

NATIONAL INTEGRITY SYSTEM ASSESSMENT ALBANIA 2016



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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

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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

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

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Expert of an international organisation, 25 April 2016

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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

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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

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

IMF – International Monetary Fund
ISA – International Standards on Audits
JIU – Joint Investigative Unit
LRI – Law on the Right to Information
LSMS – Living Standard Measurement Survey
MDG – Millennium Development Goals
MMB – Media Monitoring Board
MoJ – Ministry of Justice
MP – Member of Parliament
NAC – National Anti-Corruption Coordinator
NATO – North Atlantic Treaty Organization
NBC – National Business Center
NBI – National Bureau of Investigation
NDI – National Democratic Institute
NGO – Non Governmental Organization
NIS – National Integrity System
NJC – National Judicial Conference
NLC – National Licensing Center
NPO – Non Profit Organization
NRC – National Registration Center
OAJB – Office for the Administration of the Judiciary Budget
OECD – Organisation for Economic Cooperation and Development
OGP – Open Government Partnership
OPG – Office of the Prosecutor General
OSCE – Organization for Security and Cooperation in Europe
OSFA – Open Society Foundation Albania
PACA – Project Against Corruption in Albania
PCI – Law on Prevention of Conflict of Interest
PG – Prosecutor General
PISA – Program for International Student Assessment
PMO – Prime Minister's Office
PPA – Public Procurement Agency
PPC – Public Procurement Commission
SAI – Supreme Audit Institution
SIAC – Service of Internal Affairs and Complaints
SMEs – Small and Medium Enterprises
SMI – Socialist Movement for Integration
SOE – State Owned Enterprise
SP – Socialist Party
SPD – State Police Directorate
TI – Transparency International

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.

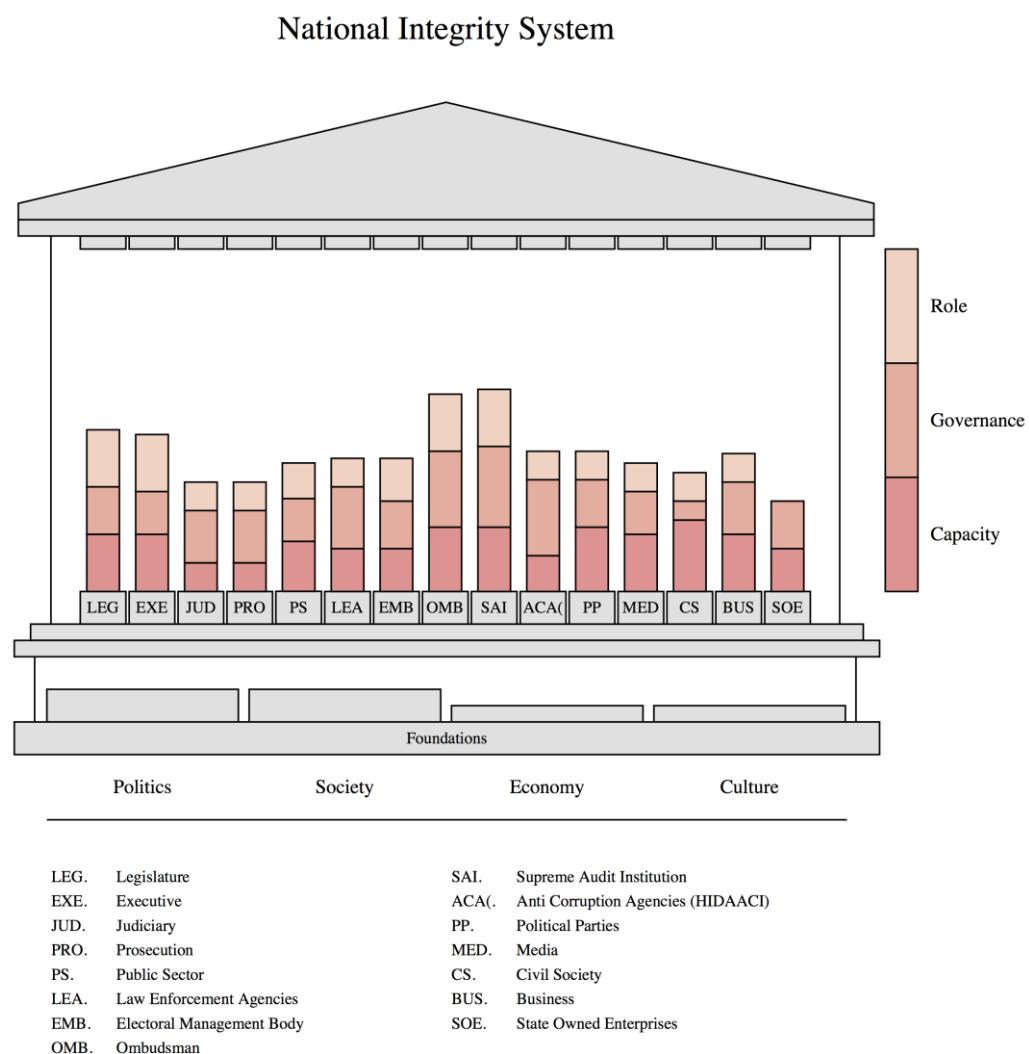
The purely rhetorical commitment to integrity and the fight against corruption found in Political Parties is also a question of values and norms, rather than simply legislation or oversight. Emphatically failing to uphold those values, Political Parties have promoted individuals with criminal records 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 conflicts 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:

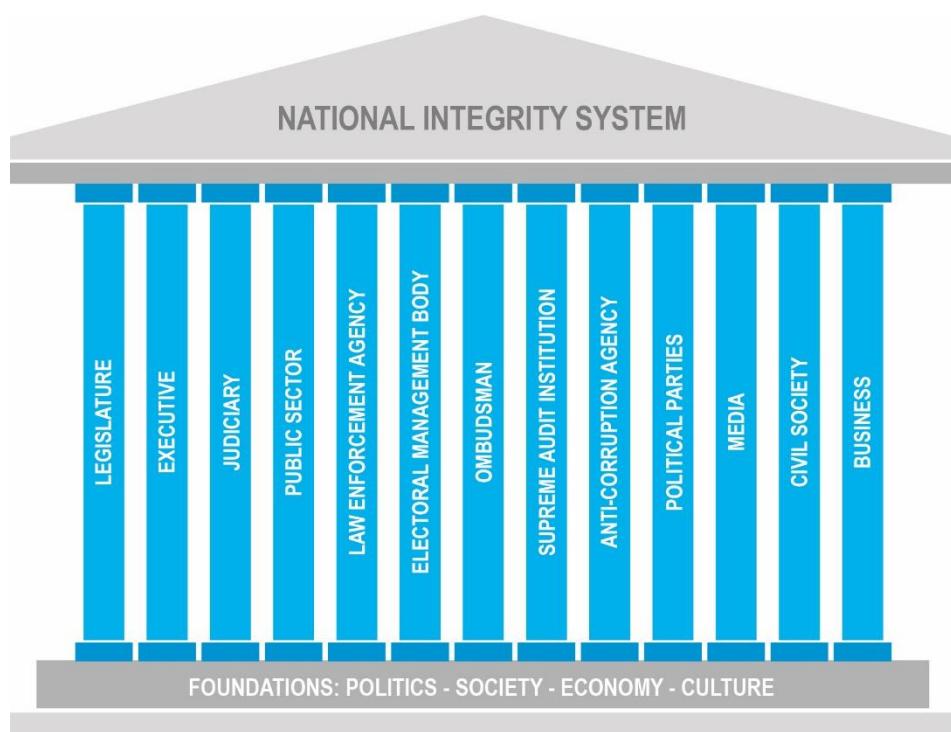
- Political Parties in Parliament must adopt justice reform through wide cross-party consensus, ensuring inter alia appropriate independence and accountability for judicial institutions and the Prosecution (see detailed recommendations under respective pillars).
- The government and Parliament should 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.’⁴

‘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.’⁵ ‘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.’⁶ ‘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.’⁷

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

CORE GOVERNANCE INSTITUTIONS	PUBLIC SECTOR AGENCIES	NON-GOVERNMENTAL ACTORS
Legislature	Public sector	Political parties

⁴ The Anti-Corruption Plain Language Guide, Transparency International, 2009, p.14.
http://www.transparency.org/whatwedo/pub/the_anti_corruption_plain_language_guide [accessed 21 December 2012].

⁵ Ibid, p.23.

⁶ Ibid, p.33.

⁷ Ibid. p.35.

Executive	Law enforcement agencies	Media
Judiciary	Electoral management body	Civil society
Prosecution	Ombudsman	Business
	Supreme audit institution	State Owned Enterprises
	Anti-corruption agency	

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.

DIMENSION	INDICATORS (LAW AND PRACTICE)
Capacity	Resources Independence
Governance	Transparency Accountability Integrity
Role within governance system	Pillar-specific indicators

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.

POLITICS	SOCIETY	ECONOMY	CULTURE
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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:

PILLAR	Judiciary
INDICATOR NUMBER	3.1.2
INDICATOR NAME	Resources (practice)
SCORING QUESTION	To what extent does the judiciary have adequate levels of financial resources, staffing and infrastructure to operate effectively in practice?
GUIDING QUESTIONS	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?
MINIMUM SCORE (1)	The existing financial, human and infrastructural resources of the judiciary are minimal and fully insufficient to effectively carry out its duties.
MID-POINT SCORE (3)	The judiciary has some resources. However, significant resource gaps lead to a certain degree of ineffectiveness in carrying out its duties.
MAXIMUM SCORE (5)	The judiciary has an adequate resource base to effectively carry out its duties.

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.⁸

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.

VERY STRONG	81-100
STRONG	61-80
MODERATE	41-60
WEAK	21-40
VERY WEAK	0-20

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.

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/>

¹⁰ OSCE/ODIHR, Election Observation Mission Final Report, 23 June 2013, Parliamentary Elections, 10 October 2013, p.1.

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.¹¹

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.¹² 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.¹³

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 intermingling of political and business interests makes media outlets biased towards one party or the other.¹⁴ 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.¹⁵

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.¹⁶ 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 undertaken 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.¹⁷ 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

¹¹ Lamallari, B., Nations in Transit Albania, Freedom House, 2016, p.5:
https://freedomhouse.org/sites/default/files/NIT2016%20Albania_1.pdf

¹² Coalition for Domestic Observers, 'Political dialogue, necessity for solving deadlocks created and conducting electoral reform', 4 June 2016: <http://www.zgjedhje.al/index.php?idart=111&qj=sh>

¹³ Lamallari, Nations in Transit Albania, 2016, p.5-6, OSCE/ODIHR, Election Observation Mission Final Report, 21 June 2015 Local Elections, p.2.

¹⁴ Freedom House, Albania Country Report 2015: <https://freedomhouse.org/report/freedom-world/2015/albania>; Balkan Insight, 'Self-Censorship rampant in Albanian media, study says', 3 December 2015:
<http://www.balkaninsight.com/en/article/self-censorship-rampant-in-the-albanian-media-birn-study-finds-12-02-2015>

¹⁵ Freedom House, Nations in Transit Albania, 2012: <https://freedomhouse.org/report/nations-transit/2012/albania>; Freedom House, Nations in Transit Albania, 2013, p.65-66:
https://freedomhouse.org/sites/default/files/NIT13_Albania_3rdProof_0.pdf

¹⁶ Bertelsmann Transformation Index, Albania Country Report, 2016, p.8: https://www.bti-project.org/fileadmin/files/BTI/Downloads/Reports/2016/pdf/BTI_2016_Albania.pdf

¹⁷ Ibid.

on a scale of 0 to 1 (with 1 indicating strongest adherence to the rule of law).¹⁸ 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”.¹⁹

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”.²⁰ 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.²¹

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.²² 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.²³

Albania is a largely homogenous country with an overall climate of tolerance and good inter-ethnic relations.²⁴ 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.²⁵ Participation in the labour market is also significantly lower for Roma and

¹⁸ World Justice Project, Rule of Law Index 2015, p.58: http://worldjusticeproject.org/sites/default/files/roli_2015_0.pdf

¹⁹ European Commission, Albania Report, 2015, p.75:

http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_albania.pdf

²⁰ Bertelsmann Transformation Index, Albania Country Report, 2016, p.2.

