, prohibiting gifts that “may influence or appear to influence...”:
625 Articles 14 and 17, Decision of the Council of Ministers no. 714, of 22 October 2004.
626 Article 8, Decision of the Council of Ministers no. 714, of 22 October 2004; Article 23, PCI Law; Reed, Q., Prevention and Regulation of Conflicts of Interest of Public Officials in Albania: Assessment and Recommendations, ACFA assessment report, December 2014, p.20.
627 Article 11, PCI.
628 Articles 18-20, EPA law.
629 Articles 57-60, CSL.
630 Articles 41-44, PCI Law; Reed, Q., Prevention and Regulation of Conflicts of Interest of Public Officials in Albania: Assessment and Recommendations, ACFA assessment report, December 2014, p.31.
Integrity mechanisms (Practice)

Score: 25

TO WHAT EXTENT IS THE INTEGRITY OF PUBLIC SECTOR EMPLOYEES ENSURED IN PRACTICE?

Corruption remains widespread in Albania, as reported by international organisations and surveys. The number of full audits of asset/interest declarations conducted by HIDAACI sharply increased in 2014-2015, as did the number of fines imposed, referrals to Prosecution and recommended disciplinary measures. However, HIDAACI’s capacity to conduct thorough audits is doubtful given its technical infrastructure, human resources, legal and/or practical impediments to obtaining information domestically and abroad, and the large number of subjects of asset/interest declarations. The sustainability of its recent drive is also questionable given its inadequate independence (see HIDAACI pillar).

HIDAACI has reported efforts to strengthen conflict of interest management in public institutions, in particular through providing training and advice for responsible authorities. However, there is hardly any record of day-to-day conflict of interest management. A 2014 assessment concluded that responsible authorities had not been properly constituted, that self-reporting of conflicts of interest by officials, and annual reporting to HIDAACI by responsible authorities rarely occur in practice. The assessment noted that there had been no cases of declared conflicts of interest in two key ministries responsible for economic development and trade, and transport and infrastructure, although all official interlocutors believed such cases to be common. Two interlocutors for this report corroborated claims that institutions rarely manage conflicts of interests in practice. Furthermore, the research team asked eight ministries to provide extracts of the last five entries in both, their conflict of interest and gift registers, or an opportunity to physically see these registers. Five did not answer at all, two reported no conflicts of interest on record, and one responded with questions. Only one ministry provided entries regarding gift registers.

In 2014, the School of Public Administration conducted 24 training sessions on integrity and ethics in public administration for a total of 648 civil servants – clearly an inadequate number given the need for all civil servants to receive some form of ethics training, especially in context of the recent expansion of the civil service. According to a recent NPO report, records on implementation of Albania’s legal framework on ethics are either poor or absent. A former experienced civil servant noted that integrity is still largely understood as a matter of politeness and dress code in institutions, and is not heard of again after the recruitment process.

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632 Reed, O., Prevention and Regulation of Conflicts of Interest of Public Officials in Albania: Assessment and Recommendations, ACAF assessment report, December 2014, p.28-31; Interview with Mr. Shkëlqim Ganaj, Inspector General, HIDAACI, 12 February 2015.
633 Interviews with Dorian Matlija, Executive Director, ResPublica, 21 December 2015; Interview with civil servant in central administration, 22 December 2015.
637 Interview with former civil servant in central administration, 22 December 2015.
TO WHAT EXTENT DOES THE PUBLIC SECTOR INFORM AND EDUCATE THE PUBLIC ON ITS ROLE IN FIGHTING CORRUPTION?

Educating the public on corruption, how and where to denounce it, and how to curb it is part of the Anti-corruption Strategy and Action Plan. There have been some concrete efforts in this regard, but they are generally short-lived, scattered, donor-dependent or at too early a stage to assess impact.

In February 2015, the National Anti-corruption Coordinator launched and promoted in an anti-corruption portal, with a wider campaign to raise awareness from November 2015 (posters, advertising in main online media outlets and government websites, and public debates). The NAC recently launched the “SMS Citizens” programme, in which the NAC can contact citizens immediately after they have received services in regional hospitals and property registration offices in the three main cities to ask them about the quality of the service and whether they were asked for a bribe. Citizens can respond for free, and this is used to assess the quality of services. Corruption reports are sent to the Unit for Internal Control and Anti-corruption (UICA) in the Prime Minister’s Office, on which there is no publicly available information. The NAC reports that in the first three months around 57,000 citizens were contacted, and about 11,000 replied.

A Council of Europe project developed a teacher’s manual on anti-corruption education in schools in 2012. The incorporation of anti-corruption modules in school curricula throughout the country will be part of the Council’s 2015-2017 cooperation strategy with Albania.

TO WHAT EXTENT DOES THE PUBLIC SECTOR WORK WITH PUBLIC WATCHDOG AGENCIES, BUSINESS AND CIVIL SOCIETY ON ANTI-CORRUPTION INITIATIVES?

Experts and a former civil servant interviewed for this assessment believe that examples of cooperation between public sector agencies and CSOs or businesses on anti-corruption initiatives have been rare, with interaction generally limited to speeches in conferences or seminars. A government initiative to establish the National Council for Civil Society to foster and institutionalise cooperate with public institutions, CSOs and private agencies in preventing/ addressing corruption

Score: 25
cooperation on democratisation and good governance was approved by Parliament in November 2015, and enforcement has only just begun.\(^{644}\)

The Agency for the Support of Civil Society – a public body established in 2009 – has provided limited funds to CSOs for corruption-related issues (in 2014, 2.4 per cent of funds for ‘good governance and rule of law’ projects, and 22 per cent for overlapping priorities where anti-corruption may have been one).\(^{645}\) The Agency’s activities have been marred by strong allegations concerning integrity of its own grant-giving practices.\(^{646}\)

During 2014-2015, the Ministry of Education and the NAC cooperated with the Institute for Democracy and Mediation – a local non-profit – on a project to educate high school students to reject corruption, funded by the US Embassy.\(^{647}\)

**Reduce corruption risks by safeguarding integrity in public procurement**

Score: 50

TO WHAT EXTENT IS THERE AN EFFECTIVE FRAMEWORK IN PLACE TO SAFEGUARD INTEGRITY IN PUBLIC PROCUREMENT PROCEDURES, INCLUDING MEANINGFUL SANCTIONS FOR IMPROPER CONDUCT BY BOTH SUPPLIERS AND PUBLIC OFFICIALS, AND REVIEW AND COMPLAINT MECHANISMS?

The Law on Public Procurement regulates all procurement procedures with some exceptions.\(^{648}\) As a rule, authorities should use open bidding, except in legally defined circumstances where other procedures may be used – limited, negotiated with prior publication, negotiated without prior publication, request for proposals, design contests, and consultancy services.\(^{649}\)

The share of contracts allocated through open bidding declined from an already low 30 per cent in 2013 to 22 per cent in 2014, while contracts negotiated without publication – a procedure judged to be unjustified in most cases and exempt from complaints procedures – constituted about a third in both years, and increased sharply in the first half of 2015.\(^{650}\) The law exempts low value purchases, the threshold for which was raised from 400,000 to 800,000 ALL (~5,700 euro) at the end of 2014.\(^{651}\) The number of small purchases had already more than quadrupled in 2014 and there is no evidence that the Public Procurement Agency (PPA) checks whether small purchases are used to circumvent competitive procedures.\(^{652}\)

All contracting authorities must use Standard Bidding Documents, which include provisions on corrupt practices and require a declaration on conflicts of interest.\(^{653}\) Offers are submitted electronically through the public procurement portal and technical specifications must refer to international standards or national ones in the absence of the former.\(^{654}\) In practice, the use of discriminatory criteria (technical or economic) is one of the main problems in the procurement

\begin{footnotesize}
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\item\(^{644}\) Law no. 119/2015 on Creation and Functioning of the National Council on Civil Society: http://www.amshc.gov.al/web/KKSHC/Ligi%20KKSHC%20(119.2015).pdf
\item\(^{647}\) Institute for Democracy and Mediation, Project citizen against corruption, 2015: http://idmalbania.org/?p=5396
\item\(^{648}\) Exceptions are national security, special sectorial contracts in energy, water, transport and postal service, purchase/production of audio-visual programmes and adverts for broadcasting in radio and television operators, and print media.
\item\(^{649}\) Articles 29-35, Law on Public Procurement.
\item\(^{651}\) Institute for Democracy and Mediation, Project citizen against corruption, 2015: http://idmalbania.org/?p=5396
\item\(^{652}\) Articles 29-35, Law on Public Procurement.
\item\(^{654}\) Articles 40, Decision of the Council of Ministers no. 914, of 29 December 2014, on the approval of public procurement rules.
\item\(^{655}\) PPA, 2013 and 2014 annual reports.
\item\(^{656}\) See standard bidding documents here: https://www.app.gov.al/en/BiddingDocuments.aspx; for provisions on corrupt practices, see article 4 of General Conditions of Contracts, annex 17 in any of the SBDs.
\item\(^{657}\) Article 23, LPP.
\end{itemize}
\end{footnotesize}
process.\textsuperscript{655} Grounds for exclusion and disqualification are regulated, and include participation in corruption or money laundering.\textsuperscript{656} Offers must be evaluated on the basis of the lowest price or a combination of price and quality. Contracting authorities are required to ask bidders for further details if offers appear abnormally low.\textsuperscript{657} In practice, abnormally low offers are a persistent concern of the Public Procurement Commission (PPC), with 48 per cent of its decisions in April to October 2014 regarding this issue in private security tenders specifically.\textsuperscript{658} According to Res Publica, winners are almost exclusively determined on the “lowest price” criterion.\textsuperscript{659}

Concerning transparency, provisions are in place for a variety of information to be made public, including a register of completed procurements, a weekly bulletin on open procedures, winning bidders, exclusions/bans from participation, annual reports, and decisions on complaints.\textsuperscript{660} Bidders are entitled to information on other bidders and procedures if they request it. However, authorities are not allowed to publish procurement information which bidders have classified as “confidential” in their bidding documents.\textsuperscript{661} Monitoring reports by the PPA are not public. According to Res Publica, information on procurement procedures is publicly accessible only for a few months, reasoned decisions on barred bidders are not published, and the PPC (the administrative remedy body) interprets the right to information in a way that prohibits bidders from accessing information on qualifications of other competitors.\textsuperscript{662} In practice, minutes of meetings of the opening of offers are not published on the websites of contracting authorities, as required, or that of the PPA.

The PPA is a central body subordinate to the Prime Minister, with policy, coordination, advisory, and oversight responsibilities. It can impose fines on contracting authorities and/or propose disciplinary sanctions based on decisions of the PPC or its own administrative investigations.\textsuperscript{663} Its officials are civil servants, with the exception of support staff. The PPA suffers from severe capacity problems. For example, of 1,713 unpublished negotiated procedures and 7,194 small purchases awarded in 2013, the PPA monitored 77, and this fell to 66 in 2014, despite a dramatic rise in small purchases (see earlier).\textsuperscript{664}

Concerning redress, bidders can first seek remedy with the contracting authority, and then with the PPC, which reviews complaints on procurement, concessions, mining licences, and public auctions and issues final administrative decisions.\textsuperscript{665} However, there are significant problems with its design and functioning.

The PPC’s subordination to the Prime Minister, who proposes all of its five members to government for appointment, hampers its ability to operate independently; none of the PPC members have ever completed their five-year mandate, and 10 members were appointed or dismissed by government during the first 15 months after it took power in September 2013, on the basis of undisclosed reasons; and the study identifies considerable periods of time during which the PPC functioned without a chair or with less than five members, risking its quorum and the validity of its decision-making.\textsuperscript{666}

\textsuperscript{655} Public Procurement Commission, 2013 and 2014 annual reports, p.28-29 and 21-23, respectively. ResPublica, Impunity in Public Procurement: Analysis of some of the causes that stimulate impunity in the activity of the Public Procurement Commission, May 2015, p.29. Interview with former civil servant in central administration, 22 December 2015. The PPC has repeatedly reported that contracting authorities set criteria that are exaggerated and discriminate against small businesses, essentially refer to a brand, or communicate new disqualifying criteria to bidders even after the administrative review of the PPC.
\textsuperscript{656} Article 45.1, LPP.
\textsuperscript{657} Articles 55-56, LPP.
\textsuperscript{658} ResPublica, Impunity in Public Procurement: Analysis of some of the causes that stimulate impunity in the activity of the Public Procurement Commission, May 2015, p.29; See also PPC, Annual Report, 2014, p.22-23.
\textsuperscript{659} ResPublica, Impunity in Public Procurement: Analysis of some of the causes that stimulate impunity in the activity of the Public Procurement Commission, May 2015, p.37.
\textsuperscript{660} Articles 1-2, 13, 19/6, 21, 33, LPP.
\textsuperscript{661} Article 25, LPP.
\textsuperscript{662} ResPublica, Impunity in Public Procurement: Analysis of some of the causes that stimulate impunity in the activity of the Public Procurement Commission, May 2015, p.25, 48-50.
\textsuperscript{663} Article 66, LPP.
\textsuperscript{664} Data derived from the PPA’s 2013 and 2014 annual reports.
\textsuperscript{665} Article 19/1, LPP.
\textsuperscript{666} ResPublica, Impunity in Public Procurement: Analysis of some of the causes that stimulate impunity in the activity of the Public Procurement Commission, May 2015, p.24-26.
Furthermore, while the law stipulates fines for specific violations, it does not oblige the PPC to recommend them in its decisions, or the PPA to impose them. A recent assessment of PPC decisions between April and October 2014 found that of the 235 breaches identified in its findings, sanctions were only recommended in 18 cases and the PPA imposed a fine in one case out of the 18.667

The PPC is also not obliged to refer cases indicating criminal liability to the Prosecution.668 Criminal offences include attempts to influence the PPC, or breach of equal treatment in public tenders or auctions by public officials, which may be punishable by up to three years imprisonment. Between January and September 2015, the Prosecution registered eight such cases with only one resulting in court trial.669

There are undue obstacles to seeking remedy for public procurement decisions. The PPC applies tariffs for its complaint procedures, set at 0.5 per cent of the limit value for procurement, 10 per cent of the guaranty value for concessions, and 0.5 per cent of the starting bid for public auctions.670 Recent legal changes have left a gap regarding such tariffs on complaints about mining licences.671 Although the tariff is refunded if the complaint is successful, this method presents unjustifiable barriers to complaints, especially in larger procurements and is at a minimum unusual for complaints against administrative decisions (as opposed to financial/damages claims). It is also at odds with court tariffs on such administrative cases, typically at a flat rate of 3,000 ALL (about 25 euro).672 and PPC decisions can only be challenged in the Tirana Administrative Court, thus hindering access for complainants in towns distant from the capital.673

Oversight of State Owned Enterprises
Score: 25

There is no integrated written policy for State Owned Enterprises (SOEs) available and out-of-date privatisation plans (only for 2014), and other measures relevant to some SOEs – especially in the water, railway and energy sectors – are scattered across various policy documents.674

An independent, centralised coordination unit to exercise the state’s ownership function is not in place. A Directorate of the Ministry of Economy, which covered energy policy, too until 2013, monitors the economic and financial activity of SOEs, reviews development plans, and monitors the functioning of steering organs, and the transfer of use and development rights (rents, concessionary agreements etc.).675 The Directorate publishes no information on the sector or its own capacity, and the Ministry failed to respond to questions on this by the Transparency International research

668 Article 64/5, LPP.
669 Written response from the OPG dated 11 December 2015.
670 See DCM no. 261, of 17 March 2010, For procurement; Law no. 9663, on Concessions, of 18 December 2006; and DCM no. 56, dated 19 January 2011 on public auctions.
672 Joint Instruction of the Minister of Justice and Minister of Finance no. 33, of 29 December 2014: http://www.pp.gov.al/web/udh_zim_i_p_rbashk_t_per_tarifat_e_adm_958.pdf
673 Article 64/3, LPP.
Interlocutors consider the Directorate to have limited power in strategic decisions, which are made at the level of the Council of Ministers. Both policies have been marred by strong indications of mismanagement and corruption.

Recommendations

- Parliament should establish an ad hoc committee, balanced in composition, assisted by a technical secretariat, on conflict of interest reform and lobbying regulation, with a mandate to analyse the current framework and practice, and propose changes that complete and simplify the legal framework, strengthen the independence of key institutions, and render enforcement possible. The SAI should conduct a thorough audit of integrity systems in the public sector as a central piece of the reform process. The committee should solicit the assistance of the SAI, Ombudsman, and HIDAACI in this process.

- The government and Parliament should amend public procurement legislation to strengthen the independence of the Public Procurement Commission, oblige the PPC to recommend adequate measures where it identifies breaches and refer cases of criminal liability to the Prosecution, and revise complaint tariffs.

- The government and Parliament should amend the Law on the Civil Servant to strengthen the independence of the Commissioner, and remove the possibility of civil servants returning to the service after political office – especially elected office.

- Parliament should hold government to account for the persistent problems in public procurement, SOEs management, and transparency in the public sector.

- The Ministry of Economy must publish information on its work on SOEs.

- The Anti-Corruption Unit at the Prime Minister’s Office must publish information on its work.

- The Commissioner for the Right to Information should start applying stronger measures in cases of freedom of information breaches.

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676 Information request sent by project assistant via e-mail on 16 May 2016.
677 Interview with Besar Likmeta and Gjergj Erebara, journalists, BIRN Albania, 16 March 2016 and Gjergj Bojaxhi. Former KESH Director, 8 April 2016.
679 This is a combined form of the recommendations made under the Legislature and SAI pillars that are central to this pillar, too.
LAW ENFORCEMENT AGENCIES/ POLICE

Summary

The legal framework for the transparency, accountability, and integrity of the Police is largely in place, although legal reform to allow the pro-active publication of assets, facilitate the transparency of the Police oversight body, and clarify conflict of interest management are necessary.

The situation in practice lags behind significantly across all indicators, but especially regarding independence, resources, integrity and corruption investigation. On independence, the key weakness in law is the power granted to the Minister of Interior over both the top leadership of the State Police and its oversight body. In practice, the Police is highly politicised, suffering massive turnover after changes in government and, to a lesser degree, during the same administration.

There are also significant claims of its infiltration by organised crime through high-level politics, which remain to be investigated. Other factors in addition to job insecurity and its impact on motivation to perform well affect the quality of investigations. Key among them are limited expertise and divergent interpretations of law, with courts often not admitting evidence gathered proactively by the Police, prior to prosecutorial authorisation.

The Police is poorly resourced to effectively fulfil its mission. Technical equipment for surveillance and interception is insufficient, inefficient and centralised in Tirana. However, responsibility for some aspects of police performance in this assessment rests also elsewhere, i.e. with the HIDAACI for full audits of asset declarations of the Police’s top management, or with Parliament for failing to effectively scrutinise turnover in the Police.

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Structure and organisation

The State Police is centralised, administratively subordinate to the Minister of Interior, and responsible for maintaining public order and safety, protecting top officials and objects of a special importance, and guaranteeing law enforcement. The State Police Directorate (SPD) is the central administrative and technical structure. Attached to it as an advisory body to the director of the State Police, the Policy Council, the functioning of which is determined by a director’s order. Local directorates represent the local administrative level, responsible for operational and investigative tasks at that level. They oversee commissariats and police stations.
Upon proposal of the Minister of Interior, the Council of Ministers determines the overall number of staff in the State Police. Upon the proposal by the director of the State Police, the Minister approves the organisational structure of the central SPD. The director approves local level and special structures. Police officers have the status of civil servant and the attributes of the Judicial Police. The hierarchy among police officers is based on a system of eight ranks, from ‘inspector’ to ‘director major’, and their corresponding functions.

The Police Academy is responsible for the education and training of police officers at the operational, administrative and managerial level.\(^{681}\) There is a Police oversight body – the Service of Internal Affairs and Complaints – which is independent from the State Police and subordinate to the Minister of Interior.

**Capacity**

**Resources (Practice)**

**Score: 25**

### TO WHAT EXTENT DO LAW ENFORCEMENT AGENCIES HAVE ADEQUATE LEVELS OF FINANCIAL RESOURCES, STAFFING, AND INFRASTRUCTURE TO OPERATE EFFECTIVELY IN PRACTICE?

The State Police has a separate budget, as part of the Ministry of Interior’s budget. It can accept donations and provide extra services, upon request, and for a charge, but the exact nature and practical weight of these services remains vague.\(^{682}\) The budget has increased over the past four years (2012-2015), especially in 2015, largely due to a significant pay rise for police officers, as well as the planned recruitment of 1,200 new officers.\(^{683}\) In 2014, police officers were finally paid overtime and per diem arrears dating back to 2012.\(^{684}\)

The positive impact of pay rises is hampered by high staff turnover; a persistent concern reiterated by the European Commission and confirmed by interlocutors for this assessment (see Independence (Practice) below).\(^{685}\) In addition to being unstable, the Police is reportedly understaffed. According to 2014 figures provided by the Minister of Interior, Albania has the lowest number of police officers vis-à-vis its population compared to other countries in the region; one police officer per 400 inhabitants, in comparison to Kosovo (1/204 inhabitants), Macedonia (1/190 inhabitants), and Croatia (1/170 inhabitants).\(^{686}\) The number of staff dedicated to corruption investigation is particularly low, with five police officers working for the Sector against Corruption, at

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\(^{683}\) Albanian State Police, Annual Analysis, 2014, p.29 (slide), sent to the author via e-mail by ASP, on 5 December 2015. Ombudsman, Recommendation on the guarantee of the necessary funds to increase the State Police Budget with the aim of paying police officers for overtime, supplementary services and good performance remuneration, addressed to the Minister of Finance, the Minister of Interior, and the ASP Director, Document No. 201401724/5.


\(^{685}\) Statements of Minister of Interior Saimir Tahiri, Inquiry Committee on staff changes in the police force, 11 April 2014, p.5: [http://www.parlament.al/web/pub/komisioni_hetimor_date_11_04_2014_2_16979_1.pdf](http://www.parlament.al/web/pub/komisioni_hetimor_date_11_04_2014_2_16979_1.pdf)

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the General Directorate of the State Police, eight at the Tirana office, and none in other offices.\textsuperscript{687} The numbers of police officers assigned to the Prosecution-led Joint Investigative Units are below the agreed numbers.\textsuperscript{688} The quality of human resources is another concern, with know-how in the investigation of corruption being particularly low.\textsuperscript{689}

The budget expenditures for other operational costs and capital investments have either stagnated or declined as a share of the total Police budget over 2012-2015.\textsuperscript{690} Police directorates at the regional/local level are reported to suffer extreme budget shortages even for basics, such as vehicles and gasoline.\textsuperscript{691} Technical resources key to effective investigation – such as registration and surveillance equipment – are poor, out of date and centralised in Tirana.\textsuperscript{692} Several sources report that the equipment used for interception, for instance, lasts for three hours at most, as the battery dies.\textsuperscript{693}

Overall, Police resources are insufficient and unstable.

**Independence (Law)**

Score: 50

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**TO WHAT EXTENT ARE LAW ENFORCEMENT AGENCIES INDEPENDENT BY LAW?**

The legal status of the State Police is that of an apolitical institution of public administration, which cannot change in times of war, natural disasters or emergencies. Operational independence, political impartiality, and merit are three of the explicitly stated principles underpinning police activity.

Operational independence is reflected in the relations of the State Police with the Minister of Interior, who is responsible for policy and strategic orientation but is prohibited from interfering in the operational work of the Police, and is not to be informed of police investigative activity, witnesses, justice co-operators, informants or the information gathered by them. The law affords lower-rank police protection from the potential abusive interference of superiors into their operational work by allowing them to challenge orders they deem to be illegal.\textsuperscript{694}

Political impartiality is reflected in principles and rules on human resources. Membership of Political Parties or organisations and support for political campaigns are prohibited. The only extracurricular activity allowed is teaching, for which prior permission is required.\textsuperscript{695} Police officers are civil servants and subject to those aspects of the qualified majority Law on the Civil Service that are not envisaged differently in the Law on the State Police.\textsuperscript{696} However, the legal framework fails to clearly demarcate the authorities of the two laws.\textsuperscript{697} In fact, given the detailed regulation of career and disciplinary

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\textsuperscript{689} Group of High-Level Experts, Ad hoc Parliamentary Committee on Justice Reform, Analysis of the Justice System, June 2015, p.284; Interview with international expert on law enforcement, 27 October 2015.

\textsuperscript{690} For 2012-2015 figures, see initial budget tables submitted to the Assembly for each year, on the Ministry of Finance website: http://www.financa.gov.al/al/legislacion/buxheti/buxheti-buxheti/vite.

\textsuperscript{691} Interview with international expert on law enforcement, 27 October 2015.


\textsuperscript{693} Ibid.

\textsuperscript{694} Articles 4-5, 7-8, and 86, Law on the State Police.

\textsuperscript{695} Articles 39, and 90-91, Ibid.

\textsuperscript{696} Article 3, Law on the Civil Servant.

\textsuperscript{697} The author asked the Albanian State Police for clarifications on this point, but the response was vague. Response of the Albanian State Police, dated 23 November 2015 and 5 December 2015, to the information request submitted on 6 November 2015.
processes in the State Police Regulation (see below), it is unclear whether any aspect at all of the Law on Civil Service applies to the Police.

The authorities responsible for the two top appointments, those of director and vice director of the State Police, are political – the Council of Ministers and the Minister of Interior, respectively. Their decisions must be based on generic criteria of seniority of rank, experience and integrity. The director is appointed for a renewable five-year mandate, slightly longer than that of a Minister and the government, and the vice director is appointed for four years. Their discharge from office by the same authorities must be motivated by poor performance and/or a final court sentence for a criminal offence.698

The law requires the rest of the Police to be recruited competitively through the Police Academy.699 Police transfers are restricted to specific circumstances and timelines and grades cannot be lowered through transfers.700 A career in the Police is competitive and based on a system of ranks. The law lays down the principles and criteria on recruitment, career advancement, transfers, and professional evaluations in general terms, though competitiveness and meritocracy emerge as guiding principles. Detailed rules and procedures on all these processes are left to the State Police Regulation; a secondary legal act, subject to the approval of the Council of Ministers.701 The provisions of the current Regulation, which entered into force more than a year after the new Law on the State Police in September 2015, are generally sound.702

Importantly, the law does not guarantee the independence of the Service of Internal Affairs and Complaints (SIAC), responsible for inspections and verifications of complaints against police officers. The Service is independent from the State Police as such, and its members sign so-called “depolitisation declarations”. They are barred from any political activity or expression of political conviction. However, the Service is under the direct command of the Minister of Interior, who is its chief executive with the power to determine its priorities, approve its structure, issue orders and instructions regulating the Service’s activity, including inspection procedures. The Minister has exclusive power to appoint the director of the Service, checked only by general criteria. The Minister also appoints the vice director, upon the director’s proposal, again on the basis of general criteria. Finally, the Minister has the right to be informed on all aspects of the Service’s activity, apart from the identity of collaborators and data on criminal proceedings.703 The EU-funded police assistance mission to Albania – PAMECA – has recommended that Parliament have a role in these appointments, in line with international standards on Police oversight bodies.704

Independence (Practice)

Score: 25

In practice, the Police is highly politicised. Massive staff turnover follows government changes and continues, though to a lesser degree, during the same administration.705 An international expert noted that even though Police authorities provide some, general justifications for the high turnover

698 Articles 13-16, Law on the State Police.
699 Articles 37-38, Ibid.
700 Articles 43-45, Ibid.
701 See for instance, article 48/2 on individual professional evaluations; Article 51/2 on the Commissions on Ranks; Articles 43/7 and 45/3 on transfers and temporary transfers. Law on the State Police.
703 Articles 8, 13, 14, 16, 27, and 51/2 Law no. 70/2014 on the Service of Internal Affairs and Complaints.
704 PAMECA IV. Assessment of the laws and subsidiary legislation adopted against the background of PAMECA IV comments/recommendations, 30 April 2015, p.9.
rate, the scale of the problem is such that it cannot be credibly justified.\textsuperscript{706} For instance, during the first year of the new left-wing government – September 2013 to September 2014 – 6,416 police officers were dismissed (843), demoted (161), transferred (4,675), admitted or re-admitted (735).\textsuperscript{707} That is more than 60 per cent of the Police. Of the five directors of the State Police since 2002, only one has come close to finishing a five-year mandate.\textsuperscript{708}

In 2014, Parliament established an inquiry committee on staff changes in the Police during which the Minister of Interior, incumbent since September 2013, reported that 9,866 police officers had been transferred, mostly during the previous administration, between 2010 and 2013, amounting to a duration in office of between 15 days and two months per officer.\textsuperscript{709} The Minister also claimed that certain ranks had been obtained illegally, based on political party credentials rather than professional merit.\textsuperscript{710} An interviewee noted that police appointments are largely based on connections, while another observed that police officers feel “temporary” and that often the decisions that keep them temporary are a tool for superiors to assert authority.\textsuperscript{711}

There are strong suspicions that a confluence of political influence and criminal interests has affected the State Police. The US Embassy cablegrams published by Wikileaks in 2011 alleged that the then vice director of the State Police, Agron Kuliçaj, a former bodyguard of the 2005-2013 Prime Minister, Sali Berisha, was suspected of corruption and involvement in organised crime, but simultaneously “untouchable”. According to the cable, the failure of a police operation to capture a notorious figure suspected of organised crime in 2009 was allegedly attributed to Kuliçaj, who was said to have tipped him off, resulting in the loss of four police lives.\textsuperscript{712} Though reportedly suspected within his own ranks, Kuliçaj remained in his position, covering intelligence, throughout the entire right-wing administration led by the Democratic Party of 2005-2013.

Such questions have persisted into the new administration. An example in point is that of the arrest of Mark Frroku, an MP of the ruling coalition. In March 2015, after being abandoned by his party, ruling majority MP Tom Doshi accused a series of top officials of having plotted to murder him since the summer of 2014, noting also that his colleague Mark Frroku had informed him about the plot.\textsuperscript{713} Frroku was first put under house arrest for false testimony, and it was only then that it emerged that an international arrest warrant for him, issued by Interpol Brussels, had not been executed by the Albanian authorities. Frroku had been wanted for murder since 2010 in Belgium, and was also suspected of involvement in prostitution.\textsuperscript{714} Immediately afterwards, the Chief of Interpol Tirana was charged with “abuse of office” for not taking action on Mark Frroku’s international arrest warrant, while the director of the State Police resigned, citing “moral responsibility”. The former was acquitted in April 2015, while the latter was appointed contact officer for the State Police in Albania’s US Embassy in July 2015.\textsuperscript{715} No further investigations took place.

Concerns were deepened further when in April 2015, soon after Frroku was arrested for a second time – in execution of Belgium’s warrant – his brother was acquitted by the Serious Crimes Court of

\textsuperscript{706} Interview with international expert on law enforcement, 27 October 2015.

\textsuperscript{707} Ibrahimi, G., Reed, Q., Investigation and Prosecution of Corruption-related Offences in Albania, ACFA assessment report, December 2014, p.18.

\textsuperscript{708} Based on information received from the State Police on 5 December 2015, in response to the author’s information request of 6 November 2015.

\textsuperscript{709} Statements of Minister of Interior Saimir Tahiri, Inquiry Committee on staff changes in the police force, 11 April 2014, p.6.

\textsuperscript{710} Ibid, p.12.

\textsuperscript{711} Interview with a prosecutor, 3 November 2015; Interview with international expert on law enforcement, 27 October 2015.


\textsuperscript{713} ABC News, ‘Prokuroria mbëlhet për komplotin e vrasjes së deputetit Tom Doshi’ (Prosecution concludes investigation on the complot to murder MP Tom Doshi), 6 June 2015: http://www.abcnova.al/ajhkem/aktualitet/2/57248


the charge of murder of a policeman in 2013. In June 2015 he was found guilty by the Appeal Court of serious crimes, but had left Albania a few days before the verdict. The electronic control system, which allows the border Police to swiftly verify citizens crossing the border, had not worked for a few hours on the day he left.716

In 2014, the US State Department criticised the Albanian government for not investigating “government officials allegedly complicit in human trafficking offenses”,717 while in 2015 it explicitly pointed to official complicity in crime, stating that an MP “had prior convictions for trafficking-related crimes”.718 Other, unverified claims of the infiltration of criminal interests in the Police through high-level politics are ubiquitous in Albania’s public political debate and media reports, but no investigations are reported to be on-going.719 A prosecutor noted that external interference into the investigative process happens precisely through pressure on the Police.720

The independence of the SIAC in practice is hard to assess. On the one hand, SIAC’s predecessor – the Internal Control Service (ICS) – demonstrated independence with its special inspection of police conduct before, during and after the 21 January 2011 demonstration where four citizens died, shot by the Guard of the Republic. While the government accused the opposition, the President and the Prosecutor General of orchestrating a coup, the ICS reported significant mismanagement and unpreparedness on the part of the Police.721 However, despite the persistence of strong allegations of complicity in organised crime of the top levels in the Police, as discussed above, the work of the ICS – and now SIAC – has rarely focused on that level.722

Furthermore, the recent history of the appointments and removals of SIAC/ICS directors is also noteworthy. A Cabinet change within the former right-wing government in July 2012 affecting the Ministry of Interior was soon accompanied by a change in the management of the Internal Control Service (subsequently SIAC). The eligibility of the new director, who had previously served as the secretary general in another ministry and allegedly as bodyguard to the family of a majority MP at the time, was not clear. In September 2013, the Minister of Interior in the new left-wing administration removed the director of the ICS – who then moved on to a political career in the Democratic Party723 – and one day after, on 19 September 2013, appointed the new director of what was to become the SIAC.724

Governance

Transparency (Law)

Score: 75

722 Interview with a prosecutor, 3 November 2015.
723 Internal Control Service, Inspection Report on the Management of the Situation by the State Police Structures before, during and after the Demonstration of January 214, 17 May 2011: https://docs.google.com/uc?id=0B7xOEQYe9s3ddkxVzVN3UkF0bQ&export=download
724 The first time the ICS referred a top police official to the Prosecution was in 2013. In 2014, three top police officials were referred to the Prosecution. See 2006-2011 data in Internal Control Service, Annual Performance Report, 2011, p.22: https://docs.google.com/uc?id=0B7xOEQYe9s3ddkxVzVN3UkF0bQ&export=download; for the other annual reports, see: http://shcba.gov.al/index.php/raporte
The legal framework for the State Police and the Service of Internal Affairs and Complaints establishes transparency as one of the key principles underpinning their activity. Specific provisions on public information are also in place, with due restrictions on information that may prejudice the presumption of innocence, damage the dignity of victims, or the investigative process, and the like. The SIAC is specifically required to publish its inspection and criminal proceeding reports, after the process of adjudication is complete, as well as annual activity reports. The right of SIAC to organise media events to present the annual report and inform the public on its activities is subject to the approval of the Minister of Interior. Complainants are entitled to monitor the progress of their complaint, and to information on its resolution and further complaint procedures.

Furthermore, both the State Police and SIAC are subject to the Law on the Right to Information, which requires the pro-active publication of several categories of information, including organisational charts, recruitment and decision-making procedures, control mechanisms the institution is subject to, and information on the use of public funds. Top positions in the State Police and the Director of the Service – as an appointee of the Minister – are also required to declare their assets. Asset declarations are not part of the categories of information to be published pro-actively, but can be published upon request.

Transparency (Practice)

Score: 50

In line with the Law on the Right to Information, the State Police and the SIAC have published their transparency programmes and have assigned a coordinator to deal with information requests and other legal obligations. The State Police regularly inform the public on their operations, and the Ministry of Interior publishes a monthly bulletin covering Police activity. However, annual reports of the State Police are generally not available. For 2013 and 2014, limited data is provided in respective press releases for the public events organised on the annual analysis of the activity of the State Police for those years.

Furthermore, some categories of information that the law requires to be published pro-actively are not public, including the structure of the State Police and data on the budget. Experts interviewed for this assessment noted that substantial transparency on career decisions in the State Police was lacking. The State Police responded to a very complex and voluminous request for information.

725 Articles 5/6 and 77, Law on the State Police. Articles 6 and 26, Law on the Service of Internal Affairs and Complaints.
726 Article 69, Law on the Service of Internal Affairs and Complaints.
727 Article 51, Ibid.
728 Article 7, Law on the Right to Information.
730 Check Ministry of Interior Affairs Bulletins here: http://www.punetebrendshme.gov.al/al/programi/buletini-i-mpb-se
732 Interview with international expert on law enforcement, 27 October 2015; Interview with international expert, 17 July 2015.
submitted by the author, but many of the specific questions submitted received vague answers or remained unanswered.\textsuperscript{733}

The SIAC also publishes regular reports on its activity, which for this year includes budgetary data, too.\textsuperscript{734} Its structure and staff numbers are also public.\textsuperscript{735} With very few exceptions, however, inspection and criminal proceeding reports are not public.\textsuperscript{736}

**Accountability (Law)**

Score: 75

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**TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THAT LAW ENFORCEMENT AGENCIES HAVE TO REPORT AND BE ANSWERABLE FOR THEIR ACTIONS?**

Accountability is one of the key principles established in law that underpins the activity of the State Police.\textsuperscript{737} A great number of internal and external checks are available, but some of the key checks are flawed. Police officers are subject to both criminal and disciplinary liability. Criminal law envisages a series of acts against state activity – including abuse of office, arbitrary action, and corruption-related offences – for which police officers as well as other state officials are liable.\textsuperscript{738} The Constitution establishes a robust set of fundamental rights and freedoms, including the right of all citizens to be rehabilitated and/or compensated for damage caused by the illegal actions or inactions of state institutions, including the Police.\textsuperscript{739}

In addition to courts, respect for human rights and freedoms by the Police is subject to the checks of the Ombudsman – including through the Mechanism Against Torture – which has the right to regularly visit, inspect and check police stations. The Ombudsman’s recommendations are not binding for the Police, but they have to be considered and answered. The Ombudsman can address Parliament on the results of its work, recommend discharge from office of responsible authorities for serious breaches of human rights, and recommend the initiation of criminal investigations to the Prosecution.\textsuperscript{740}

A new disciplinary system has been introduced, but it is only briefly outlined in law, with its detailed provisions elaborated in the State Police Regulation – a less stable, sub-legal act.\textsuperscript{741} The Regulation’s current provisions are generally sound. Complaints that could trigger disciplinary action can be made by all citizens, in a variety of ways, and can be anonymous.\textsuperscript{742} Superiors, central police officers and those dealing with professional standards (who also conduct professional evaluations) have the right to initiate disciplinary proceedings. Disciplinary breaches can be either minor or serious and detailed sub-categories are provided for each.

For serious breaches that also constitute criminal acts, the Service of Internal Affairs and Complaints is also informed,\textsuperscript{743} but the categorisation of certain breaches merits reconsideration. For instance, the Regulation considers “private employment, out of duty” a minor breach, even though the law establishes that teaching is the only form of private employment permissible to police officers, subject to prior authorisation,\textsuperscript{744} and that there is a wide range of private work that can

\textsuperscript{733} Response of the State Police on 5 December 2015 (five e-mails) to information request submitted by author on 6 November 2015.

\textsuperscript{734} See reports from 2010 onwards here: http://shcba.gov.al/index.php/raporte

\textsuperscript{735} See structure of SIAC here: http://shcba.gov.al/images/banners/Struktura.pdf

\textsuperscript{736} Two inspection reports available dating back to 2011. See SIAC website: http://shcba.gov.al/index.php/raporte

\textsuperscript{737} Article 5/g, Law on the State Police; Article 6/f, Law on the Service of Internal Affairs and Complaints.

\textsuperscript{738} Articles 248-260, Criminal Code.

\textsuperscript{739} Article 44, Constitution. For fundamental rights and freedoms, see Part II of the Constitution.

\textsuperscript{740} Articles 21-22, Law on the Ombudsman.

\textsuperscript{741} Articles 94-96, Law on the State Police. Part V, State Police Regulation.

\textsuperscript{742} Article 218, State Police Regulation.

\textsuperscript{743} Article 228, Ibid.

\textsuperscript{744} Article 92, Law on the State Police; Article 199, State Police Regulation.
conflict with police duty. Failure to report the receipt of gifts and rewards is considered “minor discrediting behaviour”, corresponding to a minor breach, even though gifts and rewards can often indicate abuse of office and corrupt behaviour — i.e. criminal acts. "Instances of corruptive acts" also constitute a serious breach, one of the sub-categories of which includes receipt of gifts, causing overlaps and opening up space for subjective interpretations.

A number of tools are available to police officers to check the powers of decision-makers. Apart from internal complaints mechanisms, police officers can challenge disciplinary decisions for serious breaches in the Administrative Court. Similar to prosecutors, subordinates can challenge superiors’ orders that they consider illegal. Police officers can also address complaints to an Appeals Commission at any stage of the process of obtaining grades/ranks. However, it is not clear that police officers can appeal such decisions further — i.e. at the Administrative Court, as they can in the case of disciplinary decisions.

A key check on the State Police is the Service of Internal Affairs and Complaints — the Police oversight body. The SIAC’s powers are generally extensive, and include verifying assets of particular officers, administering complaints against police officers, and conducting administrative inspections, criminal investigations, and integrity tests. The State Police and SIAC are subject to Executive oversight — which holds political responsibility for their performance — through the Minister of Interior. Some of the Minister’s powers are excessive and the director of the State Police is required to report to the Minister on his performance and that of the Police, on the basis of which the Minister drafts and publishes annual reports.

The Minister is barred from interfering in the operational aspects of police work and from soliciting certain categories of information, such as that on investigative actions, collaborators, informants or witnesses. However, the law empowers the Minister to also oversee the process of complaints in the State Police and examine complaints against the director. Furthermore, the Minister is by law the “highest leading authority over the organisation and functioning of the Service of Internal Affairs and Complaints”, whose director is the Minister’s appointee, and procedures for the conduct of inspections by the SIAC are also subject to the Minister’s approval. Such a combination of powers dangerously treads the line between accountability and undue political influence, even though in the case of the SIAC, the Minister is barred from soliciting information on collaborators and criminal proceedings.