²¹ IDRA, Corruption in Albania – Perceptions and Experiences, 2015-2016, p.16:

http://www.idrainstitute.org/files/reports/Corruption%202016/Gjetjet%20Kryesore%20Studimi%20i%20Korrupsionit%20IDRA%20_Grafike.pdf

²² Data retrieved from the Institute of Statistics, 2011 Census: <http://www.instat.gov.al/en/census/census-2011/census-data.aspx>

²³ US Department of State, International Religious Freedom Report Albania, 2014, p.5:

<http://www.state.gov/documents/organization/238560.pdf>

²⁴ Home Office, Country Information and Guidance, Albania: Minority ethnic groups, 14 November 2014, p.5:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/375421/CIG_Albania_Minority_ethnic_groups.pdf

²⁵ Simon, P., Roma and Egyptians in Albania: A socio-demographic and economic profile based on the 2011 census, United Nations Support to Social Inclusion Programme in Albania, 2015, p.23:

http://www.al.undp.org/content/albania/en/home/library/poverty/_roma-and-egyptians-in-albania--a-socio-demographic-and-economi.html

Egyptians with figures as high as 58 per cent and 73 per cent for unemployed women.²⁶ Housing is one of the most problematic issues the Roma and Egyptian communities face. According to a UNDP study based on the 2011 census 36 per cent of Roma households are worried about the possibility of losing their houses to forced evictions and 68 per cent have difficulties in paying for utilities. Extreme poverty is one of the main drivers not only with housing problems but the overall lack of access to services.²⁷

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.²⁸

Albanian 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.²⁹ Party politics is perceived poorly and described as conflictual and based on personal rather than citizens' interests.³⁰ 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.³¹ Other studies link political elites to the patronage system and explain polarisation a due to the influence of the communist past.³²

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 (see *Civil Society pillar*). However, recent years have seen a number of steps towards acknowledging the role of CSOs in policy reform, especially in the EU integration process. Such initiatives include a resolution adopted by Parliament recognising the role of civil society in the country's democratic development. The establishment of the National Council on Civil Society as a consultative body pushing for an enabling environment for civil society and providing expertise for reforms is a positive step in creating a livelier and more visible civil society in Albania. As both abovementioned initiatives are fairly recent, their impact in practice remains to be seen.

²⁶ Ibid., p.31.

²⁷ Ibid., p.42.

²⁸ Commissioner for Protection from Discrimination, Annual Report 2015, p.18: http://kmd.al/skedaret/1458135488-Rapor-Vjetor-2015_KMD.pdf

²⁹ National Democratic Institute and IDRA, Dialogue between citizens and politicians key to a better governance and a stronger economy: Findings from focus group research in Albania, March 2014, p.28: <https://www.ndi.org/files/NDI-Albania-2014-Focus-Group-Report.pdf>

³⁰ National Democratic Institute, Brief: Audit of Political Engagement in Albania, 2016, p.1:

<https://www.ndi.org/files/NDI%20Brief%20on%20Audit%20of%20Political%20Engagement%20in%20Albania.pdf>

³¹ Kajsiu, B., 'Down with Politics! The crisis of representation in post-communist Albania', *East European Politics and Society*, vol. 24, no. 2, May 2010:

https://www.researchgate.net/publication/254088779_Down_with_PoliticsThe_Crisis_of_Representation_in_Post-Communist_Albania

³² Xhaferaj, A., 'Appointed Elites in the Political Parties – Albania Case', *Academic Journal of Interdisciplinary Studies*, vol. 2, no. 3, November 2013, p.307 and 310-311.

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.³³ 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",³⁴ where political and business interests prevail over media market regulations and impartial reporting (see *Media* pillar).

Socio-economic foundations

Score: 25

TO WHAT EXTENT IS THE SOCIO-ECONOMIC SITUATION OF THE COUNTRY SUPPORTIVE TO AN EFFECTIVE NATIONAL INTEGRITY SYSTEM?

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.³⁵ 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 2012.³⁶ 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.³⁷ In 2016 Albania ranked 97 in the World Bank's Doing Business report, with a score of 60.5.³⁸ Starting a business in Albania takes five and a half days and six procedures.³⁹

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.⁴⁰ 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.⁴¹ According to an estimate by the Albanian government, the informal economy may be as high as 50 per cent of GDP.⁴² The European Commission Report concludes that more needs to be done to

³³ Freedom House, Freedom of the Press Albania, 2015: <https://freedomhouse.org/report/freedom-press/2015/albania>

³⁴ 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>

³⁵ The World Bank Group, Overview Albania: <http://www.worldbank.org/en/country/albania/overview - 1>

³⁶ World Bank, Albania Public Finance Review, Part 1: Toward a Sustainable Fiscal Policy for Growth, Report no. 82013 – AL, 2014, p.11: http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2014/03/12/000442464_20140312104023/Rendered/PDF/82013ESW0P1430C0disclosed030100140.pdf

³⁷ Central Intelligence Agency, The World Factbook: <https://www.cia.gov/library/publications/the-world-factbook/geos/al.html>

³⁸ World Bank Group, Doing Business, 2016, p.5: <http://www.doingbusiness.org/~media/GIAWB/Doing%20Business/Documents/Annual-Reports/English/DB16-Full-Report.pdf>

³⁹ World Bank Group, Doing Business, Measuring Regulatory Quality and Efficiency: Economy Profile Albania, 2016, p.17: <http://www.doingbusiness.org/data/exploreeconomies/albania/~media/giawb/doing%20business/documents/profiles/country/ALB.pdf>

⁴⁰ Data retrieved from Albania's Institute of Statistics, Labour Market Figures: <http://www.instat.gov.al/en/themes/labour-market.aspx>

⁴¹ European Commission, Albania Report, 2015, p.5.

⁴² Albania Investment Council, Informality: A Common Government-Business Challenge, Working Document, December 2015, p.12: <https://www.investment.com.al/wp-content/uploads/2015/08/Working-Dокумент-on-Informality.pdf>

improve the national employment service, employment promotion programmes and to develop a coherent labour market system.⁴³

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.⁴⁴ 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.⁴⁵ 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”.⁴⁶

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.⁴⁷ In the Human Development Index 2015 Albania ranked 85 among 188 countries; falling into the high development category with a score of 0.733.⁴⁸ However, it lags behind other countries in the region and scores below the average of human development for European and Central Asian Countries.⁴⁹

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.⁵⁰ 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.⁵¹ 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.⁵² 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.⁵³

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

⁴³ European Commission, Albania Report, 2015, p.25.

⁴⁴ United Nations in Albania, Millennium Development Goals Albania 2000-2015 Report, p.11:

<http://www.un.org.al/editor-files/file/MDG%20ALBANIA%202000%20-%202015%20REPORT.pdf>

⁴⁵ Data retrieved from Albania's Institute of Statistics, Living Standards Figures; Poverty Global Practice, World Bank, an Update on Poverty and Inequality in Albania: 9 stylized Facts, May 2015: http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2015/08/03/090224b083049f29/1_0/Rendered/PDF/AnUpdateonOp0nine0stylized0facts.pdf

⁴⁶ United Nations in Albania, Millennium Development Goals Albania 2000-2015 Report, p.12.