While the Law on the State Police establishes no specific mechanism, legislative oversight of the State Police is ensured through Parliamentary tools, such as questions to the Minister of Interior, hearings with the heads of state institutions in committees, and investigative committees. Parliament is also one of the oversight authorities of the SIAC, but the law remains vague as to how such oversight is to be exerted. A more specifically outlined relationship with Parliament — including regarding the appointment procedure of SIAC’s director — would provide opportunities to strengthen SIAC’s independence and enhance its democratic control, and provisions to regularly inform Parliament on SIAC’s activity have been recommended.

745 Article 198, State Police Regulation.
746 Article 208, Ibid.
747 Article 95, point 6, Law on the State Police.
748 Article 86, Ibid.
749 Article 60, Ibid.
750 Article 5, Law on the Service of Internal Affairs and Complaints.
751 Article 7, Law on the State Police.
752 Articles 7-8, ibid; Articles 13-14, Law on the Service of Internal Affairs and Complaints.
753 Article 61/2, Law on the Service of Internal Affairs and Complaints.
754 Article 13, Law on the Service of Internal Affairs and Complaints. See also PAMECA IV, Assessment of the laws and subsidiary legislation adopted against the background of PAMECA IV comments/recommendations, 30 April 2015.
755 Article 80, Constitution.
756 Article 23, Law on the Service of Internal Affairs and Complaints.
757 PAMECA IV, Assessment of the laws and subsidiary legislation adopted against the background of PAMECA IV comments/recommendations, 30 April 2015, p.9.
The actions of the State Police and the SIAC are fully subject to judicial control and the State Police is subject to financial audits by the Ministry of Finance and the SAI.

**Accountability (Practice)**

Score: 50

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**TO WHAT EXTENT DO LAW ENFORCEMENT AGENCIES HAVE TO REPORT AND BE ANSWERABLE FOR THEIR ACTIONS IN PRACTICE?**

The record of accountability in practice is mixed. For the first time in 2013, the SIAC referred a high-level police officer to the Prosecution for indictment, and three followed in 2014. Altogether in 2014, the SIAC referred 227 cases to the Prosecution for indictment, affecting 279 police officers, most on corruption-related offences. That is many more than in 2013 (170), and almost double the number of police officers referred to the Prosecution in 2012 (132) and 2011 (135).758 Of these 227 cases, the Prosecution decided not to initiate, suspend, or close more than a third. By the end of 2014, the first instance court proceedings been concluded for only nine.759 Upon the Prosecution’s request, a first instance court suspended the director of the State Police in June 2016 under charges of abuse of office, related to the alleged illegal use of wire tapping equipment. The decision sparked aggressive reactions from the Executive, and was appealed and overturned in a closed hearing.760

The impact of internal rules of accountability, and especially of the disciplinary and professional evaluation systems, as elaborated in the State Police Regulation is difficult to assess as the Regulation was only approved in September 2015, more than a year after the entry into force of the new Law on the State Police. The State Police disciplined 715 police officers in 2015, and 897 in 2014, which represents a three to four-fold increase on previous years. The Appeal Commission received 215 complaints against measures in 2015 and 666 in 2014, changing or annulling a small fraction. Given the concerns noted above about politicisation of the Police, it is difficult to assess whether these higher figures for disciplinary action represent genuine efforts to strengthen internal accountability, or whether they also serve to justify arbitrary staff turnover. The State Police needs to report more thoroughly and systematically on these matters in its annual analyses, providing sufficient detail for analysis, rather than the generic, PowerPoint format of annual analyses that it uses.761

According to experts interviewed for this report, there are no cases of police officers challenging the orders of superiors.762 When asked about data on this point, the State Police did not provide any.763 The Ombudsman regularly inspects police units and reports that its recommendations are generally accepted. Their level of implementation is unclear, however, and some of the observed problems –

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762 Interview with international expert on law enforcement, 27 October 2015; Interview with international expert, 17 July 2015.
763 Response of the State Police on 5 December 2015 (five e-mails) to information request submitted by author on 6 November 2015 did not contain answers to questions on challenges to orders.
such as overpopulation – require action from higher authorities or policy changes that are not in the State Police’s authority.764

The Parliament’s role has generally been weak in terms of effecting policy change or higher transparency in the functioning of accountability mechanisms within the Police. The inquiry committee on staff turnover established in February 2014 failed to produce any results, or any policy recommendations on improving the transparency and accountability of career decisions in the State Police.765

**Integrity mechanisms (Law)**

Score: 50

The Law on the State Police lays down general principles on conflicts of interest and ethics, obliging police officers to avoid conflicts between their public and private interests, report them to their superiors, and adhere to ethics rules.766 Officers of the SIAC are also obliged to declare and avoid conflicts of interest.767 The Law on the Prevention of Conflicts of Interest applies to both, but it is a highly complex and ambiguous law (see HIDAACI and Public Sector pillars).

The State Police Regulation, which entered into force in September 2015, elaborates in detail the standards and norms of police behaviour, in and out of duty, but it remains vague on the monitoring of the implementation of these norms.768 The Regulation does not expound on what constitutes a conflict of interest, even though avoiding such conflicts is considered to fall under the principles of impartiality and integrity that are to guide police conduct.769 The Regulation also considers the intentional non-avoidance of such conflicts as “serious discrediting behaviour”,770 for which police officers are disciplinarily liable. However, the requirement to prove intention in acting with a conflict of interest clearly makes such a disciplinary breach next to impossible to prove.

The same problem of intention emerges in the framework of the regulation of gifts and hospitality (see Public Sector pillar). By law, officials are obliged to refuse gifts and other forms of favours “given because of their duty”, a qualification that is contrary to international standards.771 The State Police Regulation reiterates this qualification when it considers the refusal of gifts given because of duty as one of the meanings of integrity. Likewise, it considers the failure to inform on the offer of money or gifts in exchange of favours as “minor discrediting behaviour”, and gifts or any other service solicited or received without prior authorisation and “in professional quality” an instance of corrupt behaviour.772 However, should such breaches be claimed, it would be almost impossible to prove that a gift was indeed accepted in exchange for a favour or in the line of professional duty.

Regulations on asset declarations only apply to the top levels of the Police – the director of the State Police, heads of directorates and sectors (commissariats). The director and vice director of SIAC, as well as the vice director of the State Police are subject to asset declaration legislation by virtue of being ministerial appointees.773 The declarations are subject to HIDAACI audit, which can impose

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765 See minutes of meetings of the Committee here: http://www.parlament.al/web/Procesverbale_16960_1.php
766 Article 92, Law on the State Police.
767 Article 30, Law on the Service of Internal Affairs and Complaints.
768 Articles 115-124, State Police Regulation.
769 Articles 111-112, Ibid.
770 Article 205, Ibid.
772 Articles 112, 198 and 208, State Police Regulation.
fines and/or refer cases of refusal or failure to declare, false declaration or hiding of assets to the Prosecution.774 Furthermore, the SIAC is empowered to verify the assets, interests, extra employment, gifts and privileges of particular officers on the basis of complaints and referrals.775

Police and SIAC officers are subject to a number of restrictions because of their duty, such as political party membership, campaign support, or extra employment other than teaching.776 SIAC employees are subject to stricter prohibitions. Apart from political party membership, participation in political activities, and public expression of political convictions, SIAC employees have to sign “depoliticisation declarations” and are excluded from the right to strike. Furthermore, if a SIAC employee chooses to run for office – Parliament or local government – s/he must quit the Service and cannot be later readmitted.777

Post-employment restrictions and provisions for cooling off periods are generally lacking. However, there are some provisions for the director of the State Police. Upon completion of the mandate, the director cannot join any police structures, but s/he remains eligible for consultative or teaching roles in relevant bodies of public order.778 Furthermore, the director is entitled to a special post-employment treatment package determined by the Council of Ministers.779 The SIAC director and vice director can join other police or state functions after office.780

The so-called “decriminalisation package” – a law and constitutional amendments meant to remove individuals with criminal records from office and guarantee integrity in future appointments, through a vetting process – applies to the Police too.781

Integrity mechanisms (Practice)

Score: 25

TO WHAT EXTENT IS THE INTEGRITY OF MEMBERS OF LAW ENFORCEMENT AGENCIES ENSURED IN PRACTICE?

There is no track record of enforcement of integrity rules to demonstrate their impact in practice. The State Police Regulation that details most ethics rules only recently entered into force in September 2015. The Transparency International research team asked the State Police for evidence of conflict of interest declarations by police officers, but did not receive any.782

HIDAACI attests that enforcement of conflict of interest regulation is its weakest point. The institution did not clearly answer questions about the full audit of asset declarations of top State Police and SIAC officials, and there is no other evidence to suggest that they have ever been fully audited.783 The cases reported, in Independence (Practice), above suggest that integrity issues inside the State Police may be severe. Within the framework of the enforcement of the so-called “decriminalisation package”, six of 21 policemen that the State Police has reported on so far appear to have had criminal records.784

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774 Articles 5, 38 and 40, Law on Asset Declarations; Article 257/a, Criminal Code.
775 Articles 5/c, 38/b, and 39/2, Law on the Service of Internal Affairs and Complaints.
776 Articles 90–91, Law on the State Police.
777 Article 27, Law on the Service of Internal Affairs and Complaints.
778 Article 15/4, Law on the State Police.
779 Article 15, point 4 and 73, Law on the State Police.
780 Article 18, Law on the Service of Internal Affairs and Complaints.
782 Response of the State Police on 5 December 2015 (five e-mails) to information request submitted by author on 6 November 2015 did not contain answers to questions on conflicts of interest.
783 Information request submitted to HIDAACI via e-mail by project assistant on 16 May 2016. Response by HIDAACI received on 19 May 2016. HIDAACI did not respond to a second e-mail by research team.
784 Binjaku, F., ‘Emrat/ Dekriminalizimi, 6 punonjës policie me precedent, ikën edhe djali I Shukri Xhelli’ (Decriminalization. 6 police officers with precedents, son of Shukri Xhelli dismissed also), Panorama, 23 June 2016: http://www.panorama.com.al/emrat-dekriminalizimi-6-punonjes-policie-me-precedente-12-zyrtare-u-dorehoqen/
On a positive note, the State Police is piloting the use of body cameras on traffic police as a means of curbing bribes and improving police conduct with citizens.\textsuperscript{785} Also, despite remaining low overall (54/100), citizens’ trust in the State Police has increased slightly since 2010, and the body is the most trusted among public institutions, according to a recent survey.\textsuperscript{786}

**Role**

**Corruption investigation**

Score: 25

**TO WHAT EXTENT DO LAW ENFORCEMENT AGENCIES DETECT AND INVESTIGATE CORRUPTION CASES IN THE COUNTRY?**

While investigations of corruption have been increasing, there are still few for low and mid-level officials and almost none for top officials.\textsuperscript{787} The data are inconsistent because of a lack of integrated intelligence, but the European Commission has reported that “the number of cases being brought before the courts remains low, even though it increased by 82% in 2014 compared to the cases sent to court in 2013”.\textsuperscript{788} The quality of police investigations is reportedly poor for a number of reasons, including issues of law, capacity, motivation and political influence. Even though prosecutors are the lead authority in the investigative process, judicial police officers are empowered by law to “conduct investigations and gather all that serves the enforcement of criminal law” on their own initiative.\textsuperscript{789} The use of this legal remedy is not evidenced in practice by the number and reported quality of proactive investigations brought to the Prosecution by the Police.\textsuperscript{790} Part of the reason is also the disagreement, in practice, over the admissibility in court of information gathered by the Police prior to a prosecutor’s order.\textsuperscript{791}

The ability of the Police to gather the necessary information for an investigation from other state bodies is, in practice, regulated by a large and cumbersome chain of memoranda of understanding between the State Police and other state bodies (22 in total), which has not yielded the expected results.\textsuperscript{792} Information is gathered by written requests, responses to which are reported to take on average 30-60 days, rather than through an integrated intelligence network.\textsuperscript{793} This is particularly problematic in light of the very brief – though extendable – timeframe of preliminary investigations stipulated in law: three months.\textsuperscript{794}

\textsuperscript{786} IDRA, Corruption in Albania – Perceptions and Experiences, 2015-2016, p.22.
\textsuperscript{787} European Commission, Albania Report, November 2015, p.15-16.
\textsuperscript{788} Ibid., p.54.
\textsuperscript{789} Article 30, Criminal Procedure Code. See also articles 3-4 of Law no. 8677, on the Organisation and Functioning of Judicial Police, of 2 November 2000, changed by laws no. 9241 (2004) and 10301 (2010).
\textsuperscript{790} Interview with a prosecutor, 3 November 2015; Ibrahimi, G., Reed, Q., Investigation and prosecution of corruption related offences in Albania: Assessment and Recommendations, ACFA assessment report, December 2014, p.28-30.
\textsuperscript{791} Varanese, M., Peer assessment mission to Albania on efficiency of investigations related to organised crime and corruption, 9 April 2014, p.7.
\textsuperscript{793} Varanese, M., Peer assessment mission to Albania on efficiency of investigations related to organised crime and corruption, 9 April 2014, p.3; Ibrahimi, G., Reed, Q., Investigation and prosecution of corruption related offences in Albania: Assessment and Recommendations, ACFA assessment report, December 2014, p.34-35.
\textsuperscript{794} Varanese, M., Peer assessment mission to Albania on efficiency of investigations related to organised crime and corruption, 9 April 2014, p.8; Ibrahimi, G., Reed, Q., Investigation and prosecution of corruption related offences in Albania: Assessment and Recommendations, ACFA assessment report, December 2014, p.34.
\textsuperscript{795} Article 323, CPC.
The law enables the use of special investigative techniques, such as interception and surveillance, which are so crucial to corruption cases. However, it limits the use of interceptions to investigations of criminal offences punishable by more than seven years. Active corruption in Albania is punishable by a maximum of five years in the case of high and elected state officials, and three years in the case of other officials. An expert interlocutor for this assessment noted that while problematic, this provision is not as prohibitive as it appears. Passive corruption is punishable with up to eight years, and since active and passive corruption always go hand-in-hand, it is possible to circumvent the problem by registering the case as one of passive corruption. Nevertheless, in the context of politicisation of the Police and low motivation, such legal flaws offer opportunities for justifying inaction in the investigation of corruption (see below).

Furthermore, the law prohibits house and personal searches of top officials, including the President, Prime Minister and Cabinet, and MPs. While this may appear as a sound mechanism to protect against the misuse of Executive power, practice has recently shown its potential for damage when police officers were unable to search the car of an MP where an organised crime suspect was allegedly hiding. Other legal flaws identified by various other assessments include the lack of clear definitions in law of petty and grand corruption, and of the category “high state official”, which connects to issues of jurisdiction over corruption-related offences.

Regarding capacities, apart from inadequate know-how, corruption investigation is rendered exceptionally difficult by the lack of proper interception equipment and the concentration of what is available in Tirana (see Resources above). The impact of, amongst others, low capacities on complex investigations was recently demonstrated in the case of the police operation in Lazarat; until recently an outlaw cannabis-growing village. As an interlocutor noted, rather than a police investigation operation into a large and organised network of drug trafficking, the Lazarat operation was one of public order, limiting itself to the identification and arrest of cannabis cultivators. A proper investigation of the whole chain of drug trafficking activity, and possibly corruption, which would include the identification of the network of buyers, international sellers, and potential institutional complicity never took place.

With surveillance and interception capability concentrated in Tirana, such complex operations may be out of reach. But an international expert on law enforcement also emphasised the instability and unpredictability of police careers as a key reason behind the reticent attitude towards proactive investigations. Police officers and prosecutors, he noted, feel “temporary”, do not believe that good performance affects their careers, and thus lack the motivation to perform. The figures confirm a level of turnover in the Police that cannot be justified by meritocracy (see Resources above).

Moreover, judicial police officers assigned to Joint Investigative Units, established with the purpose of strengthening law enforcement cooperation on corruption cases, are low in number, but also physically absent. They do not actually work in the premises of the JIUs. Their daily work continues to be under the auspices of their superiors in the police premises, thus hampering the ability of JIUs to function as teams. A prosecutor contended that police investigations are the weakest link in the

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795 Interview with international expert on law enforcement, 27 October 2016.
796 ABC News, ‘Deputeti Mark Frroku fsheh në makinën e tij një të kërkuar për trafik droge’ (MP Frroku hides in his car a person wanted for drug trafficking), 16 March 2015; http://www.abcnews.al/lajme/aktualitet/2/53766
798 Interview with international expert on law enforcement, 27 October 2015; Interview with prosecutor, 3 November 2015.
799 Interview with international expert on law enforcement, 27 October 2015; European Commission, Albania Report, 2015, p.65; OSCE, Report to the Permanent Council by the Head of the OSCE Presence in Albania, 17 September 2015, p.3.
800 Group of High-Level Experts, Ad hoc Parliamentary Committee on Justice Reform, Analysis of the Justice System, June 2015, p.284.
investigative process because of distorted loyalties to superiors, as a result of the practice of politicised and undeserved career decisions.\textsuperscript{801}

The US State Department and the European Commission have openly spoken of the infiltration of crime in law enforcement agencies through politics.\textsuperscript{802} Another expert interlocutor pointed to the discrepancy between the good performance of the State Police in international cooperation operations and the poor performance domestically as indications of politicisation and poor motivation.\textsuperscript{803}

Recommendations

- Parliament’s inquiry committee on the Police should agree on and publish a work calendar and eventually a thorough report on career decisions and dismissals in the Police, accompanied by recommendations for the way forward. A parliamentary resolution committing parties to stability and professionalism in the Police should be considered at the end of this process.

- The government and Parliament should amend the laws on the State Police and on the SIAC with a view to:
  - Removing the power of the Minister of Interior in the appointment and discharge of the director of SIAC, and consider other procedures and mechanisms – perhaps a higher role for Parliament – that could strengthen SIAC’s independence and appropriate accountability.
  - Removing the power of the Minister of Interior to examine complaints against the director of the State Police.

- The government should continue the trend of budget increases for the Police, and seek to address the huge gaps in technical resources, especially surveillance and interception equipment.

- The State Police should draft and publish detailed annual performance reports that allow analysis.

\textsuperscript{801} Interview with a prosecutor, 3 November 2015.
\textsuperscript{803} Interview with international expert on law enforcement, 27 October 2015.
CENTRAL ELECTION COMMISSION

Summary

The electoral legal framework features both provisions and gaps of great importance, especially regarding the Central Electoral Commission’s (CEC) independence, accountability, and campaign oversight. Limited resources and a political culture that is corrosive of independent and responsible institutional conduct aggravates the situation.

By law, the independence of the CEC rests on the political balance in the appointment of its seven members and the requirement for a qualified majority among them for major decisions, implying wide consensus. However, the law’s logic has failed in practice and the CEC is highly susceptible to political whims, as seen in inconsistent decision-making, the avoidance or overstepping of authority, or complete paralysis in decision-making. Despite an oath of impartiality while in office, the careers of a number of CEC members indicate political patronage rather than independence and highlight the importance of instituting post-employment restrictions.

There are various causes for the low levels of accountability in the CEC, including partial oversight by Parliament, a weak Judiciary, and – contrary to the constitutional provisions – the possibility of only one level of judicial review. The public and civil society has little legal space to hold the CEC to account and stakeholders report low levels of trust in an effective and impartial system of redress, which is marred, amongst others, by poor transparency and delays.

Similar problems of independence, resources and political culture explain the CEC’s inability to ensure the integrity of elections and campaigns. Parties change the composition of lower level commissions at will, even on election day and use state resources for campaigning, vote-buying and biased media coverage of electoral candidates – all in breach of legal provisions. These are widely reported but go unpunished. Electoral subjects are not obliged to disclose funds and expenditure during the campaigns and only two CEC employees manage the process of party finance oversight, as part of larger finance management responsibilities. External certified accounting experts are used to audit Political Parties, but they lack incentives and produce superficial audit reports.

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Structure and organisation

There is a three-tier election administration comprised of the Central Election Commission (CEC), Commissions of Electoral Administration Zones (CEAZ), and Voting Centre Commissions (VCCs). Votes are counted centrally through Ballot Counting Centres (BCCs) and Ballot Counting Teams.

The CEC consists of seven members and lower level commissions consist of seven members and a secretary without voting rights. The Electoral College, a body of Appeal Court judges, adjudicates on complaints against CEC decisions or its failure to decide. The CEC approves its own regulation, including procedures on meetings, and the structure and remuneration of the CEC administration through a qualified majority. The CEC appoints the Secretary General of the institution according to the Law on the Civil Service, with additional requirements equal to those applied to CEC members.804

Capacity

Resources (Practice)

Score: 50

TO WHAT EXTENT DOES THE CEC HAVE ADEQUATE RESOURCES TO ACHIEVE ITS GOALS IN PRACTICE?

Over the past five years, the CEC budget, as approved in the annual State Budget, has declined both in electoral and non-electoral years, from about 670,000 euro in 2012 to 640,000 euro in 2016 (non-electoral), and from 5.16 million euro in 2013 to about 4.9 million euro in 2015 (electoral).805 Both external and internal stakeholders agree that the institution’s resources are inadequate.

The Coalition of Domestic Observers (CDO) has publicly supported CEC’s requests to Parliament for budgetary increases.806 The CEC Finance Director pointed to working conditions and oversight of political party finance as particular areas of weakness.807 The CEC operated in visibly substandard premises until 2016; the new premises have changed this situation, but training, IT infrastructure and equipment remain dependent on donor assistance.808

In addition to political party oversight for which only two members of staff are tasked, low staff numbers have also negatively affected the ballot counting process and the performance of the Media Monitoring Board.809 Low resource levels have particularly conditioned the work of lower level commissions.810 Premtto Gogo of the CDO noted that CEC resources are sufficient for it to manage elections at an average standard, but that proper compliance with the best international standards would require higher budgets, equipment and staffing levels.811 However, he also pointed to the CEC’s responsibility in improving the organisation of current resources, including, for instance, staff

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807 Interview with Mirela Gega, CEC Director of Finance, 6 February 2015.
808 Interview with Dorarta Hyseni, Program Manager, National Democratic Institute in Albania, 11 August 2015.
811 Interview with Premtto Gogo, Coalition of Domestic Observers, 3 February 2016.
levels in the Finance Directorate. The CEC has reported its inability to do so over 2013-2014 due to political deadlock and subsequent lack of quorum (see Independence below).\textsuperscript{812} However, that situation was overcome in 2015 and the CEC is yet to change its organisational structure.

In terms of the quality of human resources, while legal requirements for CEC members are broad, in practice most CEC members have had a background in law.\textsuperscript{813} The administration is subject to the Law on Civil Servants, which also provides for career development. Women are well represented in the CEC administration and three of the current seven CEC members, including the chair, are women. Representation of women at the CEAZ level has never met the legal requirement of 30 per cent, while at the VCC level there is no such requirement.\textsuperscript{814} Minorities are not represented although the CEC has in the last few elections made efforts to engage temporary staff with special mobility needs.\textsuperscript{815}

**Independence (Law)**

Score: 50

### TO WHAT EXTENT IS THE CEC INDEPENDENT BY LAW?

The CEC was removed from the Constitution in 2008 and its legal status as the highest permanent election management body is defined only and briefly in the Electoral Code.\textsuperscript{816} A seven-member body, six CEC seats, are divided equally between candidates proposed by the largest parliamentary opposition and governing parties. Parliament appoints these members through a simple majority for renewable six-year mandates. The chair of the CEC is appointed in the same way by Parliament, but for a four-year renewable mandate, and following an open application procedure. The CEC elects its deputy chair, required to countersign all decisions, from among the two members proposed by the largest opposition party.\textsuperscript{817} Political balance is reflected in the composition of second and third tier commissions, whose non-permanent members are directly nominated by parties, which can replace their CEAZ members without the need for justification.\textsuperscript{818}

Some provisions are in place to limit the politicisation that is warranted by such partisan appointments, but they fall short. Thus, political party engagement or national elected office over the past five years disqualifies candidates for the CEC, but local elected office does not.\textsuperscript{819} CEC membership is incompatible with any other political, public or private activity (with the exception of teaching) and members take an oath of impartiality and compliance with the law in the exercise of their functions.\textsuperscript{820} There are provisions in place for conflicts of interest, remuneration and career protection of CEC members and the chair. A number of violations and situations of conflict of interest constitute grounds for the discharge of CEAZ members by the CEC, and of VCC members by the CEAZ.\textsuperscript{821}

To mitigate risks of partisan decision-making arising from its composition, the CEC can make major decisions, including on the certification of election results, only by qualified majority (5/7 votes).\textsuperscript{822} This requirement is also the only protection for CEC mandates, as members’ premature dismissal

\textsuperscript{813} Article 12/b/c, Electoral Code.
\textsuperscript{814} Article 29/c, Ibid.
\textsuperscript{815} Interview with Dorarta Hyseni, Program Manager, National Democratic Institute in Albania, 11 August 2015.
\textsuperscript{816} Article 2, points 6-8, Electoral Code.
\textsuperscript{817} Articles 13-16 and 20, Ibid.
\textsuperscript{818} Articles 28-29, and 36, Ibid.
\textsuperscript{819} Articles 12/dh/e, 30 and 37, Ibid.
\textsuperscript{820} Articles 13.3, 13.4 and 17.2, Ibid.
\textsuperscript{821} Articles 17, 32, 39, Ibid.
\textsuperscript{822} Article 24.1, Ibid.
can be initiated on loosely defined grounds, but necessitates wide support within the CEC before Parliament’s simple majority vote. However, while the need for wide consensus for major decisions hinders parties from imposing their singular will on the CEC, failure to reach such a broad agreement in the CEC blocks its decision-making altogether. Overall, the entire election management system seeks independence through political balance in appointments and decision-making. While this is a recognised standard, it is discouraged for countries like Albania with “no longstanding tradition of administrative authorities’ independence from those holding political power.” The OSCE-ODIHR as well as domestic civic actors have called for legislative amendments providing for an a-political electoral administration.

The CEC prepares its own draft budget within ceilings determined by the Ministry of Finance, proposes and administers budgets for upcoming elections and decides on payment of lower level commissions and counting teams. As for other institutions, budgetary allocations are not based on an objective assessment of needs. On a positive note, the CEC administration is mostly composed of civil servants, who by law enjoy the highest level of employment protection in the public sector and carryout administrative roles only in implementation of CEC decisions.

**Independence (Practice)**

Score: 25

### TO WHAT EXTENT DOES THE CEC FUNCTION INDEPENDENTLY PRACTICE?

The system of seeking independence through political balance has failed in Albania and OSCE/ODIHR election observation missions, domestic observers and Political Parties have openly questioned the independence and effectiveness of the CEC. Over the last three elections, criticism has included politically motivated and inconsistent decision-making by the CEC (including on candidate registration and counting), political pressure on the CEC and through to the administration and lower level commissions, and low confidence in an impartial complaint process.

Political struggles have led to termination of mandates of CEC members and zonal commissioners, boycotts of the institution and in its inability to function. Shortly before the June 2013 general election, the Socialist Movement for Integration decided to leave the governing majority led by the Democratic Party and run in that election with the opposition coalition. This was followed by the dismissal of the SMI-proposed CEC member Ilirjan Muho by the DP-majority in Parliament upon a questionable legal basis. Subsequently, three other members of the CEC proposed by the opposition parties that the SMI had just joined resigned. The political struggle was reflected also in changes in lower level commissions made by the CEC without a legal basis and left the CEC with only four members during 2013-2014 and thus unable to make important decisions.

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823 Articles 19 and 24/dh, Ibid.
826 Articles 21, points 14, 16 and 19, Electoral Code.
827 Article 5, Electoral Code.
828 Renowned cases include the decision on the count of misplaced ballots in 2011, decisions on registration of candidates in 2015, and the decision on withdrawal of the DP Kelcyra candidate in 2015.
While CEC chairs and members have not generally come from pronounced political or public backgrounds, the subsequent careers of some of them in elected, ministerial and other high offices have raised questions of their independence while at the CEC (see Integrity (Practice) below). Members have generally refrained from explicit political statements when in office, but political tension is often made evident during CEC meetings and previous party-nominated chairs and deputy chairs have been targets of political attacks by the leaders of the main parties.\textsuperscript{831} On a positive note, contrary to the expectations of some commentators, the position of the CEC chair, elected in the previous legislature, was not challenged following the changes in political balance after the 2013 election.

According to Premto Gogo, political or nepotistic favours have influenced appointments in the CEC Secretariat and its subsequent failure to withstand pressures from the CEC.\textsuperscript{832} A case in point was the publication – a responsibility of the CEC Secretary General – of changes to a CEC decision on the registration of candidates in the 2015 elections, which was changed after being published online, without a formal CEC meeting or decision on the amendments. Records of the original meetings were never shared with the civil society organisations that requested them.\textsuperscript{833}

**Governance**

**Transparency (Law)**

Score: 50

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THAT THE PUBLIC CAN OBTAIN RELEVANT INFORMATION ON THE ACTIVITIES AND DECISION-MAKING PROCESSES OF THE CEC?

Legal provisions for the transparency of the CEC are generally in place and the overall functioning of the CEC is subject to the Law on the Right to Information (see Public Sector pillar). In addition, the Electoral Code requires that meetings, votes and the reasoning of members are open in all three tiers of election administration, including the CEC.

The CEC should provide adequate prior notice of its meetings to parliamentary parties and the public. During elections, it should provide free certified copies of its decisions to electoral subjects within 24 hours of a filed request. As a rule, decisions are to be public on the CEC website immediately, but charges may apply outside electoral periods for all interested parties requesting certified copies.\textsuperscript{834}

Detailed provisions are in place for the publicity of voters’ lists.\textsuperscript{835} The CEC should publish preliminary election results immediately upon receipt from lower level commissions, and final results should be published at both national and VCC levels.\textsuperscript{836} An Election Bulletin published by the CEC must include election results, the report on election spending, as well as audit reports of party funds.

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and spending for the campaigns. 837 Civil society, party and candidate observers can monitor all segments of the voting and counting process, although provisions are vague regarding the transport of ballot boxes from voting to counting centres. 838 The counting process is to be recorded and involves observers, security cameras, and scanning and projection of each ballot paper. 839 Some provisions are in place to ensure transparency in the administrative review proceedings, such as announcements of joining appeal requests, dates and times of administrative review decisions etc. 840 The Electoral College must fully transcribe its decisions no later than three days from its declaration and in line with constitutional principles for judicial decisions, they are to be public. 841

However, legal gaps and inconsistencies remain on the transparency of political party finances and media rules during campaigns. The Constitution requires sources of political party funds and expenses to be “always made public.” 842 The CEC should publish audit reports of political party campaign finance, which must include expenses and names of donors above the 710 euro threshold, no later than 30 days after their submission by CEC-appointed certified accounting experts. 843 However, the submission deadline for the experts is not specified in law, but decided by the CEC on an ad hoc basis. Political Parties should also to submit annual financial reports to the CEC, but again no specific deadline is set in law. 844 Parties are not subject to financial reporting obligations during electoral campaigns and requirements on transparency of financing are scattered between the Electoral Code and the Law on Political Parties and are inconsistent, rather than being harmonised.

The law requires the CEC to publish media operator tariffs for political advertising and upon request the proportions of media space allocated in local elections. However, no provisions are in place for the publication of the reports of the Media Monitoring Board, which should be submitted daily to the CEC and include proposals for administrative measures against violations of media rules during campaigns. 845 Provisions on candidates require the publication of candidate lists in the media, CEC official website, and at the local level (by prefectures, district councils, and CEAZs), but do not include candidate biographies. 846

Transparency (Practice)

Score: 50

TO WHAT EXTENT ARE REPORTS AND DECISIONS OF THE CEC MADE PUBLIC IN PRACTICE?

The CEC has approved and published a transparency programme, but only partially complies with the requirements of the Law on the Right to Information. While its organisational chart and reports to Parliament are public; it does not publish information on procurement, contract enforcement, or internal audit reports. 847 The CEC meetings are public (and streamed online), as are preliminary materials and decisions. In electoral years, the CEC publishes a variety of relevant information, including candidate and voter lists, election results, and audit reports of party finances (see below). In the last two elections the CEC has also used more advanced technology to enhance transparency, such as LED screens to show the ballots during counting and smartphone

837 Articles 21.12 and 91.4, Ibid.
838 Articles 6-7, Ibid.
839 Articles 94.4 and 121, Ibid.
840 Articles 132.4 and 144.3, Ibid.
841 Article 158.6, Ibid; Article 146, Constitution.
842 Article 9, Constitution.
843 Article 91, Electoral Code.
844 Article 23, Law on Political Parties.
845 Articles 84-85, Electoral Code.
846 Article 73.3, Ibid.
847 See CEC official page: www.cecc.org.al
Local groups have also called for signed/certified decisions to be made public rather than drafts only, as is the current practice. According to Premto Gogo of the Coalition of Domestic Observers, it is difficult to get copies of decisions in good time. The transparency of meetings and documents is not achieved at lower levels of the election administration. Information on complaints and both CEC and Electoral College decisions have been published with delays. The preliminary election returns are generally transmitted and reported in good time, but the counting process has always extended beyond the legal deadline, observers have complained of the difficulty of seeing the ballot papers through the screens set up for that purpose, and parties have at times not been provided with copies of result tables. Overall, these issues have hampered the transparency of the electoral process and administration.

Political party finance remains particularly obscure and the CEC is ineffective in rendering it transparent. The CEC struggles with the engagement of auditors and reports are disclosed late and are superficial (see Role below). The annual and campaign finance reports are available on the CEC website only for the major parties and many believe that the full costs of campaigns are never disclosed. Weak transparency of true media ownership compounds concerns of electoral transparency (see Media pillar) and civil society has also raised issues of the media illegally serving as donors in elections, given that many parties are debtors to media outlets for political advertising. The daily reports of the CEC’s Media Monitoring Board were distributed among interested stakeholders during the 2015 election, but are not available to the public.

Accountability (Law)

Score: 50

A system of legal remedy for the decisions of electoral administrative bodies is in place, but it does not comply with international standards due to a number of gaps and inconsistencies. The CEC and zone commissions are respectively the administrative review bodies for the decisions of lower commissions, while CEC decisions or failures to reach decisions on time are subject to judicial review by the Electoral College – a body of eight appeal-level judges who in electoral times operate

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855 Interview with Dorarta Hyseni, Program Manager, National Democratic Institute in Albania, 11 August 2015.
from the Appeals Court of Tirana.\textsuperscript{858} As noted by the OSCE/ODIHR mission, despite Constitutional provisions on the right to appeal to a higher court, Electoral College decisions are final.\textsuperscript{859}

All electoral subjects can lodge a complaint with the Electoral College, whether they are parties, coalitions or independent candidates. However, the right of voters and civil society to legal remedy is limited only to complaints about exclusion from voter lists and denial of accreditation as observers.\textsuperscript{860} The Electoral College has 10 days to issue a decision during the pre-electoral period, which has been considered too long by the OSCE/ODIHR when compared to international standards (three to five days).\textsuperscript{861} There is also a lack of clarity in law on jurisdiction over campaign-related complaints and deadlines for their adjudication. The same applies to complaints on voter lists, with the Electoral Code assigning jurisdiction to district courts and the Law on Administrative Courts and Disputes to administrative courts.\textsuperscript{862}

The CEC is also accountable to Parliament through the requirement for annual reporting.\textsuperscript{863} Legal provisions do not define the extent of such reporting, but Parliament can ask the CEC for further detail or particular sections in the future through its resolutions on the reports. Financially, the CEC is subject to auditing from the SAI, and to the same rules of financial management and reporting requirements to the Ministry of Finance on budget execution as all other public institutions.

**Accountability (Practice)**

Score: 25

**TO WHAT EXTENT DOES THE CEC HAVE TO REPORT AND BE ANSWERABLE FOR ITS ACTIONS IN PRACTICE?**

International and domestic observers have repeatedly concluded that the electoral dispute resolution system is ineffective and fails to ensure redress of irregularities. Persistent problems include but are not limited to inconsistent or poorly argued decision-making by both the CEC and the Electoral College, avoidance or overstepping of competence, breach of deadlines, and untimely publication of decisions.\textsuperscript{864} The deep-seated problems of judicial independence and professionalism affect the CEC’s accountability too, and overall stakeholders have reported low or no trust in the impartial adjudication and effective redress of disputes by the election administration and courts.\textsuperscript{865}

The CEC regularly submits its annual reports to Parliament, which are published on the CEC website.\textsuperscript{866} They focus on operational aspects but have also included recommendations for legal amendments to improve the work of the CEC. In terms of finances, annual reports to Parliament provide a very general overview, while the Ministry of Finance has asked the CEC to provide more information and analysis in its quarterly budget reports.\textsuperscript{867} The CEC was subject to an audit by the

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\textsuperscript{858} Articles 124-144 and 145-159, Electoral Code.


\textsuperscript{863} Article 21.13, Electoral Code.


\textsuperscript{866} See annual reports to Parliament on the CEC website: http://www.cec.org.al/sq-al/raportet-per-kuvendin

SAI in 2012 for the 2010-2011 period. The implementation of SAI recommendations is not part of the CEC’s annual reporting to Parliament, and Parliament does not follow up on them on its own initiative. Parliamentary resolutions on the CEC annual reports, approved by a simple majority, criticise aspects such as partisan and illegal decision-making, failure to effectively oversee public finances, and operational shortcomings also highlighted in international monitoring mission reports. They include recommendations to address these issues.

Integrity mechanisms (Law)

Score: 50

The Electoral Code provides for incompatibility of CEC membership with political, public or private activity and for independence in exercising of CEC functions. Members take an oath committing them to free and fair elections, the integrity and privacy of the vote, neutrality and professionalism. The regulation on the functioning of the CEC provides that CEC activity is based on principles of legality, collegiality, independence, professionalism, neutrality and transparency and requires that CEC members respect the norms of ethics. The same principles are required of the CEC administration, as reflected in its respective regulation.

Both CEC members and key positions in the administration are subject to conflicts of interest legislation – which is poorly designed – as well as to the Law on Ethics in Public Administration and periodic declaration of assets (see Public Sector and HIDAACI pillars). The CEC has drafted a specific regulation that reinforces incompatibility provisions of the Law on the Prevention of Conflicts of Interest. However, the regulation is generic and has not been approved. The CEC administration is also subject to regulations of the Law on Civil Status and the Administrative Procedure Code (see Public Sector pillar). There are no post-employment restrictions in place for CEC members or staff.

Integrity mechanisms (Practice)

Score: 25

The CEC failed to provide the Transparency International research team with any information on its register of conflicts of interest and gifts and hospitality. According to public records, a former member of staff of the CEC was fined and then later referred to the Prosecution for failure to declare

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872 Article, 13.4, Ibid.
873 Articles 2.2 and 6.d, Ibid.
874 Articles 3, 7, 48, Ibid.
875 Articles 18, 19, 22, Regulation on prevention of conflicts of interest in the exercising of public functions at the CEC: http://www.cec.org.al/Portals/0/Documents/CEC%202013/LOGO%20KQZ/Prekuidore%20e%20Konfliktit%20e%20interesit%20KQZ.pdf
876 Written request submitted by project assistant via e-mail to CEC on 16 May 2016. No response was received by the CEC.
his assets.\textsuperscript{877} Regarding asset declarations, there is no evidence in its reports or response that HIDAACI has ever fully audited asset declarations of CEC members and chairs.\textsuperscript{878}

In addition to the CEC’s susceptibility to political struggles, the controversial dismissal of a CEC member in 2013 also revealed the absence of a proper vetting process in Parliament to ensure the integrity of CEC appointments. The Democratic Party majority in Parliament that enacted the dismissal eventually claimed that the CEC member in question had been appointed by Parliament in violation of eligibility requirements seeking to uphold integrity, as he had been reportedly discharged from his judicial office in 2003 due to serious disciplinary breaches. In turn, the Socialist Movement for Integration – the party that had proposed the outgoing CEC member – claimed that the former CEC chair turned vice minister in the then DP government had been convicted of corruption in the past.\textsuperscript{879}

Despite OSCE/ODIHR and civic groups claims of partisanship in the CEC, no concrete steps have been taken to address misconduct by CEC members.\textsuperscript{880} Verbal communication between CEC members has been noted to cross ethical boundaries at times, but apart from one case when a member claimed she would pursue offensive rhetoric from the CEC chair in court, no other steps are known to have been taken.\textsuperscript{881}

There are no reports of CEC members engaging in other overt activity besides teaching, which the legal framework allows. The careers of members after their CEC mandates, however, have raised questions of conflicts of interest and the importance of clear post-employment restrictions. Former CEC Chair Arben Ristani, known for the controversial decision during the 2011 local elections that gave the Tirana mayoral mandate to the Democratic Party, later became a vice minister in the DP-led government and a DP MP in 2013.\textsuperscript{882} Another former chair, Ilirjan Çelibashi (2001-2006), held political posts both before (1998) and after (2013) his CEC mandate in SP-led governments.\textsuperscript{883} One of the CEC members who resigned in 2013 was appointed by the government that came out of those elections to the Public Procurement Commission and was then reinstated in the CEC as vice chair, while another one continued to become Parliament’s secretary general and one of two Parliament-appointed (simple majority) members to the High Council of Justice.\textsuperscript{884} Finally, the dismissed member by the right-wing majority in Parliament in April 2013, Ilirjan Muho, was appointed as chief registrar of the Central Property Registration Office by the new left-wing government that came to power after the June 2013 elections.\textsuperscript{885}


\textsuperscript{878} Request for information submitted by project assistant via e-mail on 16 May 2016. Response received on 19 May via e-mail.

\textsuperscript{879} Top Channel, ‘Ilirjan Muho Discharged’, 15 April 2013: \url{http://top-channel.tv/lajme/artikull.php?id=255231}


\textsuperscript{881} Panorama, ‘Subashi Ristanit: Fyerjen do ta ndjek ligjerisht’ (Subashi to Ristani: I will take legal measures on the insult), 19 May 2011: \url{http://www.panorama.com.al/subashi-ristanit-me-keni-fyer-do-permballemi-ligjerisht/}


\textsuperscript{883} Presidential Decree no. 8304, of 11 September 2013 ‘On appointment of the Council of Ministers’ Official Journal 154, 13 September 2013, p.7036; On Ilirjan Celibashi’s former career: Hoxha, A., ‘Celibashi dorëhqiut si minister, Rama e zëvendëson me deputetën Felaj’ (Celibashi resigns as minister, Rama replaces him with MP Felaj), Gazette Shop, 2 August 2014; \url{http://www.gazeta-shop.com/lajme/2014/08/02/celibashi-dorehtsi-minister-rama-e-zevendesoon-deputeten-felaj-2/}

\textsuperscript{884} Decision no. 874, of 4 October 2013 ‘On Release and Appointment of Chair of Commission on Public Procurement’ Official Journal 163, 11 October 2013, p.7316; Decision no. 86/2014, of 30 October 2014 ‘On appointment of Albania Shytyll as member of the High Council of Justice’.

\textsuperscript{885} Zyra e Regjistrimit të Pasurive të Paluajtshme, Chief Registration Officer: \url{http://www.zrpp.gov.al/mat.php?idr=320&idm=353&lang=1}
Role

Campaign regulation (Law and Practice)

Score: 25

DOES THE CEC EFFECTIVELY REGULATE CANDIDATE AND POLITICAL PARTY FINANCE?

The Electoral Code regulates campaign finance, media coverage, and a series of other aspects of the electoral period. Parties are entitled to public funds, private donations and loans and restrictions are in place for the kind of donors, level of donations, and expenditures. The book-keeping in all cases, and the declaration of all donations above 100 thousand ALL (approx. 710 euro) are required.886

The OSCE/ODIHR missions have noted that the exclusion of independent candidates from public funds is discriminatory and contrary to OSCE commitments.887 A recent assessment has noted that the current threshold for reporting donations is too high and does not explicitly apply to total donations from a single donor, but rather to single payments, which may facilitate the artificial break-up of donations and hiding of funds.888

The Code bans the use of public resources and campaigning in public institutions. The CEC has oversight powers – including on campaign finance and expenditure – and can apply sanctions for the violations of these provisions.889 As of 2012, vote-buying constitutes a criminal offence envisaged by the Criminal Code.890 In practice, reports of vote-buying and the use of state resources for campaign purposes by both central and local government are widespread, but go unpunished or unpunished.891

Likewise, disclosure and oversight of campaign finance is poor. Parties are not required to provide any level of disclosure during the campaign, while post-election oversight suffers from loose deadlines, difficulties in engaging independent certified accountants to conduct audits, superficial audits, delays, and low resources on the part of the CEC, with only two employees on the task, as part of their larger finance management responsibilities.892 Domestic watchdog organisations have argued that non-sophisticated observation methodologies show that real campaign spending largely exceeds official reports and that parties do not disclose in-kind contributions.893 Weaknesses have been acknowledged and recommendations have been put forward by a number of stakeholders, including the CEC.894

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886 Articles 87-91, Electoral Code.
889 Articles 87-91 and 173, Electoral Code.
890 See articles 325-332, Chapter X of the Criminal Code.
892 Ibid, p.2 and 14-15. See also Reed, Q., Regulation and Oversight of Political Finance in Albania: Assessment and Recommendations, July 2014, in framework of the Assessment of the Anti-Corruption Framework (ACFA); CDO, Public Stand on Transparency of Political Party Finance, 1 August 2015, p.2; Mjaft! Movement and Open Data Albania quoted in the 2014 roundtable on political party finance: http://www.cec.org.al/Portals/0/Documents/CEC%202013/rekomandime_eng/Report%20of%20roundtable%20on%20P
critical%20Party%20%20Campaign%20Financing.docx
di metodologjia/
894 A full list of the 20 recommendations stemming from a 2014 roundtable on this topic can be found here: http://www.cec.org.al/Portals/0/Documents/CEC%202013/rekomandime_eng/Report%20of%20roundtable%20on%20P
The law offers extensive regulations on marked and equitable broadcast in public and private media, free air time, the public broadcaster, political advertising and a seven-member Media Monitoring Board (MMB), established by the CEC for oversight. However, oversight is weak in practice and the MMB has been noted to lack the necessary resources to effectively monitor media outlets. Its conclusions have been inconsistent and have generally failed to expose the partiality of campaign coverage, as identified by other observers. Even when the MMB has proposed sanctions on outlets favouring specific contestants, the CEC has not supported it, in breach of legal provisions. In 2013 the CEC took a much-criticised decision that practically imposed party-produced broadcast materials on media outlets, hampering editorial independence. The obstruction of media operators from independent coverage of electoral events has been reported and larger issues of media independence, including opaque media ownership, concentration, and the status of defamation as a criminal offence all impinge on fair electoral campaign coverage.

**Election administration**

Score: 50

**DOES THE CEC ENSURE THE INTEGRITY OF THE ELECTORAL PROCESS?**

Unless deemed incompetent by a court decision, all citizens above 18 can vote, in person, and in Albania. The OSCE/ODIHR has noted that ‘blanket restrictions’ on mental disabilities and non-citizens do not comply with international standards and should be re-visited. In practice, the majority of voting centres are inaccessible to people with disabilities and their right to vote is breached. Similarly, the right to vote of citizens in detention has been hampered to some extent in practice. While the rights of minorities are generally respected, and political awareness and representation of citizens of Roma and Egyptian descent has seen some improvement, their right to vote in practice has been particularly vulnerable to lack of identification documents and the phenomenon of vote-buying.

Voter registration is passive, except for citizens above 100 years of age, which the OSCE has considered discriminatory and contrary to international standards. The CEC oversees the process of preparing of voters’ lists, determining polling stations, and notifying voters, the primary responsibility for which lies with the Ministry of Interior and local government. The CEC appoints technical auditors, proposed by the two largest parties, who submit joint or individual reports on the accuracy of voters’ lists. Preliminary lists are posted at Civil Status units and are searchable online. The final list is made available online and copies are posted at the CEAZ and the respective voting centre. There is a general agreement on the accuracy of voter lists, although challenges remain regarding citizens without full addresses, duplications, and non-residents. In the last elections, problems with voting lists referred to the Prosecution were not conclusively investigated before Election Day, many voting centre locations were changed last minute, and some citizens were reportedly not notified, as is required by law.

The CEC is responsible for voter education and has stepped up efforts in this regard over the past election cycles, especially on first-time voters, women and minorities, through the use of flyers.

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895 Part VI, the electoral campaign and the media, Electoral Code.  
896 OSCE/ODIHR, Final Report: Local Elections 21 June 2015, 8 September 2015, p.15-17; See also article 84.1 of the Electoral Code.  
899 Ibid, p.3 and 18.  
901 Articles 49-61, Electoral Code.  
902 Ibid.  
Up until the end of 2015, the right to run for office was extended to all voting-age citizens and restricted only for those serving a prison sentence. A new Law on the Integrity of Public Officials and subsequent constitutional amendments have introduced new restrictions for citizens with certain categories of criminal record. These changes are yet to be reflected in the relevant parts of the Electoral Code or on candidate registration procedures. The CEC and subordinate commissions are responsible for candidate registration, which requires support signatures from voters for candidates who are not already represented in Parliament or local government (independently or via parties). Candidacy requires timely resignation from office for a number of categories of public official. In practice, election administration has made inconsistent decisions with respect to candidate registration and timely resignation has not materialised in all cases. In 2015, inconsistencies emerged on withdrawal procedures, which are not defined in law, and on requirements for candidates who were in office in communes, which were removed as local government units after the 2014 territorial-administrative reform. A number of candidates with serious criminal records have been successfully elected to office in the past and some were made to withdraw their candidacies in 2015.

Adequate provisions are in place and are generally upheld on the safety of materials and the transparency of opening and closing procedures on Election Day. Reported problems concerning finding names on voters' lists and overt obstruction of voting have been judged inconsequential on electoral results, and incidents during closing have been isolated. However, strong accusations and problems persist regarding indirect pressure on voters, vote-buying, and group and proxy voting. Some key safeguard elements on ballots may also affect the secrecy of voting. While the atmosphere on election day is generally calm, violent incidents, including in the proximity of voting centres and involving commissioners, have yet to be completely eliminated. The frequent changes of commissioners in VCCs and CEAZs, which Political Parties can implement at will even during election day have undermined the work of commissions and the training provided.

Vote counting is centralised around counting centres attached to CEAZs. The legally defined deadlines on counting and tabulation are usually not met and issues of transparency have been highlighted, mainly referring to inadequate premises and overcrowding. The larger parties that nominate the members of counting teams have also been accused of unfair counting processes that hurt small parties and independent candidates. Criticism has also been expressed at the failure to distribute copies of results to all party observers and at the transparency of data entry and transmission.

906 Articles 6/1 and 45, Constitution; Law no. 138/2015 on the Guarantee of Integrity of Persons Elected, Appointed or Serving Public Functions, approved on 17 December 2015.
Electoral subjects and Albanian and foreign NPOs are entitled to observe the entire electoral process, at all levels. The accreditation process is generally inclusive and overt obstruction is rare, although some cases have been reported during closing procedures at the level of VCCs. The right to observe the transport of ballot boxes is ambiguous and likewise the set-up of counting centres and the ballot scanning process poses obstacles to full observation.

Recommendations

A parliamentary ad-hoc committee has been established to draft electoral legal amendments that address all remaining 2013 and 2015 OSCE/ODIHR recommendations. There is general agreement that the OSCE/ODIHR missions have covered and offered recommendations on all key matters. In addition to the reform framework already available, the research team addresses the parliamentary ad-hoc committee and recommends:

- Involvement, through structured and timely dialogue, of local observer coalitions to enhance ownership and accountability of the reform process.
- Drafting and publication of a programme of work that includes plans for consultations.
- Publicity of all committee proceedings.
- Commissioning of independent local and international experts to work on the technical design of an independent and effective electoral management body.
- Conclusion of the reform no later than nine months before the next election to allow time for adequate training and enforcement.
- In terms of content Transparency International emphasises the necessity of:
  - De-politicisation of the electoral administration at all levels, through:
    - Removing the role of any single or aligned group of Political Parties in CEC nominations and appointments
    - Introducing more coherent and stricter eligibility criteria
    - Introducing post-employment restrictions, combined with longer terms in office
    - Introducing mechanisms of personal responsibility of CEC members for a category of actions in office (i.e. actions that paralyse the CEC)
    - Prohibiting parties’ discretionary replacement of commissioners and designing alternative appointment and replacement mechanisms.
  - Introducing a second level of judicial review, combined with much shorter deadlines for decisions and the possibility of judges to stall their regular work during electoral redress engagement.
  - Introducing tools for the public and civil society to challenge CEC decisions or failure to take a decision.
  - Abolishing of provisions allowing for airing of party-produced campaign footage.

914 Articles 6-7, Electoral Code.
Comprehensive review of legal and institutional framework on regulation and oversight of party finances – including specification of expedited deadlines for the submission of financial reports to CEC auditors, their timely publication, and publishing of preliminary reports on campaign income and expenditures prior to election day – reflecting the 2014 proposals of the CEC and joint recommendations of EU and OSCE technical assessments.
Summary

The legal framework is largely in place for the Ombudsman to function, especially regarding its independence, transparency and accountability. The few remaining legal gaps are overshadowed by larger problems of practice.

While the Ombudsman has adequate legal means to investigate the conduct of public institutions and violations of citizens’ rights, it is at times obstructed in the exercise of its duty, and most often disregarded by key institutions. Therefore, responses to and the implementation of the Ombudsman’s recommendations remain weak. Parliament, in particular, on whose support the Ombudsman’s impact hinges, has only recently begun to engage with the institution, and still at an insufficient level. The track record of good conduct on the part of the Ombudsman’s Office itself has been marred by allegations of conflicts of interest and some arbitrary decisions, which does not help its claim to be serving as an imposing model on other institutional actors.

While the institution has significantly increased its public promotion of human rights, civil society actors warn of a trend towards publicity at the cost of substantive work. This is also hampered by the institution’s wide legal remit and difficulties for prioritisation.

Structure and organisation

The Ombudsman is a constitutional institution mandated to protect the rights, freedoms and legitimate interests of individuals from the illegal actions or inactions of public institutions. The Ombudsman is elected by a three-fifths qualified majority of all members of Parliament for a renewable five-year term.

The Ombudsman’s Office was recently re-organised into five specialised sections covering 1) central and local institutions and third parties working on their behalf; 2) police, secret service, prisons, armed forces and the Judiciary; 3) the prevention of torture and denigrating treatment; 4) protection of children’s rights; and 5) general/cross-cutting affairs. A commissioner to head each

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916 Article 60, Constitution; Article 2, Law no. 8454 on People’s Advocate.
section is elected by Parliament for a four-year mandate (renewable only once) from among four candidates proposed by the Ombudsman.

While the headquarters are located in Tirana, if deemed necessary the Ombudsman appoints a local representative for a specific topic or period of time. Local government institutions are required to provide necessary facilities and other working conditions. The overall number of staff working at the Ombudsman Office is 54. The only exceptions to the Ombudsman’s jurisdiction are the President, the Prime Minister, and military orders of the armed forces.

Capacity

Resources (Practice)

Score: 50

TO WHAT EXTENT DOES AN OMBUDSMAN OR ITS EQUIVALENT HAVE ADEQUATE RESOURCES TO ACHIEVE ITS GOALS IN PRACTICE?

Figures indicate significant increases in the Ombudsman’s budget over the past five years, from about 80 million ALL (~580,000 euro) in 2012 to 101.5 million ALL (~734,000 euro) in 2016. The increase has not been steady with the highest peak in 2014 at a total of 131.9 million ALL (~953,000 euro) due to foreign financing of about 36 million ALL (~263,000 euro).

During the annual reporting to Parliament in 2015, the Ombudsman noted that the institution’s requests to allocate funds to the seven regional offices had not been heeded for the past three years. Thus, the functioning of these offices had been weak, relying on the part-time volunteers from civil society and donor support. The addition of two commissioners in the Ombudsman’s Office in 2014 was not accompanied by budget increases until 2016.

During the parliamentary hearings on the 2016 draft Budget, the Ombudsman stated that the allocation of additional funds from the Ministry of Finance in 2016 reflected all requests made by his institution. However, during an interview with the Transparency International research team, the Ombudsman expressed concerns about the appropriateness and sustainability of the recent budget support for the regional offices, given that it only allows for temporary staff to be employed through one-year contracts with no guarantee of continuity. The end of the Danish project that has supported the Office over three years will also negatively affect its capacity in the near future.

Like some other independent institutions, the Ombudsman has also suffered mid-year budgetary cuts at times, for instance in 2013. For the period 2012-2014 the Ombudsman’s Office used

917 Articles 31, 32, and 33/1, Law on the People’s Advocate.
918 For the structure see: http://www.avokatipopullit.gov.al/sq/struktura-0
919 Article 25, Law on People’s Advocate.
922 Interview with Mr. Igli Totozani, Ombudsman, 25 February 2016.
between 75 per cent and 100 per cent of its allocated budget. Low budget absorption at times is connected most often to staff movements/vacancies created throughout the year. In 2014, the office spent 85.8% of available funds on salaries and 79.9% on health and social insurance, operational costs stood at 86.5% and investment at 76.8%. A 2015 audit report by the SAI noted several issues with the management of both financial and human resources.

In addition to the School of Public Administration – responsible for the training of civil servants – the Ombudsman cooperates with international counterparts, donors and civil society organisations to provide staff training. Professional training often follows opportunities as they arise, but in the last quarter of 2014 the Ombudsman issued an order for the drafting of an Annual Training Plan to enhance professional capacity through a more structured approach.

The Ombudsman considers his staff to be relatively small, but highly professional. However, in the 2015 audit report noted above, the SAI found that the Ombudsman’s Office had not recruited all the staff it had budgeted for, with 6 or 7 “missing staff” in 2014 and 2015. External actors have raised doubts about the level of professionalism in some cases. Key staff résumés published online are too brief to enable an objective assessment, but some cases of non-compliance with the legal requirement of at least 10 years of professional legal experience for commissioners can be observed. A human rights activist claimed that in some cases it is a highly bureaucratic approach, rather than a lack of staff, that hampers effective responses from the Ombudsman’s Office (see Role below).

Independence (Law)

Score: 75

TO WHAT EXTENT IS THE OMBUDSMAN INDEPENDENT BY LAW?

Strong legal provisions are in place to endow the Ombudsman with the necessary level of independence to carry out its mission. Its independence is first sanctioned in the Constitution, and the Ombudsman is indeed the only head of a constitutional institution whose election requires a three-fifths qualified majority of all members of Parliament. The Ombudsman’s premature dismissal from office requires the approval of the same qualified majority, preceded by a motivated request of at least a third of Parliament.

The Constitution and law establish general professional requirements for election, but other provisions seek to strengthen independence at the moment of election and in duty. Thus, a candidate for Ombudsman cannot be a member of the Parliament that elects him/her and participation in any other political, state or professional activity, or in the management of any social, economic or trade body is prohibited. The Ombudsman enjoys equal immunity to that of a High Court judge, his/her salary is equal to that of the High Court chief judge, and the institution’s budget

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928 SAI, Auditing Findings and Recommendations delivered to the Ombudsman on 26 December 2015: http://www.avokatipopullit.gov.al/sites/default/files/ctools/css/AUDITIM%20I%20KLSH-s%C3%AB.pdf
930 Interview with Mr. Igli Totozani, Ombudsman, 25 February 2016.
931 SAI, Auditing Findings and Recommendations delivered to the Ombudsman on 26 December 2015: http://www.avokatipopullit.gov.al/sites/default/files/ctools/css/AUDITIM%20KLSH-s%C3%AB.pdf
932 Interviews with Mrs. Vjollca Meçe, Executive Director, Albanian Helsinki Committee, 18 February 2016; and a human rights activist, 19 February 2016.
934 Interview with human rights activist, 19 February 2016.
935 Articles 60 and 62, Constitution.
936 Article 61/2, Constitution; Article 3, Law on People’s Advocate.
is separate and self-administered. However, the Ombudsman’s mandate is only for five years and can be renewed, which stakeholders have noted may provide incentives for incumbents to unduly court politics.

There are similar provisions prohibiting political engagement and office in place for the commissioners heading the five sections of the Ombudsman’s Office. The appointment of commissioners for a renewable four-year mandate ultimately requires Parliament’s simple majority vote, but the choice of candidates is restricted by a pre-selection process carried out by the Ombudsman in cooperation with civil society organisations. Commissioners can be prematurely removed from office through a simple majority in Parliament on the basis of a motivated request by a third of MPs or the Ombudsman, which opens some room for politicisation.

The staff of the Ombudsman’s Office is part of the civil service and subject to the requirements and protections of the Law on the Civil Servant, which does not adequately separate the administrative from the political sphere (see Public Sector pillar). The law determines five mandatory sections within the Ombudsman’s Office based on clusters of rights and institutions and the Ombudsman is free to determine their detailed organisation.

**Independence (Practice)**

Score: 50

The first Ombudsman was appointed in 2000 and his mandate was renewed for another five years, to 2010 – in both cases with majorities stronger than the required three-fifths of all MPs. In December 2011, the incumbent Ombudsman was also appointed by a much stronger majority (127/140 votes) than required (84/140). However, for almost two years between February 2010 and December 2011, the Parliament failed to appoint a new Ombudsman due to a long political stalemate, thus hampering the institution’s functioning.

The current Ombudsman noted that the possibility of renewal of a five-year mandate could create pressure to lobby MPs to gain that renewal, and that a longer but limited mandate might be more appropriate. When asked about concrete cases of undue interference in his and the Office’s work, the Ombudsman did not provide any specifics, but noted that various forms of pressure aiming to undermine the institution’s work are always present, pointing to lack of cooperation from institutions or the use of media outlets close to political actors for defamation and public accusations targeting the Ombudsman.

Several commissioners have had their mandates renewed, including by different political majorities in Parliament. The Albanian Helsinki Committee Director Vjollca Meçë noted, however, that this should not be mistaken for independence and considered the appointment of commissioners to be highly political, with no real involvement of civil society organisations in the pre-selection process, as envisaged by law. According to her, the tenure of Ombudsman staff is sustainable for the wrong

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937 Articles 60/3, 61/3 and 61/4, Constitution; Articles 3/d and 6, Law on People’s Advocate.
938 Article 61, Constitution; Interviews with Mr. Igli Totozani, Ombudsman, 25 February 2016 and Mrs. Vjollca Meçë, Executive Director, Albanian Helsinki Committee, 18 February 2016.
939 Articles 33 and 33/1, Law on People’s Advocate.
940 Article 34, Law on People’s Advocate.
941 Articles 31 and 35, Law on People’s Advocate.
942 Article 61, Constitution; Interviews with Mr. Igli Totozani, Ombudsman, 25 February 2016 and Mrs. Vjollca Meçë, Executive Director, Albanian Helsinki Committee, 18 February 2016.
943 See ‘History of the institution’ on its official webpage: http://www.avokatipopullit.gov.al/sq/historiku
945 Interview with Mr. Igli Totozani, Ombudsman, 25 February 2016.
946 History of the institution on its official webpage: http://www.avokatipopullit.gov.al/sq/historiku
reasons, such as nepotism. 946 Regarding possible political interference and influence on the Ombudsman’s work, she denied there are grounds for concern, because the institution is not taken seriously in her view, and the government and legislators do not heed its recommendations. 947 Similar to another human rights activist interviewed, she observed that the possibility of mandate renewals does in practice lead to an “eagerness to please” and less antagonistic positions near the end of the mandate. 948

Governance

Transparency (Law)

Score: 75

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THAT THE PUBLIC CAN OBTAIN RELEVANT INFORMATION ON THE ACTIVITIES AND DECISION-MAKING PROCESSES OF THE OMBUDSMAN?

The requirements of transparency in the appointment of the Ombudsman and commissioners are established in the Ombudsman’s organic law and were recently improved. 949 While little is provided here on the transparency of other aspects of the Ombudsman’s functioning, the gap is filled by the extensive provisions of the new Law on the Right to Information (see Public Sector pillar). 950 Even though this new law clearly provides for the proactive publication of activity reports by public institutions, given that the law on the Ombudsman is a qualified majority law, its more limited requirements on this point prevail. Specifically, the Ombudsman is free to publish its annual activity and/or the special reports it submits to Parliament only after the deadline for Parliament to discuss them has passed (two to three months). While this is an improvement from the previous situation when the reports’ publication was at the Parliament’s discretion, it falls short of guaranteeing timely transparency. 951

Given the specificities of its mandate, the Ombudsman is also subject to confidentiality obligations when deemed necessary and/or when requested by the complainant. 952 The Ombudsman’s Code of Good Administrative Conduct seeks a balance between the right to information and data protection, forbidding, amongst others, the use of personal data for unlawful reasons and the unauthorised transmission of data. 953 The Ombudsman and senior staff are also required to periodically submit asset declarations with the High Inspectorate for the Declaration and Audit of Assets and Conflicts of Interest. The disclosure of asset declarations is possible only upon request (see HIDAACI pillar). 954

Cooperation with civil society is envisaged in the Ombudsman’s organic law during the commissioners’ recruitment process and on assessing the human rights situation in the country. 955 A new Law on Public Consultation requires all public bodies to consult with interest groups and the wider public on policy and decision-making. This law also requires the publication of “transparency of decision-making reports” containing information on the number of acts approved by a public institution, recommendations received, accepted and rejected, and public meetings held. 956

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946 Interview with Mrs. Vjolica Meçe, Executive Director, Albanian Helsinki Committee, 18 February 2016.
947 Ibid.
948 Ibid; Interview with human rights activist, 19 February 2016.
949 Articles 9 and 33/1, Law on the People’s Advocate; European Commission, Albania Report, 2015, p.8 and 56.
950 See in particular article 7, Law no. 119/2014 on the Right to Information.
951 Article 28, Law on the People’s Advocate; European Commission, Albania Report, November 2015, p.56.
952 Articles 2 and 12, Law On People’s Advocate.
953 Articles 17-18 and 21-22, Code of Good Administrative Conduct: http://www.avokatipopullit.gov.al/sq/kodi-i-sjelljes-s%C3%AB-mir%C3%AB-administrative-0
954 Article 3 and 34, Asset Declarations Law; Decision no. 16, of 11 November 2004 of the Constitutional Court, paragraph 5.
955 Article 30 of Law On People’s Advocate.
Transparency (Practice)

Score: 75

TO WHAT EXTENT IS THERE TRANSPARENCY IN THE ACTIVITIES AND DECISION-MAKING PROCESSES OF THE OMBUDSMAN IN PRACTICE?

The Ombudsman’s Office has approved its transparency programme and appointed a coordinator for the right to information in line with the law.\(^{957}\) Although it is not always easy to find, its website contains extensive information, including the organisational structure, brief resumes of key staff members, all annual reports submitted to Parliament, a list of special reports, procedures for filing a complaint or requesting information, salaries, audit reports, the budget and procurement calls.\(^{958}\) In general, the reports are comprehensive but readability would benefit from better structuring, and more concise language and data. The information provided on the enforcement of the Ombudsman’s recommendations also needs to be more precise to lend itself to deeper analysis. The Ombudsman’s orders or the annual training plan mentioned in the 2014 Annual report are not published.

While the Ombudsman considered cooperation with civil society to be good, other interviewees provided a different assessment. In particular, Vjolica Meçe of the Albanian Helsinki Committee who has also been part of the Ombudsman Office’s advisory board noted that the involvement of civil society in the pre-selection process of commissioners is superficial and does not, in practice, serve the purpose of transparency and accountability. Nor should consultation with some human rights organisations be seen, in her view, as an exhaustive measure towards opening the Ombudsman’s decision-making to the public. The legal obstacle to the publication of the Ombudsman’s reports prior to the timeline for discussion by Parliament also hampers, according to her, timely discussions with civil society and other institutions.\(^{959}\) Another human rights activist who asked to remain anonymous pointed to the publication of a regular newsletter as a positive step towards higher transparency, but also claimed that there had been cases when the Ombudsman had not responded to requests for information, and that the line between a commitment to transparency in practice and mere publicity is often blurred.\(^{960}\)

Accountability (Law)

Score: 75

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THAT THE OMBUDSMAN HAS TO REPORT AND BE ANSWERABLE FOR ITS ACTIONS?

Parliament can hold the Ombudsman accountable through the legal requirement for annual reports to be submitted in April each year, shared with the President and Prime Minister, and debated in the plenary within three months from submission. The Speaker or a group of MPs can also ask the Ombudsman to report on an ad hoc basis, in which case the report is discussed within two months in a forum determined by the Speaker.\(^{961}\) Parliament can also establish inquiry committees into the

\(^{957}\) Ombudsman’s Transparency Program: [http://www.avokatipopullit.gov.al/sq/content/transparenca-e-institucionit](http://www.avokatipopullit.gov.al/sq/content/transparenca-e-institucionit)

\(^{958}\) See Ombudsman’s official website: [http://www.avokatipopullit.gov.al/sq](http://www.avokatipopullit.gov.al/sq)

\(^{959}\) Interview with Mrs. Vjolica Meçe, Executive Director, Albanian Helsinki Committee, 18 February 2016.

\(^{960}\) Interview with human rights activist, 19 February 2016.

\(^{961}\) Articles 26-28, Law On the People’s Advocate.
work of other institutions and high officials, including the Ombudsman. Compliance with the Law on Civil Service in the management of human resources is subject to checks by a commissioner – a new institution endowed with insufficient independence and resources to carry out its oversight mandate (see Public Sector pillar). All decisions on labour relations are also subject to checks by the courts.

The Ombudsman is accountable to the SAI, which is mandated to conduct a variety of audits, including financial and performance audits (see SAI pillar). The Ombudsman is required by law to record the income and payments originating from donations separately and submit these records to the SAI and Parliament’s Standing Economy and Finance Committee. A new Law on Whistleblowing was adopted as this report was being finalised, but its entry into force has not yet begun (see Public Sector pillar).

**Accountability (Practice)**

Score: 50

The Ombudsman submits annual reports to Parliament, as well as special reports and recommendations. The annual reports provide extensive information on the Ombudsman’s activities including monitoring visits and complaints handling, and findings and recommendations in a variety of human rights areas. They also cover the challenges encountered in the Office’s work, international cooperation, and a brief account of the internal management of the Office, including financial matters, staff training and meetings, and external and media relations.

Overall, the reports tend to be voluminous and not sufficiently succinct to facilitate readability and analysis. More importantly, the annual reports are not debated in Parliament’s plenaries, as required by law. Instead, Parliament’s Standing Committee on Legal Affairs, Public Administration and Human Rights holds a hearing with the Ombudsman to discuss the report and present a resolution to the plenary for voting. These discussions rarely deal with the Office’s internal management, even though problems have been reported in the past. The 2012 annual report was not discussed at all and 13 special reports submitted by the Ombudsman during 2012-2013 were not included in the Parliament’s agenda until 2014-2015. Parliament claims to have debated them now, but provides dates for only two of the reports.

According to two interviewees, oversight is not entirely ensured because the Ombudsman is not taken seriously and ignored in Parliament, although the Ombudsman himself notes that law-makers

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962 Article 77, Constitution; Article 25, Parliament’s Rules of Procedure; Article 3, Law no. 8891 on Inquiry Committees, of 2 May 2002.
963 Article 11, Law on Civil Servant.
964 Articles 10-14, Law no. 154/2014 on Organization and Functioning of the High State Council.
965 Article 37, Law On the People’s Advocate.
966 Law no. 60/2016 on Whistleblowing and the Protection of Whistleblowers, approved on 2 June 2016:
967 See, for instance, the minutes of the plenary of 14 May 2014 where the draft resolution on the Ombudsman’s 2014 Annual Report is voted without discussion:
968 See for instance, the discussion of the 2014 Annual Report on 11 May 2015:
970 Interview with Mr. Igli Totozani, Ombudsman, 25 February 2016.
have demonstrated increasing interest by inviting the Ombudsman’s Office to provide its opinion on several laws.\footnote{Interviews with Mrs. Vjolca Meçe, Executive Director, Albanian Helsinki Committee, 18 February 2016; Human rights activist, February 19, 2016; and Mr. Igli Totozani, Ombudsman, 25 February 2016.}

**Integrity mechanism (Law)**

Score: 75

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THE INTEGRITY OF THE OMBUDSMAN?

Prohibitions on political engagement and office are in place for both the Ombudsman and commissioners. The Ombudsman is also barred from engaging in any state or professional activity – except for publication and teaching – or in the management of any social, economic or trade body.\footnote{Articles 61, Constitution; Articles 3/d, 10, and 33, Law on People’s Advocate.} As civil servants, Ombudsman’s staff are entitled to integrity training from the School of Public Administration.

The Ombudsman’s Office has its own Code of Good Administrative Conduct, which applies to all employees of the Office, interns and external collaborators. The Code is governed by key principles of integrity, including non-discrimination, non-abuse of power, and impartiality, and regulates conflicts of interest, gifts and hospitality, external activities, the use of the institution’s resources, confidentiality and other aspects of ethics.\footnote{Articles 17-18, 26-27, 29, 36 of the Code of Good Administrative Conduct of the Ombudsman Office: http://www.avokatipopullit.gov.al/sq/kodi-i-sijelljes-s%C3%AB-mir%C3%AB-administrative-0; Articles 30 and 38 of the Code; Law no. 9131 on Ethics in Public Administration, of 8 September 2003, and Law 9367 on the Prevention of Conflicts of Interest (HIDAACI) is to fully audit the Ombudsman’s declarations biannually, and those of commissioners and civil servants less frequently.\footnote{Article 25/1, Ibid.}} It also makes reference to and reinforces many of the provisions in the existing legal framework on integrity, which is highly complex, lacking in clarity, and inconsistent (see Public Sector pillar).\footnote{See, for instance, TV Klan news report, ‘Totozani’s Former Advisor: Ombudsman, in corruptive affairs with his wife’, 16 July 2015: http://tvklan.al/ish-keshilltari-i-totozanit-avokati-i-popollit-ne-afera-korrupite-me-te-shoqen-2; TV Klan news report, ‘HIDAA investigates Ombudsman, conflict of interest with wife’s funds’, 30 May 2014: http://tvklan.al/liktp-heton-avokatin-e-popollit-konflikti-interesi-me-fondet-e-quiz-expert-2; Lapsi.al, ‘Ombudsman’s Adviser confesses corruption scandals of Igli Totozani’, 16 July 2015: http://www.lapsi.al/lajme/2015/07/16/A%C3%ABshilltari-i-avokatit-t%C3%AB-popullit-n%C3%ABfen-afera-korrupite-f%C3%AB-igli-totozanit#.VsrNfO4Jd} Finally, the Ombudsman, commissioners, and top and mid-level civil servants in the Ombudsman’s Office are subject to asset declarations at the beginning and end of their terms, as well as periodically.\footnote{Articles 3/b, 3/gj, 5/1, 7 and 7/1, Law on Asset Declarations: http://www.hidaa.gov.al/ligji-ri/} The High Inspectorate for the Declaration and Audit of Assets and Conflicts of Interest (HIDAACI) is to fully audit the Ombudsman’s declarations biannually, and those of commissioners and civil servants less frequently.\footnote{Article 25/1, Ibid.}

**Integrity mechanism (Practice)**

Score: 50

TO WHAT EXTENT IS THE INTEGRITY OF THE OMBUDSMAN ENSURED IN PRACTICE?

The enforcement of integrity provisions does not appear to be satisfactory. The Ombudsman has been subject to accusations of conflict of interest by some media outlets and his former media advisor regarding some appointments and cooperation agreements with a NPO headed by his wife.\footnote{See, for instance, TV Klan news report, ‘Totozani’s Former Advisor: Ombudsman, in corruptive affairs with his wife’, 16 July 2015: http://tvklan.al/ish-keshilltari-i-totozanit-avokati-i-popollit-ne-afera-korrupite-me-te-shoqen-2; TV Klan news report, ‘HIDAA investigates Ombudsman, conflict of interest with wife’s funds’, 30 May 2014: http://tvklan.al/liktp-heton-avokatin-e-popollit-konflikti-interesi-me-fondet-e-quiz-expert-2; Lapsi.al, ‘Ombudsman’s Adviser confesses corruption scandals of Igli Totozani’, 16 July 2015: http://www.lapsi.al/lajme/2015/07/16/A%C3%ABshilltari-i-avokatit-t%C3%AB-popullit-n%C3%ABfen-afera-korrupite-f%C3%AB-igli-totozanit#.VsrNfO4Jd} There was no public investigation or clarification from any institution following these media
In an interview, the Ombudsman said he had chosen not to answer targeted attacks by the media, which he considered to be close to certain political circles. When asked about registers of gifts and hospitality, and conflicts of interest, the Ombudsman said there was nothing to share as there had been no cases to register over the past three years.\textsuperscript{979}

In 2010 and 2014, HIDAACI fined two Ombudsman employees, one for a conflict of interest, and another for the failure to declare assets upon leaving office.\textsuperscript{980} It was not possible to establish whether HIDAACI has ever fully audited the Ombudsman’s Office’s asset/interest declarations up until now.\textsuperscript{981} The Ombudsman reported only two minor cases of violations of the Code of Good Administrative Conduct – unethical communication with citizens – and subsequent disciplinary measures (warnings).\textsuperscript{982} The 2014 annual report contains a full list of training and study visits attended by different staff members, but none relate to integrity specifically.\textsuperscript{983} The interviewees from civil society expressed reservation about ethics awareness and enforcement within the Office, with Albanian Helsinki Committee Director Vjollca Mećë noting that generally, the Code has either been ignored or inefficient in practice.\textsuperscript{984}

### Role

#### Investigation

**Score: 50**

**TO WHAT EXTENT IS THE OMBUDSMAN ACTIVE AND EFFECTIVE IN DEALING WITH COMPLAINTS FROM THE PUBLIC?**

Citizens can lodge complaints with the Ombudsman through various means.\textsuperscript{985} Prisons and pre-trial detention centres display information with relevant contact details and host special letterboxes – the key to which is held by the Ombudsman’s Office, where detainees can submit their complaints.\textsuperscript{986} In practice, the majority of complaints are lodged in person at the Tirana Office and by post, pointing to potentially low awareness, as well as the resource problems of regional offices and other means of complaint.\textsuperscript{987} Complainants have the right to ask for the protection of confidentiality, which the Ombudsman’s Office is bound by, or the Office can decide on the need for confidentiality in certain cases. The online form does not ask at any point if the complainant desires confidentiality and no such information is presented in the Q&A section of the website either.\textsuperscript{988} By law, complaints cannot be anonymous.\textsuperscript{989}

The Ombudsman is empowered to conduct administrative investigations on the basis of complaints and notifications, or on its own initiative. Public institutions are obliged to respond to the Ombudsman’s requests for information and allow access to their premises and files. When investigations determine that a right has been breached, the Ombudsman can issue

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\textsuperscript{979} Interview with Mr. Igli Totozani, Ombudsman, 25 February 2016.  
\textsuperscript{981} Information request sent via e-mail on 16 May 2016. HIDAACI response received via e-mail on 19 May 2016. The information request sought to learn whether the declarations in question had ever been fully audited, and if yes, the declarations of which years, and with what results. HIDAACI’s response only provided references to the relevant legal articles regulating asset/interest declarations and audits.  
\textsuperscript{982} Interview with Mr. Igli Totozani, Ombudsman, 25 February 2016.  
\textsuperscript{984} Interviews with Mrs. Vjollca Mečë, Executive Director, Albanian Helsinki Committee, 18 February 2016 and human rights activist, 19 February 2016.  
\textsuperscript{986} Interview with human rights activist, 19 February 2016 and Mrs. Vjollca Mećë, Executive Director, Albanian Helsinki Committee, 18 February 2016.  
\textsuperscript{988} See online complaint form: http://www.avokatipopullit.gov.al/ankese; See the Q&A section: http://www.avokatipopullit.gov.al/pyejtedhepergjigje  
\textsuperscript{989} Article 15, Law on the People’s Advocate.
recommendations to the complainant for further action, to the responsible authorities for measures of redress (including legislative changes), to the Prosecution to (re)open investigations in cases of suspected criminal liability, and to Parliament or any other competent authority for the discharge from office of officials. Recommendations are not binding on any party, but institutions are obliged to provide reasoned responses to them within 30 days, including on steps taken to remedy the situation. The failure to do so nullifies the acts and actions deemed illegal and entitles the Ombudsman to demand disciplinary proceedings against the responsible employee to the competent authority, or address Parliament, as the case may be.\textsuperscript{990}

In 2014, the Ombudsman reported 3,969 complaints, requests and notifications, of which only about 60 per cent fell within the institution’s remit.\textsuperscript{991} In the view of Albanian Helsinki Committee Director, Vjollca Meçë, this indicates problems with the public understanding of the mandate of the Ombudsman and efforts to clarify its role.\textsuperscript{992} The civil society interviewees also pointed to the challenge posed by such wide a mandate for the institution, for both prioritisation and depth of work.\textsuperscript{993} A recent opinion poll suggests that the public’s perception of the Ombudsman’s work is mixed, with 45 per cent of respondents believing that it holds government accountable, and 49 per cent believing the opposite.\textsuperscript{994}

In terms of investigation and resolution of complaints, the data reported by the Ombudsman is unclear, but 646 cases were said to have been resolved in favour of the complainants in 2014, while the number carried over into the next year has risen from 666 in 2013 (carried over into 2014), to 1,091 in 2014 (carried over into 2015).\textsuperscript{995} In terms of proactive investigations, the Ombudsman’s Office undertook 115 monitoring visits, inspections and checks in 2014 in penitentiary institutions and issued 81 recommendations as a result, most of which remain unimplemented according to the European Commission.\textsuperscript{996} When providing two examples of controversial Roma evictions, a human rights activist posited that the Office’s approach is inappropriately bureaucratic when swift deployment of staff in the field is required when violations are occurring.\textsuperscript{997}

In 2015, the Ombudsman was reportedly obstructed from investigating claims of violence in the Tirana Police Directorate, relating to arrested student protesters who had thrown eggs at the Prime Minister.\textsuperscript{998} The problem of responsiveness from institutions persists with regard to both recommendations and requests for information during investigations. In 2014, the Ministry of Education and Science, Ministry of Health, and the Administrative courts of Tirana and Gjirokastra did not answer the Ombudsman’s requests for information during investigations of unfair dismissals of employees.\textsuperscript{999} For that same year, the Ombudsman reported that 20 per cent of its recommendations remained unanswerable by public institutions, 3 per cent were still in process, and 8 per cent were turned down.\textsuperscript{1000} Among the institutions and officials who had not answered were the Deputy Prime Minister, Minister of Justice, Prosecutor General, Director General of the State Police, and many others.\textsuperscript{1001} In an interview, the Ombudsman noted that when the Office has enquired after the reasons for such unresponsiveness, the answer has at times been that the recommendations had been lost.\textsuperscript{1002} To address this situation, during the legal amendments to the Law on the People’s Advocate in 2014, the Ombudsman proposed – unsuccessfully – the introduction of financial

\textsuperscript{990} Articles 18-23. Ibid.
\textsuperscript{991} Initially, 2,572 were within the Ombudsman’s jurisdiction and competence, of which 240 later were found not to be such. See Ombudsman, Annual Report, 2014, p.9.
\textsuperscript{992} Interview with Mrs. Vjollca Meçë, Executive Director, Albanian Helsinki Committee, 18 February 2016.
\textsuperscript{993} Interviews with Mrs. Vjollca Meçë, Executive Director, Albanian Helsinki Committee, 18 February 2016 and human rights activist, 19 February 2016.
\textsuperscript{994} Institute for Democracy and Mediation, Trust in government: Public Opinion Poll 2015, December 2015, p.31-32.
\textsuperscript{995} Ombudsman, Annual Report, 2014, p.9 and 143. For full statistics on complaints, see p.139-144.
\textsuperscript{996} Ibid, p.28; European Commission, Albania Report, November 2015, p.57.
\textsuperscript{997} Interview with human rights activist, 19 February 2016.
\textsuperscript{999} Ombudsman, Special Report (II): Public Administration and the Regulation of Work Relations, 2014, p.9-12; see also OSCE Presence in Albania, Report to the Permanent Council by the Head of the OSCE Presence in Albania, 17 September 2015, p.10.
\textsuperscript{1000} Ombudsman, Annual Report, 2014, p.124.
\textsuperscript{1002} Interview with Mr. Igli Totozani, Albanian Ombudsman, 25 February 2016.
sanctions for cases of non-cooperation on the part of state institutions. The implementation of the accepted recommendations is not adequately tracked, but is nevertheless reported to be unsatisfactory.