⁴⁷ Poverty Global Practice World Bank, An Update on Poverty and Inequality in Albania: 9 stylized Facts, p.19.

⁴⁸ United Nations Development Programme, Human Development Report: Work for Human Development, 2015, p.209: http://hdr.undp.org/sites/default/files/2015_human_development_report.pdf

⁴⁹ Bertelsmann Transformation Index, Albania Country Report, 2016, p.16.

⁵⁰ Ibid, p.24.

⁵¹ European Commission, Albania Report, 2015, p.66.

⁵² United Nations in Albania, Millennium Development Goals Albania 2000-2015 Report, p.16.

⁵³ Ibid, p.16.

to be fundamental – including health and education".⁵⁴ 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.⁵⁵

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.⁵⁶ 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).⁵⁷

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.⁵⁸ 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".⁵⁹

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.⁶⁰ 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

⁵⁴ United Nations Country Team Albania, Common Country Assessment, 2015, p.57: <http://un.org.al/editor-files/file/CCA%20Albania%202015.pdf>

⁵⁵ Ibid, p.60.

⁵⁶ European Values Survey, Variable Report Albania, 2008, p.74: <https://info1.gesis.org/EVS/Studies/studydescription.asp?db=QSD-EVS&id=ZA4783&fi=>

⁵⁷ Cela, A., Kamberi, G., and Pici, E., Albanian Youth 2015: Slow change, internet dependency and...EU trust!, Friedrich Ebert Stiftung, p.21-22: <http://library.fes.de/pdf-files/bueros/albanien/12300.pdf>

⁵⁸ Duci, V., Dhembo, E., Audit of Political Engagement, Institute for Democracy and Mediation, 2016, p.24: <https://www.ndi.org/files/IDM%20Audit%20of%20Political%20Engagement%20in%20Albania.pdf>

⁵⁹ National Democratic Institute, Brief, Audit of Political Engagement in Albania, 2016, p.2: <https://www.ndi.org/files/NDI%20Brief%20on%20Audit%20of%20Political%20Engagement%20in%20Albania.pdf>

⁶⁰ Vurmo, Gj., Civil Society Index in Albania: In search of citizens and impact, Institute for Democracy and Mediation, 2010 p.20-21: <http://idmalbania.org/wp-content/uploads/2014/09/civil-society-index-albania.pdf>

respondents in the Political Engagement Audit did not find MPs to be respected members of society that work in an ethical manner.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.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.⁶³

⁶¹ Duci, V., Dhembo, E., Audit of Political Engagement, Institute for Democracy and Mediation, 2016, p.35.

⁶² IDRA, Corruption in Albania – Perceptions and Experiences, 2015-2016, p.13.

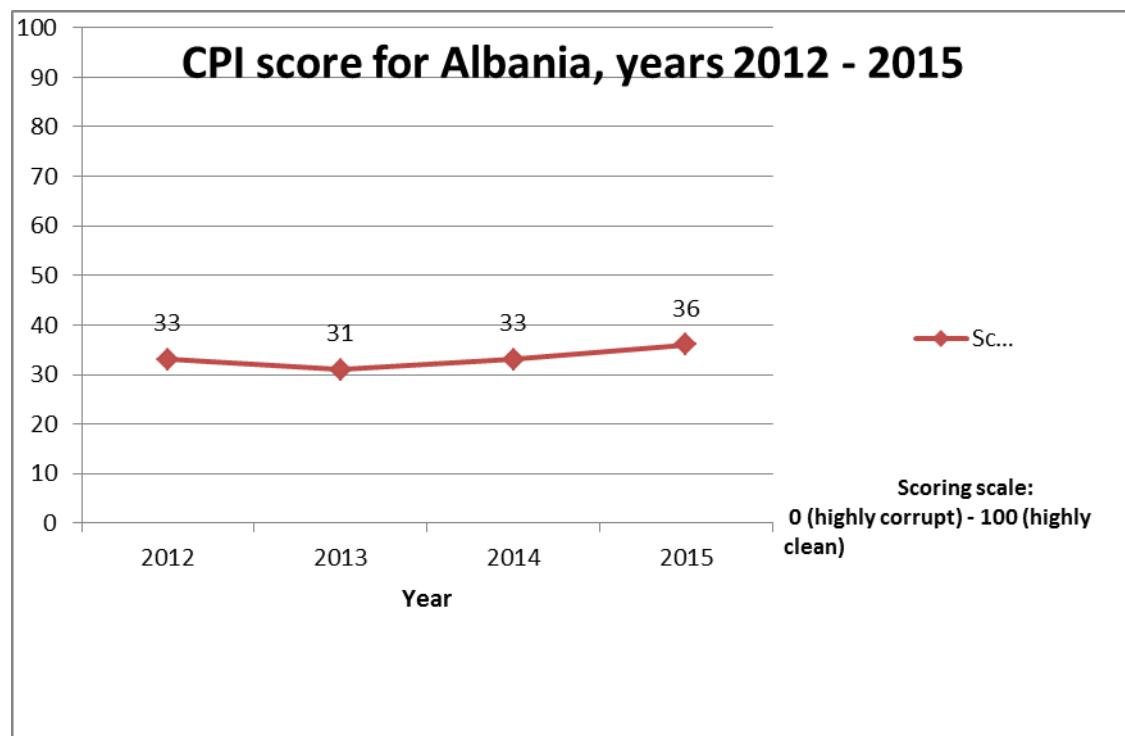
⁶³ IDRA press release, 'Impunity – Perceptions and Experience of Albanian Citizens', 30 April 2015:
http://www.idrainstitute.org/files/reports/impunity_2014/press_release.pdf

V. CORRUPTION PROFILE

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.⁶⁴ 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).⁶⁵



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

⁶⁴ Transparency International, Corruption Perceptions Index Albania, 2015: <http://www.transparency.org/cpi2015#results-table>

⁶⁵ Freedom House, Nations in Transit Albania, 2016: <https://freedomhouse.org/report/nations-transit/2016/albania>

thought it had remained the same and only 10 per cent thought it has decreased.⁶⁶ 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.⁶⁷

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.⁶⁸ 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).⁶⁹ 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.⁷⁰

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.⁷¹

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).⁷² 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.⁷³

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 factory 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

⁶⁶ Transparency International, Global Corruption Barometer: Albania, 2013:
<http://www.transparency.org/gcb2013/country/?country=albania>

⁶⁷ Pasha, A., Islami, E., & Rexhepi, I., Impunity: Public opinion on understanding, reasons and role of institutions, National Survey, IDRA, 2015, p.4-5.