Promoting good practice

Score: 50

The Ombudsman’s Office has demonstrated increasing commitment to promoting good practice, but its effectiveness is questionable. In 2014, the Ombudsman submitted seven special reports to Parliament, 368 recommendations to public institutions, 27 legislative recommendations, and mobilised the Constitutional Court in two cases. In an interview, the Ombudsman noted that public institutions are routinely consulted before the issuing of reports. While there are no specific examples of sustained and structured public campaigns on promoting good practice, the Ombudsman has cooperated with the public administration through training and other joint activities, has been active in the media, and recently launched a newsletter that is distributed free of charge.

In terms of its effectiveness, the Ombudsman has increasingly been invited to provide input on legislative initiatives, and based on the Office’s work, Parliament also approved a resolution on blood feuds in March 2015. However, it was only at the end of 2014 that Parliament began to consider a backlog of about 20 special reports the Ombudsman had submitted over 2012-2014 – reports that due to previous legal obstacles could not be published by the Ombudsman’s Office itself. In addition, these reports, as well as the Office’s annual activity reports, are only debated in Parliament’s Standing Committee on Legal Affairs, Public Administration and Human rights, and not in the plenary, which would enhance their impact. In general, Parliament does not add to the voice of the Ombudsman in promoting good governance, and it does not use its findings and recommendations to hold institutions to account. Of the 368 recommendations to public institutions issued in 2014, only 90 were reportedly accepted, 17 were refused, and no answers were provided for the rest.

The Ombudsman has recently publicly promoted some legislative recommendations. In March 2016, it submitted a recommendation to the government on the drafting of a law on good administrative conduct in line with the European Code of Good Administrative Behaviour. However, questions are warranted on the depth of work that goes into supporting such initiatives, as the recommendation in question failed to acknowledge that Albania has had a Law on Rules of Ethics in Public Administration since 2003 reflecting almost word for word the Council of Europe model code,

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1003 ‘Opinions on proposed changes to the Law on People’s Advocate’, sent by the Ombudsman to the Chair of Parliament’s Standing Committee on Legal Affairs, Public Administration and Human Rights, on 2 July 2014, Prot. No. 212/1, received scanned by the TI team via e-mail from the Ombudsman’s Office on 26 February 2016.
1006 OSCE Presence in Albania, Report to the Permanent Council by the Head of the OSCE Presence in Albania, 17 September 2015, p.10; European Commission, Albania Report, 2015, p. 11.
1008 Interview with Mr. Igli Totozani, Albanian Ombudsman, 25 February 2016.
1011 Interview with Mr. Igli Totozani, Albanian Ombudsman, 25 February 2016.
and failed to propose adequate means of addressing poor enforcement of the overall regulatory framework on integrity in public office (see Public Sector pillar).

The civil society activists expressed concerns about a tendency towards publicity and the media at the expense of thoroughness of the Ombudsman’s initiatives. One also noted that the Ombudsman’s effectiveness is hampered both by an overall administrative culture of disregard for criticism, and the Office’s inability to impose respect for its work and foster constructive relationships. Altogether, the picture that emerges from these interviews – public accusations of conflicts of interest (see Integrity above), a 2015 audit report by the SAI noting several issues with the management of both financial and human resources, including unfair dismissals in two cases and arbitrary changes to salary structures and bonuses – is not one of an institution capable of inspiring by example.

Recommendations

Parliament should:

- Debate the Ombudsman’s reports first in its Sub-committee for Human Rights, second in the Standing Committee for Legal Affairs, Public Administration and Human Rights, and finally during the plenaries.

- Publish the Ombudsman’s reports immediately as they are submitted.

- Publish other relevant documents to the debate in addition to minutes of meetings which are already published, including the assessment reports of the Parliament’s services, positions taken by the MPs charged with reviewing and presenting the reports to colleagues, and the resolutions.

- Include in its resolutions specific requirements on the format of the reports, with a view to improving readability and analytics, and their content and improving transparency and accountability on the Office’s internal management.

- Consider in its debates – as enabled by their availability – reports of the SAI, the Commissioner for the Oversight of Civil Service, the Ministry of Finance, and the audits of the HIDAACI on the Ombudsman.

- Especially on the Ombudsman’s special reports, Parliament should also organise hearings with civil society organisations working in the same fields covered by the reports.

- Follow up on the Ombudsman’s recommendations to public institutions through interpellations, hearings, and reporting requirements.

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1012 Interviews with Mrs. Vjolca Meçe, Executive Director, Albanian Helsinki Committee Director, 18 February 2016 and a human rights activist, 19 February 2016.

1013 SAI, Auditing Findings and Recommendations delivered to the Ombudsman on 26 December 2015: http://www.avokatipopullit.gov.al/sites/default/files/ctools/css/AUDITIMI%20KLSH-%C3%AB.pdf
The Ombudsman should:

- Pro-actively publish the interest declarations of relevant staff, their audit reports – as available by HIDAACI – and its register of gifts and hospitality on its official webpage, as a concrete step towards setting an example for integrity in public institutions. This implies real identification and reporting of conflicts of interest in the institution’s decision-making, and gifts and hospitality.

- In cooperation with HIDAACI and the SAI, undertake a comprehensive survey of integrity practices in public institutions, and in particular on the enforcement in practice of conflicts of interest and ethics laws. This exercise should result in open consultations with relevant actors for legislative and practice changes, to be eventually proposed to government and Parliament.
SUPREME AUDIT INSTITUTION

Summary

The Supreme Audit Institution (SAI) enjoys a relatively strong legal mandate but insufficient capacity, institutional clout and support from other key institutions to be effective. While both financial and human resources have been increasing, the SAI’s efforts towards compliance with international auditing standards are yet to yield the needed results.

Legal provisions to guarantee the SAI’s independence include a seven-year mandate for the head of the SAI, operational independence envisaged in a qualified majority law, and civil servant status for auditors. However, the process of appointment of the head of the SAI remains vulnerable to politicisation due to the simple majority vote in Parliament of candidates proposed by a President of questionable independence. In practice, the last two heads of the SAI have come from political careers.

There is a legal framework in place to ensure the SAI’s accountability and the institution fulfils its responsibilities in this regard and is generally transparent. However, its accountability is hampered by Parliament failing to fulfil its role, especially regarding the external audit of the SAI, which has not taken place since 2001. Parliament’s insufficient commitment to the follow-up on the work of the SAI also affects the institution’s impact.

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<td>Integrity mechanisms</td>
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<td>Improving financial management</td>
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Structure and organisation

Albania’s Supreme Audit Institution (SAI) is a constitutional institution mandated to audit all bodies that manage public funds, including Political Parties and State-Owned Enterprises. The SAI is organised into departments in line with the types/clusters of subjects audited by the SAI (i.e. local government, central administration, etc.). It recently adapted its structure to expand performance and IT auditing. The department dedicated to Auditing Policy is headed by the Secretary General.1014

1014 SAI’s organisational structure, approved by Order no. 149 of the Head of the SAI, on 31 October 2014: http://www.klsh.org.al/web/pub/organigrama_2014al_1338_1.pdf
The head of the SAI is appointed by Parliament, upon the proposal of the President, for a renewable seven-year mandate. The SAI reports to Parliament annually on its performance and on the State Budget.

Capacity

Resources (Practice)

Score: 50

TO WHAT EXTENT DOES THE AUDIT INSTITUTION HAVE ADEQUATE RESOURCES TO ACHIEVE ITS GOALS IN PRACTICE?

The SAI’s budget and staff have increased over the years but remain inadequate for it to fulfil its mandate effectively. The SAI submits its budget proposal directly to the Economics and Finance Committee in Parliament, thus enjoying a more independent process than other institutions. Experts and the Secretary General of the SAI report that overall the Committee has supported the institution’s resource demands.\(^\text{1015}\) However, the Executive determines mid-term expenditure thresholds for all institutions that are part of the State Budget, and the SAI is no exception. Mid-year budget cuts are a common practice in Albania and they have at times affected independent institutions, including the SAI.\(^\text{1016}\)

The SAI has significantly enhanced its investment in training and professionalism in recent years, reporting 26 days of training per staff member in 2014.\(^\text{1017}\) A previous assessment noted that the high number of training days could have inadvertently taken away from the time necessary for the preparation of audits.\(^\text{1018}\) Generally, and especially in comparison to other parts of the civil service, SAI staffing is stable (see Independence (Practice) below). Overall, the SAI’s resources need to be enhanced if the institution is to successfully conduct the full range of audits it is mandated to carry out (see Role below).

Independence (Law)

Score: 75

TO WHAT EXTENT IS THERE FORMAL OPERATIONAL INDEPENDENCE OF THE AUDIT INSTITUTION?

The SAI is established by the Constitution and explicit reference to its independence and impartiality is made in its organic law.\(^\text{1019}\) This is a qualified majority law and provides for the SAI’s operational independence, including the liberty to determine its own auditing plans, standards, and conclusions, and defines its relations with Parliament.\(^\text{1020}\) The Head of the SAI cannot be prosecuted for opinions expressed and decisions made in the normal discharge of duties, nor can s/he be subject to house and personal search, or arrest without prior authorisation from the Constitutional Court, unless caught in a criminal act.\(^\text{1021}\) The SAI staff enjoy civil servant status, with recruitment and careers


\(^{1016}\) Interviews with Mrs. Luljeta Nano, Secretary General, Supreme Audit Institution, 20 February 2015 and a public finance expert, 20 November 2015.


\(^{1018}\) Ibid.

\(^{1019}\) Part XIV, Constitution; Article 4, Law no. 154/2014 on the Organisation and Functioning of the Supreme Audit Institution (hereafter, Law on the SAI).

\(^{1020}\) Articles 25 and 31, Law on the SAI.

\(^{1021}\) Article 22, Ibid.
subject to the Law on the Civil Servant as well as the SAI organic law.\textsuperscript{1022} It is prohibited for audit staff to be active members of political organisations or parties, participate in political or commercial activities, or obtain any political mandate.\textsuperscript{1023}

There are similar in-office prohibitions in place for the head of the SAI. However, while election in party structures is prohibited, membership is not.\textsuperscript{1024} Furthermore, the appointment process for this position is vulnerable to politicisation. Concretely, the Constitution rules that the head of the SAI is to be appointed by Parliament by a simple majority, upon a proposal by the President, for a seven-year renewable mandate and discharge from office follows the same procedure.\textsuperscript{1025} Given that the 2008 constitutional amendments facilitated the appointment of a politicised President, his/her power to propose the head of the SAI and thus limit the discretion of Parliament is no longer a guarantee of an impartial choice. Eligibility conditions for appointment are in place, but they are generic – i.e. candidates must “enjoy high moral and professional integrity” – and do not exclude candidates with significant partisan backgrounds.\textsuperscript{1026} One of the grounds for dismissal of the head of the SAI is “committing acts that seriously damage his/her position and reputation” and has been criticised as open to subjectivity.\textsuperscript{1027}

**Independence (Practice)**

Score: 50

**TO WHAT EXTENT IS THE AUDIT INSTITUTION FREE FROM EXTERNAL INTERFERENCE IN THE PERFORMANCE OF ITS WORK IN PRACTICE?**

The SAI has not shied away from auditing politically sensitive sectors and bodies – such as energy – but there are some concerns regarding its independence in practice. Thus, SAI leaders usually complete their mandates, though none has had one renewed. Evident interference in the SAI’s work has hardly ever been reported and the head of the SAI recently denied any political pressure on him or the institution.\textsuperscript{1028} However, the SAI was persistently obstructed from auditing the General Directorate of Taxation from 2010 to 2015, despite the institution claiming a final court decision in favour of its right to conduct an audit.\textsuperscript{1029} During a reporting session in Parliament in 2015, the head of the SAI revealed that the institution had also encountered persistent obstacles in its audit of the National Agency of Natural Resources.\textsuperscript{1030}

The level of staffing is generally stable, with a reported average stay of about eight years in 2014.\textsuperscript{1031} However, changes in leadership do appear to cause rises in staff changes. For instance, the new head of the SAI was appointed in December 2011, and the average staff tenure at the SAI dropped from 9.1 years/employee at the end of that year to 5.5 by the end of 2012.\textsuperscript{1032} The last two leaders of the SAI have come from high-level political careers and the current head of the SAI had been an MP and a Minister (2005-2007) for the Democratic Party (DP) government of 2005-2009. He was voted in to lead the SAI in 2011 by a DP-majority Parliament, upon the proposal of a

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\textsuperscript{1022} Article 37 and 38/2, Ibid.

\textsuperscript{1023} Article 36, Ibid.

\textsuperscript{1024} Article 21, Ibid.

\textsuperscript{1025} Article 162/2, Constitution.

\textsuperscript{1026} Article 20, Law on the SAI.

\textsuperscript{1027} SIGMA, Baseline Measurement Report - The principles of public administration Albania, April 2015, p.114.


\textsuperscript{1031} SAI, Annual Performance Report, 2014, p.47.

\textsuperscript{1032} SAI, 2012 Annual Performance Report, 2012, p.45.
President with a similar background in the same party.\textsuperscript{1033} The government officials and MPs of the Socialist Party currently in power have openly attacked the credibility of the SAI on the basis of the political background of the head of the institution.\textsuperscript{1034} While it is to be expected that the SAI – by virtue of its mandate – will often stand at odds with majorities in power, clearly partisan backgrounds at the top of the institution do not contribute to its credibility in public and among audit subjects.

The Secretary General of the SAI emphasised in an interview the importance of provisions that guarantee the SAI’s \textit{operational} independence.\textsuperscript{1035} However, three other interlocutors external to the SAI posited that it is the independence of the head of the SAI that determines the operational independence of the institution as a whole.\textsuperscript{1036} A public finance expert, in particular, claimed that the tone, conclusions and severity of recommended measures of audit reports indicated preferential treatment of some institutions and ill-intentioned targeting of others.\textsuperscript{1037} While examples were provided during the interviews, a more systematic and expert analysis of the SAI’s audit reports would be necessary to objectively substantiate these claims.

\textbf{Governance}

\textbf{Transparency (Law)}

Score: 100

\textbf{TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THAT THE PUBLIC CAN OBTAIN RELEVANT INFORMATION ON THE RELEVANT ACTIVITIES AND DECISIONS BY THE SAI?}

The law requires the SAI to publish a periodic bulletin, which must at least feature final and annual audit reports, the conclusions and recommendations of particularly important audits and the SAI’s annual accounts, accompanied by the opinions of auditors on them.\textsuperscript{1038} Also, the SAI is required to electronically publish audit reports, which must reflect the opinions of the audited subjects and the auditors’ stances on them.\textsuperscript{1039} Reports to Parliament must also be made public, and they include a report on the execution of the State Budget, an opinion on the Council of Ministers’ report on the previous year’s expenditures before approval by Parliament, and the SAI’s annual performance report.\textsuperscript{1040} The Law on the Right to Information also applies to the SAI (see Public Sector pillar for more detail on this law).

\textbf{Transparency (Practice)}

Score: 75

\textbf{TO WHAT EXTENT IS THERE TRANSPARENCY IN THE ACTIVITIES AND DECISIONS OF THE AUDIT INSTITUTION IN PRACTICE?}

The SAI regularly publishes an informative bulletin on its work and a wide range of information on the institution can be found on its website, including reports on the execution of the State Budget, 1035 BalkanWeb, ‘Kallëzimi për CEZ, Gjiknuri: KLSH është vënë në shërbinë të opozitës, raporti nuk i referohet ligjit, por akuzave të PD’ (Charges for CEZ, Gjiknuri: SAI serves the opposition, the report does not refer to the law but to DP accusations), 14 October 2015: http://www.balkanweb.com/site/kallezimi-per-cez-gjiknuri-klsh-eshte-vene-ne-sherbim-te-opozites-raporti-nuk-i-referohet-ligjit-por-akuzave-te-pd/ 1036 Minutes of meetings of Parliament’s plenary session of 15 October 2015, p.9 and 13: https://www.parlament.al/wp-content/uploads/2015/11/proc_15_10_2015_24027_1.pdf 1037 Interviews with public finance expert, 20 November 2015; Interview with former civil servant in central administration, 22 December 2015 and a current high-ranking official in the Executive, 18 January 2016. 1038 Articles 33, Law on the SAI. 1039 Articles 29/2 and 34/b, ibid. 1040 Articles 31 and 34, ibid.
The institution has also enhanced its links with civil society through cooperation memoranda, and has held its annual performance assessments publicly in universities over the past two years.\textsuperscript{1041} The SAI responded to information requests by the Transparency International research team, mostly in full.\textsuperscript{1042} The SAI publishes summaries of audit reports but not the full versions, separately or in its bulletins, as required by law.\textsuperscript{1043} It is impossible to objectively assess whether the opinions of the audited subjects and the auditors' stances on them are reflected in these reports or not, as the summary reports do not indicate differences of position (see \textit{Accountability (Law)} below).

**Accountability (Law)**

Score: 75

| TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THAT THE SAI HAS TO REPORT AND BE ANSWERABLE FOR ITS ACTIONS? |

The law requires the SAI to report to Parliament on its activity within the first three months of every year, for the previous year.\textsuperscript{1044} No specific requirements on the content of this report are envisaged in law, but Parliament is free to set requirements for the future through the resolution that it approves on the report.\textsuperscript{1045} Furthermore, the SAI is required to inform Parliament on the results of its audits and submit its final audit reports whenever Parliament so asks.\textsuperscript{1046} Prior to finalisation, audit reports are sent to the audited body for comments and objections, which the SAI is obliged to reflect in the final report together with its stance on them.\textsuperscript{1047} However, the wording of this legal provision may be slightly misleading, as it is not clear whether the SAI is meant to reflect them verbatim, as an attachment to the report, for instance, or amend the report according to the objections it accepts.

Financially, the SAI is subject to the same rules of accountability as all other public bodies. The law also envisages that the SAI financial accounts are audited by a group of independent auditors, selected by and reporting to Parliament's Permanent Committee on Economy and Finance.\textsuperscript{1048}

**Accountability (Practice)**

Score: 50

| TO WHAT EXTENT DOES THE SAI HAVE TO REPORT AND BE ANSWERABLE FOR ITS ACTIONS IN PRACTICE? |

The SAI regularly reports to Parliament on its annual activity and on the execution of the State Budget. The activity reports cover data on the number and types of audits, key findings, implementation of SAI recommendations, referrals to the Prosecution of cases that are suspected of

\textsuperscript{1041} For cooperation agreements with civil society organisations see: http://www.klsh.org.al/web/Me_Shogerine_Civile_98_1.php; for the SAI's open annual performance assessments in 2014 and 2015 see: http://www.klsh.org.al/web/Analiza_750_1.php
\textsuperscript{1042} Information requests by the research team were submitted in September 2015, and February and May 2016.
\textsuperscript{1043} For SAI bulletins, see here: http://www.klsh.org.al/web/Buletini_Auditimeve_80_1.php?kc=0,1,1,0,0; for SAI audit reports (summaries), see here: http://www.klsh.org.al/web/Raporte_Auditimi_1084_1.php; see also SIGMA, Baseline Measurement Report – The principles of public administration Albania, April 2015, p.116, and European Commission, Albania Report, 2015, p.73
\textsuperscript{1044} Article 31/3, Law on the SAI.
\textsuperscript{1045} Article 103, Parliament’s Rules of Procedure.
\textsuperscript{1046} Article 31, Law on the SAI.
\textsuperscript{1047} Article 29/2, Ibid.
\textsuperscript{1048} Article 7/4, Ibid.
bearing criminal liability, auditing quality control mechanisms, transparency and publications, cooperation with other institutions, SAI resources, implementation of Parliament’s recommendations for the SAI, and future challenges.1049

The State Budget reports include the opinion of the SAI on the Council of Minister’s expenditure report, and an assessment of internal audit structures and public procurement, etc. While these reports are generally debated in Parliament, its ability to scrutinise the quality of the SAI’s auditing activity and institutional management seems limited and expressed only in generic comments and recommendations.1050

The SAI’s 2014 Annual Performance Report was accompanied by an external audit report of the institution’s finances initiated by the SAI itself. Despite repeated efforts on the part of the SAI and open acknowledgement of the fact in Parliament’s Economic and Finance Committee, Parliament has not commissioned an audit of the SAI since 2002.1051 At the end of 2013, Parliament issued a decision to initiate such a procedure but there is no evidence of its enforcement.1052

**Integrity mechanisms (Law)**

Score: 75

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**TO WHAT EXTENT ARE THERE MECHANISMS IN PLACE TO ENSURE THE INTEGRITY OF THE AUDIT INSTITUTION?**

The SAI’s organic law establishes key principles for auditors’ professional conduct, including honesty, integrity, probity, confidentiality and independence. In addition to referring to conflict of interest legislation, the Law on the SAI explicitly prohibits the direct or indirect soliciting and offering of gifts and other benefits.1053 In April 2015, the SAI approved a new Code of Ethics, following the entry into force of the institution’s new law in March 2015.1054 Both the provisions of the Law on the SAI and the Code apply to temporary external auditors that the SAI may also engage in its work. The new Code is anchored to the relevant international standards (ISSAIs) on ethics. It covers conflicts of interest, and gifts and hospitality, in both cases outlining specific relevant situations, and making reference to relevant laws.1055 However, the legal framework in this area is overall problematic (see Public Sector pillar).

The SAI Code of Ethics also requires employees to not use privileged information obtained because of their position once they leave the institution.1056 No other post-employment restrictions are in place. One of the novelties of the new Code of Ethics in comparison to the previous one is the establishment of an Ethics Commission to act as an advisory and enforcement body for the Code.1057 The SAI also has an Ethics and Integrity Sector to oversee auditors’ ethics within and without the institution, also through inspections.1058

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1053 Ibid. p.20 and 26. See also letter of the Head of the SAI to the Parliament’s Speaker, Chair of the Economic and Finance Committee, and Secretary General, 15 July 2014, Prot. no. 711, as scanned in the annexes to the SAI’s 2014 Annual Performance Report.

1055 Parliament’s Decision no. 64/2013 of 26 November 2013 “On the launch of parliamentary procedures for the auditing of the SAI’s economic activity”.

1056 Article 41, Law on the SAI.


1058 Articles 13, 15 and 16, Ibid.

1059 Article 26, Ibid.

1060 Article 28, Ibid; For the previous Code, see: [http://www.klsh.org.al/web/pub/20120104140046kodetikiklsh_77_1.pdf](http://www.klsh.org.al/web/pub/20120104140046kodetikiklsh_77_1.pdf)

Finally, the head of the SAI, senior and middle management, including chief auditors, are required by law to periodically declare their interests to the High Inspectorate for the Declaration and Audit of Assets and Conflicts of Interest.\textsuperscript{1059}

**Integrity mechanisms (Practice)**

Score: 50

**TO WHAT EXTENT IS THE INTEGRITY OF THE AUDIT INSTITUTION ENSURED IN PRACTICE?**

The recent establishment of new ethics structures within the SAI, engagement in EUROSAl’s Audit and Ethics Task Force, and the alleged application of the INTOSAINT integrity self-assessment tool all attest to the institution’s enhanced commitment to integrity.\textsuperscript{1060} However, a clear picture is yet to emerge. While some indicators are available, they are scattered and the SAI is yet to systematically report figures on ethics and integrity. Thus, the SAI referred four of its employees for prosecution in 2013 – one for falsification and three for abuse of office.\textsuperscript{1061} The institution’s internal disciplinary system appears to be operating, with the numbers of measures on staff ranging from 14 in 2012 and 2015, to the highest point of 29 in 2013.\textsuperscript{1062} Furthermore, in 2015, the SAI’s Ethics and Integrity Sector reportedly conducted 711 inspections within the institution and in audited subjects, resulting in 14 disciplinary measures for ethical breaches.\textsuperscript{1063} Measures have varied from reprimands, to demotions and discharges from office, and they have affected various levels of staff.\textsuperscript{1064}

However, useful information on ethics enforcement, such as the kinds of ethical breaches in question, is not a regular feature of the SAI annual reports to Parliament, and has not been made available through requests. In both the 2013 and 2014 performance reports, superficial information, mainly figures, was retrievable only by sifting through the annexes, rather than through the relevant sections of the reports dealing with human resources.\textsuperscript{1065} Also, apart from three cases of abuse of office, it is unclear whether any of the demotions, discharges or other measures taken by the SAI were on the grounds of ethical breaches, and as a result of inspections, notifications from colleagues, audited subjects or the public. The Transparency International research team asked for details on the disciplinary measures taken on ethical grounds between 2012 and 2016, including the specific ethical breaches. However, the SAI responded vaguely by stating “breaches of the internal regulation, code of ethics”,\textsuperscript{1066} which did not enable an assessment of whether what is being disciplined is, say, inappropriate dressing or language, or failure to declare a conflicts of interest and other serious breaches.

There are indicators to suspect weak enforcement, rather than simply weak reporting, of conflicts of interest, and gifts and hospitality regulation. When asked about the last five entries in the conflicts of interest register, the SAI responded that there have been no such cases. When asked the same about declarations of gifts and hospitality, the SAI showed only one such case, dated August


\textsuperscript{1060} SAI 2014 Annual Performance Report, p.36-39 and 60-61: Analysis of the activity of the Supreme Audit Institution, presented by the Head of the SAI during its public 2015 performance reporting, 1 February 2016, p.57.


\textsuperscript{1062} Hardcopy response to request for information, given to the project assistant Megi Llubani on 26 May 2016, at the SAI office in Tirana.


\textsuperscript{1064} Hardcopy response to request for information, given to the project assistant Megi Llubani on 26 May 2016, at the SAI office in Tirana.

\textsuperscript{1065} For instance, information on the 2014 disciplinary measures, which include demotions, discharges and three cases pursued in court for abuse of office is found in the external audit report “On the Legality and Regularity of the Financial and Economic Activity of the Supreme Audit Institution and Assessment of the Financial Management Systems” (p.17), published as part of the SAI 2014 Annual Performance Report.

\textsuperscript{1066} Hardcopy response to request for information, given to the project assistant Megi Llubani on 26 May 2016, at the SAI office in Tirana.
2014.\textsuperscript{1067} The HIDAACI fined one of the SAI chief auditors in 2014 for failing to submit an asset declaration. When asked about the case, the SAI responded that it issued a soft reprimand ("tërheqje vëmendje") as the fine was successfully challenged in court.\textsuperscript{1068} The Transparency International research team inquired after the timing, scope and results of full audits of asset declarations of relevant SAI staff, including the head of the institution in practice and HIDAACI’s response was vague and inconclusive.\textsuperscript{1069}

Finally, three interviewees external to the SAI – a high official in the Executive, a former civil servant and a freelance public finance expert – all expressed reservations, albeit to different degrees, on the integrity of SAI auditors and the institution’s previous and current leadership.\textsuperscript{1070}

### Role

**Effective financial audits**

Score: 50

**TO WHAT EXTENT DOES THE AUDIT INSTITUTION PROVIDE EFFECTIVE AUDITS OF PUBLIC EXPENDITURE?**

In its annual report on the State Budget, the SAI routinely examines the effectiveness of internal financial control and audit within government. However, SIGMA recently concluded that the SAI does not conduct a financial audit of the execution of the State Budget in line with international standards, and the SAI acknowledged that it is overall unable to come to an opinion on the financial statements of audited subjects.\textsuperscript{1071}

The overall number of audits has remained stable, between 153 and 160, over the past three years, which the European Commission has considered too low to bear impact.\textsuperscript{1072} The SAI predominantly conducts compliance/regularity audits, but performance audits have increased over the past three years from six in 2013 to 10 in 2015, and the SAI conducted its first two IT audits in 2015.\textsuperscript{1073} However, these numbers remain low and despite notable improvements SAI audits are yet to comply with international standards (ISSAIs), a challenge which the institution acknowledges.\textsuperscript{1074}

The impact of the SAI’s compliance and regularity audits is highly reliant on their consideration by Parliament and the Executive. Both the State Budget and Annual Performance reports of the SAI are debated in Parliament upon submission, but no systematic follow-up takes place.\textsuperscript{1075} Following its recent audit of a politically highly sensitive sector – energy – and ensuing accusations of bias, the SAI reiterated a number of times its request to be heard by Parliament on this audit, as envisaged by law. It also recommended that Parliament take its own steps to investigate the matter further.\textsuperscript{1076}

\textsuperscript{1067}ibid.

\textsuperscript{1068}ibid; HIDAACI Press Release, 2 September 2014: \url{http://www.hidaa.gov.al/02-shtator-2014-2/}.

\textsuperscript{1069}Hardcopy response to request for information, given to the project assistant Megi Llubani on 26 May 2016, at the SAI office in Tirana.

\textsuperscript{1070}Interviews with public finance expert, 20 November 2015; a former civil servant in central administration, 22 December 2015 and a current high-ranking official in the Executive, 18 January 2016.

\textsuperscript{1071}SIGMA, Baseline Measurement Report – The principles of public administration Albania, April 2015, p.115; Analysis of the activity of the Supreme Audit Institution, presented by the Head of the SAI during its public 2015 performance reporting, 1 February 2016, p.7

\textsuperscript{1072}Analysis of the activity of the Supreme Audit Institution, presented by the Head of the SAI during its public 2015 performance reporting, 1 February 2016, p.10; European Commission, Albania Report, November 2015, p.73.

\textsuperscript{1073}Analysis of the activity of the Supreme Audit Institution, presented by the Head of the SAI during its public 2015 performance reporting, 1 February 2016, p.10.


\textsuperscript{1075}European Commission, Albania Report, November 2015, p.73; Interview with public finance expert, 20 November 2015.

However, Parliament is yet to respond to such requests. As the SAI Secretary General pointed out during an interview, Parliament also failed to support the SAI during its long battle to audit the Tax General Directorate.1077

Detecting and sanctioning misbehaviour

Score: 50

The SAI can access all the necessary information related to the financial management of an entity that would also enable the identification of misconduct.1078 In its compliance and regularity audit reports, the SAI routinely identifies the responsibilities of office holders and economic damage, and recommends measures as appropriate. If in the course of its audit the SAI identifies misconduct that could also bear criminal liability, it refers the case to the Prosecution. It can also directly raise charges in court.1079

In practice, the SAI has significantly increased the recommended disciplinary measures against officials and requests for indemnification/compensation of economic damage caused by officials' misconduct.1080 The same applies to its referrals to the Prosecution, which have risen from 38 referrals affecting 94 officials in 2013 to 51 referrals affecting 159 officials in 2015, including a Minister, the state advocate and a secretary general in a ministry.1081 However, the SAI has recently recognised some weaknesses in the quality of its audits, including superficial scrutiny of evidence.1082 The level of enforcement of measures recommended by the SAI is low, as is the number of successful prosecutions resulting from SAI referrals.1083 Furthermore, since 2013 the SAI has repeatedly recommended legal initiatives to enable a clearer determination of the material responsibility of high-level state officials in cases of misconduct that cause economic damage, but this request has not been heard either.1084

Improving financial management

Score: 50

1077 Interview with Mrs. Luljeta Nano, Secretary General, Supreme Audit Institution, 20 February 2015.
1078 Article 26, Law on the SAI.
1079 Article 15/gi/h, Ibid.
1081 Analysis of the activity of the Supreme Audit Institution, presented by the Head of the SAI during its public 2015 performance reporting, 1 February 2016, p.38-39.
1084 Analysis of the activity of the Supreme Audit Institution, presented by the Head of the SAI during its public 2015 performance reporting, 1 February 2016, p.16.
The SAI focuses on improving public financial management, but its effectiveness is thwarted by various factors. As noted above, resource and other constraints translate into inadequate numbers of audits, auditing standards, and a lack of financial audits (see Effective financial audits above). Furthermore, the recommendations that the SAI makes are not always implemented, so the institution repeats recommendations over a number of years. This is the case, for instance, with the SAI recommendations on fixing public debt levels in the law and Constitution, drafting of a law on the material responsibility of public officials, and establishing a Fiscal Council. Between 2012 and 2015, only a third of the SAI’s legislative recommendations and 56 per cent of its organisational recommendations were implemented and in 2015, the lowest level of implementation was that of administrative and disciplinary recommendations, at 29 per cent and 46 per cent respectively. Overall, it cannot be conclusively ascertained whether the low level of implementation of all types of measures is due to lack of government will, problems with the recommendations, or other factors. Similarly, the Transparency International research team was unable to conclusively ascertain the quality of SAI follow-up of its recommendations, with the SAI reporting data on the level of implementation, and SIGMA claiming that the SAI does not keep track of accepted recommendations by institutions. However, it is worth noting that Parliament rarely demands answers from government on the low level of the implementation of SAI recommendations and does not systematically debate these recommendations.

Recommendations

- The SAI should uphold its commitment to training, but focus more strategically on the absorption and enforcement by staff of international auditing standards, especially on financial and performance audits.
- The SAI should publish the full and final audit reports, appropriately reflecting the opinions of the audited subjects.
- The SAI should include concrete evidence of its commitment to ethics in its annual reports, including data on training, conflicts of interest, gifts and hospitality and interest declarations.
- The SAI should conduct an audit of integrity systems in the public sector as a key step for future reform in this area.
- Parliament should devote more time and resources to using SAI findings to hold audited subjects accountable, for example through dedicated committee hearings on audit reports and/or the establishment of a dedicated sub-committee for that purpose. Parliament should ask institutions that regularly report to Parliament to include in their reporting efforts to address SAI findings and recommendations.
- Parliament should improve its scrutiny of the SAI by commissioning an external audit of the institution, and more concrete reporting on compliance with standards and integrity within the institution.

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1085 Ibid, p.14-16, and 35-38. The figure on the implementation of SAI recommendations reported by SIGMA seems at odds with the figures noted above, reported by the SAI itself. See SIGMA, Baseline Measurement Report – The principles of public administration Albania, April 2015, p.116.
HIGH INSPECTORATE FOR THE DECLARATION AND AUDIT OF ASSETS AND CONFLICTS OF INTEREST (HIDAACI)

Summary

The High Inspectorate for the Declaration and Audit of Assets and Conflicts of Interest (HIDAACI) is generally transparent and fulfils its obligations in terms of accountability. It generally scores low in all other indicators, mainly for reasons outside its own control, namely inappropriate legal design and resources. More specifically, HIDAACI’s Inspector General is appointed by a simple majority in Parliament, and can be similarly discharged from office. This is highly problematic given HIDAACI’s auditing subjects include MPs, judges, prosecutors and other top officials.

HIDAACI’s mandate is not that of a multi-purpose anti-corruption agency. This partly explains the low scores in its role indicators, because HIDAACI is not designed to carry out the extensive role envisaged in this pillar. Its preventive and educational roles, for instance, are limited to overseeing the enforcement of conflict of interest legislation and supporting institutions with training, advice, and guiding documents, while its investigative mandate – particularly important to the audit of interest declarations – is limited to administrative checks. These tasks HIDAACI carries out within the limits of its resources, and these limits are significant in some regards.

More importantly, the institution relies on a poor technological base and insufficient access to information to be able to thoroughly audit the large number of subjects under the legal obligation to declare their interests. As noted in other pillars, the legal framework for integrity is problematic especially on conflicts of interest and gifts and hospitality regulations. Overall, vulnerability to political pressure and poor resources are the key factors hampering HIDAACI in effectively preventing or fighting corruption in Albania. These issues ought to be addressed before or in parallel with considerations of widening HIDAACI’s mandate.

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Structure and organisation

Albania does not have a multi-purpose anti-corruption agency. There are two bodies that combined fulfil some of the tasks of such an agency: the National Anticorruption Coordinator (NAC), charged with policy development and coordination, and the High Inspectorate for the Declaration and Audit of
Assets and Conflicts of Interest (HIDAACI), an independent institution charged with the audit of asset declarations and conflicts of interest of elected and other officials.

This pillar assesses the latter only because the NAC does not fit Transparency International’s understanding of an anti-corruption agency as a “specialized, statutory and independent body of a durable nature.” In fact, it is debatable whether the NAC can be properly called an institution. It is, rather, one of the functions of the Minister of State for Local Affairs. Albania has a history of charging similar structures attached to the Prime Minister’s Office with coordination and oversight of the drafting and implementation of national anti-corruption policy. Rather than durable, these structures – combining both political and technical levels of involvement have changed in line with general election results.

Capacity

Resources (Law)

Score: 50

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE THAT PROVIDE THE HIDAACI WITH ADEQUATE RESOURCES TO EFFECTIVELY CARRY OUT ITS DUTIES?

By virtue of holding civil servant status, HIDAACI inspectors are entitled to initial and continuous training by the School of Public Administration. HIDAACI drafts its own separate budget, within ceilings determined by the Ministry of Finance and subject to final approval by Parliament. Similar to most other independent institutions, however, it is legally unprotected from arbitrary decisions on its resources (see Judiciary pillar).

HIDAACI’s staff number and structure are subject to approval by Parliament. In this sense, the vulnerability of HIDAACI’s financial stability noted above applies to and evidently affects its human resources. There are no prohibitions on Parliament lowering the number of HIDAACI inspectors, should it so decide. Given that HIDAACI is an independent institution accountable to Parliament, provisions to grant it authority over HIDAACI’s resources are understandable. However, Parliament’s unrestricted authority over HIDAACI’s financial and human resources conflicts with the authority of HIDAACI to audit the wealth of members of Parliament.

Resources (Practice)

Score: 25

TO WHAT EXTENT DOES THE HIDAACI HAVE ADEQUATE RESOURCES TO ACHIEVE ITS GOALS IN PRACTICE?

1088 In 1999, the Governmental Commission of the Fight against Corruption (GCFAC) was established at ministers’ level, under the coordination of the relevant minister of state at the time. Later on, the Anti-Corruption Monitoring Group was established at the level of the highest civil servants. The new rightwing government that came to power in 2005 overhauled the existing anti-corruption structures and established the Anti-Corruption Task Force at the political level and the Department of Internal Administrative Control and Anti-Corruption (DIACA) at the technical level. See OECD, Specialised Anti-Corruption Institutions: Review of Models, 2008, p.135-136. The new leftwing government that took power in 2013 created the NAC, demoted DIACA to a unit, and has established similar structures along political and technical lines. The NAC is meant to coordinate an inter-ministerial group on anti-corruption, supported by a technical secretariat and establish a monitoring mechanism for the Anti-corruption Strategy and Action Plan.
1089 Article 8 and 9, Law on the Civil Servant.
1091 Apart from the Asset Declaration Law noted above, see also Article 10, Law no. 9584 on Salaries, Honoraria and Structures of Constitutional Institutions and other Institutions Established by Law, of 17 July 2006.
It is widely acknowledged that HIDAACI’s financial and human resources are insufficient given the high number of subjects it audits, and the inefficient process of asset declarations and verifications.\(^{1092}\) A recent assessment estimates that about 18,300 people are under an obligation to disclose their assets.\(^{1093}\) The process of submission, preliminary check and full audit of asset declarations is paper-based. This is due to HIDAACI’s poor technology base. It has only four servers that were reported to be either dysfunctional or greatly damaged by 2014, which essentially store scanned data from asset declaration submissions.\(^{1094}\) Other important agencies for HIDAACI’s auditing work, such as the Immovable Property Registration Office, the General Department for Road Transport Services which holds the vehicle register and the Tax Administration have either very poor electronic databases, or inappropriate databases for HIDAACI’s real-time/direct access.\(^{1095}\)

This situation is part of the reason why HIDAACI’s preliminary audits are ineffective and have barely yielded any results. It is also part of the reason experts have raised doubts about the thoroughness of HIDAACI’s full audits. Each HIDAACI inspector/assistant inspector is estimated to perform about 66 full audits per year, sending about 48,000 letters of request for information to other institutions for each of them. The experts contrast this work process to that of the Slovenian Commission on Prevention of Corruption, where two inspectors and an IT expert, relying on a largely electronic mode of work, took around a year to complete full audits of seven political party leaders in 2012.\(^{1096}\)

Financial instability exacerbates this concern. HIDAACI’s Inspector General attests to an upward trend in the institution’s budget, but official figures corroborate this claim only from the year 2013 onwards.\(^{1097}\) However, HIDAACI’s (initial) 2013 budget was almost equal that of 2009 (around 664,286 euro), which in turn, was higher than those of 2010 to 2012 (621,286 euro in 2010, to 643,636 euro in 2011, and 593,714 euro in 2012).\(^{1098}\) Thus, HIDAACI’s budget history over a longer period than 2013-2015 speaks of budgetary instability rather than a steady rise. It is worth noting, however, that in 2012 and 2013 HIDAACI made no requests for more funds during the discussions of the State Budget in Parliament. In 2014, its request to Parliament during discussions of the 2015 draft-budget for more funds for IT investment and additional staff was partially approved.\(^{1099}\)

That said, HIDAACI has suffered mid-year budget cuts in the past – in 2012 and 2013 – though it does not seem to have ever been targeted for them.\(^{1100}\) The reasons for the mid-year cuts in 2012 and 2013 may have been linked to the country’s overall economic performance and weaknesses in

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\(^{1093}\) This estimate is based on the number of asset declarations HIDAACI received in 2014 (6,100) multiplied by three, estimated as the average number of family members under obligation to declare. See, Reed, Q., The Legal and Institutional Framework for Financial Disclosure in Albania, ACFA assessment report, October 2014, p.16.