⁶⁸ Lame, E. and Papa, A., Trust in government: Public Opinion Poll 2015, Institute for Democracy and Mediation, 2016 p.5: http://idmalbania.org/wp-content/uploads/2016/02/Opinion-Poll_trust-in-government_2015.pdf

⁶⁹ Ibid, p.26.

⁷⁰ Albanian Center for Economic Research, Corruption Assessment Report Albania, 2014, p.15.

⁷¹ Cela, L., Erebara, Gj., 'Korrupsioni, më shumë peshq të vegjël të dënuar', (Corruption, small fish convicted more), BIRN, Tirana, 7 January 2016: <http://www.reporter.al/korrupsioni-me-shume-peshq-te-vegjel-te-denuar/>

⁷² World Bank, Worldwide Governance Indicators, Country Data Report for Albania, 1996-2013:
<http://info.worldbank.org/governance/wgi/pdf/c6.pdf>

⁷³ Erebara, Gj., 'Leaked OSCE Document Names 'Corrupt' Albanian MPs', Balkan Insight, 15 September 2015:
<http://www.balkaninsight.com/en/article/leaked-osce-report-on-albanian-politicians-crimes-makes-waves-09-14-2015>

anniversary of the Albanian state.⁷⁴ 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.⁷⁵ 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.⁷⁶

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.⁷⁷ 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.⁷⁸

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.⁷⁹ 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.⁸⁰

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.⁸¹ 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”.⁸² Moreover, a European

⁷⁴ Shqiptaria.com, ‘High Court dismisses case against Fatmir Mediu’, 10 December 2012: <http://shqiptaria.com/news.php?IDNotizia=136416>

⁷⁵ Shekulli Daily, ‘Afera Berisha-Basha per rrugen e kombit’, (Berisha-Rama scandal on “nations road”), 1 February 2015: <http://www.shekulli.com.al/p.php?id=211289>

⁷⁶ Gazeta Shqip, ‘Meta i pafajshem, Gjykata e Larte shpall vendimin 83 faqe’ (Meta innocent, High Court publishes 83 page decision), 16 February 2012: <http://shqiptaria.com/lajme/2706/meta-i-pafajshem-gjykata-e-larte-zbardh-vendimin-83-faqe-71426.html>

⁷⁷ Erebara, Gj., ‘Albanian Court cuts short Albanian MP’s mandate’, Balkan Insight, Tirana, 10 May 2016: <http://www.balkaninsight.com/en/article/albania-court-cuts-mp-mandate-short-05-09-2016>

⁷⁸ Albanian Assembly, Këshilli për Rregulloren, Mandatet dhe Imunitetin, Raport për cështjen e mandatit për deputetët Znj. Valentina Leskaj dhe Z. Rakip Suli, (Report on the mandate issue for Members of Parliament Ms. Valentina Leskaj and Mr. Rakip Suli), 2016: <https://www.parlament.al/wp-content/uploads/2016/04/raport-dergimi-ne-GJ-per-mandatet-Leskaj-dhe-Suli.pdf>

⁷⁹ Bogdani, A., ‘Prokuroria nis hetimet per koncesionet multimilioneshe te Beqajit’, (Prosecution initiates investigation for Beqaj’s multimillion concessions), BIRN, Tirana, 13 December 2015: <http://www.reporter.al/prokuroria-nis-hetimet-per-koncesionet-multimilioneshe-te-beqait/>

⁸⁰ Likmeta, B., ‘Albania jails ten over Central Bank theft’, Balkan Insight, Tirana, 20 February 2015: <http://www.balkaninsight.com/en/article/albania-central-bank-employees-guilty-of-treasury-theft>; Panorama, ‘Padia/ Ardian Fullani fiton me gjyq 12 paga dëmshperblim nga BSH-ja’, (Lawsuit/ Ardian Fullani wins in court 12 salaries from Central Bank), 2 June 2016: <http://www.panorama.com.al/ardian-fullani-fiton-me-gjyq-12-paga-demshperblim-nga-bsh-ja/>

⁸¹ Dervishi, I., ‘Korrupsioni i gjithëpërhapur 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/korrupsioni-i-gjithëpërhapur-në-organet-shtetërore-ne-shqiperi-vlereson-dash/>

⁸² US Department of State, Human Rights Report: Albania, 2015 p.16: <http://www.state.gov/documents/organization/253027.pdf>

Commission 2015 Report called for greater efforts in strengthening anti-corruption institutions, which at the moment remain vulnerable to undue political influence.⁸³

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.⁸⁴ 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.⁸⁵ 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”.⁸⁶ Parliament adopted the so-called “decriminalisation” legal package 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.⁸⁷ 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.⁸⁸ 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.⁸⁹

Corruption is seen as the second most significant obstacle to doing business, after high taxes, hampering the growth of the private sector and investments.⁹⁰ 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.⁹¹ 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.⁹²

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.⁹³ An OSCE/ODIHR report on the 2015 local elections voiced expert concerns over suspicious sources of party finances and lack of proper reporting.⁹⁴

⁸³ European Commission, Albania Report, 2015, p.4.

⁸⁴ Lamallari, B., Zhilla, F., Organized Crime: Threat Assessment in Albania, Open Society Foundation Albania, 2015, p.7: https://www.osfa.al/sites/default/files/organized_crime_soros.pdf

⁸⁵ Ibid, p.20.

⁸⁶ Ibid, p.105.

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_Frroku_accused_by_the_Belgium_authorities_for_the_offense_of_premeditated_murder_769_2.php#.Vz15lfI96Uk

⁸⁸ Balkanweb. ‘Ministria e Drejtësisë nis në Holandë kërkesën për ekstradimin e Arben Frrokut’, (Ministry of Justice submits extradition request for Arben Frroku in the Netherlands), 4 May 2016: <http://www.balkanweb.com/site/ministria-e-drejetise-nis-ne-holande-kerkesen-per-ekstradimin-e-arben-frrokut/>

⁸⁹ Shqiptarja.com, ‘Skeda/Ja kush është Klement Balili’, (File/ Who is Klement Balili) Tirana, 11 May 2016: <http://shqiptarja.com/aktualitet/2731/skeda-ja-kush-eshte-klement-balili-355771.html>

⁹⁰ UNODC, Business, Corruption and Crime in Albania: The impact of bribery and other crime on private enterprise, 2013: http://www.unodc.org/documents/data-and-analysis/statistics/corruption/Albania_Business_Corruption_2013_EN.pdf

⁹¹ Ibid, p.5.

⁹² SELDI, Anti-Corruption Reloaded: Assessment of South East Europe, 2014, p.31: <http://seldi.net/publications/publications/anti-corruption-reloaded-assessment-of-southeast-europe/>

⁹³ Transparency International Albania, Buying Influence: Money and Political Parties in Albania, 2013, p.18: <http://tia.al/wp-content/uploads/2013/11/CRINIS-publication.pdf>

⁹⁴ OSCE/ODIHR, Final Report: Local Elections 21 June 2015, 8 September 2015, p.2.

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.

⁹⁶ High Level Experts Group, Ad Hoc Parliamentary Committee for Justice Reform, Strategy of the Reform in the Justice System, 24 July 2015, p.47:

http://www.reformanedrejtesi.al/sites/default/files/draft_strategjia_versioni_shqip.pdf

⁹⁷ Council of Europe, Project Against Corruption in Albania (PACA) Summary:
<http://www.coe.int/t/dgih/cooperation/economiccrime/corruption/Projects/Albania/1917-d-PACASum-Engfin.pdf>

approved the Inter-sectorial Strategy Against Corruption 2015-2020 and the respective Action Plan for 2015-2017.⁹⁸

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 (HIDAACI) 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.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.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.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.¹⁰² Parliament finally adopted the law in full on 2 June 2016, as this report was being finalised.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.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.¹⁰⁵ However, the process was accompanied by mutual accusations between the government and opposition for lack of political will or purposefully delaying the approval.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

⁹⁸ Cross Cutting Strategy Against Corruption 2015–2020 and Action Plan 2015–2017 can be found here: http://www.ceshtjetvendore.gov.al/files/pages_files/15-04-01-05-52-47Strategjia_antikorrupsion_2015-2020_dhe_plani_i_veprimit.pdf

⁹⁹ Sheme, M., ‘Kushtetuesja: Byorja e Hetimit i merr kompetencat Prokurorise’ (Constitutional Court: National Bureau of Investigation takes competencies from the Prosecution), Gazeta Shekulli, 9 July 2015: <http://www.shekulli.com.al/p.php?id=282778>

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.reformanedrejesi.al/sites/default/files/procesverbal_date_23.03.2016.pdf

¹⁰¹ Dymishi, A., Hroni, E., Gjokutaj, E., Whistleblowers protection in Albania: An assessment of legislation and practice, Institute for Democracy and Mediation, November 2013, p.5: http://idmalbania.org/wp-content/uploads/2014/11/whistleblowers_final_tetor-nentor_2013_anglisht.pdf

¹⁰² Shqiptarja.com, ‘Siguria kalon përmes skepticizmit ligjin për mbrojtjen e sinjalizuesve’ (Security Committee passes amid scepticism law on whistleblower protection), 10 March 2016: <http://shqiptarja.com/aktualitet/2731/siguria-kalon-permes-skepticizmit-ligjin-per-mbrojtjen-e-sinjalizuesve-344711.html>

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/ligi-nr.-60-dt.-2.6.2016.pdf>

¹⁰⁴ Mero, A., ‘Miratohet me konsensus ligji për dekriminalizimin’, (Law on decriminalization approved with consensus) Voice of America, 17 December 2015: <http://www.zeriamerikes.com/a/3107221.html>

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/>

¹⁰⁶ Dedaj, E., ‘Dekriminalizimi, PD-PS akuzojnë njëra-tjetrën për mungesë vullneti’, (Decriminalization, DP-SP accuse each other for lack of will), Ora News, 14 April 2015: <http://www.oranews.tv/vendi/pd-i-kerkon-komisionit-te-venecias-te-asistoje-per-dekriminalizimin/>

and taking legal measures when needed.¹⁰⁷ The Prosecutor General's Office signed an order in March establishing the Integrity Verification Office.¹⁰⁸ 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.¹⁰⁹

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.¹¹⁰

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.stopkorruptionit.al).¹¹¹ 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.¹¹² 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.

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

¹⁰⁸ Office of the Prosecutor General, Press Release, 'Office of the Prosecutor General establishes structure in the framework of the law on decriminalization', 16 March 2016:

http://www.pp.gov.al/web/Prokuroria_e_Pergjithshme_krijon_structuren_per_zbatimin_e_ligit_Per_dekriminalizimin_92_6_1.php - .V0CDKIN96Rs

¹⁰⁹ Full list of names and declarations can be found on Reporter.al designated articles:

<http://pushtetivendor.reporter.al/pese-kryetare-bashkish-te-ps-dhe-pd-pranojne-problemet-me-drejesine/> and
<http://www.reporter.al/pese-te-majte-dhe-pese-te-diathte-me-precedente-penale-ne-parlament/>

¹¹⁰ Open Society Foundation Albania (OSFA), Press Release, 'Enhancing citizen inclusion in decision and policy making': <http://www.osfa.al/njoftime/ritja-e-perfshirjes-qytetare-ne-vendimmarje-dhe-politikeberie>

¹¹¹ Gazeta Shqip, 'Lancohet portali i ri anti-korrupsion, Rama: Denonconi, kjo është arma juaj' (New anti-corruption portal launched, Rama: Denounce, this is your weapon), 3 February 2015: <http://www.gazeta-shqip.com/lajme/2015/02/03/lancohet-portali-ri-antikorrupsion-rama-denonconi-kjo-eshte-arma-juaj/>

¹¹² Albanian State Police, 'Aplikacioni Komisariati Dixhital – Policia në dorën e qytetarit', (Digital Commissariat App – Police in citizens' hands), 2015: <http://www.asp.gov.al/index.php/275-slideshow-home/7336-aplikacioni-komisariati-dixhital-policia-ne-doren-e-qytetarit>

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 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.

LEGISLATURE			
Overall Pillar Score: 51.3			
Dimension	Indicator	Law	Practice
Capacity 62.5/100	Resources	100	50
	Independence	75	25
Governance 41.6/100	Transparency	75	75
	Accountability	50	25
	Integrity mechanisms	25	0
Role 50/100	Executive oversight	50	
	Legal reforms	50	

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

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE THAT PROVIDE THE LEGISLATURE WITH ADEQUATE FINANCIAL, HUMAN AND INFRASTRUCTURE RESOURCES TO EFFECTIVELY CARRY OUT ITS DUTIES?