\(^{1097}\) Interview with Mr. Shkëlqim Ganaj, Inspector General, HIDAACI, 12 February 2015.

\(^{1098}\) Euro conversions are calculated at the rate of 1 EUR = 140 ALL. The figures are from corrected budgets, not the initial budgets for each year. For HIDAACI’s budgets of 2008-2011 and 2013, see the respective annual reports. For 2012, 2014 and 2015 figures, see State Budget tables.

\(^{1099}\) The Parliamentary Committee on Legal Affairs approved both requests for funds for IT investments and additional staff. However, the Economic and Financial Affairs Committee mentions only the sum requested for IT investments. Minutes of meeting of the Parliamentary Committee on Legal Affairs on 14 November 2014; Minutes of meeting of the Economic and Financial Affairs Committee, 25 November 2014.

\(^{1100}\) A series of other institutions, including constitutional and independent ones (i.e. the Prosecutor General’s Office), suffered similar cuts. For approved initial 2012 budget figures, see the Budget Tables here: http://www.financa.gov.al/files/userfiles/Buxheti/Buxheti_ne_vite/Viti_2012/Buxheti_2012_Fillestar/Buxheti_2012_Tabel at_Kuvendi.xls; for the revised 2012 budget figures, see Normative Act no. 6 of the Council of Ministers, of 12 December 2012, published in No. 161 of the Official Journal, 2012, p.8666; for approved initial 2013 budget figures see the Budget Tables here: http://www.financa.gov.al/files/userfiles/Buxheti/Buxheti_ne_vite/Viti_2013/Buxheti_2013_Fillestar/Buxheti_2013_Tabel at_e_Ligiit.xls; for the revised figures, see the tables attached to Normative Act no. 7, dated 14 December 2013.
Independent of these reasons, however, the cuts expose the vulnerability of key independent institutions to political decision-making in the Executive and Legislature.

**Independence (Law)**

Score: 25

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HIDAACI’s status is defined in the Law on Assets Declaration as that of an independent institution, but legal provisions to this end are overall weak. HIDAACI’s leading figure is the Inspector General, who until 2014 was appointed by Parliament’s simple majority, based on two proposals by the President for a renewable mandate of five years.\(^{1101}\) Following legal changes in 2014, the Inspector General is now appointed by Parliament alone, again by a simple majority.\(^{1102}\) Experts consider the criteria to guide the Legislature’s judgment in this process to be far too generic.\(^{1103}\) With a unicameral parliamentary system, this means that the Inspector General is appointed by the majority that governs in Parliament. It is worth recalling that MPs and the Council of Ministers are some of the key subjects of HIDAACI’s audits. The current HIDAACI leadership considers the will of the Inspector General to be a stronger determinant of independence than the legal provisions in question,\(^{1104}\) but practice has revealed the weaknesses of this legal framework already (see *Independence (Practice)* below).

As noted by a recent assessment, a renewable mandate of five years does not sufficiently guard against correspondence with electoral four-year cycles — especially given the trend of two-mandate governments in Albania since 1998 — and may nourish dependence, rather than independence from the Executive.\(^{1105}\)

HIDAACI inspectors are subject to the protection of the Law on the Civil Service. Furthermore, there are legal provisions on the incompatibility of the position of the Inspector General with political party membership or activities, or any other profitable activity with the exception of teaching.\(^{1106}\) The Inspector General has a right to claim his/her previous post or an equivalent at the end of the mandate, during which s/he enjoys the same legal treatment as judges of the High Court. However, post-employment restrictions and “cooling-off” periods are not in place.

The size and remuneration of HIDAACI staff are subject to Parliament’s decision, like its budget overall.\(^{1107}\) The structure and remuneration of HIDAACI civil servants (i.e. inspectors) is also subject to a government decision on structures and salary levels in the Executive and some independent institutions. The instability this produces is evidenced by the 16 times this decision has been changed since its approval.\(^{1108}\)

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1101 Article 11, Law on Asset Declaration, before the 2014 amendments.
1102 The impact of the removal of the role of President from this procedure on HIDAACI’s independence should not be overstated, as the independence of the institution of the President was itself jeopardised by the 2008 constitutional amendments that allow for a simple-majority parliamentary vote on the President, too.
1104 Interview with Mr. Shkëlqim Ganaj, Inspector General, HIDAACI, 12 February 2015.
1106 Article 13, Asset Declarations Law.
1107 Article 16.4, Ibid.
Independence (Practice)

Score: 25

There are weaknesses in some of the legal provisions for HIDAACI’s independence. The appointment and dismissal of HIDAACI’s previous leadership, in particular, demonstrated the institution’s vulnerability to political control. Inspector General Zana Xhuka was elected by Parliament in January 2013, following the appointment of the previous inspector as Prosecutor General, and had until then served as Vice-Minister of Defence.

The President who proposed her as one of two candidates for the position had previously been the Minister of Interior under the same government, and had himself been appointed through a simple majority in Parliament. While not equivalent to being a member of a political party – a disqualifying condition by law – the position of Vice-Minister is, nevertheless, a recognised political appointment. Transferring that appointment without a cooling-off period to the head of an institution charged with auditing the wealth of politicians just before a general election (June 2013) certainly fails to convey an intention of upholding HIDAACI’s independence. The new parliamentary majority after the June 2013 elections soon moved to discharge the Inspector General, in office for about a year, through an inquiry committee, based on arguments of ineligibility at the moment of appointment, non-responsiveness to Parliament, and poor performance. The President and the opposition addressed the matter to the Constitutional Court, without success.

In its latest evaluation report for Albania (research conducted near end of 2013), GRECO notes strong allegations of selective targeting of the opposition by HIDAACI. This claim is not corroborated by HIDAACI’s performance under its new leadership. Since 2014, HIDAACI has fined and/or filed criminal charges with the Prosecution against six sitting MPs – two from the opposition and four from the ruling majority. However, as noted by one interviewee, three of the majority MPs were reported to the Prosecution in 2015 only after significant scandals had erupted in the media – including on their criminal pasts – and the ruling majority had politically ‘abandoned’ them.

Similarly, in 2015, five years after his post as Minister and abandoned by political parties, HIDAACI referred former Minister Dritan Prifti to the Prosecution for hiding wealth, false declarations and related offences. Despite the strong political will demonstrated by HIDAACI’s current leadership in pursuing strong allegations of inexplicable wealth held by top officials, the institution’s work over a decade has failed to produce a single significant case from politics. While institutional resources are a strong factor, HIDAACI is also insufficiently independent and therefore vulnerable to political pressure, whether in the shape of selective or timid targeting of top officials.

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1109 Meeting of the Parliamentary Committee on Legal Affairs of 18 February 2014.
1110 Constitutional Court Decision no. 59, of 23 December 2014: http://www.gik.gov.al/web/Vendime_perfundimitare_100_1.php
Governance

Transparency (Law)

Score: 75

HIDAACI is subject to the newly adopted Law on the Right to Information. This has significantly improved deadlines for responses to information requests. It also requires institutions to publish some categories of information proactively, including organisational structures, relevant legal and sublegal acts, codes of ethics, policy documents, budgets, information on the education, qualifications and salaries of officials subject to the Law on Asset Declaration, audit and performance reports, as well as information on contracts signed by the institution.\footnote{1114} The Law on Asset Declaration allows the publication of data gathered from such declarations in line with freedom of information and personal data protection legislation.\footnote{1115} It also requires HIDAACI to publish cases of refusals to declare.\footnote{1116} However, in a 2004 decision the Constitutional Court – somewhat implicitly – ruled out the pro-active disclosure of asset declarations by HIDAACI, stating that no such disclosure should be made in the absence of a request from a journalist or citizen, etc.\footnote{1117} The new Law on the Right to Information does not include asset declarations in the categories of information public institutions are requested to publish proactively.

Transparency (Practice)

Score: 75

Overall, HIDAACI is one of the most transparent institutions in practice. It has responded to requests for information and asset declarations are periodically published in the media. Other information published by HIDAACI on its website includes annual reports since 2008 (with the exception of 2012), measures taken in cases of breaches, the institution’s Code of Ethics and Internal Regulation, the Inspector General’s orders, various guidance documents on asset declarations and conflicts of interest, budgetary reports, as well as its 2015 procurement plan.

However, some information is still missing, such as that on signed contracts, as required by the Law on the Right to Information.\footnote{1118} HIDAACI responded swiftly, but not always fully to Transparency International’s information requests: it asked HIDAACI for factual information on when it had conducted full audits of the declarations of members of the government and other top officials, which declarations it had fully audited (covering which period of time), and for the results. Such specific information is not part of HIDAACI’s annual reports, and the institution responded generically, referring to legal provisions and its website.\footnote{1119}

\footnote{1114} Article 7, Law no. 119/2014 on the Right to Information.
\footnote{1115} Article 34, Asset Declarations Law.
\footnote{1116} Article 5, Asset Declarations Law.
\footnote{1117} Decision no. 16 of 11 November 2004 of the Constitutional Court, paragraph 5.
\footnote{1118} Article 7/1/ë, Law on the Right to Information.
\footnote{1119} Information request submitted by project assistant Megi Llubani, on 16 May 2016. HIDAACI response (e-mail) on 19 May 2016.
Accountability (Law)
Score: 75

The law requires HIDAACI to report annually to Parliament, no later than the end of May, and whenever the Parliament requires it. The Inspector General also makes an asset declaration to Parliament within 30 days of appointment, and each year thereafter. Parliament can also hold HIDAACI accountable through its right to inquiry committees (see Legislature pillar). HIDAACI’s decisions can be appealed in court.1120

As with all other budgetary institutions, HIDAACI is obliged to report to the Ministry of Finance on the realisation of its budget, and is subject to the audit of the SAI.1121 While complaints against HIDAACI can also be filed with the Ombudsman, an appropriate framework for whistleblowing has not been in place. Parliament finally adopted a new Law on Whistleblowing on 2 June 2016, as this report was being finalised and HIDAACI is envisaged as the main implementing institution. Parts of the new law enter into force in October 2016, and others in July 2017 (see Public Sector and SAI pillars).1122

Accountability (Practice)
Score: 75

HIDAACI has generally fulfilled its reporting obligations vis-à-vis Parliament, and with the exception of 2012 its reports are public.1123 In 2013, Parliament established an inquiry committee to investigate the performance and conduct of the HIDAACI Inspector General, which then led to her discharge from office in early 2014. As noted above, the episode and Parliament’s overall role vis-à-vis HIDAACI has highlighted the fine line between accountability and political pressure on the institution.

According to its own reporting, the courts have overturned HIDAACI’s decisions only in a few cases.1124 There is no publicly available evidence that the SAI has ever audited HIDAACI.

Integrity mechanisms (Law)
Score: 50

TO WHAT EXTENT ARE THERE MECHANISMS IN PLACE TO ENSURE THE INTEGRITY OF MEMBERS OF THE HIDAACI?

1120 Articles 11/7, 39 and 40/3 of the Asset Declarations Law.
1121 Article 65, Law on the Budgetary System; Article 7, Law on the SAI.
1123 During 2013, under the leadership of the previous IG, HIDAACI failed to respond to Parliament’s requests. Parliament established an ad hoc committee to assess the institution’s functioning and eventually dismissed the previous IG.

NATIONAL INTEGRITY SYSTEM ASSESSMENT ALBANIA
A number of laws establish principles and rules for integrity in public administration and the civil service. They include the Law on the Prevention of Conflicts of Interest, the Administrative Procedure Code, the Law on the Rules of Ethics in Public Administration, and the Law on the Civil Service.\footnote{Law no. 9131, of 8 September 2003; and Law no. 9367, of 7 April 2005, most recently changed by Law no. 44/2014 of 24 April 2014. See articles 21 and 57 of Law 152/2013 on the Civil Servant.} They all apply to HIDAACI and issues of conflicts of interest, gifts, ethics and integrity are underpinned in HIDAACI’s own Code of Ethics, and internal regulations, including the one on conflicts of interest.\footnote{Regulation for the Prevention of Conflicts of Interest in the Exercise of Public Functions at HIDAACI, approved by Order of the Inspector General no. 1406, of 5 September 2014. Code of Ethics, approved by Order of the IG no. 1284, of 02 September 2014.}

It has already been noted that the legal framework provides an erroneous definition of conflicts of interest and convoluted and overlapping elaboration of different types of conflict, on the clarity of which many other provisions depend; an inadequate definition of “decision-making”; and lax provisions on declaration of certain types of interests.\footnote{Reed, Q., Prevention and Regulation of Conflicts of Interest of Public Officials in Albania, ACFA assessment report, December 2014, p.9-12; See also articles 3/4, 5/1/d, 5/1/dh, and 7/4, PCI.} Similar problems have been noted with gifts and hospitality requirements (see Public Sector pillar for more details).\footnote{Article 8, Decision of the Council of Ministers no. 714, of 22 October 2004; Article 23, PCI Law; Reed, Q., Prevention and Regulation of Conflicts of Interest of Public Officials in Albania: Assessment and Recommendations, ACFA assessment report, December 2014, p.20.}

There also seems to be a legal gap regarding the audit of asset declarations of HIDAACI staff (i.e. inspectors). While it is clear that it would be a conflict of interest for HIDAACI to audit itself, there is no other authority charged with this task. The Inspector General is required to submit an asset declaration to Parliament each year, but how Parliament deals with it, or whether it is indeed appropriately equipped to deal with it is unclear. It may not be necessary to establish a new authority or assign such a task to an existing authority, so as to avoid falling into the vicious circle of “guarding the guards”. However, it is necessary to have a clear and transparent regulation on HIDAACI’s self-audit, and the regular publication of the relevant declarations as a sign of the institution’s standards of impartiality and integrity.

Finally, post-employment restrictions and “cooling-off” periods are not envisaged for HIDAACI inspectors, including the Inspector General.

**Integrity mechanisms (Practice)**

Score: 50

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\footnote{Interview with Mr. Shkëlqim Ganaj, Inspector General, HIDAACI, 12 February 2015.}

The Inspector General reports that there have been few disciplinary measures or resignations due to the implementation of the Code of Ethics and related regulations.\footnote{Interview with Mr. Shkëlqim Ganaj, Inspector General, HIDAACI, 22 July 2015, and written response from HIDAACI, 24 July 2015.} When probed further about the management of conflicts of interest, in particular during the auditing work, HIDAACI reported no such cases. The Inspector General asserted that at HIDAACI they rely on knowledge of and familiarity with each other to identify and thus avoid ad hoc conflicts of interest at the moment audit files are assigned.\footnote{Ibid.} When asked about the audit of inspectors’ asset declarations – which includes interests – HIDAACI confirmed that they had not been audited since the institution’s establishment in 2003, and that measures were being taken to do so on a rotating basis.\footnote{Ibid.}
Anti-corruption policy-development and coordination is the responsibility of the National Anti-corruption Coordinator. HIDAACI’s key competences in terms of prevention are those under the Law on Conflicts of Interest; it is the highest responsible authority for its enforcement. Its responsibilities in this regard are mainly of an oversight and advisory nature. The law envisages that “responsible authorities” are established in all institutions covered by the law – superiors or human resource directors – to deal with the day-to-day implementation of the law and liaise with HIDAACI.\(^\text{1132}\)

There is wide agreement, though at times for different reasons, that the implementation of this law is very poor. Key problems include: i) failure to properly constitute the “responsible authorities”, ii) failure of many institutions to annually report to HIDAACI on their management of conflicts of interests, iii) failure of many institutions to issue the relevant sublegal acts or guidance materials that would simplify understanding and enforcement of the law, and iv) inadequate definitions in the law, etc.\(^\text{1133}\)

As a result, HIDAACI has been able to deal with conflicts of interest mainly based on its audit of asset/interest declarations, but even this seems to have been inconsequential. It is highly significant, for instance, that with respect to judges and prosecutors no violations of conflicts of interest rules have been reported to or by HIDAACI, according to GRECO.\(^\text{1134}\) In the case of MPs, GRECO’s Fourth Evaluation Report notes two cases when HIDAACI’s identification of conflicts of interest seems to have borne results, in the 2009 to 2012 period – one of an invalidation of the MP’s mandate and one of a fine. However, the second case cannot qualify as a success story as the fine imposed by HIDAACI on the former Minister of Economy, Trade and Energy for appointing a “trusted person” in the supervisory body of a subordinate institution to the Ministry was repealed in court.\(^\text{1135}\)

Fines are also considered to be too low to really affect and deter future malpractice.\(^\text{1136}\)

In terms of its advisory role, including the provision of opinions for legal initiatives (upon request), HIDAACI has generally done so when requested, except for during 2013 when the institution was not functioning overall.\(^\text{1137}\)

\(^\text{1132}\) Articles 10-11, and 41-42, Law on the Prevention of Conflicts of Interest.


\(^\text{1136}\) For instance, subjects may be fined between 50,000 - 100,000 ALL (approx. 357-714 EUR) for failing to declare their assets periodically or upon request, on time and for no good reason, and between 30,000 - 50,000 ALL (214-357 euro) for failing to voluntarily declare a conflict of interest. For further details, see article 40 of Law on the Declaration of Assets, and article 44 of the Law on the Prevention of Conflicts of Interest; Reed, Q., The Legal and Institutional Framework for Financial Disclosure in Albania, ACFA assessment report, October 2014, p.37.

Education
Score: 25

TO WHAT EXTENT DOES THE HIDAACI ENGAGE IN EDUCATIONAL ACTIVITIES REGARDING FIGHTING CORRUPTION?

HIDAACI has trained “responsible authorities” on the management of conflicts of interest in public institutions, and it has also published guidance materials on asset declaration and conflicts of interest.\textsuperscript{1138} Even though these efforts may appear meagre vis-à-vis the country’s need of public education against corrupt practices, HIDAACI is neither mandated nor resourced to do much more.\textsuperscript{1139}

Investigation
Score: 25

TO WHAT EXTENT DOES THE HIDAACI ENGAGE IN INVESTIGATION REGARDING ALLEGED CORRUPTION?

The Prosecution exclusively conducts criminal investigations in Albania. The Prosecutor General’s Office, the Serious Crimes Prosecution and the Joint Investigative Units – where HIDAACI also participates – investigate corruption offences depending on the level of official under investigation. HIDAACI’s full audits are administrative investigations and HIDAACI has recently demonstrated heightened will to increase its full audits after a sharp decline to virtually none in 2013.\textsuperscript{1140} However, experts are sceptical of its effectiveness for a number of reasons.

First, HIDAACI and most of the institutions it requires information from have poor IT systems that do not allow for the electronic or online exchange of data. The paper-based work process is not only time-consuming, but also much less effective as the cross-checking of data relies solely on the naked eye. Second, the range of institutions HIDAACI addresses for information (30 in total) has been considered to be narrow.\textsuperscript{1141} Third, HIDAACI’s legal ability to access information retained by other bodies has been questioned in practice. Despite the legal provisions in place to guarantee HIDAACI’s access to relevant data, and the series of memoranda of understanding or cooperation with a string of institutions to facilitate such access, HIDAACI has had problems attaining information. Fourth, this problem is aggravated when it comes to obtaining information abroad. The Inspector General reported in two interviews that the possibility of HIDAACI obtaining information abroad had not been adequately used in the past, but that it is also impossible in the case of both banks and other financial institutions abroad due to legal constraints in other countries. A recent assessment has indeed reported problems with obtaining information from banks in Cyprus, for instance, and poor results from the memoranda of understanding signed with anti-corruption authorities in Montenegro, Slovenia and Romania.\textsuperscript{1142}

Finally, while the absence of a single significant case from HIDAACI in more than a decade of its work is a strong indicator of its performance, it is also true that HIDAACI is not alone in the responsibility of establishing a solid track record in the fight against corruption. The Prosecution has dismissed many cases of criminal charges initiated by HIDAACI, typically for “insufficient evidence”

\textsuperscript{1141} Ibid; Interview with Mr. Shkëlqim Ganaj, Inspector General, HIDAACI, 12 February 2015 and 22 July 2015.
or no good reason, according to HIDAACI.\textsuperscript{1143} Of the 154 cases referred to the Prosecution in 2014 and until July 2015 – by far the highest in the institution’s history – HIDAACI reports that the Prosecution has decided to not start investigations in 21 cases, and has stopped them in 33 cases. HIDAACI does not find the communicated reasons for these decisions clear or convincing, but has not shared them with the Transparency International research team due to concerns of breaching criminal procedure law. For 72 of the cases it has reported, the Prosecution has not notified HIDAACI of a decision. Of the 28 cases that the Prosecution has taken to court, 20 have been found guilty, one innocent, and seven are still under adjudication.\textsuperscript{1144}

Recommendations

Strengthen the independence of the institution:

- Change the appointment and dismissal procedure for the Inspector General. At a minimum, introduce qualified majority voting in Parliament. More ambitiously, introduce stricter legal criteria for eligibility and a non-political collegial body to pre-select candidates that are put to Parliament’s vote.
- Conditional on the above, prolong the mandate of the Inspector General to nine years, for instance, but limit it to one term.
- Establish limits on the authority of the Executive and Legislative to cut HIDAACI’s budget, based on objective calculations of an adequate budget for the institution.

Strengthen HIDAACI’s resources:

- Thoroughly and comprehensively assess HIDAACI’s resource needs, especially given the dramatic rise in its auditing activity and the need to step up its work with regards to conflicts of interest. Such an assessment should inform HIDAACI’s budget requests, and include infrastructure and equipment, as well as human resources (both quantitative and qualitative aspects).
- Modernise HIDAACI’s work process from paper-based to electronic, including the introduction of online declarations of assets and online access to other electronic databases, with due care for data protection.

Strengthen HIDAACI’s internal integrity mechanisms and accountability:

- Establish a register of conflicts of interest.
- Fully audit the asset declarations of HIDAACI’s Inspector General, inspectors, and assistant-inspectors, and publish them as a demonstration of the institution’s will to uphold integrity and public accountability.

\textsuperscript{1143} Ibid.
\textsuperscript{1144} Ibid; Written response from HIDAACI on 24 July 2015.
Strengthen HIDAACI’s effectiveness:

- Review the regime of conflicts of interest with a view to strengthening HIDAACI’s oversight, and clarifying the responsibilities of public institutions.

- Review terms and definitions, especially that of a “gift” with a view to removing the qualification “given because of one’s duties”.

- Discuss and agree with the Prosecution on the standard of evidence that would result in successful referrals.

- Current discussions to vest HIDAACI with more powers, moving it towards a multi-purpose anti-corruption agency should continue only in parallel with a discussion to strengthen its independence, integrity and effectiveness, including a full assessment of resource needs, as indicated above and in previous assessments (ACFA and GRECO in particular). In general, the experience of other countries should be taken into account before moving towards the multi-purpose agency model.1145

1145 See, for instance, the OECD 2013 and 2008 reviews of models in different countries.
POLITICAL PARTIES

Summary

Political Parties can be freely established and can only be banned by the Constitutional Court. Provisions on the oversight of Political Parties – especially regarding their finances – are not intrusive or coercive. However, the inadequate independence of oversight bodies leaves room for partial and discriminatory decision-making, which is also the main complaint of small parties.

State subsidies and other forms of support significantly favour big, parliamentary parties, and contrary to international standards, they exclude independent candidates. Media coverage is highly skewed in practice, adding to concerns about the ability of political subjects to compete fairly. This is amplified by legal gaps on the transparency and accountability of party finances. Financial report submission deadlines are not fixed and the donation threshold above which the disclosure of donors’ identities and use of the banking system is mandatory has been considered high and not clearly formulated, thus leaving room for artificial splitting of donations and the subsequent hiding of funds.

The threshold for campaign expenditure is far too high to be relevant and there is no obligation to disclose financial information during campaigns. The CEC has only two members of staff to manage the process of oversight of political party finances and relies on external certified accounting experts. Incentives for political party engagement are poor and audit reports superficial, as parties’ private funds are thought to be highly under-reported and obscure. While the main parties’ statutes espouse principles of internal democracy, adherence to such principles in practice is very poor and decision-making highly concentrated in the hands of chairmen and small cliques. Despite some differences – i.e. in tax policy – ideological distinctions between Political Parties have been diminishing.

The public has ranked Political Parties among the least trusted actors for a number of years now, indicating serious problems of representation. Political Parties’ promotion to public office of individuals suspected or convicted of serious crimes attests to very poor levels of integrity. Finally, corruption is a staple of political discourse, often as an accusation towards opponents, but results on the fight against corruption remain to be seen.

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<th>POLITICAL PARTIES</th>
<th>Overall Pillar Score: 40.95</th>
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Structure and organisation

The Constitution lays the groundwork, while the Law on Political Parties and Electoral Code comprise the fundamental legal framework regulating the activity of Political Parties. Registration authority lies with the Tirana District Court, but only the Constitutional Court can ban a political party on the basis of unconstitutionality.

In addition to electoral management, the Central Elections Commission (CEC) is the main institution responsible for control and oversight of campaign and regular financing. The Supreme Audit Institution is only mandated to audit funds derived from the State Budget. Based on reports from the CEC, 68 parties and two independent candidates registered in the 2013 general election, of which seven won parliamentary seats. In 2015, 63 parties and 26 independent candidates, 14 for mayor and 12 for municipal council, registered in the local elections.1146

Capacity

Resources (Law)

Score: 50

The Constitution guarantees the freedom to create Political Parties, of association and of peaceful protest. It bans totalitarian or secret parties, those that incite racial, religious, regional or ethnic hatred, and those that employ the use of force to gain power and influence.1147 The Tirana District Court registers Political Parties within 30 days upon submission of a request supported by no less than 500 permanent residents, and the party statute and programme, which must adhere to democratic principles and forms of organisation.1148 Decisions not to register a party can be appealed to the Tirana Appeal Court within 15 days.1149 The Constitutional Court alone determines the existence of unconstitutional activity and the subsequent prohibition of parties.1150 The law prohibits political party membership for a series of state officials, including the President, heads of independent institutions, high-level civil servants, judges, members of the police force and military personnel.1151

Political Parties are entitled to state subsidies in both electoral and non-electoral years, premises, free electoral advertising with the public broadcaster, and favourable rates with private media, with electoral success and parliamentary representation affecting levels of such support.1152 Funding in non-electoral years cannot be less than funding for the preceding year.1153 The lion’s share of all these forms of support is designed to go to large parliamentary parties. In addition, state subsidies for parties participating in elections are first calculated in advance based on previous election results, and recalculated post-election, with parties performing worse than previously having to return the difference, and those performing better being entitled to more funds.1154 This inevitably creates insecurities, hurts small parties more, and as noted by a previous assessment, defies the

1147 Articles 9 and 46-47, Constitution.
1148 Articles 3, 7, 10 and 13, Law on Political Parties.
1149 Article 15, Ibid.
1150 Article 8, Ibid.
1151 Articles 61, 69, 89, 130, 143, 167, Constitution; Article 90, Law on the State Police; Article 37, Law no. 152/2013 on the Civil Servant, changed.
1152 Articles 19 and 22, Law on Political Parties; Articles 80, 84, and 87, Electoral Code.
1153 Article 19/1, Law on Political Parties.
1154 Article 87, Electoral Code.
purpose of subsidies to mitigate resource constraints on political participation. Finally, independent candidates are exempt from public funding, which the OSCE has noted goes against international standards.

**Resources (Practice)**

Score: 50

To what extent do the financial resources available to political parties allow effective political competition?

Over 2009 to 2016, total state subsidies to Political Parties have at times decreased, contrary to the law. Official financial and audit reports indicate a very heavy reliance of parties on state funds. For instance, in 2014, public funds occupied 88 per cent of the total funds declared by the Socialist Party, the main party in power. Donations and membership quotas seem to be collected mostly during electoral years. However, domestic and international actors agree that private funding is significantly underreported. Independent candidates rely solely on private funding. An independent candidate for mayor in Tirana in 2015 reported donations of about 2.32 million ALL (16,842 euro), which was insignificant compared to electoral funds of larger Political Parties.

Media coverage and airtime is skewed and favours big parties in practice, to the detriment of smaller ones and independent candidates, and provides inadequate information to voters on political alternatives. For example, news coverage of parties running outside the two main coalitions in 2015 was between 1-4 per cent of all electoral news on the five main television stations, including the public broadcaster. During those same elections, 81 per cent of paid advertising in four commercial TV stations monitored by the OSCE was bought by the ruling coalition.

**Independence (Law)**

Score: 75

To what extent are there legal safeguards in place to prevent undue external interference in the activities of political parties?

The existence of grounds, as defined in the law, and subsequent banning or de-registration of Political Parties can only be decided by the Constitutional Court, which in such a case is mobilised by the President, Prime Minister, or one fifth of MPs. Parties are subject to the oversight of the

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1157 State budget allocated to political parties for 2012 and 2014 (non-electoral years) has been less than public funding to parties for the preceding years (2011 and 2013). (2014-190 000 000 ALL; 2013 – 200 000 000 ALL); (2011 – 200 000 000 ALL; 2012 189 000 000 ALL). Data retrieved from excel sheets of state budget published on the website of the Ministry of Finance.
1161 OSCE/ODIHR, Final Report: Local Elections 21 June 2015, 8 September 2015, p.16-17 (on p.16, click on the Media Monitoring Results).
1162 Articles 9 and 131/d, Constitution; Articles 8 and 26/d, Law on Political Parties; Articles 57-60, Law no. 8577 on Organisation and Functioning of the Constitutional Court, of 10 February 2000.
CEC and the SAI regarding their finances, and to the decisions and redress of the CEC and the Electoral College at the Tirana Appeal Court for other electoral administration issues (i.e. registration of candidates, etc.). The powers of these state bodies over Political Parties are reasonable and do not warrant concerns of undue interference. However, to different degrees their independence is not fully guaranteed, which may create risks of partiality in their decisions.

**Independence (Practice)**

Score: 50

**TO WHAT EXTENT ARE POLITICAL PARTIES FREE FROM UNDUE EXTERNAL INTERFERENCE IN THEIR ACTIVITIES IN PRACTICE?**

No party has been banned in Albania during the current constitutional order. However, and especially in electoral times, the independence of political activity is hampered by the poor independence of electoral management bodies, the Judiciary, and some forms of harassment.

Smaller Political Parties in particular have often complained of unequal treatment and partial justice from the CEC and Electoral College, including on registration (see Central Election Commission pillar). Though limited, there have been reports of intimidation of political candidates and activists during the elections in 2013 and 2015.\(^\text{1163}\) There have also been claims of illegal wiretapping of MPs by the military and state intelligence service, but these remain unverified.\(^\text{1164}\) In December 2015, the Municipality of Tirana – run by the same coalition in power in the central government – issued a controversial fine for the opposition Democratic Party for damage caused during a rally and warned of the blocking of its accounts should the fine not be paid within 30 days.\(^\text{1165}\)

**Governance**

**Transparency (Law)**

Score: 50

**TO WHAT EXTENT ARE THERE REGULATIONS IN PLACE THAT REQUIRE PARTIES TO MAKE THEIR FINANCIAL DATA PUBLICLY AVAILABLE?**

The Constitution requires the financial sources and expenses of Political Parties to be public at all times, but this is not adequately reflected in the rest of the legal framework.\(^\text{1166}\) While the CEC is required to publish parties’ financial and audit reports within 30 days of submission, there is no set date for the submission deadline.\(^\text{1167}\) Also, while it should be recorded, data on donors of less than 710 euro does not have to be published.\(^\text{1168}\) Parties are not required to report and publish their


\(^\text{1166}\) Article 9, Constitution; Article 15/1.2, Law on Political Parties.

\(^\text{1167}\) Ibid

\(^\text{1168}\) Article 91, Electoral Code.
finances during electoral campaigns, which does not ensure timely information for the public (see
Accountability below for more on reporting requirements).\textsuperscript{1169}

Transparency (Practice)

Score: 25

TO WHAT EXTENT DO POLITICAL PARTIES MAKE THEIR FINANCIAL DATA PUBLICLY AVAILABLE?

Transparency in practice remains very poor. Based on conservative cost estimates, monitoring by
Mjaft!, a local NPO, indicated that major parties under-report their finances by two to six times.\textsuperscript{1170}
Since 2011, a very small number of parties' financial reports are available on the CEC website (10
from 2011, six from 2012, 14 from 2013 and 13 from 2014).\textsuperscript{1171}
The Albanian Institute of Science, a local non-profit, filed lawsuits in 2015 with the Administrative
Court against three of Albania’s main parties and the Commissioner for the Right to Information for
the their refusal to disclose funds upon the organisation’s request, and the Commissioner’s decision
to not interfere by arguing that Political Parties are not subjects of the Law on the Right to
Information. The case is now with the Administrative Court of Appeal.\textsuperscript{1172}

Accountability (Law)

Score: 50

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE GOVERNING FINANCIAL OVERSIGHT OF POLITICAL
PARTIES?

The CEC is responsible for oversight of both public and private political party funds, while the SAI
can audit Political Parties for funds allocated by the State Budget.\textsuperscript{1173} The independence of both
institutions, and especially the CEC, is insufficient to enable effective oversight.

Parties should submit financial reports to the CEC annually, detailing sources and expenses,
following standard templates approved by the CEC. In electoral years, reports should include
campaign donations and expenditure. As noted in Transparency above, the deadlines are loose
and there are no reporting requirements during the campaign. Book-keeping is required for all
donations from natural and legal persons, and donations exceeding 100,000 ALL (~710 euro)
should be made only by bank, and reported publicly. The law is unclear on whether this applies
to total donations, per donor, and for what reporting period (i.e. the whole year, or the campaign),
thus leaving room for legal splitting and hiding of donations. The threshold itself may be too high for

\textsuperscript{1169} Reed, Q., Regulation and oversight of political finance in Albania: Assessment and recommendations, ACFA
\textsuperscript{1170} Ibid.
\textsuperscript{1171} Central Election Commission, Yearly Financial Reports of Political Parties: http://www.cec.org.al/sq-al/Raportet-
vjetore-financiare-%C3%AB-partive-politike
\textsuperscript{1172} Albanian Institute of Science, AIS versus SP, DP, SMI on transparency of campaign donations, request to the
administrative court of appeal to accelerate judicial review: http://ais.al/new/ais-vs-ps-lsi-dhe-pd-mbi-transparencen-
me-fondet-e-fushatave-kerkese-gjykates-administrative-apell-per-pershpejtim-te-shqyrtimit-gjyqesor/
\textsuperscript{1173} Article 15/2, Law on Political Parties; Article 21/15, Electoral Code; Article 10/1, Law no. 154/2014 on Organization
and Functioning of High State Council.
\textsuperscript{1174} Article 23, Law on Political Parties.
\textsuperscript{1175} Articles 90-91, Electoral Code.
Albania’s income levels and suggestions have been made to lower it to the level of the minimum wage (~150 euro).1176

Parties cannot receive donations in excess of one million ALL (~7,100 euro) from one single donor. Assistance from certain subjects is prohibited: i) foreign entities (except for Political Parties, unions of parties, or political foundations); ii) government and public entities; iii) legal persons or shareholders who have benefitted from public contracts or concessions over the past two years of above 10 million ALL (~71,000 euro); iv) legal persons or shareholders who exercise media activity; and v) anonymous donors, etc. Campaign expenditure cannot be above 10 times the level of funding received from the State Budget.1177 As noted by a previous assessment, this threshold is too high to be relevant to campaign funding oversight and integrity.1178

The CEC should assign by lot accounting experts to audit Political Parties’ finances, and make verifications as deemed appropriate. Auditing should take place within 45 days of a party’s registration date in electoral years, and at the beginning of each year for non-electoral ones. The Electoral Code stipulates that audit costs are to be covered by the ‘budget for elections’, which is administered by the CEC, while the Law on Political Parties requires parties to transfer adequate funds to the CEC to pay auditors. In this sense, the remuneration of auditors is unclear and a risk to the audit exercise overall. The law defines sanctions for when parties fail to make transparent the sources of their funding, impede the work of audit experts, or fail to meet deadlines for financial report submission.1179 While the CEC can initiate sanctions, clarity is missing on whether non-electoral subjects can lodge complaints with and thus mobilise the CEC to act on financing violations.1180

Accountability (Practice)

Score: 25

TO WHAT EXTENT IS THERE EFFECTIVE FINANCIAL OVERSIGHT OF POLITICAL PARTIES IN PRACTICE?

As indicated by Transparency above, financial oversight of Political Parties is very poor in practice, with the CEC unable to provide timely or substantial scrutiny.1181 Very few parties submit their financial reports in time, with only 13 of 125 parties registered in court submitting theirs in 2014, and only seven in 2013.1182 The parties’ financial reports that are available on the CEC website follow different formats.1183 In a rare case in April 2016, the CEC fined two (marginal) electoral subjects for failure to disclose funds, and two parties and four individuals for failure to cooperate with CEC auditors.1184

A lack of updated information on parties’ headquarters has often meant that accounting experts waste precious time trying to find the parties they have been assigned to audit. The CEC claimed that its assigned accounting experts were unable to contact 71 of the 118 parties that were meant to be audited for 2014.1185 This is compounded by claims that there is uncertain and inadequate

1176 Reed, Q., Regulation and oversight of political finance in Albania: Assessment and recommendations, ACFA assessment report, July 2014, pp.4 and 7.
1177 Articles 89-90, Electoral Code; Articles 21 and 23/1, Law on Political Parties.
1181 Picari, M., ‘Nësër afati i fundit – Auditi ët financimit të partive politike drejt dëshmit, s’ka auditues!’ (Tomorrow final deadline – Auditing of political party finance towards failure, there are no auditors), Ora News, 2 August 2015: http://www.oranews.tv/endi/financimi-partite-politike-fshehin-fondet-kqz-asnje-mase-ndeshkimore/
1184 Article 23/4, Law on Political Parties; CEC Press Release, 29 April 2016: http://www.cec.org.al/sq-
aI/Notitme/deklarata-shtyp/ID/460/Njoftim-per-shyp-29042016
remuneration, leading to low interest from accounting experts in obtaining the assignments from the CEC. In 2013, for instance, only nine of the minimum of 20 experts required by law applied to participate in the selection draw of the CEC.1186

The auditing that does take place is deemed superficial.1187 The accounting experts spotted no irregularities in the management of finances by the 14 audited parties in 2014, and 90 in 2013, but the general agreement is that parties dramatically under-report campaign expenditure.1188 The auditing of parties for 2014 saw significant delays, with the CEC organising the draw to assign accounting experts in August 2015 for the auditing of both 2014 and the 2015 electoral funds.1189 The CEC reports it has no capacity to conduct verifications as it is empowered to do by law. In an interview, the CEC Director of Finance noted that with only two staff at the Finance Directorate, resources for effective oversight are lacking.1190 Finally, the SAI has never audited parties’ public funds.

Integrity mechanisms (Law)

Score: 100

1189 CEC Decision no. 969, of 10 August 2015: http://www.cec.org.al/sq-AL/Legjislacioni/Aket-e-KQZ-s%C3%AB/Vendimet/Vendimet-2015
1190 CEC, Annual Report 2015, February 2016, p.42; Interview with Mirela Gega, CEC Director of Finance, 6 February 2015.
1192 Articles 39, 46/3, DP Statute; Article 33/1, SP Statute; Chapter 6.1, SMI Statute.
1193 Articles 8, 34/2, 41 2/e, DP Statute; Article 29/15, SP Statute; Chapters 7.8, 11.5 SMI Statute.
1194 Article 2/1 for freedom of expression, Article 14/8 for socialist organization (lowest level in the hierarchy), Article 16/6 for the Socialist Assembly in the Municipality; Article 18, 5/ç for Socialist assembly of the region; Article 23, 2/e for party structures in immigration; Article 26/1, SP Statute, Article 28/11, SP Statute; Chapters 7.8, 11.5 SMI Statute.
Integrity mechanisms (Practice)

Score: 0

TO WHAT EXTENT IS THERE EFFECTIVE INTERNAL DEMOCRATIC GOVERNANCE OF POLITICAL PARTIES IN PRACTICE?

Various sources concur that Albanian parties pay lip service to internal democracy principles, and practice has shown that statutes are frequently ignored. The main ruling party has recently been involved in heated debates about chairmanship elections – which have not been held since 2009 – and other aspects of internal democracy. The incumbent Premier and SP Chairman Edi Rama curtailed such criticism by launching a party referendum instead, asking members to state whether the party chair’s mandate should be considered automatically renewed when the party wins general elections and the chair is the Prime Minister. Subsequent amendments to the SP Statute, which would undermine the principle of regular party elections, have been announced.

Albania’s first opposition party with the fall of the communist regime – the Democratic Party – has been dominated by one figure, Sali Berisha, since shortly after its inception in December 1990. With some brief exceptions during the first part of the 1990s, Berisha has been party chairman during most of the post-communist period. He was the only candidate for the party leadership in four consecutive DP national conventions (2001, 2003, 2005, and 2009). Upon his resignation in 2013, after losing the general election, the DP launched a leadership race in which, in Berisha’s words, democrats would vote for the first time according to the one vote principle. The 2013 DP leadership elections were marred by omissions of members in voting lists, and the new party leader is largely seen as Berisha’s designated successor and pawn. The new leader was previously investigated for grand corruption during his office in the Ministry of Transport in 2005-2006 but the High Court ruled that the Prosecution had breached investigation deadlines, and thus dismissed charges against him as invalid.


1197 Majko: Statuti I PS është shkelur. Por me Ramën jo me Blushin’ (Majko: SP Statute was violated. However I take sides with Rama, not Blushi), 8 February 2016: http://shqiptarja.com/home/1/basha-zgjidhet-kryetar-ne-ps/


1199 Subsequent amendments to the SP Statute, which would undermine the principle of regular party elections, have been announced.


1201 The main ruling party has recently been investigated for grand corruption during his office in the Ministry of Transport in 2005-2006 but the High Court ruled that the Prosecution had breached investigation deadlines, and thus dismissed charges against him as invalid.

1202 Shqiptarja.com, ‘Surprizë, deputetët ikën…’ (Late MPs left), Tema, 6 February 2013: http://shqiptarja.com/news.php?IDNotizia=346016

The findings of a recent study of internal party democracy, targeting the members of the three main parties – SP, DP and SMI – note that the one-member-one-vote principle is redundant when faced with artificial or no competition at all in parties’ leadership races.1205 The study also claimed that the role of party structures in programming, organisational development and political orientation has been weakening over the past five years.1206 Two interviewees remarked that political success is tied to closeness with party leaders, and that party structures and forums have little say in decision-making.1207 Such concentration of power is facilitated by an electoral system based on closed party lists.1208 In 2013, some members of parliament learned via the media that they were not part of their parties’ candidate lists for the upcoming general election.1208

Role

Interest aggregation and representation (Practice)

Score: 25

TO WHAT EXTENT DO POLITICAL PARTIES AGGREGATE AND REPRESENT RELEVANT SOCIAL INTERESTS IN THE POLITICAL SPHERE?

The SP and DP are the largest and most sustainable parties of the last 25 years, with the addition of a third influential political force in 2004 in the SMI. These three parties are positioned along an ideological spectrum of left (SP), centre-left (SMI), and right (DP). This positioning owes more to their histories – with the DP being the first opposition party at the fall of communism, and the SP being the successor to the Labour Party – and less to governing policies, which has led to descriptions of Albania's politics as ‘ideologically monist’.1209

A 2012 study of the public discourse of the main right-wing and left-wing party leaders at the time – Sali Berisha and Edi Rama – revealed a predominance of right-wing vocabulary, pointing to little ideological differences between the party leaders.1210 In 2015, incumbent Prime Minister and leader of the historically left-wing SP, Edi Rama, encouraged Italian businessmen to invest in the country by appraising the absence of labour unions.1211 However, a small number of ideological distinctions have emerged, i.e. the flat tax policy of the 2005-2013 right-wing government, and the progressive tax of the current left-wing government, or the higher presence of women’s issues in the discourse of the left-wing SP leader. Women’s ascent to high public office is also a feature of the current left-wing government.1212 While larger parties are catchall in their program and tend to target most fragments of society, there are smaller parties that represent specific interests and groups, but are not ideological – i.e. the Party of Justice, Integration and Unity representing the Albanian Cham community.

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1206 Interviews with an international, 19 April 2016, and a local expert, 11 August 2016, working for two international organisations in Albania (asked to remain anonymous).
1207 Interviews with an international, 19 April 2016, and a local expert, 11 August 2016, working for two international organisations in Albania (asked to remain anonymous). Article 64, Constitution.
1211 Il Fatto Quotidiano, "Renzi “sponsor” dell’Albania in Ue. Rama: “Qui niente sindacati e tasse al 15%" (Renzi sponsor of Albania in the EU. Rama: ‘There are no unions here and 15% taxes”), 30 December 2014:
http://www.illfattoquotidiano.it/2014/12/30/renzi-sponsor-dellalbania-in-ue-rama-niente-sindacati-tasse-15/1305270/
Loss of trust in Political Parties and poor assessments of their performance by the public have become established trends. In a 2015 survey, an absolute majority of 79 per cent of respondents said they either did not trust parties, or did not trust them at all.1213 Similarly, a large majority of respondents perceived Political Parties’ performance as bad (63 per cent), and only 7 per cent assessed their performance as good.1214 In a 2016 survey, 60 per cent of participants denied that Parliament fairly represents all groups in society. Less than a quarter of participants believed that contacting an MP or local councillor made a difference. Even fewer believed that joining a political party could bring about change. The two main reasons respondents gave for withholding from political participation and engagement were that nobody listens to them, and that politicians are out for themselves. Almost a half of participants suggested the introduction of blank/protest voting as a means of improving – ironically – participation in elections.1215 Finally, evidence is mounting that Political Parties have promoted individuals with criminal records to public office – including elected office at both central and local levels – thus exacerbating problems of representation and at times bordering on illegality.1216

**Anti-corruption commitment (Practice)**

Score: 25

**TO WHAT EXTENT DO POLITICAL PARTIES GIVE DUE ATTENTION TO PUBLIC ACCOUNTABILITY AND THE FIGHT AGAINST CORRUPTION?**

Corruption occupies considerable space in party programmes and platforms as well as in the political discourse of party leaders. The DP came to power in 2005 promising to govern with “clean hands”.1217 The 2013 electoral programme of the SP featured anti-corruption pledges and plans to tackle the culture of impunity.1218 In public discourse, corruption has risen as the main accusation that parties lodge against each other and also against judges.1219

Despite the rhetoric, both in politics and the Judiciary, corruption remains prevalent and as indicated by the so-called “decriminalisation” legal package, Political Parties are part of the problem of low

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accountability and elite impunity. The leaders of two of Albania’s three main parties have stood trial on corruption charges and have been acquitted in highly controversial judgements.

**Recommendations**

In addition to the recommendations offered under the CEC pillar, the research team addresses the following recommendations to the *ad hoc* Parliamentary Committee on Electoral Reform:

- Introduce support through state subsidies for independent candidates.
- Abolish requirements for parties to return funds to the CEC if their electoral support diminishes.
- *Significantly* lower the threshold for campaign expenditure to be reported.

The following recommendations are addressed to Political Parties to regain public trust and promote integrity and appropriate representation:

- Pro-actively publish funds and expenditure at regular intervals during the upcoming 2017 electoral campaign and before election day.
- Pro-actively publish detailed biographies of election candidates.
- Establish strict checks on election candidate backgrounds.
- Introduce selection criteria for election candidates that give weight to public credit, community service, distinct professional achievements, as well as combine professional and financial backgrounds – with a view to countering the trend of rising businessmen in office.
- Involve communities and party structures in candidate selection.

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1220 Barbullushi, O., Albanian Political Parties, Inter-Party relations and the EU, in EU integration and party politics in the Balkans, European Policy Center, p.85-86.

MEDIA

Summary

The legal provisions in Albania largely guarantee the freedom of expression, but libel remains a criminal offence. The media landscape is dynamic and has seen technological advances. Despite legal provisions to prevent the concentration of ownership, transparency is limited and proxy ownership widely acknowledged. Media funding sources are also not transparent, and tied to political and non-media business interests.

The politicisation of the regulatory institution – the Audio-visual Media Authority (AMA) – and public broadcaster has resulted in their failure to carry out their mandates effectively. The digital switch-over as managed by the AMA has been long delayed and marred by accusations of favouritism by both political and media actors.

The job and financial security of journalists is low and persistent efforts at self-regulation and enforcement of professional ethics have been unsuccessful. Investigative journalism has grown, but remains at an early stage of development and coverage of corruption is highly reliant on exchanges of accusations between political actors. Altogether, journalists’ criminal liability for libel, employment and financial insecurity, and the capture of media by business and political interests all lead to censorship, including self-censorship.

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<td>Inform public on corruption and its impact</td>
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<td>Inform public on governance issues</td>
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Structure and organisation

The figures on the size of the media market are unreliable, but those provided by the AMA indicate a rich landscape with estimations of over 70 radio and 70 TV outlets, both local and national. There is a public broadcaster transmitting on two channels. There are no official statistics on the print media and online media portals, but they are numerous.

The AMA is the regulatory institution in charge of licensing and supervision of the broadcast media. The print media is not supervised by regulatory bodies and a self-regulation entity does not exist. The main legal framework in this field consists of the Law on Audio-visual Media, the Broadcasting Code, the Law on the Press, and the voluntary Media Code of Ethics. The National Registration Centre is the public authority that registers all media entities and makes their data public.

Capacity

Resources (Law)

Score: 75

TO WHAT EXTENT DOES THE LEGAL FRAMEWORK PROVIDE AN ENVIRONMENT CONducive TO A DIVERSE INDEPENDENT MEDIA?

The Constitution prohibits prior censorship and enshrines the freedom of the press, radio and television, thus setting the framework for an independent media. Audio-visual media is the most regulated sector (see below) and the establishment and operation of print media is regulated by a separate law, which does not impose ownership restrictions or the need for a specific licence. Online media is unregulated. There is no legal requirement for hiring journalists and no licence is needed to engage in the profession.

The regulation of audio and audio-visual broadcasting is extensive, but not considered prohibitive. The AMA manages the licencing process, which includes both service and transmission for public, private and community establishments (audio only), at national, regional, local and cross-border levels. The criteria for obtaining a license include financial, human, and technical capacity to offer quality broadcasting. The licensing process includes programming (content), which is required to be pluralistic and neutral. Decisions to not award licenses can be appealed to the AMA Council of Complaints and the Council’s decisions are subject to checks by the court. Based on legally defined principles and its own administrative needs, the AMA sets and periodically reviews licence and annual tariffs. All AMA decisions are subject to judicial control.

Political parties/organisations, financial institutions, state authorities and religious communities cannot apply for a broadcasting licence. Ownership restrictions are in place for national and local operators to avoid concentration of the media in too few hands. Additionally, licencing requires that entities focus exclusively on media activity and do not have business holdings in other sectors.

The Law on Audio-visual Media does not guarantee the AMA’s independence (see section on Independence below). This is a concern given AMA’s authority over licencing, tariffs, and monitoring, and its central role in the complete digital switch-over envisaged by the 2013 Law on Audio-visual Media. In this process, the law charges the AMA with the distribution of five national digital frequency bands to private operators through an open competition. In its Regulation for the process, the AMA determines technical and financial criteria (capital and bank guarantee), but it also limits the

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1223 Article 22, Constitution.
1224 Law no. 8239/1997 on Press.
1225 Interviews with Besar Limeta and Gjergj Erebara, Journalists, BIRN Albania, 21 December 2015; Londo, I., Media Integrity Matters: Albania, at South East European Media Observatory, Media Integrity Matters: Reclaiming public service values in media and journalism, 2014, p.52-56; European Commission, Progress Report Albania, 16 October 2013, p.10.
1226 Article 56.7, LAM.
1227 Article 132, paragraph 4, Ibid.
1228 Article 11, 94, 136, Ibid.

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NATIONAL INTEGRITY SYSTEM ASSESSMENT ALBANIA
competition to existing national operators and those with experience in digital broadcasting, even though this has not been previously regulated.\textsuperscript{1234} The law has assigned two national digital frequency bands to the public broadcaster, which will technically host local and regional operators, subject to tariffs to be proposed by its Steering Council and subject to the AMA’s approval.\textsuperscript{1234}

Finally, the regulation of state advertising does not adequately ensure accountability and transparency, and poses a potential threat to a competitive media market (see Independence below).

**Resources (Practice)**

Score: 50

TO WHAT EXTENT IS THERE A DIVERSE AND INDEPENDENT MEDIA PROVIDING A VARIETY OF PERSPECTIVES?

There is limited reliable information on media market shares, audience, readership, sales and financial sources. The media landscape is considered rich and dynamic, but highly politicised.\textsuperscript{1236} The representation of a broad spectrum of social interests and groups is weak. The media is not considered financially self-sufficient, which Media Institute Director Remzi Lani attributes to an insufficient advertisement market for such an overcrowded media landscape.\textsuperscript{1236}

In the last few years, developments have led to the concentration of ownership around media groups, which are supported by their owners’ other businesses, mainly in construction and oil.\textsuperscript{1237} State advertising, which plays a significant role in media finances, has been allocated to outlets favourable to the government and has reflected political rotations in both central and local government (see Independence below). The Albanian Radio Television (ART) is supported by the state budget. According to BIRN Albania journalist Besar Likmeta, ART continues to be exploited by governments despite its dwindling audience because of its truly national coverage and technology for live connection from remote areas in the country.\textsuperscript{1238}

Illegal broadcasting (including the usurpation of frequencies), proxy ownership, and failure to pay tariffs/fees are some of the persisting issues affecting media market diversity. The shift from analogue to digital broadcasting, initially planned to be completed by summer 2015, has been delayed. Only the two frequency bands planned by law for the national broadcaster have been awarded. The competition launched for the distribution of the other five has been challenged because of the initially high financial requirements,\textsuperscript{1239} claims of cross-ownership of three of the invited contenders,\textsuperscript{1240} and finally because the procedure regulated by the AMA favours existing national operators. The latter claim – raised by the now closed Agon Channel – is currently under

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\textsuperscript{1233} Articles 70-71, LAM; Article 4/1 of the Regulation on licensing numerical networks and their programs through the beauty contest procedure: http://ama.gov.al/preview/wp-content/uploads/2015/03/Regrullore_BC.pdf
\textsuperscript{1234} Articles 122/3, 126, LAM.
\textsuperscript{1236} Interview with Mr. Remzi Lani, Executive Director of Albanian Media Institute, 14 October 2014.
\textsuperscript{1238} Interview with Besar Likmeta, Editor, BIRN Albania, 21 December 2015.
\textsuperscript{1239} Article 16, AMA, Decision no. 10, of 2 July 2013, Regulation on licensing numerical networks and their programs through the beauty contest procedure; Court Decision no. 17, of 8 October 2014; AMA, (Information on “Beauty Contest” procedure): http://ama.gov.al/preview/wp-content/uploads/2015/03/Rrregullore_BC.pdf
\textsuperscript{1240} Vizion Plus TV Lawsuit against AMA in the First Instance Administrative Court; Bogdani, A., Likmeta, B., ‘Beauty Contesti kthetet në gati të shëmtuar për frekuencat dixhilitale’ (Albania’s Beauty Contest turns into an ugly race for digital frequencies), BIRN Albania, 21 December 2015: http://www.reporter.al/beauty-contesti-kthetet-ne-gare-te-shemtuar-per-frekuencat-dixhilitale/
consideration by the European Court of Human Rights. Concern has also been expressed over the high hosting costs that are estimated to be levied by the public broadcaster on local and regional audio-visual outlets. This persistent struggle is largely due to a long absence of regulation, and to the AMA’s poor capacity, independence, and overall functioning since its establishment in 2013.

On a positive note, production and broadcasting technological advances have been notable in both analogue and digital transmission, and for digital transmission have preceded regulation.

Professional resources are limited as journalists have little job security, the Law on Labour is not upheld, and opportunities for professional development are limited. The Chair of the Albanian Union of Journalists, Mr Aleksandër Çipa believes that increased economic pressure on the media market creates insecure working conditions for journalists. Many of them work without formal labour contracts and face delays in obtaining salaries, which affects integrity and professionalism.

Regarding professional capacities, the standard of formal qualifications is also reported to be problematic and many professionals have expressed the need for a reform of the School of Journalism and for more investment in training.

Independence (Law)

Score: 50

The legal framework protects the freedom of media establishment and activity, bans censorship and guarantees the right to information. For audio-visual media, the AMA can block or filter content or request the broadcasting of national interest messages in justified cases defined by law, i.e. to protect the constitutional order or in cases of public health threats.

The sponsorship of news and informative programmes on politics is prohibited, but overall the regulation of public sponsorship of the media is ambiguous. Institutional advertising is allowed, but its association with specific parties is explicitly forbidden. State advertising in both public and private outlets during electoral periods is prohibited, with the exception of advertising on voter awareness and other aspects of the electoral process. The production and broadcast of advertising and media programmes is exempt from procurement legislation. Its regulation by a Council of Ministers decision does not uphold adequate standards of transparency and fair competition, allowing ample space for abuse.

The independence of the AMA and the public broadcaster are not fully guaranteed by law. Prohibitions are in place for candidates and members of the AMA’s board that seek to ensure

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1241 European Court of Human Rights, AGONSET lawsuit against Albania, First Section, 5 November 2015; Interview with Dorian Matlija, Director, Respublica, 8 April 2015.
1242 Interview with Besar Likmeta and Gjergj Erebara, Journalists, BIRN Albania, 21 December 2015.
1247 Article 22, Constitution; Article 4, LAM; Law no.8239 on the Press, of 3 September 1997.
1248 Articles 4, 34, 57, LAM.
1249 Article 45.4, LAM; Article 3, Law no. 7892 on Sponsorships, of 21 December 1994.
1250 Articles 80, paragraph 4 and 84, paragraph 10, Electoral Code.
1251 Article 7/b, Law no 9643 on Public Procurement, of 20 November 2006; Article 5/q, Law no. 125/2013 on Concessions and Public Partnership: Decision of the Council of Ministers nr. 1195, of 05 August 2008. See also ResPublica, Public Procurement of advertising and media campaigns in Albania: European practices, p.6.
distance from political, commercial and other interests. However, the process of evaluation and voting of candidates is highly vulnerable to politicisation, as the majority and opposition in Parliament arrive at a final list of candidates by taking turns in ruling applicants out. At the end of this process, Parliament votes to appoint the remaining candidates by simple majority, for a five-year mandate renewable only once. The AMA’s Board chair is also appointed by parliamentary vote.1253 Members of the Steering Committee of the public broadcaster are elected through the same procedure.1254

To support independence, media ownership is limited to entities that work on media solely and provisions limit ownership concentration. Legislative proposals on the removal of ownership restrictions in audio-visual media, proposed by an MP of the main governing party, stayed with parliament for over six months in 2015 and were withdrawn only after strong international pressure.1255

A new law has introduced significant improvements to the regulation of the right to information (see also Public Sector pillar, Transparency).1256 Law protects the confidentiality of journalists’ sources of information.1257 The Code of Criminal Procedure also prohibits forcing journalists to testify and disclose sources of information, but conditions it on the existence of other means to bring out criminal evidence and witnesses.1258

Defamation remains a criminal offence: the 2012 amendments to the Criminal Code removed prison sentences for defamation, but increased the upper limit of fines to three million ALL (approximately 21,400 euro).1259 Journalists are also subject to civil liability for defamation.1260 In autumn 2015, a proposal sponsored by the Prime Minister to reintroduce prison sentences caused strong concern among media and international bodies and was withdrawn.1261 Similar efforts to regulate offensive online comments were discouraged.1262 The continued criminalisation of defamation has been criticised, amongst others, for contributing to self-censorship.1263

Independence (Practice)

Score: 25

1253 Articles 7-11, LAM.
1254 Article 94, Ibid.
1256 Law 119/2014 on the Right to Information.
1257 Article 2, paragraph 2, LAM.
1258 Article 159, Code of Criminal Procedures.
1259 Article 120, Penal Code.
1260 Articles 625, 647/a, Civil Code.
The media is strongly influenced by economic and political interests, channelled mainly through the politicisation of the AMA, hidden media ownership, and state advertising. Coupled with vulnerable working conditions, this situation has led to high levels of self-censorship among journalists.

The AMA has been largely dysfunctional since its establishment in 2013, due to long delays and politicisation of the election of its board members, followed by a boycott of AMA meetings by opposition-supported members for almost a year. The election of the AMA’s chair in particular has been contested by the main opposition party in court, claiming his election was made in a situation of conflict of interest because of suspected links of the new chair of one of the key media market operators (Digitalb). Overall, the proximity of the regulator’s board members to political or other interests is not a new occurrence, exacerbating issues of credibility. The delayed process of digital switch-over and reform of the public broadcaster have been marred by many of the same issues. The AMA’s management of the digital licence distribution process has been challenged in national and international courts by various media operators on a number of issues and is currently stalled (see Resources above).

The ownership regime is opaque and experts as well as the AMA’s chair openly admit to proxy ownership and market concentration. In breach of legal provisions, many media outlets are supported by business holdings, mainly in trade, construction, telecommunication and oil. According to a number of sources, business owners use media outlets to gain favour with government, avoid taxes and promote their business interests with both major parties.

Public advertising is distributed to outlets supporting the government line. Distribution of funds among various operators is disproportional. A BIRN investigation showed that during the 2009 to 2013 Berisha government, five media and advertising companies linked to Aleksander Frangaj, a Berisha supporter at the time, received 730,000 euro worth of advertising from state institutions, while Top Channel, the country’s largest broadcaster and a perceived supporter of then opposition socialist leader Edi Rama received 9,940 euro over the same period. Following the short-lived freeze on government advertising instituted by the new Rama administration in 2013, this situation has been reversed. In addition, there is an evident lack of transparency over public advertising contracts and state institutions have largely failed to respond to information requests on this matter.

Private advertising plays a major part in media finances and, as a result, censorship. For instance, actions of the Competition Authority against two of the major telecommunications companies in the country went largely unreported by the media. A 2014 BIRN Albania survey of journalists, editors and owners revealed that rather than serving to boost media independence, big advertisers are a key influence on editorial policy, leading not only to avoidance of certain news, but also to favourable coverage.

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1266 European Commission, Albania Report, 2015, p.21
1270 Londo, I., Media Integrity Matters: Albania, at South East European Media Observatory, Media Integrity Matters: Reclaiming public service values in media and journalism, 2014, p.72-79.
1273 ResPublica, Use of Public Funds for Advertising and Other Forms of Publicity, July 2015, p.11-14, 21-23.
The survey confirmed high levels of self-censorship in the media, reported by multiple sources, stemming from the influence of political and business interests on editorial policies, levels of physical and job security for journalists, as well as weak implementation of labour contract obligations. Albanian journalists have also faced political and criminal pressure in the form of threats and violence: at least seven cases were publicly registered over the past two years. While police protection is sometimes provided and investigations are initiated, interviewed journalists were not aware of any prosecutions or convictions. Libel charges against journalists are rare, but hostile statements from politicians against journalists have been noted. International partners have continuously demanded further steps to fully decriminalise defamation.

In electoral periods, legislation is not fully implemented and fines against unbalanced reporting are rarely levied. It is widely acknowledged that outlets air party-produced electoral coverage.

Governance

Transparency (Law)

Score: 75

TO WHAT EXTENT ARE THERE PROVISIONS TO ENSURE TRANSPARENCY IN THE ACTIVITIES OF THE MEDIA?

Legal provisions are in place for financial and ownership transparency of all commercial operators, as for all businesses. These include information on the company’s representatives, governing board members and stock ownership, which are also part of the licencing requirements for audio-visual media. Fines are envisaged for failure to inform the regulator of changes in the ownership structure. Audio-visual media outlets are also required by law to submit annual financial reports to the AMA and the National Registration Centre, which also makes them public. There are no legal requirements for the disclosure of staffing data or editorial policies for any media. Online media is unregulated.

Transparency (Practice)

Score: 25

TO WHAT EXTENT IS THERE TRANSPARENCY IN THE MEDIA IN PRACTICE?

1276 Ibid; Freedom House, ‘Freedom of the Press 2014‘; Interview with Mr. Aleksander Cipa, Chair of the Albanian Union of Journalists, 29 September 2014; Interview with Mr. Remzi Lani, Executive Director of Albanian Media Institute, 14 October 2014.
1278 Interview with Gjergj Erebara and Besar Likmeta, Journalists, BIRN Albania, 21 December 2015.
1282 Article 32, Law on National Registration Center.
1283 Article 36, LAM.
1284 Article 133, LAM.
1285 Article 43, Law on National Registration Center; Article 33g, LAM.
In practice, financial and ownership data of media outlets is publicly available on the website of the National Registration Centre. Annual financial reports have only begun to be published online by the NRC in the past two years. Experts have questioned the veracity of ownership records and claim that quite a few registered ownership shares serve as a cover for hidden media owners.\(^{1286}\)

Sources of revenue are difficult to ascertain and commentators agree that the media business is unsustainable and supported, contrary to the law, by other non-media business holdings.\(^{1287}\)

Although broadcast media is required to submit annual financial reports to the AMA, only 47 per cent of them did so in 2014.\(^{1288}\) Meanwhile, there is no information on the ownership and management of blogs and other online media.\(^{1289}\) In a 2014 survey, 65 per cent of journalists and editors surveyed stated they were not aware of a written editorial policy.\(^{1290}\)

**Accountability (Law)**

Score: 75

**TO WHAT EXTENT ARE THERE LEGAL PROVISIONS TO ENSURE THAT MEDIA OUTLETS ARE ANSWERABLE FOR THEIR ACTIVITIES?**

The AMA is the main state body responsible for regulating and overseeing audio-visual media operators. Its Appeal Council, a full time and specialised collegial board, oversees the implementation of the Broadcasting Code\(^{1291}\) and other regulations adopted by the AMA, dealing mainly with the protection of human dignity and other basic individual rights, in particular related to children and moral and ethical norms in broadcasting. The Appeal Council is also tasked with preparing surveys, publishing guidelines for media entities, and reviewing complaints. It also proposes the adoption of measures to AMA’s Board in cases of violations of law or regulations, especially regarding individual fundamental rights.\(^{1292}\) The law envisages a similar structure for the public broadcaster – the Council of Viewers and Listeners.\(^{1293}\) Audio-visual media operators are required to submit annual financial reports to the AMA, as well as to report changes to information provided at the licencing stage. They are not required to submit reports on programming.\(^{1294}\)

The right to reply is guaranteed by law. Individuals can address a written complaint to the relevant media entity and retractions/corrections in the audio-visual media have to be made in the same form as the originally incorrect information was presented, within 30 days of submission of a written complaint. In the case of a rejection, they can refer the case to AMA’s Appeal Council, which in cases of violations recommends further measures to the AMA’s Board.\(^{1295}\) In the press media, retractions are to be made immediately upon receipt of an acceptable complaint, in the same part of the publication where the erroneous information appeared.\(^{1296}\) No such regulations exist for online

\(^{1286}\) Interviews with Mr. Remzi Lani, Executive Director of Albanian Media Institute, 14 October 2014 and Mr. Aleksander Cipa, Chair of the Albanian Union of Journalists, 29 September 2014.

\(^{1287}\) Londo, I., Media Integrity Matters: Albania, at South East European Media Observatory, Media Integrity Matters: Reclaiming public service values in media and journalism, 2014, p.72-76.


\(^{1289}\) Interviews with Mr. Remzi Lani, Executive Director of Albanian Media Institute, 14 October 2014 and Mr. Aleksander Cipa, Chair of the Albanian Union of Journalists, 29 September 2014.

\(^{1290}\) Balkan Investigative Reporting Network (BIRN) Albania, A blind eye on news: Self-censorship in the Albanian media, Tirana, 2015, p.6; Londo, I., Media Integrity Matters: Albania, at South East European Media Observatory, Media Integrity Matters: Reclaiming public service values in media and journalism, 2014, p.102.


\(^{1292}\) Articles 20, and 51-52, LAM.

\(^{1293}\) Article 112, LAM.

\(^{1294}\) Article 78, LAM.

\(^{1295}\) Article 53, LAM

\(^{1296}\) Article 10, Law on the Press.
media. Libel carries both civil and criminal liability and is punishable by fine (see Independence above). Based on the Code of Civil Procedures, the court receiving the case may require the broadcasting service operator or other media entities to publish a retraction.1297

The Electoral Code also provides for accountability of media coverage in electoral times through a Media Monitoring Board (MMB), a temporary structure that reports daily to the Central Election Commission.1298 Self-regulation mechanisms are lacking despite past and on-going efforts to establish them.

**Accountability (Practice)**

Score: 25

**TO WHAT EXTENT CAN MEDIA OUTLETS BE HELD ACCOUNTABLE IN PRACTICE?**

Media accountability is poor, with the most concerning aspect being the poor functioning of the regulatory authority. The AMA’s Appeal Council has not been established yet, and the institution has not fully performed many of its statutory tasks because of political deadlock.1300 Amongst others, this has impeded the AMA’s activity on registering and sanctioning violations, or enforcing past decisions. The situation is similar at the public broadcaster where the Council of Viewers and Listeners is yet to be established because of long held vacancies in its Steering Council.1301

Low accountability is most evident in the usurpation of frequency bands by audio-visual media operators, violation of technical conditions, non-payment of financial dues to the AMA, and the AMA’s admitted failure to control such developments.1302 In 2013, the AMA declared the nullification of 16 audio-visual media licences and imposed fines on 43 other media entities for illegal broadcasting.1303 The AMA has also issued official warnings on the use of language during advertisements, violation of ethics on child privacy and other episodes of sponsorship abuse.1304

According to the AMA reports, the individual right of reply is not adequately respected in audio-visual broadcasting. Therefore the AMA has drafted new special regulations to guarantee the individual right of reply, which have not yet been approved.1305 According to the interviewees, there are no cases where media outlets have granted a right of reply without prompting from outside agents, despite pressure by journalist associations to implement this good practice.1306 Retractions are also a very rare occurrence,1307 and incorrect or defamatory content online goes unchecked, including in the comments’ sections.

The Media Monitoring Board, tasked with monitoring of electoral coverage, has not carried out its mandate as required, largely because of poor independence and limited resources. The CEC has

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1297 Articles 617, 625, Code of Civil Procedure.
1298 Articles 85, 85.1, Electoral Code.
1301 Ibid.
1304 Ibid.
1306 Interviews with Mr. Remzi Lani, Executive Director of Albanian Media Institute, 14 October 2014 and Mr. Aleksander Cipa, Chair of the Albanian Union of Journalists, 29 September 2014.
1307 Interview with Gjergj Erebara and Besar Likmeta, journalists, BIRN Albania, 21 December 2015.
rarely imposed fines for unbalanced coverage, which is a regular occurrence.\textsuperscript{1308}

**Integrity mechanisms (Law)**

Score: 25

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THE INTEGRITY OF MEDIA EMPLOYEES?

There is a voluntary Media Code of Ethics, first drafted in 1996 and revised in 2006 covering both individual journalists and editors, and entities. The Code sets standards on accuracy of reporting, rectifications and replies, relations with sources (including issues of privacy), editorial independence, plagiarism, and other important aspects of professional journalism.\textsuperscript{1309} However, it lacks implementation mechanisms despite several efforts in that regard, and its endorsement by media outlets and journalists is unclear.\textsuperscript{1310} There is one case on record of an ethical bureau within a daily newspaper, but it no longer exists.\textsuperscript{1311}

**Integrity mechanisms (Practice)**

Score: 0

TO WHAT EXTENT IS THE INTEGRITY OF MEDIA EMPLOYEES ENSURED IN PRACTICE?

A 2014 BIRN survey with some 120 journalists revealed that almost none were aware of a code of ethics in their own media outlets.\textsuperscript{1312} Overall, efforts to uphold media ethics, including through self-regulation, have been persistent but unsuccessful.\textsuperscript{1313} The country’s two professional organisations have been ineffective in supervising and enforcing media ethics. According to the director of the Media Institute, Remzi Lani, the provision of accurate information to citizens through fair and objective reporting is principally hampered by interference from political and business interests, and the standard of cross-checking information with at least two sources is often overlooked.\textsuperscript{1314} The latter is often denounced in op-eds and commentaries, and was also one of the main findings of a recent assessment of media reporting of human trafficking, according to which 84 per cent of the news on this phenomenon was from one source.\textsuperscript{1315}

\textsuperscript{1308} OSCE/ODIHR, 2015 Local Elections Final Report, 8 September 2015, p.16-17; OSCE/ODIHR, 2013 General Election Final Report, p.16-17.


\textsuperscript{1312} Balkan Investigative Reporting Network (BIRN) Albania, A blind eye on news: Self-censorship in the Albanian media, Tirana, 2015, p.28.

\textsuperscript{1313} Friedrich-Ebert-Stiftung (FES), Balkan Media Barometer: Albania Barometer, 2013, p.48.

\textsuperscript{1314} Interview with Mr.Remzi Lani, Executive Director of Albanian Media Institute, 14 October 2014.

In addition, the assessment noted that the media revealed personal data of trafficking victims in a third of the monitored news. This reporting on children has often been criticised for breaching legal-ethical standards. Sexism is pervasive, with the media depicting political disputes between female politicians in derogatory or sensationalist terms, as ‘female fights’, or focusing coverage on appearances with headlines like ‘Sexy models? No, they’re the DP’s parliamentarians’. Furthermore, online news portals, including the pages of mainstream newspapers, are dominated by pieces on the latest revealing photos and ‘provocations’ of female celebrities. A recent assessment of 705 articles on seven online news media during October and November 2015 found that 208 of them (~27 per cent) contained hate speech and/or discriminatory language, and in 82 per cent of the cases the monitored media published the articles without an author. Rectifications are not a practice among Albanian media.

Role

Investigate and expose cases of corruption (Practice)

Score: 25

Over the years, investigative journalism has grown but remains generally weak and hampered by the lack of an independent Media and Judiciary, and low resource levels. There are a few investigative TV programmes that seek to uncover corruption of mainly mid- or low-level officials. A focus on grand corruption at the top levels is rare: the recently established BIRN Albania is the only specialised (online) investigative media outlet actively engaged in investigating high-level corruption, including in justice, energy and health. Another network of investigative journalists, called the Association of Journalists for Justice is less visible.

A 2014 monitoring of key audio-visual and print media indicated frequent reporting of corruption, with a focus on politics and public administration. This reporting was heavily in the form of news, with very few interviews or investigative reports, and largely reliant on political party statements. Furthermore, corruption the media does not systematically follow up on cases, thus weakening public pressure for accountability.

January 2016: http://peizazhe.com/2016/01/12/tallava-e-lajmit/; Vehbiu, A., ‘Si të shokohemi’ (How to be shocked), Peizazhe të fjalës, 2 January 2016: https://peizazhe.com/2013/01/02/si-te-shkokohemi/

Kaziar, E., ‘Kur famijet përdoren për interesin më të lartë të medias’ (When children are used for media’s higher interest), BIRN Albania, 19 May 2016: http://www.reporter.al/kur-femijet-perdoren-per-interesin-me-te-larte-te-medias/;

Kaziaj, E., ’Fëmijët në ekranet shqiptare të keqpërdorur nga politika’ (Children in Albanian media misused by politics), BIRN Albania, 10 February 2015: http://www.reporter.al/femijet-ne-ekranet-shqiptare-te-keperdorur nga-politika/;


Historia Ime, ‘Historia ime publikon gjetjet e monitorimit mbi gjuhën e urrëjtjes dhe diskriminimit në media’ (Historia Ime publishes monitoring results on hate speech and discrimination in the media), 21 December 2015: http://historia-ime.com/2015/12/21/historia-ime-publikon-gjetjet-e-monitorimit-mbi-gjuhen-e-urreljes-dhe-diskriminimit-ne-media/;


1316 Fiks Fare” on Top Channel TV, and “Alarm” on Ora News TV, “Stop” in TV Klan, “Xhungel” in News24.


1322 Interview with Besar Likmeta, Editor, BIRN Albania, 21 December 2015.
Inform public on corruption and its impact (Practice)

Score: 25

As discussed above, reporting on corruption is largely limited to reporting corruption charges among Political Parties, and to a few investigative audio-visual programmes. Overall, the media has limited capacity and interest in investing in specialised informative programming on corruption and its effects. Some investigative programmes serve to raise awareness of the prevalence of corruption, but their focus is not on educating the public on how to curb it. The recent establishment of BIRN Albania has enhanced the media contribution to exposing the impact of corruption.

Inform public on governance issues (Practice)

Score: 25

Government activity is regularly covered by the media, but largely in the form of direct reporting of political statements with limited analysis and often with a clear bias. A BIRN journalist interviewed for this assessment asserted that journalists’ independence in shaping the news has declined as government institutions provide ready-made news pieces. According to the US State Department, journalists in Albania continue to complain that publishers and editors censor their work directly and indirectly in response to political and commercial pressures. The head of the Union of Journalists also attributed the lack of balanced reporting to a lack of specialists for complex governance issues. Opposing views are covered, he added, but usually in other biased media, supportive of the political opposition.

Many journalists complain that a lack of employment contracts frequently hinders their ability to report objectively. Freedom House meanwhile reports that journalists, outlets, and advertisers can face repercussions for the negative coverage of public authorities, including tax inspections and loss of state business. A 2014 survey with about 120 journalists and editors in chief confirmed the same concerns.

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1324 Ibid, Interviews with Mr. Remzi Lani, Executive Director of Albanian Media Institute, 14 October 2014 and Mr. Aleksander Cipa, Chair of the Albanian Union of Journalists, 29 September 2014.
1325 Interview with Mr. Besar Likmeta, Editor, BIRN Albania, 21 December 2015.
1327 Interview with Mr. Aleksander Cipa, Chair of the Union of Journalists, 29 September 2014.
1328 Interview with Mr. Remzi Lani, Director of Albanian Institute of Media, 14 October 2014.
Recommendations

Journalists’ associations, media development organisations, and international organisations working in media issues should:

- Develop and push Parliament – through its Committee on Education and Public Information Means – to consider a package of legal amendments that seek to i) depoliticise appointments both to the Audio-visual Media Authority and the public broadcaster (Law on Audio-visual Media); ii) bring public procurement of adverts and programing in line with principles of competitiveness and transparency (Law on Public Procurement and related sublegal acts); and iii) fully decriminalise libel (Criminal Code).

- Advocate for the enforcement of the law in the sector regarding work contracts and regular payments.

- Advocate for the adoption, publication, and enforcement of written editorial policies and the Code of Ethics by all media, including online outlets.

- Conduct intensive training on compliance with professional ethical standards and investigative work.

The Commissioner for Protection against Discrimination and the Audio-visual Media Authority, together with journalists’ associations, should:

- Take a more proactive role in identifying and sanctioning hate speech and discriminatory language in the media.
CIVIL SOCIETY

Summary

The freedom of association is generally guaranteed in law and practice and citizens can act as a registered or unregistered entity, with the former being subject to specific regulations on non-profit organisations (NPOs). Tax exemptions are in place for membership contributions. However, tax incentives are inadequate to encourage business donors and do not exist for individual donors, so that philanthropy and volunteerism are not encouraged by law or cultural practice.

Overall, NPO resources are low and although their independence is well guarded in law politicisation is a significant concern in practice. There are examples of where violations of the right to protest have not been addressed independently. The sector’s levels of transparency and accountability to the public are low and self-regulation efforts have failed. There are no known codes of conduct in force, and CSO representatives have been embroiled in conflict of interest scandals. Altogether, these issues are reflected in low public confidence in civil society.

CSOs have spearheaded important initiatives to improve the legal framework for transparency and accountability of state institutions and for better access to policy processes, and some good watchdog initiatives have also been implemented. However, their impact remains low and is hampered by a lack of public confidence, fragmented funding, poor constituency bases, and inadequate advocacy.

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Structure and organisation

Some parts of civil society, such as Political Parties, the Media and Business sectors, are covered in separate pillars, so this section focuses on non-profit organisations (NPOs) and unregistered groups of civic activism, which will be collectively referred to as civil society organisations, hereafter CSOs. Trade unions and religious communities are excluded.
The number of registered NPOs with the Tirana District Court was 6,855 in 2014, but the exact number of active NPOs throughout the country is unknown. According to Open Data Albania, the number of Albanian and foreign NPOs that currently declare taxes at the Tax Office is only 2,378. An Agency for the Support of Civil Society (ASCS) was created in 2009 as a grant-giving public body to support both the sector’s development and civic activity on major national priorities, such as the fight against corruption, human trafficking, and domestic violence. NPOs are legally subject to oversight by a series of state institutions depending on the issue, i.e. compliance with legislation on tax and customs, social security, implementation of public service contracts, use of public funds. The tax authorities and the Directorate General for the Prevention of Money Laundering (Ministry of Finance) can inspect NPOs for issues of money laundering and financing of terrorism.

Capacity

Resources (Law)

Score: 75

TO WHAT EXTENT DOES THE LEGAL FRAMEWORK PROVIDE AN ENVIRONMENT CONducive TO CIVIL SOCIETY?

Albania’s Constitution establishes a package of rights that are key to civil society, including the right to information, referenda, legal initiative (of 20,000 citizens), and freedom of expression, association, and peaceful protest. The court registration of NPOs is envisaged by law, as is the right to unregistered collective action. The law prohibits organisations and associations pursuing anti-constitutional aims. A judge at the commercial chamber of Tirana’s District Court decides on registration issues within 15 days of the deposited request, which must provide information on the organisation’s form, aims, object of activity, founders and directors, management structure, location, and legal representatives. The centralisation of the procedure in Tirana has been criticised for increasing difficulties for CSOs outside the capital. These decisions can be appealed to a higher court. State authorities can ask the court to dissolve an NPO if its registration is not deemed in line with the law, if its activity is deemed unconstitutional or illegal, or the NPO has become bankrupt as defined by law. In such cases, and if the NPO’s activity does not constitute a serious threat to the public, the court must inform the NPO of the legal breach in writing and ask for remedy within 30 days.

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1334 Article 5, Statute of the Agency for the Support of Civil Society; Article 4, Law on ASCS.
1335 Article 41, Law on Non-profit Organizations.
1337 Articles 2-23, 46-47, 81, and 150, Constitution.
1338 Article 46, Constitution; Law no. 8799, on the Registration of Non-profit Organisations, of 7 May 2001; Article 3, Law on NPOs.
1339 Articles 4-5, 22, and 24, Law on the Registration of NPOs.
1341 Article 25, Law on the Registration of NPOs.
suspensing the case in the meantime. Following court registration, NPOs must apply for registration with the tax authority, which must process the registration within five days.  

NPOs can tap into a variety of financial sources, including membership contributions, grants, donations, and public funds through public procurement procedures and others. They can also engage in economic activity in the pursuit of their missions, as long as this is not their primary aim. Membership contributions and donations of all NPOs, regardless of their mission and other particularities, are exempt from income tax. It is not clear whether the same applies to bank interest, as their exemption from tax is only envisaged in the Law on NPOs, and not in tax law. Income tax is applied if NPOs engaging in economic activity divert those funds to aims other than those they have registered. Exemptions from VAT entered into force in 2015 and they are defined in minute, and at times unclear detail.