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

¹¹³ See articles 5-14, 15, 19, 120-121, Parliament's Rules of Procedure, approved by decision no. 166, of 16 December 2004: <http://www.parlament.al/wp-content/uploads/sites/4/2015/11/Rregullore-e-Kuvendit-e-perditesuar.pdf>

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.¹¹⁵ 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.¹¹⁶ 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.¹¹⁷

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.¹¹⁸ 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.¹¹⁹

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.¹²⁰ 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.¹²¹

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

¹¹⁵ See initial and revised Budget Bill tables on the website of the Ministry of Finance: <http://www.financa.gov.al/al/legislacioni/buxheti-thesari-borxhi/buxheti/buxheti-ne-vite>

¹¹⁶ See Open Society Foundation Albania, Monitoring Public Finance, the role of Parliament in the 2014 Draft-Budget: http://www.osfa.al/sites/default/files/roli_i_kuvendit_ne_projektbuxhetin_2014.pdf; and Open Society Foundation Albania, Monitoring Public Finance, 2012 Draft-Budget and Parliament: http://financatransparente.al/pdf/ProjektBuxheti_2012_Roli_Kuvendit_OSFA.pdf

¹¹⁷ See initial and revised Budget Bill tables (annex 1) on the website of the Ministry of Finance: <http://www.financa.gov.al/al/legislacioni/buxheti-thesari-borxhi/buxheti/buxheti-ne-vite>; Parliament, Report on budget execution for 2015: <https://www.parlament.al/wp-content/uploads/sites/4/2015/10/Raport-per-realizimin-e-buxhetit-2015.doc>

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/>

¹²⁰ Article 18, Law on the Status of the Member of Parliament, changed: <https://www.parlament.al/wp-content/uploads/sites/4/2015/10/ligji-per-statusin-e-deputetit.pdf>; 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.

¹²¹ Parliament, Report on budget execution for 2015, p.3.

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.¹²²

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).¹²³ The Speaker calls extraordinary sessions upon a determined agenda and if required by the President, Prime Minister or one-fifth of MPs.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.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.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.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.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.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

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/>

¹²³ Article 75, Constitution; Article 21, Rules of Procedure.

¹²⁴ Article 74, Constitution.

¹²⁵ Article 81, Constitution.

¹²⁶ Article 11, Rules of Procedure.

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.

¹²⁸ Articles 87, 96 and 104, Constitution.

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

TO WHAT EXTENT IS THE LEGISLATURE FREE FROM SUBORDINATION TO EXTERNAL ACTORS IN PRACTICE?

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

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.

¹³¹ Koçiko, A., 'Përgjimet, nga SHIU...në breshër', Dita, 25 September 2014: <http://www.gazetadita.al/djajte-dalin-nga-shish-i/>; Hoxha, E., 'Emrat, ja kë përgjoi Berisha', Shekulli, 10 October 2014: <http://www.shekulli.com.al/p.php?id=57576>; Likmeta, B., 'Albania spy agency accused of illegal surveillance', Balkan Insight, Tirana, 3 March 2014: <http://www.balkaninsight.com/en/article/albania-spy-agency-accused-of-illegal-eavesdropping>

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.

¹³³ SIGMA, 2015 Albania Baseline Measurement, April 2015, p.30: http://sigmaweb.org/publications/Baseline_Measurement_2015_Albania.pdf; 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.8, fn.7: [https://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/Eval%20IV/GrecoEval4\(2013\)9_Albania_EN.pdf](https://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/Eval%20IV/GrecoEval4(2013)9_Albania_EN.pdf)

¹³⁴ Parliament, 2013 Activity Report, p.7 and 10-11; 2014 Activity Report, p.12-13; 2015 Activity Report, p.12-13. All reports can be accessed here: <https://www.parlament.al/administrata/raporte-2/>

¹³⁵ Open Society Foundation Albania, Monitoring Public Finance, the role of Parliament in the 2014 Draft-Budget, p.7: http://www.osfa.al/sites/default/files/roli_i_kuvendit_ne_projektbuxhetin_2014.pdf; Changes in the Law on Taxes: Shekulli Newspaper, 'Taksat, ndryshimet e plota' (Taxes, complete changes), 20 December 2015: <http://www.shekulli.com.al/p.php?id=364629>; Changes on law on waste: Binjaku, F., 'Plehrat, PS në Kuvend ndryshon ligjin e qeverisë' (Waste, SP changes government's law in parliament), Panorama Daily, 8 October 2013: <http://www.panorama.com.al/plehrat-ps-ne-kuvend-ndryshon-ligjin-e-qeverise/>

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.¹³⁷ 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.¹³⁸ Recently, the Prime Minister used forceful language towards the opposition to vote on judicial reform.¹³⁹ 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.¹⁴⁰

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.¹⁴¹ 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.¹⁴² 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.¹⁴³

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.¹⁴⁴ 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

¹³⁷ Likmeta, B., 'Interior Minister Becomes Albania's New President', Balkan Insight, 11 June 2012: <http://www.balkaninsight.com/en/article/albania-elects-interior-minister-for-president>

¹³⁸ European Commission, Analytical Report 2010, 9 November 2010, p.11: http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/al_rapport_2010_en.pdf; see also Biberaj case: Ora News, 'Shkarkimi, Biberaj: Topalli ka shkelur rregulloren' (Dismissal, Biberaj: Topalli has violated regulations), 23 January 2009: <http://www.oranews.tv/uncategorized/shkarkimibiberajtopalli-ka-shkelur-rregulloren-2/>

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=ml>

¹⁴⁰ SIGMA country assessment reports 2012/7, Albania Assessment Report 2012, p.7-8: <http://www.oecd-ilibrary.org/docserver/download/5jz2rq18z4mr.pdf?Expires=1465143646&id=id&accname=guest&checksum=7197389ED34D12EF6D65365CBF5F6BB4>

¹⁴¹ Top Channel, 'Court of Appeal punishes Saimir Tahiri', 21 December 2012: <http://top-channel.tv/english/artikull.php?id=7860>

¹⁴² Albanian Daily News, 'Paloka and Ristani convicted and fined with 200 thousand ALL by the High Court for slander', 5 June 2015: <http://www.albaniannews.com/index.php?idm=1699&mod=2>

¹⁴³ Mejdini, F., 'Albania backs off from restoring defamation crime', Balkan Insight, 12 November 2015: <http://www.balkaninsight.com/en/article/albania-steps-back-on-defamation-criminalization-11-12-2015>

¹⁴⁴ See Part IV (articles 105-108), and articles 6, 11-12, 27, 34-36, 39, 43-44, 54, 58-60, 64, 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.¹⁴⁵ Committees can also decide on closed meetings by a majority of all their members.¹⁴⁶

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 latters' reports on laws under their scrutiny.¹⁴⁷ 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.¹⁴⁸ As a rule, voting is open in both committees and plenaries.¹⁴⁹ 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.¹⁵⁰

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.¹⁵¹ 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.¹⁵² Provisions are in place for public, including civil society, participation in the law-making process and attendance at parliamentary proceedings.¹⁵³

The publication of Parliament's financial expenditures and annual reports is at the discretion of the Bureau.¹⁵⁴ MPs' asset declarations can be obtained upon request from the High Inspectorate for the Declaration and Audit of Assets and Conflict of Interest (see *HIDAAC*/ 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

¹⁴⁵ Articles 23 and 79, Constitution; Article 43, Rules of Procedure.