In 2015, the National Accounting Standard was approved, finally distinguishing NPOs from businesses for financial reporting requirements. It provided for simplified reporting formats – effective as of January 2016 – for small NPOs with annual resources of less than 5 million ALL (~35,000 euro). A recent legal amendment removed the eligibility of business donors to fiscal reductions, thus reducing incentives for these donors. A Law on Sponsorship envisages tax benefits for sponsors, but sponsors are only understood as merchants, thus excluding individuals, the tax benefits envisaged were significantly reduced in 2007, and donations above the percentages (relative to earnings before tax) defined in law are not recognised as donations for purposes of tax reductions at all.

Resources (Practices)

Score: 25

TO WHAT EXTENT DO CSOS HAVE ADEQUATE FINANCIAL AND HUMAN RESOURCES TO FUNCTION AND OPERATE EFFECTIVELY?

Although it is simple, the registration procedure is reportedly costly and time-consuming in practice, especially for individuals and groups outside the capital. In addition, much of the relevant legal framework, including on CSOs and donors’ fiscal treatment, remains unknown or poorly understood by CSOs, businesses, and other donors. CSOs remain largely dependent on international donors and there is a lack of diversity in resources. In 2015, CSOs reportedly benefited from only 1 per cent of individual and corporate donations, and 82 per cent of those surveyed stated they did not rely on such a source of funding. According to the director of the European Movement Albania (EMA)

1342 Articles 44-45, Law on NPOs (changed); See also articles 39-63, Civil Code.
1343 Article 42, Law no. 9920 on Tax Procedures, of 19 May 2008 (changed).
1344 Articles 34-39, Law on NPOs.
1345 Article 40, Law on NPOs; See also Law no. 8438 on Income Tax’ (changed).
1347 For more information on the National Accounting Standard see: http://www.kkk.gov.al/foto/uploads/File/Varianti%20KK%20per%20OJF%20pas%20otbleshjes%20se%20majit%201.pdf
1349 Article 8, Law no. 92/2013 on Some Addenda and Changes to Law on NPOs. This article changes article 40 of the Law on NPOs, amongst others, removing the last sentence on donors – whether individual or legal persons – being eligible for VAT exemptions.
1350 Articles 3 and 5, Law no. 7892 on Sponsorships, of 21 December 1994, amended. For the 2007 changes see Official Journal no. 130 / 2007, p.3631; Article 21/1/j, Law no. 8438 on Income Tax*, changed.
Gledis Gjipali, businesses tend to support emergency cases and have difficulty understanding and promoting the work of think-tanks and research centres.\footnote{1362}

Furthermore, only 1 per cent of CSOs in a recent study considered public funding to be accessible, while only 7 per cent considered funds raised from economic activity to be significant. Funding opportunities at the local level are generally non-existent and cooperation with local government is unsatisfactory.\footnote{1353} Tax exemptions appear low in practice, also because of limited awareness, with the General Directorate of Taxation reporting no applications from NPOs on VAT exemptions in 2015.\footnote{1354} VAT reimbursement for EU projects continues to be a problem despite an instruction of the Ministry of Finance in 2013 that allows NPOs to be reimbursed for projects funded under the EU’s Instrument for Pre-accession Assistance.\footnote{1355} In addition, new requirements to submit monthly declarations in the online tax system even when there are no activities on-going creates additional administrative burdens, especially for small organisations.\footnote{1356}

According to two interviewees and a recent assessment, volunteerism remains underdeveloped.\footnote{1357} CSOs membership is often a formality and constituency bases remain weak, despite some good efforts to confront this.\footnote{1358} Turnout in protests organised by civil society tends to be significantly lower than those organised by Political Parties.\footnote{1359} Overall, CSOs do not have the capacity to absorb donor funds and manage large projects, especially those outside Tirana, which can often not afford permanent staff.\footnote{1360} However, both interviewees noted the potential of civil society to attract young graduates, especially those returning after studying abroad. Gledis Gjipali of the European Movement Albania also noted an inflation of professionals due to the large number of graduates in social sciences who are naturally more attracted to this sector.\footnote{1361}

**Independence (Law)**

Score: 100

**TO WHAT EXTENT ARE THERE LEGAL SAFEGUARDS TO PREVENT UNWARRANTED EXTERNAL INTERFERENCE IN THE ACTIVITIES OF CSOs?**


\footnote{1365} On some additions to directive no. 17, of 13 May 2008 on VAT; Partners Albania, Monitoring Matrix on Enabling Environment for the Development of Civil Society, Country Report for Albania 2015, February 2016, p.25.

\footnote{1366} European Commission, Albania Report, November 2015, p.9.


\footnote{1369} Interview with Dorarta Hyseni, Program Manager, National Democratic Institute in Albania, 11 August 2015.

\footnote{1370} Technical Assistance for Civil Society Organizations in the IPA Countries TACSO Albania, Albania: Revised Needs Assessment Report, December 2013, p.4 and 23.

\footnote{1371} Interviews with Gledis Gjipali, Executive Director, European Movement Albania, 1 March 2016 and Dorarta Hyseni, Program Manager, National Democratic Institute in Albania, 11 August 2015.
The legal framework guarantees the freedom of establishment and participation in NPOs to all physical or legal persons, Albanian or foreign. There are restrictions in place for some high-ranking officials — such as MPs, mayors, and Cabinet members. The right to unregistered collective action is also guaranteed.\(^{1362}\)

The independence from state bodies and interests is declared in law and state bodies are explicitly prohibited from interfering with NPOs. State oversight is legitimate only in cases and manners that are clearly defined in law, and the state is tasked with ensuring an enabling environment for NPOs.\(^{1363}\) In addition to overseeing compliance with legislation on tax, customs, social security, permissibility of economic activity, and use of state funds, state bodies were also recently empowered to oversee issues of money laundering and financing terrorism.\(^{1364}\)

Organisations and associations pursuing anti-constitutional aims are prohibited, and the Judiciary is tasked with verifying the compatibility with the Law on NPOs statutes, dissolution, and dispute resolutions.\(^{1365}\)

**Independence (Practice)**

Score: 50

### TO WHAT EXTENT CAN CIVIL SOCIETY EXIST AND FUNCTION WITHOUT UNDUE EXTERNAL INTERFERENCE?

In a recent survey of 102 NPOs 85 per cent reported no state interference in their internal management and governance and 74 per cent noted no exaggerated oversight practices from state bodies.\(^{1366}\) However, other sources paint a different picture. In its 2016 report, the Bertelsmann Transformation Index considered civil society to operate as an “appendix of the political structures”; noting a number of developments on point, such as the accession of NPO leaders to government or political posts, the establishment of NPOs by politicians, and the inclusion of advocacy leaders in government structures.\(^{1367}\) Tax authorities have been known to abuse their power in the past, such as in the case of the inspection of and fine imposed on the Mjalt! Movement, which a court deemed arbitrary in 2012.\(^{1368}\)

The practice of international donors conditioning funding upon co-support by state authorities has been criticised for hampering the impartiality of government watchdogs.\(^{1369}\) The interviewees did not consider the existing environment repressive for civil society, but contended that the omnipresence of politics and political influence in Albania is difficult to escape.\(^{1370}\) The impartiality of board members of the Agency for the Support of Civil Society (ASCS) – the main public donor – has been questioned, with BIRN Albania reporting that they are “perceived to be close to the ruling Socialist Party”.\(^{1371}\)

\(^{1362}\) Articles 3-4, Law on NPOs; Articles 27-29, Law on the Prevention of Conflict of Interest in the Exercise of Public Functions; See also article 39 of the Civil Code which requires at least five physical persons or at least two legal persons for the establishment of associations.

\(^{1363}\) Articles 6-7, Law on NPOs; Articles 43/1 and 59, Civil Code.

\(^{1364}\) Articles 40/1-41, Law on NPOs.

\(^{1365}\) Article 46, Constitution; Articles 40-41, 51-53/1, and 61-13, Civil Code; Articles 28, and 44-48, Law on NPOs.


\(^{1367}\) Bertelsmann Transformation Index, Country Report Albania 2016, p.9; Interview with Dorarta Hyseni, Program Manager, National Democratic Institute in Albania, 11 August 2015.

\(^{1368}\) Technical Assistance for Civil Society Organizations in the IPA Countries TACSO Albania, Albania: Revised Needs Assessment Report, December 2013, p.11.


\(^{1370}\) Interviews with Gledis Gjipali, Executive Director, European Movement Albania, 1 March 2016 and Dorarta Hyseni, Program Manager, National Democratic Institute in Albania, 11 August 2015.


Governance

Transparency (Practice)

Score: 25

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\textbf{TO WHAT EXTENT IS THERE TRANSPARENCY IN CSOS?} \\
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Overall, the level of transparency in the activities, management, and finances of NPOs is inadequate, and harms the sector’s effectiveness in demanding transparency and accountability of the state. Some efforts are made, increasingly through social media, to enhance transparency,\footnote{USAID, The 2014 Civil Society Sustainability Index for Central and Eastern Europe and Eurasia, p.14 and 19.} but a 2014 study concluded that there was considerably fewer NPOs in Albania that publish financial statements or their charter than in other countries of the Western Balkans or Turkey.\footnote{IPSOS and TACSO, Civil Society Organisations in Albania, March 2014, p.9-10: http://www.tacso.org/doc/ipsos_report_al.pdf}

Gledis Gjipali of the EMA confirms the low level of transparency in the sector towards the public, and notes that NPOs are usually financially transparent and accountable to their donors.\footnote{Interview with Gledis Gipali, Executive Director, European Movement Albania, 1 March 2016.} Another interviewee noted that attempts made by a group of NPOs to collectively publish financial reports failed to materialise, as NPOs were unwilling to publish their funds unless all other organisations published theirs.\footnote{Interview with Dorarta Hyseni, Program Manager, National Democratic Institute in Albania, 11 August 2015.}

Accountability (Practice)

Score: 25

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\textbf{TO WHAT EXTENT ARE CSOS ANSWERABLE TO THEIR CONSTITUENCIES?} \\
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Both interviewees and studies suggest that despite formally defined structures to guarantee effective management and accountability, NPOs rely largely on a single leader due to their small size and the
fact that boards are largely composed of close friends or acquaintances of executive directors and do not have real powers and influence in the conduct of NPOs.\footnote{1379}

Some improvements have been noted in the past couple of years, but public trust in CSOs remains low, with 34 per cent of surveyed citizens trusting CSOs in 2014 and 38 per cent in 2015.\footnote{1380} A recent case of alleged corruption involving the Association of Blind People in Albania, whose executive director was sued by the Ministry of Social Welfare and Youth for abuse of $1.14 million for a rehabilitation centre, which was never made functional, has been considered to undermine CSOs already problematic reputation.\footnote{1381}

\textbf{Integrity (Practice)}

\textbf{Score: 0}

\textbf{TO WHAT EXTENT IS THE INTEGRITY OF CSOS ENSURED IN PRACTICE?}

While the legal framework includes some provisions to ensure integrity in the workings of NPOs, including provisions on conflicts of interest, this remains a largely unrecognised issue within the sector.\footnote{1382} A very small number of NPOs have codes of ethics.\footnote{1383} As noted above, efforts at sector-wide standards of transparency in financial matters have failed.

In addition, the malpractice observed in the management of the government Agency for the Support of Civil Society involves in large part CSO actors sitting in the Agency’s board. According to an investigation by BIRN Albania, between 2010 and 2013, the Agency – through its board, where CSO representatives also sit – funded NPOs linked to its board members in breach of conflict of interest principles, amongst other problems.\footnote{1384} Both interviewees observed that there are no integrity mechanisms in place and that the issue is almost never discussed among representatives of the sector.\footnote{1385}

\textbf{Role}

\textbf{Hold government accountable}

\textbf{Score: 25}

\textbf{TO WHAT EXTENT IS CIVIL SOCIETY ACTIVE AND SUCCESSFUL IN HOLDING GOVERNMENT ACCOUNTABLE FOR ITS ACTIONS?}

\footnote{1379} Technical Assistance for Civil Society Organizations in the IPA Countries TACSO Albania, Albania: Revised Needs Assessment Report, December 2013, p.23-24; Interviews with Gledis Gjipali, Executive Director, European Movement Albania, 1 March 2016 and Dorarta Hyseni, Program Manager, National Democratic Institute in Albania, 11 August 2015.


\footnote{1381} Freedom House, Nations in Transit: Albania 2015, p.54.

\footnote{1382} See in particular article 46 of the Civil Code, and articles 26-27 of the Law on NPOs.

\footnote{1383} USAID, The 2014 Civil Society Sustainability Index, 2015, p.19.


\footnote{1385} Interviews with Gledis Gjipali, Executive Director, European Movement Albania, 1 March 2016; Dorarta Hyseni, Program Manager, National Democratic Institute in Albania, 11 August 2015.
Civil society’s watchdog role is limited to a handful of organisations. While no CSOs specialise in the fight against corruption, a number of them have undertaken important initiatives within the wider scope of good governance, making good use of the right to information legislation. Notable examples include the recent monitoring of public procurement, impunity in the Judiciary, and freedom of information by ResPublica; the monitoring of the fulfilment of electoral promises by the Mjaft! Movement; and Open Society Foundation Albania’s (OSFA) monitoring of the implementation of key national strategies, such as those on the Judiciary, implementation of EU integration priorities and anti-corruption (the impact of BIRN Albania is covered in the Media pillar).1386

Environmental concerns have risen as a drive for accountability demands by established NPOs, loose citizen coalitions, or a combination of both: the Alliance Against Waste Import, the advocacy alliances for the closure of four hydroelectric plants, the adoption of a hunting moratorium, and on the rejection of alleged government plans to accept Syrian chemical weapons for dismantlement.1387 However, civil society’s effectiveness in its efforts for higher accountability remains inadequate and hampered by a series of factors.1388 They include some of the issues noted in previous sections: low confidence in the integrity and impartiality of CSOs, a poor constituency base and advocacy know-how, a difficult relationship with the political sphere, and fragmented funding.

Policy reform

Score: 25

A number of legislative and policy initiatives to improve governance and public accountability have been initiated and pushed by civil society. They include a new Law on the Right to Information, as well as the Law on Public Consultation; the push to consult and adopt Albania’s OGP Plan by the government; whistleblower legislation, advocated by the Institute for Democracy and Mediation; as well as the judicial reform initiative structured around an ad hoc committee in Parliament, and supported by the Open Society Foundation Albania through a technical secretariat and consultation processes.1389


However, a recent survey of 102 NPOs found that a half of them claim that they do not routinely receive timely invitations for consultation. Overall, and despite some improvements, CSOs’ input in policy reforms is driven by international pressure, and hampered by selectivity on the part of state institutions, superficiality, untimeliness and low impact. Both interviewees noted that there are NPOs that focus on anti-corruption policy reform, and that the impact of those who include the fight against corruption cross-cuttingly in their policy work is hard to tell.

In December 2014, Parliament passed a resolution recognising the role of CSOs in the country’s democratic development and encouraging a greater role in promoting transparency, accountability and impact in policy-making and legislative processes. The Law on Public Consultation provides CSOs with an important tool to access policy reform processes, including anti-corruption reform.

A new law was adopted in November 2015 establishing a National Council for Civil Society as a permanent public consultative body, comprised in equal numbers of CSO and government representatives, and one from the business community. The Council’s mission is to advise the government on creating an enabling environment for civil society, and providing a more inclusive dialogue with civil society on policy issues. It will report to the Council of Ministers at least once a year. Its functioning and success so far remains to be seen, but current perceptions of partisanship in civil society, the prevalence of corruption in the country, and the inadequacies of CSO actions in the fight against corruption – through watchdog and policy initiatives – give cause for cautious expectations. They warrant a different strategy for the sector and the donor community to promote policy reform that targets corruption, such as prioritising watchdog functions, constituency-building and advocacy activities, raising anti-corruption know-how within the sector, and enhancing the use of the Law on Public Consultation.

**Recommendations**

- CSOs should urgently renew self-regulating efforts, including the adoption a sector-wide code of conduct, to improve integrity, transparency and accountability standards, and eventually their public image.

- CSOs should continue their advocacy efforts to improve the legal framework to enable incentives for both business and individual donors, philanthropy and volunteerism; clarify and simplify it; and improve the sector’s knowledge of it.

- Donors and CSOs should shift attention to building stronger constituency bases, improving advocacy skills and watchdog efforts.

- Donors should consider more sustainable schemes of funding so that NPO resources are not disproportionately dedicated to short-term project proposals and reporting, but to strategising, constituency building, and implementation.

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1392 Interviews with Gledis Gjipali, Executive Director, European Movement Albania, 1 March 2016; Dorarta Hyseni, Program Manager, National Democratic Institute in Albania, 11 August 2015.


BUSINESS

Summary

Business operates in an environment that is highly susceptible to corruption due to endemic challenges, including the high level of informality in the economy, frequent changes to the legal framework, low capacity and arbitrary behaviour of the public administration, and corruption in the justice system.

Political corruption remains a pressure on large business and major government contracts. Legal provisions on resources, transparency and accountability are considerable, but implementation suffers. While regulatory reform has largely streamlined starting and closing a business, difficulties remain regarding property rights, construction permits, authorisations and access to finance.

Especially relevant are high levels of informality in the economy and weak contract enforcement and rule of law. Transparency of enterprises has improved but further efforts are needed to ensure integrity of financial accounts and statutory auditing, and especially disclosure in the financial sector.

Oversight authorities overall need stronger capacity and independence. Improvements are likewise needed to ensure the independence and integrity of business activity – in terms of both the regulatory framework and implementation in practice. A new Code of Administrative Procedures has been adopted, but dispute resolution systems – both in administrative courts and inspection authorities – are problematic, especially for tax and customs. State aid in the economy is relatively low but not independently managed and there is a need for improved enforcement of competition rules. Business associations and individual businesses invest little in proactive disclosure and voluntary, internal integrity mechanisms are almost non-existent. Consultation and cooperation is limited between government and Business and between Business and civil society.

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Structure and organisation

The private sector contributes around 80 per cent of the GDP and employment in Albania. It is dominated by small and medium sized enterprises (SMEs) (90 per cent), while enterprises employing more than 50 staff comprise only 1 per cent of the sector. Most provide services, followed by trade and producers of goods, while in terms of value trade and manufacturing are the most significant. Only about 3 per cent are under exclusive foreign ownership. The total number of

active enterprises in 2015 was 152,288.\textsuperscript{1398} Albania does not have a stock market. The Tirana Stock Exchange, established in 1996 and separated from the Bank of Albania in 2002, was closed in 2014 after 12 years of inactivity and remains closed despite announcements in 2013 of plans to reactivate it and new efforts for a private stock exchange.\textsuperscript{1399}

The Ministry of Economic Development, Tourism, Trade and Entrepreneurship sets economic policy. It failed to respond to requests for information by the Transparency International research team.\textsuperscript{1400} The sector is principally regulated by the 2008 amended Law on Merchants and Commercial Enterprises, the Law on Business Registration (Law on National Registration Centre), and legislation on accounting, statutory auditing, tax and customs, as well as the new 2015 Code of Administrative Procedure. An administrative court system has been established since 2013 and the sector is also served and overseen by independent institutions such as the Albanian Competition Authority, the Public Procurement Commission, the Financial Oversight Authority, and the Audit Oversight Board.

There are more than a dozen industry and trade chambers. The Chamber of Commerce and Industry Tirana is the biggest Albanian chamber (214 members), while the biggest foreign chamber is the American Chamber of Commerce (232 members). Other large foreign chambers are the British, Turkish, Italian, Greek and German chambers.

Two councils serve as mediators between public and non-public institutions. The National Economic Council of Albania, established in 2014, seeks cooperation with the Business sector in developing economic policies.\textsuperscript{1401} The National Investment Council, established in 2015, facilitates dialogue on the business and investment climate. It convenes meetings of international organisations, donors and the government with the Business community, which is represented by non-permanent business members.\textsuperscript{1402}

### Capacity

**Resources (Law)**

Score: 75

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**TO WHAT EXTENT DOES THE LEGAL FRAMEWORK OFFER AN ENABLING ENVIRONMENT FOR THE FORMATION AND OPERATIONS OF INDIVIDUAL BUSINESSES**

Albania has carried out a number of significant reforms in the last few years regarding business registration and licensing. However, in 2015, the European Commission assessed that the private sector was inhibited by shortcomings in the regulatory framework and that reform was needed to facilitate market entry and exit, including authorisations, bankruptcy law, and access to finance.\textsuperscript{1403} Likewise, in 2016 the World Bank assessed in its *Doing Business* report that while business

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\textsuperscript{1398} Due to an anti-informality operation initiated by the government the number of new registered enterprises in 2015 spiked compared to previous years. In 2014 there were 15,280 new enterprises, in 2015 the number of new, registered enterprises more than doubled, to 56,787.


\textsuperscript{1400} Information request submitted to the Ministry of Economic Development, Tourism, Trade and Entrepreneurship via e-mail on 16 May 2016.

\textsuperscript{1401} Article 1, Law on Creation and Functioning of the National Economic Council.

\textsuperscript{1402} DCM no. 294, date 8 April 2015 ‘On the Establishment of the Investment Council’.

\textsuperscript{1403} European Commission, Albania Report, 2015, p.24 and 27.
registration is closest to best practice, much remains to be done on construction permits, property registration and the enforcement of contracts.\textsuperscript{1404}

Overall regulatory reform in 2007 and legislative amendments in 2013 and 2015 have simplified procedures and lowered the costs of starting a business.\textsuperscript{1405} Business registration and licensing is done by the National Business Centre (NBC), which offers one-stop-shop services at regional offices and online. The NBC has merged the National Registration Office and National Licensing Centre, a process that is still underway and seeks to further reduce the regulatory and administrative burden.\textsuperscript{1406} Licensing is a similarly centralised process, organised around three licence categories, which comprised a significant reform. An inventory of authorisation procedures with a view to simplify them is also underway\textsuperscript{1407} and the Law on Bankruptcy is being revised.

Difficulties remain regarding property rights, construction permits, inspections and access to finance. In 2015, the European Commission highlighted shortcomings in the rule of law, enforcement of property rights as well as fight against corruption.\textsuperscript{1408} Property rights legislation, and especially registration procedures, are problematic. The government has recently approved a new Law on Property, which has been challenged in the Constitutional Court and is under review.\textsuperscript{1409} In 2012 and 2015 time limits were set for land registration, and property transfer was facilitated by electronic records of immovable property.\textsuperscript{1410} Intellectual property legislation is somewhat harmonised with the EU and a new Law on Copyright has been approved.\textsuperscript{1411} The issuing of construction permits has resumed following a freeze in 2015, construction and development permits have been consolidated into one, and efforts are being made for an online system of applications.\textsuperscript{1412}

Fragmentation in institutional responsibilities is considered a key challenge to the provision of quality state services.\textsuperscript{1413}

Resources (Practice)

Score: 50

TO WHAT EXTENT ARE INDIVIDUAL BUSINESSES ABLE IN PRACTICE TO FORM AND OPERATE EFFECTIVELY?

Overall, in 2015, the European Commission stated that while steps have been taken to address the complex challenges in the rule of law, much remains to be done, particularly on corruption and the enforcement of property rights.\textsuperscript{1414}

Business registration is considered to function reasonably well and work is being done to improve and encourage online services\textsuperscript{1415} According to Doing Business, in 2015 business registration

\begin{footnotesize}
\begin{enumerate}
\item World Bank, Doing Business, Albania, 2016: http://www.doingbusiness.org/data/exploreeconomies/albania/
\item European Commission, Albania Report, 2015, p. 28.
\item Following a challenge by the President of Republic, the opposition and the Former Owner’s Association, the Constitutional Court has decided to ask for an opinion from the Venice Commission. Panorama, ‘Ligji i Pronave ne Venecia’ (Property Law in Venice), 28 June 2016: http://www.panorama.com.al/ligji-i-pronave-ne-venecia-kushtetuesja-kerkon-keqshill/em/
\item World Bank, Doing Business, Albania, 2016, p.42.
\item European Commission, Albania Report, 2015, p.36.
\item Interview with expert of an international organisation, 25 April 2016.
\item Ibid.
\item Ibid. p.27-28; Interview with expert of an international organisation, 25 April 2016.
\end{enumerate}
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required six procedures and five and a half days.\footnote{1416} The cost of opening a business is also considered reasonable, at 10.40 per cent of income per capita and with no paid-in minimum capital.\footnote{1417} According to representatives of business associations the main issue is the high level of informality, which represents the principal competition problem. While opening a business is considered easy, they argue licensing is much more complex, citing general arbitrary and inconsistent interpretation of the legal framework in the development of bylaws, inadequate guidance for businesses and a difficult working relationship between business and government agencies in sectoral ministries. They argue this environment creates fertile ground for corruption.\footnote{1418}

Exiting the market remains problematic and bankruptcy procedures are slow with the recovery rate for debtors in most cases low.\footnote{1419} In Doing Business 2016, Albania had a rather positive insolvency resolution index (13 out of 16).\footnote{1420} However, insolvency on average took two years, cost 10 per cent of the debtor’s estate and the recovery rate was 42.30 cents on the dollar.\footnote{1421} According to business chambers, verification procedures on business liquidation are often very lengthy and understood as solicitations for bribes.\footnote{1422}

Contract enforcement is a significant problem. According to Doing Business, in 2015 contract enforcement took around 500 days and cost 10 per cent of contract value.\footnote{1423} The World Bank Quality of Judicial Processes Index on contract enforcement – looking at the court structure and proceedings, case management, court automation and alternative dispute resolution – was 8 out of 18 (18 = best practice), putting Albania below regional comparator economies.\footnote{1424} The government arrears have also been a significant issue for public contracts. They were around US$11.4 million in 2015, down from US$720 million in pre-2013 period, but in 2016 IMF warned of risks of re-emergence, particularly at the local level.\footnote{1425}

**Independence (Law)**

Score: 50

### TO WHAT EXTENT ARE THERE LEGAL SAFEGUARDS TO PREVENT UNWARRANTED EXTERNAL INTERFERENCE IN ACTIVITIES OF PRIVATE BUSINESSES?

The independence of private enterprise is in the Constitution. Limits on free entrepreneurship can only be sanctioned by law, and only for matters of high public interest.\footnote{1426} These principles are reflected in the legal framework regulating enterprises, tax and customs legislation, inspections, administrative appeals and court dispute resolution mechanisms.\footnote{1427}

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\footnote{1416} These are below the global averages of seven procedures and 30 days. Heritage, 2016 Index of Economic Freedom, Albania, 2016: http://www.heritage.org/index/country/albania; World Bank. Doing Business, Albania, 2016.

\footnote{1417} Ibid (0.00 per cent of income per capita).

\footnote{1418} Interview with a representative of a trade chamber in Albania, 22 April 2016.


\footnote{1420} World Bank, Doing Business, Albania, 2016, p.88.

\footnote{1421} It scored similarly to other countries in the region. Globally, Albania stands at 42 in the ranking of 189 economies on the ease of resolving insolvency. World Bank, Doing Business, Albania, 2016, p.56.

\footnote{1422} Interview with a representative of a trade chamber in Albania, 22 April 2016.

\footnote{1423} World Bank, Doing Business, Albania, 2016, p.79.

\footnote{1424} Ibid, p.81.


\footnote{1426} Article 11, Constitution.

Administrative procedure has been simplified with the approval of a new Code of Administrative Procedures, in line with European standards, which enters into force in mid-2016. In 2015 the European Commission called for a review of other related legislation and training in order to support implementation, as well as a further review of special administrative procedures. The government is currently working on improving overall digitalisation (extending the e-Albania portal) and interoperability to further connect processes and lower public administration discretion. Importantly, the work of inspection agencies is generally not led by risk-assessment methodologies and in most cases procedures leave ample space for employee discretion.

The framework for administrative dispute resolution between business and public administration is considered to lack clarity, independence and transparency. In February 2016, the Albanian Investment Council listed three major concerns for appeal systems: lack of access to administrative complaints mechanisms, lack of efficiency in appeal procedures, and lack of transparency. It proposed legal amendments and implementation measures to enhance compliance and accountability of both business and public administration. Proposals included amendments to upfront payments of obligations and penalties, the establishment of collegial appeal bodies, the centralisation of appeals on inspections, and unified deadlines. The recognition of bank guarantees in lieu of front payments of obligations in taxation appeals processes is considered to have been a positive development in facilitating access.

Since 2013, administrative matters are settled by dedicated Administrative courts – administrative courts of first instance, administrative courts of appeals as well as the Administrative College at the High Court – which were pushed for by the business community and supported by USAID. Albania is also party to international arbitration agreements. There are no alternative dispute resolution mechanisms for business. Parties can get compensation only through court decisions. Material responsibility in cases of violations has fallen on institutions rather than employees, who are subject to administrative measures at the discretion of supervisors. Since 2013, the SAI has argued that current legislation is inadequate in allowing for assessment and identification of responsibilities for damage caused by the public administration, and has pushed for a new law regulating material responsibility of public employees.

For provisions on state-owned enterprises and public procurement see SOE and Public Sector pillars.

**Independence (Practice)**

Score: 25

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1428 European Commission, Albania Report, 2015, p.11.
1429 Ibid.
1430 Interview with expert of an international organisation, 25 April 2016; Interview with a representative of a trade chamber in Albania, 22 April 2016.
1433 Law no. 9920 on Taxation Procedures, of 19 May 2008, amended.
1435 US Embassy Tirana, Embassy Events 2009: USAID and Albanian Business Community Push for Administrative Courts, August 2009: http://tirana.usembassy.gov/events_aug09d.html; supported by Millennium Challenge Corporation Albania Threshold Agreement II.
Representatives of trade chambers and businesses cited arbitrary behaviour in the development of bylaws such as Ministerial Orders and instructions, and procedures set out by various agencies of central government as the main concern when it comes to rule of law and independence. Interlocutors argued that the legal framework often leaves space for interpretation.

The blanket freeze on issuing construction permits, disproportional measures proposed to tackle informality, as well as changes to the conditions of concessionary contracts in the energy sector are cited as a few cases of subversion or attempts to subvert rule of law. In February 2016, the Albanian Investment Council noted that budgetary institutions and their staff often take arbitrary decisions that are inconsistent with legislation, due to a lack of awareness or ignoring laws and regulations. To improve implementation, the Council has called for the unification of practice for various institutions in the interpretation of bylaws, guidance on the implementation of SAI recommendations, the publication of appeal decisions and data, as well as mechanisms for information and consultation on compliance and appeals.

Inspections and appeals are a particular concern for tax and customs authorities. In 2016 the IMF repeated concerns of corruption in tax inspections. In January 2016, Crown Agents, a British company hired in 2013 by the Albanian government to improve the management of the custom’s administration, stated in a report that the company failed to meet projected revenue due to high levels of corruption and smuggling.

State aid, without loan guarantees granted to the state-owned power company KESH, is relatively low and in 2014 dropped to 0.5 per cent of GDP. Subsidies mainly target activities that do not seek to distort the market. The European Commission has called for more independence in the management of aid and better enforcement of competition rules. The Albanian Competition Authority (ACA) ex-post evaluations have also revealed the failure of public contracting authorities to request an ACA assessment when granting exclusive rights, as required by law.

The administrative courts have failed to produce the expected results and studies conducted throughout 2015 suggest a mounting workload due to disrespect for legal deadlines in delivering decisions. This has led to a chaotic situation and a large number of pending cases, which the government has attributed to organisational deficiencies.

The WEF’s Global Competitiveness Reports and Investment Climate reports have repeatedly highlighted that companies in Albania consider the framework for challenging regulations or settling disputes to be inefficient. In 2015, it was noted that foreign investors rely on international arbitration due to corruption and inefficiency in the Judiciary. Interlocutors claim that overall justice reform is

1437 Interview with a representative of a trade chamber in Albania, 22 April 2016; Interview with Gjergj Bojaxhi, former Director of KESH and business administrator in the oil sector, 8 April 2016.  
1443 Ibid, p.30 and 37.  
needed, but that the lengthy reform process has also led to failures in addressing issues in the meantime.\textsuperscript{1448} Some business representatives also make calls for unifying decisions in courts.

Overall, corruption remains a major concern for business. The 2013 Business Environment and Enterprise Performance Survey V (BEEPS V) of the EBRD and the World Bank demonstrated that informal payments are demanded on the issuing of construction permits and government contracts.\textsuperscript{1449} Only 52.7 per cent of companies stated that firms in their sector never had to make informal payments.\textsuperscript{1450} The WEF’s Global Competitiveness Report highlighted irregular payments and bribes, particularly for obtaining public contracts, licenses and favourable judicial decisions. Undue influence was also assessed as high, particularly in judicial independence and favouritism in decision-making of government officials. On public sector performance, scores were also negative on the efficiency of the legal framework in settling disputes and challenging regulations, while the burden of government regulation was ranked as moderate.\textsuperscript{1451}

Overall, while there is no track record of convictions, there are serious accusations of political corruption in major government works, public procurement and public-private partnerships – as demonstrated in the rise and fall of large companies in the oil, construction and media sectors, which tend to follow rotations in government.\textsuperscript{1452} Election monitoring groups also claim that there is a lack of transparency in party campaign financing.\textsuperscript{1453}

Governance

Transparency (Law)

Score: 75

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\textsuperscript{1448} Interview with a representative of one of the Trade Chambers in Albania, 22 April 2016.

\textsuperscript{1449} Requested in issuance of construction permits in almost 1/3 of cases and that they reach the value of about 1.5 per cent of contract value when securing a government contract.


\textsuperscript{1452} Interview with a representative of one of the Trade Chambers in Albania, 22 April 2016.


\textsuperscript{1454} World Bank, Financial Sector Assessment Program Albania, Corporate Sector Financial Reporting, Technical Note February 2014, p.1-2:
Business registration requires disclosure of statutes, ownership structures and annual financial reports, including independent audit reports, where relevant. All data is to be made publicly available online by the National Business Centre, while shareholding enterprises are required to make the same information available on the companies’ websites. Amendments in February 2015 provided for the online submission of annual balance sheets and audit reports. The 2008 amended Law on Merchants and Commercial Enterprises provides for shareholders' right to information, requirements for reporting and documentation of mergers and divisions, and the protection of the interests of members and third parties.

Entrepreneurs and commercial enterprises are required to prepare activity and financial reports according to national accounting standards. These were strengthened as in 2015, but international accounting standards are not yet fully transposed. Large enterprises, as well as listed and financial sector enterprises, are required to apply international reporting standards, and all economic units can implement international standards voluntarily.

Statutory auditing requirements and their publication are considered advanced, with the exception of the financial sector, but improvements have been suggested regarding the oversight of statutory audits (see Accountability). Statutory audits of listed companies, banks and insurance companies are accompanied by a transparency report, with provisions on information on both the audited entity and the auditors. The provisions on the disclosure of audit reports of insurance and securities enterprises are considered inadequate, and the non-financial disclosure by banks is also assessed to be an area for improvement.

Transparency (Practice)

Score: 50

TO WHAT EXTENT IS THERE TRANSPARENCY IN THE BUSINESS SECTOR IN PRACTICE?

1456 Law no. 9723, on the National Registration Center, of 3 May 2007, amended by Law no. 9916, of 12 May 2008, Law no. 92/2012 and Law no. 8/2015.
1457 Article 106, Law no. 9901 on Merchants and Commercial Enterprises, of 14 April 2008.
1458 European Commission, Albania Report, 2015, p.36.
1461 Article 4.1 and 3. Law no. 9228 on Accounting and Financial Tables, of 29 April 2004, amended and Decision of Council of Ministers, no. 742, of 7 November 2007 ‘On Criteria for Selection of Economic Entities that should Implement International Accounting Standards’: http://www.kkk.gov.al/foto/uploads/File/udhezime/2.%20Kriteret%20e%20njive%20ekonomike%20qe%20duhet%20et%20zbatojne%20SNK_VKM%20742_7.11.2007.pdf; large enterprises are those enterprises that exceed both annual income of 1 250 000 000 lekë and average 100 employees employed, for two consecutive years.
1463 World Bank, Financial Sector Assessment Program Albania, Corporate Sector Financial Reporting, Technical Note, February 2014, p.1-2; Article 41. Law no. 10 091 on Statutory Audit, Organisation of the Profession of Certified Accounting Expert and Chartered Accountant, of 5 March 2009, Official Journal 36. 40 million lekë cash flow (less than 300 000 euro), income of 30 million lekë (about 200 000 euro), average of 30 employees during the reporting period.
1464 Article 45, Law on Accounting and Financial Reports, amended.

NATIONAL INTEGRITY SYSTEM ASSESSMENT ALBANIA
Transparency provisions are only somewhat implemented, especially for financial accounts and audits. The World Bank’s Index of Corporate Transparency, which measures disclosure of ownership and financial information, was 9 out of 10 in 2015, up from 7 in the period 2011-2014 (0=less disclosure to 10=more disclosure).

The National Registration Centre publishes records of ownership and governance structures, as well as annual reports of enterprises. It does not produce any aggregate company information. In its 2015 Report on Albania, the European Commission called for improvements in the public access to financial statements of companies, as well as measures to ensure that companies file duly approved versions. The search engine of the National Registration Centre produced inconsistent results for the Transparency International research team. It is not user friendly and requires good knowledge of an enterprise’s name and ownership structure. Journalists also claim that the obligatory updates of non-financial information are not regularly made.

The representatives of a business association argued that the transparency provisions could be too advanced for the country’s level of economic development. They claimed knowledge of a few cases of financial accounts being submitted that were lower than those submitted for tax purposes, so as not to draw public attention to their business. Other concerns that are often echoed in public discussions are the authenticity of ownership disclosure and of accounts given the acknowledged practices of double books and tax evasion.

The World Bank holds that the audited financial statements of banks are publicly available, but the same is not true for insurance companies and other so called, public interest entities. The Financial Monitoring Authority produces annual oversight reports only for the insurance market, private pensions and investment funds; made public on its website for the period 2007-2014. Annual reports on Banking Oversight of the Bank of Albania are available on its website for the period 1998-2015.

Overall, business and business associations do not have anti-corruption, social corporate responsibility or sustainability reports.

Accountability (Law)
Score: 75

TO WHAT EXTENT ARE THERE RULES AND LAWS GOVERNING OVERSIGHT OF THE BUSINESS SECTOR AND GOVERNING CORPORATE GOVERNANCE OF INDIVIDUAL COMPANIES?

The legal framework for corporate accountability improved with the 2008 Law on Merchants and Commercial Enterprises, which provided adequate standards for corporate governance. The World Bank’s Index of Corporate Responsibility, which looks at corporate transparency, extent of ownership control, shareholder rights, shareholder suits, director liability, and disclosure index, put Albania at 44/60 in 2016.

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1467 World Bank, Doing Business, Albania, 2016, p.60.
1468 European Commission, Albania Report, 2015, p.36.
1469 Interview with Gjergj Erebara, Journalist, BIRN Albania, 13 April 2016.
1470 Interview with a representative of a trade chamber in Albania, 22 April 2016.
1471 Interview with a representative of a trade chamber in Albania, 22 April 2016. Interview with an expert of an international organisation, 25 April 2016.
1476 EBRD, Commercial Laws of Albania, An Assessment by the EBRD, January 2013, p.11.
Joint-stock companies are organised around a one-tier (with board of directors) or two tier-system of governance (board of directors and supervisory board). The Shareholder’s Assembly has authority over administrators, statute changes, authorised accountants and the approval of reports. Administrators manage and report to the Assembly and supervisory boards. Similar provisions are in place in other company regimes such as limited liability and partnerships.

The Law on Merchants and Commercial Enterprises provides for shareholders the right to information, as well as personal and shared liability in cases of abuse of office and company. In 2016, the World Bank ranked Albania eighth globally, on minority shareholder protection, with a score of 7.3 out of 10. The amendments in 2015 made immediate public disclosure of related-party transactions obligatory. Joint-stock enterprises are also required to accompany annual activity and financial reports with a document that lays out principles, rules and practices for good governance and internal management in the implementation of the Law on Merchants and Commercial Enterprises. Secondary banks are required to establish more complex internal structures with a Steering Council, Managing Directorate and Audit Committee.

Statutory auditing requirements are considered advanced, but the audit oversight system requires stronger capacity and independence of oversight institutions.

Companies implementing international reporting standards, all joint-stock companies, and all medium-large limited liability companies – determined by relatively low cash flow, income and employment thresholds – are required to have financial statements audited by independent auditors based on International Standards on Audit (ISA). Statutory auditing of listed companies, banks and insurance companies is accompanied by a transparency report, with provisions on information on both the audited entity and the auditors. Such enterprises are also required to have an Auditing Committee that ensures and monitors internal compliance. The World Bank has noted the need to match audit requirements to the size of the auditing sector, with a view to enhancing the quality and trust in the audit system.

International organisations have recommended further legal review and the strengthening of the capacity and independence of the Public Oversight Board and the Chamber of Auditors (IEKA) for the oversight of statutory auditing. They have suggested that financial sector regulators are also included in the Public Oversight Board. The Bank of Albania (for secondary banks) and the Financial Supervisory Authority (for other financial institutions) oversee the financial sector. They are both independent institutions and report to Parliament. They are also assessed to have sufficient legal powers, but improvements are required, particularly on independence and the operational capacity of the Financial Supervisory Authority.

In 2011, the Business Advisory Council and the Ministry of Economy approved a Corporate Governance Code as a non-binding instrument for unlisted joint stock companies. The Code and

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1478 Article 81 (limited liability) Law on Merchants and Commercial Enterprises.
1479 Article 95 (limited liability), 154 (joint-stock), 166 & 167 (joint-stock with two levels), Ibid.
1480 Article 15, Ibid.
1481 Article 15, 98 (limited liability), 163, 164 2008, Ibid.
1482 World Bank, Doing Business, Albania, 2016. The economy has a score of 7.30 on the strength of minority investor protection index, with a higher score indicating stronger protections.
1483 Ibid.
1484 Article 134.2, Law on Merchants and Commercial Enterprises.
1485 Law on Banking Sector.
1487 Article 45, Ibid.
1488 Article 46, Ibid.
accompanying scorecards incorporate the OECD definitions and principles on corporate governance: there are of 14 principles, four of which address financial enterprises. 1493

**Accountability (Practice)**

Score: 25

**TO WHAT EXTENT IS THERE EFFECTIVE CORPORATE GOVERNANCE IN COMPANIES IN PRACTICE?**

The lack of a functioning stock market and the structure of most enterprises, including significant ones, as family business or partnerships among a small number of owners, make accountability provisions less relevant in practice. There is a significant lack of evidence as to how effectively legal provisions are implemented.

The implementation of audit and oversight provisions is weak and this is particularly a concern in the financial sector. The work of audit oversight bodies suffers from a lack of independence and resources – as is the case with the Public Oversight Board and the Chamber of Auditors (IEKA). In the banking sector, EBRD assessments have raised questions over the implementation of provisions as well as potential conflicts of interest regarding appointments in the three internal oversight structures required of second-level banks; the Steering Council, the Managing Directorate and Audit Committee. The role of banks in promoting good corporate governance is also considered weak. The Bank of Albania has been called to enhance prudential reporting (in addition to general purpose reporting), and the Financial Supervisory Authority (FSA) has also been assessed to require improvement, by financial independence and enhanced operational capacity.

Interlocutors from business chambers and international organisations also stated that there is very little awareness of voluntary instruments such as the Corporate Governance Code.

The WEF’s Global Competitiveness reports (2015-2016) gave corporate ethics, ethical behaviour of firms, and efficacy of corporate boards in Albania a mid-range assessment (around 4 on a scale 1-7), while it ranked Albania sixth in the world on investor protection.

**Integrity mechanisms (Law)**

Score: 50

**TO WHAT EXTENT ARE THERE MECHANISMS IN PLACE TO ENSURE THE INTEGRITY OF ALL THOSE ACTING IN THE BUSINESS SECTOR?**

1403 Corporate Governance Institute: http://cgi-albania.org/corporate-governance-in-emerging-markets/
1404 Interview with a representative of a trade chamber in Albania, 22 April 2016.
1407 Ibid.
1409 Ibid.
1410 Interview with a representative of a trade chamber in Albania, 22 April 2016; Interview with an expert of an international organisation, 25 April 2016.
Criminal and public contracting legislation provide for stringent and punitive integrity mechanisms. While commercial law lays out general principles, in voluntary mechanisms at the level of business associations and individual enterprises these systems are either lacking or significantly underdeveloped. Parliament finally adopted a new Law on Whistleblowing on 2 June 2016, as this report was being finalised. The parts of the new law that cover the private sector will enter into force in July 2017.  

Albania criminalises abuse of power and both active and passive corruption. There are also significant integrity provisions in legislation regulating public contracts. Measures include disqualification from procedures in cases of corruption or conflict of interest (without prejudice to criminal referral). The law also provides for exclusion from bids for one to three years for professional misconduct, forgery and corruption, criminal records or failure to meet state obligations in the past. A list of excluded operators is published.  

The Law on Merchants and Commercial Enterprises has provisions on integrity regarding the criminal records of administrations, boards and members of assemblies, as well as provisions on restricting conflicts of interest. Personal and shared liability in cases of abuse of office and company form is also provided.  

Sector-wide instruments on integrity principles and mechanisms are lacking, other than the Corporate Governance Code. There are no voluntary integrity pacts and very few of the business associations have a written Code of Ethics. The American Chamber has a Code of Ethics that refers to highest adherence to rule of law and standards in dealing with government officials – with specific reference to bans of exchange of gifts, money and information. The Code also refers to fair business practices, environmental stewardship and treatment of employees. The Albania branch of the International Chamber of Commerce also provides access to and promotes a number of anti-corruption instruments such as training handbooks on ethics and compliance, third-party diligence, gifts and hospitality, and whistleblowing. Blacklisting and screening for ethics in business associations is not common, and in cases where it is conducted, it tends to be done informally. Internal integrity mechanisms at the level of the enterprise are also not well developed, and when they exist, internal codes of ethics mainly deal with regulation towards employees on matters such as attire and working hours.  

Integrity mechanisms (Practice)  
Score: 0
In practice, there is little investment among business chambers and individual businesses in integrity mechanisms, promotion and training. Interviewees showed little awareness of the Corporate Governance Code and most companies have yet to develop internal codes. Compliance officers are rare and generally their role is focused on external legal compliance conducted by legal departments and advisors, while internal ethics is usually observed by human resources departments.\footnote{Ibid.
\footnote{BEEPS V, Business environment in the transition region, 2014.}}

Corruption and bribery are seen as significant concerns, but business efforts focus on addressing external pressures to engage in corrupt behaviour. The EBRD and World Bank’s 2013 Business Environment and Enterprise Performance Survey V (BEEPS V) showed that despite improvements from previous studies, only about a half of the businesses surveyed said that firms in their sector never had to make informal payments to “get things done”.\footnote{Interviews with Gjergj Erebara, Journalist, BIRN Albania, 13 April 2016 and a representative of a trade chamber in Albania, 22 April 2016.}

A solid track record of corruption-related convictions remains to be established. The overall high levels of informality, the low level of trust in the Judiciary as well as inefficiency and arbitrary behaviour of public administration do not support integrity in the business sector internally or in dealing with state authorities.\footnote{Law no. 146/2014 on public notification and consultation, of 30 October 2014, Official Journal 178, p.9189
\footnote{Interview with a representative of a trade chamber in Albania, 22 April 2016.
\footnote{Article 1, Law on Creation and Functioning of the National Economic Council.
\footnote{Interview with a representative of a trade chamber in Albania, 22 April 2016.}}}

### Role

**Anti-corruption policy engagement**

Score: 25

**TO WHAT EXTENT IS THE BUSINESS SECTOR ACTIVE IN ENGAGING THE DOMESTIC GOVERNMENT ON ANTI-CORRUPTION?**

In 2015, Albania passed legislation that made notification and consultation in the law-making process obligatory for government institutions, but no monitoring reports are available.\footnote{Interview with a representative of a trade chamber in Albania, 22 April 2016.} Business representatives claim that consultations on anti-corruption are hit and miss, and note that a ‘we know best’ mentality by government officials has at times led to the proposal of initiatives that spurred significant resistance and even legal challenges, such as the proposal for mandatory public trade chamber membership or the Taxation Law amendments raising penalties.\footnote{Interview with Gentian Elezi, Expert, 22 March 2016.} The government withdrew the first and the Constitutional Court annulled the second. The government’s communication with the business sector is generally more frequent at the beginning of governmental mandates.\footnote{Article 1, Law on Creation and Functioning of the National Economic Council.}

Two councils serve as principal mediators between government and business. The National Economic Council, led by the Prime Minister, was established in June 2014 to replace the Consultative Business Council of the Ministry of Economy.\footnote{Interview with a representative of a trade chamber in Albania, 22 April 2016.} According to a trade chamber representative, the forum is generally treated as a one-way platform for government communication. Its online peer-review mechanism is seen positively, but it is not binding.\footnote{Interview with a representative of a trade chamber in Albania, 22 April 2016.} The National Investment Council was established in 2015 as a facilitator of dialogue between representatives of the business community, international organisations, donors and the government, and has three non-permanent
business members. The Investment Council is considered to function better and to have produced more specific recommendations, but it is argued that its follow up is limited.

Business chambers have been quite vocal in calling for efforts to reduce corruption, but foreign chambers seem to be more active in consulting membership, including through surveys and dedicated events. Interlocutors spoke of some receptive ears in the government but noted that calls for referral to courts are empty given the low trust in the Judiciary. According to one business representative, there is also relatively limited interest among business to unite and lobby collectively and many often find it easier to address matters individually.

Support for engagement with civil society

Score: 25

To what extent does the business sector engage with/provide support to civil society on its task of combating corruption?

Cooperation with civil society is overall rather limited. When there is cooperation, it generally consists of partnership on corporate social responsibility programmes, which mainly focus on assistance to communities, marginalised groups and the environment. While there is no cooperation with civil society on anti-corruption specifically, business chambers tend to symbolically support public activities and discussions of anti-corruption studies and watchdog efforts. There is some cooperation between business associations and civil society organisations engaged in election monitoring, economic governance, and in watchdog and capacity building efforts at the local level. Financial support to civil society is very limited, and is attributed to the lack of information on CSO activities and a level of distrust towards the sector's work.

Recommendations

- The government should extend the range of online governmental services (e-Albania) and improve interoperability among various institutions.
- The government should further reform the system of awarding of licenses and authorisations:
  - Reduce and group the number of authorisations, enhance transparency on procedures, criteria and assessments.
  - Provide unifying guidance on by-laws on licenses and authorisations, to reduce arbitrary interpretation.

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1522 DCM no. 294, of 8 April 2015 ‘On the Establishment of the Investment Council’.
1523 Interview with a representative of a trade chamber in Albania, 22 April 2016.
1525 Interview with a representative of a trade chamber in Albania, 22 April 2016.
1527 Initiatives from the Vodafone Foundation, Bankers and TAP on supporting local communities affected by their activities, Philip Morris contributions to flood relief efforts, various banks and their tree-planting efforts.
1528 Partners Albania, Monitoring Matrix for an Enabling Environment for the Development of Civil Society, Albania Report, 2015, p.27.
The government should review the regulatory framework on inspections to:

- Improve access to administrative appeal systems by clarifying deadlines and reducing up-front payment of obligations and penalties.
- Introduce transparent risk-assessment inspection methodologies.
- Provide guidance to businesses on both compliance and resolution of disputes.

The government, in cooperation with the business associations, should consider the development of alternative dispute resolution mechanisms.

The National Business Centre should:

- Improve accessibility of records through an improved and more user-friendly online search system.
- Ensure that financial records submitted are the duly approved versions, and that non-financial information is also updated as per legal requirements.

The government should review the regulatory framework for statutory auditing to:

- Introduce higher thresholds for mandatory/statutory auditing (auditing of larger companies only).
- Provide for an independent Public Oversight Board.

Large enterprises and business associations should engage in and promote proactive disclosure and voluntary integrity systems, including codes of conduct, integrity pacts, whistleblowing systems, compliance officers, integrity training, and anti-corruption and sustainability reporting.
STATE-OWNED ENTERPRISES

Summary

State ownership in the Albanian economy is relatively small, but it is highly opaque and vulnerable to both political and lower-level corruption and mismanagement. The most significant state-owned enterprises (SOEs) are commercial public entities in monopolistic positions, mostly fully owned by the state.

They operate in a legal framework regulating both public entities and the private sector. As a result, although highly dispersed and fragmented, the regulatory framework has considerable transparency and accountability provisions in place. Legal provisions on independence and integrity are weaker, however, and the sector is marred by a notable lack of transparency over implementation of the legal framework and public oversight.

The Ministry of Economy, as the structure responsible for state ownership, fails to provide any information on SOEs. The independence of SOEs is mainly inhibited by the political appointments of administrators/directors and steering boards, as well as political pressure for campaign support and employment for party activists. At the level of individual SOEs, transparency is largely limited to disclosures related to business registration: financial disclosure and audits of accounts in practice are weak and inconsistent. Financial sustainability is a particular concern in politically sensitive sectors such as electrical energy and given the notable shortcomings in independence and transparency there is no meaningful evidence that the accountability and integrity mechanisms in place are accordingly implemented.

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<tr>
<th>Dimension</th>
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<td>Integrity mechanisms</td>
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Note: There are no "Resources" or "Role" indicators for this pillar. This is because the SOE sector is not considered to be an actor with a specific role in promoting integrity, as is the case with other NIS pillars.

Structure and organisation

Albania underwent a large-scale and swift privatisation process in the early 1990s. Public ownership in the economy is considered to be low, but there is no public, official information on the aggregate number or the total value of state-owned enterprises and public shares. The Ministry of Economy did not respond to official requests for this information.1531

The most significant SOEs are those in strategic sectors, mainly energy, transport and water-sewage services.1532 Some of the key state-owned enterprises are the Albanian Electro-energy

1531 Request submitted via e-mail to the Ministry of Economic Development, Tourism, Trade and Entrepreneurship on 16 May 2016.
1532 Strategic sectors are those of energy, oil and gas, postal services, telecommunications, forestry and waters, roads, railways, ports, airports, and rail and air transport and their privatisation is done by law – See Article 3, Law no. 7512
Corporation (KESH), the Organisation for Energy Transmission (OST), the energy distributor (OSHEE) and Albpetrol in the energy sector, as well as Albanian Post, Albanian Railways, Port Authorities (Durrës, Vlora, Saranda, Shengjin), and water-sewage enterprises throughout the country. Albania has completely private second-level banks, and is in the process of privatising the public, commercial insurance company INSIG. In 2015, the government negotiated the renationalisation of 76 per cent of the shares of the electric energy distributor OSHEE sh.a., sold to the Czech company CEZ a.z. in 2009, and taken under state administration after the removal of its license in 2013.

Starting in 1995, most public enterprises were transformed into state-owned commercial enterprises. They operate in the market under the same regulatory framework as all other private enterprises, principally the 2008 Law on Merchants and Commercial Enterprises, as well as other legislation regulating registration, licensing, financial reporting and taxation.

Commercial public enterprises where the state controls a half or more of the shares are also subject to the legal framework regulating the public sector and to auditing by the Supreme Audit Institution. Enterprises in the strategic sectors of energy and water-sewage services are also regulated by the Energy Regulatory Entity and the Regulatory Entity on Water Supply and Removal and Treatment of Sewage Water. State enterprises that have not been transformed into commercial state enterprises operate under the 1992 Law on State Enterprises. They are not part of this assessment given their relative insignificance.

The Ministry of Economy holds ownership rights of all public property, with the exception of cases when ownership is transferred by the Council of Ministers to the local level, as is the case of water-sewage companies. Through the Directorate of Public Property, the Ministry of Economy is in charge of both privatisation and management of state-owned enterprises. All commercial state-owned enterprises have supervisory boards appointed by the Ministry of Economy, proposed by the Ministry of Economy and line ministries or local government. From 2016, state ownership rights, including appointments to supervisory councils, in the sector of electro-energy are done in line with the new laws on electrical energy and that on natural gas, which provide for separation of ownership of OST (energy transmitter).

1535 Articles 3 and 16, Law no. 7926 on the Transformation of State Enterprises into Commercial Enterprises, of 20 April 1995, amended.
1539 Law on State Enterprises, amended.
1540 Article 4, Law no. 7926 on the Transformation of State Enterprises into Commercial Enterprises, of 20 April 1995, amended.
1541 Ibid.
1542 Law 8/2016 on an Addendum and Amendment to Law 7926 on the Transformation of State Enterprises into Commercial Enterprises, of 20 April 1995, amended; Section IV, Law no. 43/2015 on the Sector of Electric Energy and Law no. 102/2015 on the Sector of Natural Gas.
Capacity

Independence (Law)

Score: 50

There is no separation between the ownership role and the policy-making role of the Ministry of Economy, which designs economic policy on economic development, trade, and entrepreneurship, and also holds ownership rights of all public property, including SOEs. Prior to 2013, the Ministry of Economy portfolio also included the energy and industry sectors where SOEs are most prominent. The overall regulatory framework does not distinguish between commercial SOEs and private sector companies. With the exception of the key sectors of energy and water, which are subject to regulated prices and state monopoly (see below), SOEs should operate in conditions of free competition, without special privileges, such as state aid. Albania has no state-owned second-level banks. The state can guarantee loans only when authorised by law. The legislation on minority shareholder protection relevant to commercial SOEs with joint public-private holdings is advanced.

SOEs are free to set prices and economic programmes, with the exception of the energy and water sectors where prices are regulated. Some independence in the regulation of these strategic sectors, which are only partially liberalised, is achieved through collegial regulatory entities – the Energy Regulatory Entity (ERE) and the Regulatory Entity on Water Supply and Removal and Treatment of Sewage Waters (ERRU). These bodies set regulated prices and technical benchmarks and provide for licensing, market regulation and consumer protection. ERE has an independent structure and its board is appointed and dismissed by Parliament, based on criteria specified by law and through open calls. The legal framework on EERRU provides for less independence, as the entity’s Commission is appointed and dismissed by the Council of Ministers, although there are provisions for involvement of Parliament in the pre-selection of candidates based on criteria stipulated by law. The entity has reporting obligations to both Parliament and the Council of Ministers. The Law on Collegial Bodies also regulates the functioning of independent entities.

There is no independent management and reporting structure on SOEs. The Ministry of Economy exercises indirect management and monitoring competences over all SOEs, through the Directorate for the Administration of State Property, part of the General Directorate for Public Property, while line ministries, agencies and local government are responsible for administration of state property under their authority. The Ministry of Economy is responsible for monitoring the SOEs’ developments plans, programming and implementing activity, and their supervisory boards,

1544 Article 4, Law on the Transformation of State Enterprises into Commercial Enterprises, amended.
1545 Article 213.2, Law on Merchants and Commercial Enterprises, amended; Articles 2.b and 3, Law on the Transformation of State Enterprises into Commercial Enterprises, amended.
1546 Article 156, Constitution.
1548 See Articles 5, 6, and 14.2, Law on State Enterprises, amended.
1550 Articles 9-17, Law on the Sector of Electrical Energy.
1551 Articles 4-11 and 31, Law on the Regulatory Framework of the Sector of Water Supply and Removal and Treatment of Sewage Waters, amended.
1553 Article 4, Law, on the Transforation of State Enterprises into Commercial Enterprises, amended.
ownership-structure decisions, as well as the transfer of use and development rights (rents, concessionary agreements etc.).

For commercial public enterprises, the Ministry of Economy exercises the rights of the General Assembly of shareholders, thus appointing supervisory board members and external auditors, and approving all accounts.

The daily operation of commercial SOEs is generally independent, but the legal framework on supervisory boards allows for politicalisation and loose merit criteria for appointments, which are only set out in secondary legislation. The members of supervisory councils of commercial SOEs are appointed by the Minister of Economy and proposed by the Minister of Economy and line ministers for the relevant sector, and in the case of water-sewage entities, by the Minister of Economy and local government authorities. Boards can include the political staff of ministries, although they are meant to be technical bodies. In a 2015 report, the Supreme Audit Institution assessed this to be a provision that does not support independence and continuity, and that appointment criteria to these collegial bodies are loose. The Ministry of Economy, however, does not appoint SOE administrators/directors, who are appointed by and report to the supervisory council/board.

Independence (Practice)

Score: 25

TO WHAT EXTENT ARE THE DAY-TO-DAY OPERATIONS OF SOES PERFORMED INDEPENDENTLY OF STATE INTERFERENCE IN PRACTICE?

In practice, while the state generally does not interfere in the everyday management of SOEs, boards and administrators are politically appointed and controlled. Although the legal framework provides for appointments by boards, administrators of large SOEs in strategic sectors have been publicly appointed or dismissed by senior politicians. Administrators have very often been individuals with high-profile political engagement or senior-level government officials. Their replacement has reflected a rotation of political power, while poor financial or service-delivery performance has not led to dismissals.

The SAI audit reports on steering councils in 2014 and 2015 concluded that the regulatory framework on supervisory councils was often not implemented – noting appointments in violation of legal provisions, issues with remuneration, lack of expertise among board members, and irregular attendance at meetings. Gjergj Bojaxhi, former executive director of the Albanian Electrical

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1555 Article 8, Law on the Transformation of State Enterprises into Commercial Enterprises, amended and Articles 95, 154, 166 and 167, Law on Merchants and Commercial Enterprises, amended.
1558 Examples include Gjergj Bojaxhi, former director of KESH under former DP government; former OSHEE/CEZ administrator Sahit Dollapi of the DP; Majlind Lazimi, current director of Albanian Post, formerly deputy-minister of European Integration representing SMI; Adrian Cela, current administrator of OSHEE was deputy-mayor of SP in Durres etc.
1559 Interviews with civil servant involved in policy making relevant to SOEs, 8 May 2016 and Besar Likmeta and Gjergj Erebala, Journalists, BIRN Albania, 16 March 2016.
1560 SAI, Final Report on Auditing in Boards, Councils, Commissions, or other Collegial Bodies of Public Administration and Public Entities, on Implementation of the Regulatory Framework on establishment, composition and remuneration.
Corporation (KESH) and investigative journalists also agree that SOE board members are mainly selected on criteria of patronage rather than merit or relevance to the sector.\textsuperscript{1561} According to Bojaxhi, it can be said that all boards are political, but that levels of professionalism vary and often depend on the institutional culture or experience of the Minister of Economy.\textsuperscript{1562}

Such politicisation influences the work of administrators and makes the role of boards largely formal. According to interlocutors, most significant SOEs are either too large or too geographically dispersed for the government to interfere in their everyday business.\textsuperscript{1563} Political interference mainly takes the form of political patronage as in staffing and the use of SOE resources for political campaigning and advertising.\textsuperscript{1564} Large SOEs, especially those managing wide networks and providing basic services, mainly in the electric energy and water supply sectors, are used to employ party members. Electoral cycles also influence investment and operational plans, but particularly inaugurations and the conduct of unpopular operations that affect the public.\textsuperscript{1565} In addition, according to Bojaxhi, in sectors that provide basic services and are politically important, executives are also often actively discouraged from formally requesting higher tariffs/prices.

Boards are largely invisible. When exercised, oversight or pressure over the executive director is rarely about substantial managerial aspects, but rather reflects differences of opinion or power struggles among ministers who appoint board members, or between these ministers and the Prime Minister.\textsuperscript{1566}

The appointment system also leads to politicisation of members of steering bodies of regulatory entities.\textsuperscript{1567} Public accusations of government pressure on public entities, especially the Energy Regulatory Entity, have been frequent, and were particularly discussed during the renationalisation of the electric energy distributor CEZ/OSHEE.\textsuperscript{1568} Likewise, leaders of regulatory entities have been accused of links with private operators in their sector.\textsuperscript{1569}

As for the state ensuring a level-playing field more broadly, there have been claims of government agencies engaging in preferential procurement to SOEs, such as postal services, or claims of unequal treatment of private actors in the energy production market.\textsuperscript{1570} Nevertheless, the number of cases taken to by the Competition Authority remains low (\textit{see Accountability} below). However, the most significant concern in this regard is the financial situation of the three main SOEs in the electrical energy sector – dealing with production (KESH), transmission (OST) and distribution (OSHEE). These SOEs are a significant drain on public resources and are granted state loan guarantees to finance losses and debts which are believed to be too high to be covered.\textsuperscript{1571} State aid without loan guarantees granted to the state-owned power company KESH is low and in 2014


\textsuperscript{1567} Interviews with Gjergj Bojaxhi, Former KESH Director, 8 April 2016 and Besar Likmeta and Gjergj Erebara, Journalists, BIRN Albania, 16 March 2016.

\textsuperscript{1568} Interview with Gjergj Bojaxhi, Former KESH Director, 8 April 2016.

\textsuperscript{1569} Ibid.; Interviews with civil servant involved in policy making relevant to SOEs, 8 May 2016 and Besar Likmeta and Gjergj Erebara, BIRN Albania, 16 March 2016.

\textsuperscript{1570} Ibid.\textsuperscript{1567}

\textsuperscript{1571} Ibid.\textsuperscript{1569}

\textsuperscript{1572} Interviews with Gjergj Bojaxhi, Former KESH Director, 8 April 2016.

\textsuperscript{1573} Interviews with civil servant involved in policy making relevant to SOEs, 8 May 2016 and Besar Likmeta and Gjergj Erebara, Journalists, BIRN Albania, 16 March 2016.


dropped to 0.5 per cent of GDP. Subsidies are limited and concentrated in a few sectors, mainly energy.

Unlawful gain of access of SOEs to private assets or resources is not a concern, despite the high-profile case of renationalisation of the energy distribution company CEZ/OSHEE. BIRN Albania believes that the general trend is in fact the degradation of SOE property and their market share, to favour private competitors or lead to a lower privatisation price.

Governance

Transparency (Law)

Score: 75

Legal provisions on transparency at the level of the enterprise are adequate and most public enterprises are subject to both legislation regulating private commercial entities and legislation on the public sector, which have in the last few years seen significant reform regarding disclosure.

All commercial SOEs are required to be registered at the National Business Centre (formerly National Registration Centre). The Law on Registration of Business requires submission and online publication of statutes, ownership structures, steering organs, annual financial reports and audit reports. Joint-stock enterprises are also required to make the information available on the companies’ websites. The 2008 Law on Merchants and Commercial Enterprises and the Law on Business Registration are aligned with the EU and are assessed to have adequate transparency provisions. Amendments in 2015 have strengthened provisions on mergers and divisions, as well as the protection of members and third parties.

All commercial SOEs are required to apply the same national financial accounting standards as other commercial companies and to prepare and publish activity and financial reports according to those standards. National accounting standards have been strengthened as of 2015, but international accounting standards are not yet fully transposed. Large enterprises, defined by income and number of employees, are also required to apply International Financial Reporting Standards. Statutory auditing by independent auditors, based on International Standards of Audit (ISA), is required of all joint-stock companies, and all medium-large limited liability companies.

1573 Ibid, p.27.
1574 Interview with Besar Likmeta and Gjergj Erebara. Journalists, BIRN Albania, 16 March 2016.
1576 Articles 31–36, 43, 46, Ibid.
1577 Articles, 106. Law on Merchants and Commercial Enterprises.
1579 Article 1.3. Law on Merchants and Commercial Enterprises, amended.
1581 That both annual income exceeding 1 250 000 000 leke (about 9 million euro) and average 100 employees, for two consecutive years; Articles 4, point 1 and 3, Law no. 9228 on Accounting and Financial Reports, of 29 April 2004 amended, and Decision of Council of Ministers, no. 742, of 7 November 2007, ‘On criteria for selection of economic entities that should implement international accounting standards’.
1582 World Bank, Financial Sector Assessment Program Albania, Corporate Sector Financial Reporting, Technical Note, February 2014, p.1-2; Articles 41, Law no. 10 091 on Statutory Audit, Organisation of the Profession of Certified
The Law on the Right to Information, which provides for transparency programmes and both proactive and request-based publication of information, applies to commercial enterprises where the state is a majority shareholder, or enterprises that exercise public functions. Procurement in SOEs where the state is a majority shareholder is also subject to transparency provisions provided by the Law on Procurement. SOEs are not required to report on anti-corruption programmes.

Transparency (Practice)

Score: 25

**TO WHAT EXTENT IS THERE TRANSPARENCY IN SOES IN PRACTICE?**

The lack of aggregate data on SOEs is a serious transparency concern. Information on the number, types and value of SOEs is not public and could not be established in the course of the research. The Ministry of Economy has not published aggregate or individual reports on SOEs, and did not respond to official requests for information.

The National Registration Centre overall publishes records of ownership and governance structures, as well as annual reports. It does not produce any aggregate company information, however. As regards individual enterprise data, the 2015 European Commission Report on Albania highlighted that further improvements are needed on public access to companies' financial statements and for ensuring that companies file a single set of approved statements. The World Bank also stated that audited accounts of public interest entities are not publicly available. During this research, the search mechanisms of the National Registration Centre produced inconsistent results. It is not user friendly and requires good knowledge of the enterprise name and ownership structure.

The transparency of data shared by enterprises themselves varies. Small state enterprises, especially at the local level, do not have functional websites and a survey of the websites of the Albanian Electroenergy Corporation (KESH), the Organisation for Energy Transmission (OST), the energy distributor (OSHEE), Albpetrol, the Port of Durres, and the Albanian Railway, noted that none of them published all data for users (service details and tariffs), supervisory council decisions and business plans, annual financial accounts, tendering bids, and contact numbers. For example, the Albanian Energy Corporation, one of the most significant SOEs, publishes important information such as contact details, purchase and sales tenders, as well as narrative reports over a longer period of time, but fails to publish financial accounts. The overwhelming majority do not provide information on transparency programmes in the framework of the right to information legislation.

Similarly, there are generally no details on anti-corruption programmes, which according to Gjergj Bojaxhi, former KESH Director, are generally individual initiatives. Only a few SOEs have online and offline mechanisms for the filing of complaints or denouncement of corruption, such as the energy distributor.

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Accounting Expert and Chartered Accountant, of 5 March 2009, Official Journal 36. 40 milionë lekë cash flow, income of 30 milionë lekë, average of 30 employees during the reporting period.
1583 Articles 2.1.b and c, Law on Right to Information.
1584 Articles 3.4. c. Law on Public Procurement, amended.
1585 Request for information submitted to the Ministry of Economic Development, Tourism, Trade and Entrepreneurship via e-mail on 16 May 2016.
1586 European Commission, Albania Report, November 2015, p.36.
1589 Interview with Gjergj Bojaxhi, Former KESH Director, 8 April 2016.
1590 OSHEE denounce item in website: http://oshee.al/denonco/
Investigative journalists at BIRN Albania claim it is particularly difficult to get access to information such as the number of employees and subsidies, and quote low response rates to requests for information.\textsuperscript{1591}

**Accountability (Law)**

Score: 75

**TO WHAT EXTENT ARE THERE RULES AND LAWS GOVERNING OVERSIGHT OF SOES?**

The provisions on oversight and accountability of SOEs are in place, through the regulatory framework on commercial enterprises and the framework on public institutions.

All SOEs are monitored, either directly or through their supervisory boards, by the Directorate of State Property Administration at the Ministry of Economy, sector of Management of SOEs. This structure monitors the economic and financial activity of SOEs, reviews development plans and monitors the functioning of steering councils and the transfer of use and development rights (rents, concessionary agreements etc.).\textsuperscript{1592} The unit, under the Ministry of Economy, is not directly or independently accountable to Parliament. Decisions related to changes in property structures in SOEs in strategic sectors and state guarantees are made through legislation and are thus subject to Parliamentary oversight.\textsuperscript{1593} The Competition Authority monitors the government’s liberalisation and competitiveness policy, including state aid.

The direct oversight of commercial SOEs is tasked to supervisory boards, which are mandatory.\textsuperscript{1594} This includes SOEs registered as limited liability companies, although companies of this status are not subject to this requirement under law on Merchants and Commercial Enterprises.\textsuperscript{1595} In commercial SOEs, administrators are accountable to supervisory boards, where they report on performance, including narrative and financial reports. Supervisory boards approve financial accounts and have the formal authority to appoint, assess performance of and dismiss SOE administrators.\textsuperscript{1596}

Commercial SOEs are subject to internal audit systems, audits by the SAI, and financial audits by certified accountants reporting to supervisory boards. SOEs where the state is a majority shareholder or where it guarantees loans and obligations are also subject to audits by the SAI, which engages in compliance, financial, performance, IT or combined audits.\textsuperscript{1597} Likewise, the coordination unit/directorate at the Ministry of Economy is also subject to audits by the SAI.\textsuperscript{1598} Statutory auditing by independent auditors, based on International Standards of Audit (ISA), is also required by law on Merchants and Commercial Enterprises and applies to all joint-stock companies, and all medium-large limited liability companies.\textsuperscript{1599} To enhance accountability, it is deemed that the...

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\textsuperscript{1591} Interview with Besar Likmeta and Gjergj Erebara, Journalists, BIRN Albania, 16 March 2016.
\textsuperscript{1594} Article 18, Law on State Enterprises, amended and Article 8, Law on the Transformation of State Enterprises into Commercial Enterprises, amended.
\textsuperscript{1595} Article 3, Ibid.
\textsuperscript{1596} Article 8, Ibid; Articles 95, 154, 166 and 167, Law on Merchants and Commercial Enterprises, amended.
\textsuperscript{1597} Art. 163, c, Constitution; Article 10, point e, Law No. 154/2014 on Organisation and Functioning of SAI: http://www.klsh.org.al/web/pub/ligji_klsh_al_1622_1.pdf
\textsuperscript{1598} Article 10, point c, Law on Organisation and Functioning of the SAI.
\textsuperscript{1599} World Bank, Financial Sector Assessment Program Albania, Corporate Sector Financial Reporting, Technical Note, February 2014, p.1-2; Article 41, Law on Statutory Audit, Organisation of the Profession of Certified Accounting Expert and Chartered Accountant. 40 million lekë cash flow (less than 300 000 euro), income of 30 million leke (about 200 000 euro), average of 30 employees during the reporting period.
legal and institutional framework on statutory audits is in need of further legal review and that the audit oversight institution requires further strengthening (see Business pillar).\textsuperscript{1600}

Independent regulatory entities monitor the implementation of price regulations and technical performance standards, ensuring market regulation and consumer protection (see Transparency).\textsuperscript{1601} The Law on Public Procurement is also obligatory for commercial state enterprises where the state is a majority shareholder.\textsuperscript{1602} As a result, tendering is subject to this legislation and the Agency for Public Procurement. Employment in SOEs is only regulated by the Labour Code and is not part of civil service provisions.

In addition to administrative courts and internal appeal systems of governmental authorities, relevant redress mechanisms include the Competition Authority and the Public Procurement Commission.

\textbf{Accountability (Practice)}

\textbf{Score: 25}

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\textbf{TO WHAT EXTENT IS THERE EFFECTIVE OVERSIGHT OF SEOS IN PRACTICE?} \\
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In practice, oversight is limited and with the exception of the reports of the SAI, there is no evidence of public monitoring or audit results. Given the lack of transparency of the work of the Ministry of Economy in monitoring SOEs, it is difficult to assess government institutional accountability mechanisms. In commercial SOEs, supervisory boards are generally formal and political, and fail to exercise effective oversight (see Independence). Executive directors’ positions are not subject to performance assessments, but rather to political patronage.\textsuperscript{1603} Interlocutors speak of political accountability of SOE directors to ministers and the Prime Minister in the case of large SOEs, and then to lower levels of public administration for smaller SOEs. According to Gjergj Bojaxhi, the level of accountability progressively diminishes in smaller, local level SOEs (see Independence).\textsuperscript{1604}

Overall, only the SAI is actively and publicly engaged in the audit of SOEs, with a number of reports in 2015, including on key enterprises such as the electrical energy distributor Oshee, electric energy transmitter Ost, Durres Port Authority, Albpetrol Patos, Albanian Post, Albanian Railways, as well as Water and Sewage enterprises of Lushnje, Fier and Mirdite.\textsuperscript{1605} In 2014, the SAI also published an audit report on supervisory boards and other collegial structures of state enterprises, noting a number of violations in supervisory boards and payments of dividends.\textsuperscript{1606}

The enforcement of competition provisions and ownership rights is challenging.\textsuperscript{1607} Redress mechanisms are problematic, mainly given the lack of trust in the country’s justice system. According to experts, SOE directors will often seek redress outside formal channels, by leveraging

\textsuperscript{1601} Law on the Sector of Electrical Energy; Law on the Regulatory Framework of the Sector of Water Supply and Removal and Treatment of Sewage Waters, amended.
\textsuperscript{1602} Articles 3.4.ç, Law on Public Procurement, amended.
\textsuperscript{1603} Interview with civil servant involved in policy making relevant to SOEs, 8 May 2016; Interview with Besar Likmeta and Gjergj Erebara, Journalists, BIRN Albania, 16 March 2016; Interview with Gjergj Bojaxhi, Former KESH Director, 8 April 2016.
\textsuperscript{1604} Interview with civil servant involved in policy making relevant to SOEs, 8 May 2016. Interview with Gjergj Bojaxhi. Former KESH Director, Tirane, 8 April 2016.
\textsuperscript{1605} SAI, Audit Reports: \texttt{http://www.klsh.org.al/web/Raporte_Auditimi. 1084_1.php}
\textsuperscript{1606} SAI, Final Report on Auditing at Directorate of Administration of Public Property, at the Ministry of Economic Development, Trade and Entrepreneurship. On dividends and implementation of the legal framework on members of supervisory councils, for the period 1 January 2012 up to 31 December 2013, approved by Chair of SAI via Decision 179, of 23 December 2014.
\textsuperscript{1607} European Commission, Albania Report, November 2015, p.27-30.
political and operational power, or personal connections. In 2015-2016, the Competition Authority issued a number of decisions on the markets where SOEs operate, such as energy, gas and oil, including on concessionary agreements. Of the six decisions in 2015-2016 on electric energy, only one was prompted at the request of a market operator.

Minority shareholder rights are in practice not too relevant given private actors have rarely been interested in minority shares in SOEs. According to Gjergj Bojaxhi, this has been a result of informality in the market, as state ownership introduces stricter management and book-keeping requirements. The state also struggles to have its rights enforced or to have any influence in cases where it is a minority shareholder, such as with the oil producer ARMO, including regarding the receipt of dividends (see SAI note above).

Integrity mechanisms (Law)
Score: 50

Members of regulatory entities, board members of SOEs, and administrators of SOEs where the state holds at least half of the shares or that employ more than 50 employees, are subject to periodic reporting and control of assets. Likewise, officials with decision-making power in SOEs with controlling state shares are subject to the Law on Conflicts of Interest. The implementation of these laws is monitored by the High Institute for the Declaration and Audit of Assets and Conflict of Interest (HIDAACI). Executive positions in enterprises where the state holds majority ownership also fall under the remit of the recent, so called-decriminalisation legal package, which seeks to guarantee the integrity of elected and appointed officials and requires the submission of self-declaration forms. A whistleblower protection law covering private entities was approved by Parliament in June 2016, but the parts that cover the public sector will not enter into force until July 2017. Financial or material support of Political Parties by public entities and entities with state-owned shares is prohibited by legislation on Political Parties.

The Law on Merchants and Commercial Enterprises, which governs commercial SOEs, includes provisions on integrity regarding criminal records of administrations, councils and members of assemblies, as well as provisions on restrictions related to conflict of interest. Board members cannot be employed in the enterprise. Administrators are not allowed to work for competitors in the sector unless there is prior authorisation. Personal and shared liability in cases of abuse of office and company form is provided for. The law also stipulates shareholders’ rights to

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1608 Interview with Besar Likmeta and Gjergj Erebara, Journalists, BIRN Albania, 16 March 2016; Interview with Gjergj Bojaxhi, Former KESH Director, 8 April 2016.
1610 Article 3, points e, g1, and j, Law no. 9049 on Declaration and Control of Assets and Financial Obligations of Elected Officials and Some Public Officials, of 10 April 2003, amended: http://www.hidaa.gov.al/ligji-nr/
1612 Article 2g, Law no. 138/2015 on Guarantee of Integrity of Persons Elected, Appointed or Exercising Public Functions.
1613 Article 21, Law on Whistleblowing and Protection of Whistleblowers.
1614 Article 13, Law on Merchants and Commercial Enterprises.
1615 Article 8, Law on the Transformation of State Enterprises into Commercial Enterprises, amended.
1616 Article 17, Law on Merchants and Commercial Enterprises.
1617 Article 15, 98 (Shpk), 163, 164, Ibid.
information. Shareholding enterprises are also required to accompany annual activity and financial reports with a document that lays out principles, rules and practices for good governance and internal management in the implementation of the Law on Merchants and Commercial Enterprises. This should include profiles of administrators and council members.

In 2011, the Business Advisory Council and the Ministry of Economy approved a Corporate Governance Code, as a non-binding instrument for unlisted joint stock companies. The Code and accompanying scorecards incorporate the OECD definitions and principles on corporate governance.

Integrity mechanisms (Practice)

Score: 0

TO WHAT EXTENT IS THE INTEGRITY OF SOES ENSURED IN PRACTICE?

The level of public information available does not allow for an assessment of the level of implementation of the legal framework regarding integrity standards and raises serious questions in this regard. Reports of the SAI are the only ones to have led to annual recommendations for disciplinary and administrative measures, criminal referrals, and suits. In 2015, Albania's SAI audited 20 public enterprises and claimed abuse of office and other breaches in a number of them, including KESH, OSHEE, Albpetrol, Vlora Port, Albafilm and six local water supply and sewage companies.

As regards asset declaration, HIDAACI pressed charges against the KESH director in May 2015 on asset declarations during his service (2003-2005). Administrative measures for failure to submit asset declaration forms have been taken against a number of directors of water-sewage enterprises and one KESH Security administrator, in 2015 and 2014. While executive directors of major commercial SOEs in strategic sectors are frequently accused of abuse of power and corruption, there is no traceable track record of convictions or personal liability.

The media has highlighted cases mainly concerning large SOEs in the energy sector, where investigations have included former KESH and OSHEE executives. Similarly, there is no record of convictions on denunciations made by election monitoring groups, which claim that SOEs illegally support party campaign activities with staff and material resources.

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1620 Article 15, Ibid.
1621 Article 134, 2. Ibid.
1623 SAI, Annual Report, 2015, p.64-84.
Interviewees showed a complete lack of awareness of integrity provisions in the Law on Merchants and Commercial Enterprises, or of voluntary mechanisms such as the Code of Corporate Governance.

Recommendations

To address the main issues of lack of transparency, political influence over the management of state-owned enterprises, and fragmentation of the legal framework, it is critical that:

- The Ministry of Economy produces and publishes aggregate and individual reports on SOEs, covering all legal requirements for SOE policy, structures, operations and finances. A database and inventory of all SOEs should be developed and made public.

- Transparency and oversight of the implementation of state-aid, loan guarantees and public procurement involving SOEs should be enhanced by all relevant institutions. Transparency should be particularly enhanced on the financial performance and risk management of SOEs in the energy sector.

- SOEs should implement obligations stemming from the Law on the Right to Information, including transparency programmes and proactive disclosure.

- Parliament should exercise higher levels of oversight of SOEs and options should be considered for a separate, public monitoring structure.

- A central database of the integrated legal framework applied to the various types of SOEs should be developed and made public.

- Legal amendments should be considered on provisions on criteria for appointment in supervisory councils, remuneration and transparency of the work of supervisory councils – in line with SAI findings.

- Legal amendments should be considered to address issues of political patronage and influence in employment relationships in state-owned enterprises – considering alternatives for more stringent legal requirements and oversight.

- Amendments to the Law on Bankruptcy should be approved to also apply to SOEs.
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