¹⁴⁶ Article 35, Rules of Procedure.

¹⁴⁷ Article 105, *Ibid.*

¹⁴⁸ Articles 12, 39, and 54, *Ibid.*

¹⁴⁹ Articles 6, 27, 34 and 58, *Ibid.*

¹⁵⁰ Articles 58-59, *Ibid.*

¹⁵¹ Albanian Assembly Decision no. 4, of 12 February 2014, On approving the Regulation for Accreditation, Accommodation and Orientation of Mass media in the Assembly of the Republic of Albania:

https://www.parlament.al/wp-content/uploads/sites/4/2016/01/regullore_e_masmedies_prane_kuvendit.pdf

¹⁵² Articles 77/b and 108, RoP.

¹⁵³ Articles 51-52, Parliament's Internal Regulation for the Organisation and Functioning of Services:

<https://www.parlament.al/wp-content/uploads/sites/4/2015/10/Regullore-e-Admin-Kuvendit.pdf>

¹⁵⁴ Article 11, RoP.

parliamentary proceedings.¹⁵⁵ Plenaries are web-streamed.¹⁵⁶ 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.¹⁵⁷ Application forms for access and information requests are now available online, on Parliament's new website launched at the end of 2015.¹⁵⁸ 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.¹⁵⁹ 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.¹⁶⁰

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.¹⁶¹

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.¹⁶² 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.¹⁶³ 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).¹⁶⁴ MPs' asset declarations are available from the HIDAACI upon request, and have been posted online by civil society.¹⁶⁵

Accountability (Law)

Score: 50

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.

¹⁵⁷ See Parliament's website, section on Transparency: <https://www.parlament.al/transparenca/>; For the Manual see: https://www.parlament.al/wp-content/uploads/sites/4/2015/10/manuali_i_azhornuar_21298_1.pdf

¹⁵⁸ See Parliament's website section on applications: <https://www.parlament.al/aplikime/>

¹⁵⁹ Center for Parliamentary Studies, Summary of monitoring report, Press Conference: http://www.osfa.al/sites/default/files/permblehdje_e_raportit_final.pdf; Interview with Dorarta Hyseni, Program Manager, National Democratic Institute in Albania, 11 August 2015.

¹⁶⁰ 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 Republic of Albania, Parliament, Administration: Budget: <https://www.parlament.al/administrata/buxheti/>

¹⁶² For instance, reports by the Ministry of Integration on the fulfilment of EU integration requirements.

¹⁶³ 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.

¹⁶⁴ Parliament's annual reports can be found here: <https://www.parlament.al/administrata/raporte-2/>

¹⁶⁵ Open Spending Albania, Money and Power: http://spending.data.al/sq/moneypower/list/pos_id/6

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

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

¹⁶⁶ Articles 131 and 134, Constitution.

¹⁶⁷ Article 87, RoP.

¹⁶⁸ Articles 125, 136, and 149, Constitution.

¹⁶⁹ Ibrahim, 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.10.

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

TO WHAT EXTENT DO THE LEGISLATURE AND ITS MEMBERS REPORT ON AND ANSWER FOR THEIR ACTIONS IN PRACTICE?

Despite some positive developments, the accountability of the Legislature and MPs remains low in practice and a perception of the untouchability of MPs persists.¹⁷⁵ 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.¹⁷⁶ 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.¹⁷⁷ 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.¹⁷⁸

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.¹⁷⁹ 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 2014.¹⁸⁰

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 MPs, and are hampered by short notice, poor records and inadequate feedback.¹⁸¹ In 2014, Parliament adopted a manual on public participation in its proceedings, and a resolution recognising

¹⁷⁵ Pasha, A., Islami, E., & Rexhepi, I., Impunity: Public Opinion on Understanding, Reasons and Role of Institutions, National Survey, IDRA, 2015, p.39.

¹⁷⁶ On Ilir Meta: Likmeta, B., ‘Albania Ex-PM acquitted of corruption charges’, Balkan Insight, 16 January 2012: <http://www.balkaninsight.com/en/article/albania-ex-pm-innocent-of-corruption-charges>; On Lulzim Basha: Bota Sot, ‘Gjykata e Lartë liron nga akuzat ministrin Basha’ (High Court frees minister Basha from all charges), 10 April 2009: <http://botasot.info/shqiperia/12426/gjykata-e-larte-liron-nqa-akuzat-ministrin-basha/>; On Fatmir Mediu: Shqiptarja.com, ‘Gerdeci, Gjykata e Lartë pushon cështjen ndaj Fatmir Mediu’ (Gerdec, High Court ceases case against Fatmir Mediu), 10 December 2012: <http://shqiptarja.com/news.php?IDNotizia=136416>; On Tom Doshi and Mark Frroku: Erebara, Gj., ‘Two Albanian MPs face arrest over murder claims’, Balkan Insight, 20 March 2015: <http://www.balkaninsight.com/en/article/arrests-sought-for-two-albanian-mp-over-murder-plot>; On Prenga: Erebara, Gj., ‘Albania arrests MP after shooting’, Balkan Insight, 7 September 2015: <http://www.balkaninsight.com/en/article/albania-mp-arrested-after-mass-shout-out-over-fishing-rights-09-07-2015>

¹⁷⁷ Mejdini, F., ‘Albania Parliament bans criminals from politics’, Balkan Insight, 18 December 2015: <http://www.balkaninsight.com/en/article/albania-adopts-decriminalization-of-politics-law-12-18-2015>

¹⁷⁸ Erebara, Gj., ‘Albania MP resigns over his criminal past’, Balkan Insight, 8 September 2015: <http://www.balkaninsight.com/en/article/albania-mp-with-criminal-background-resigns-09-07-2015>

¹⁷⁹ See, in particular, decisions on Ilir Beqaj, investigative committees: Agolli, I., ‘Tiranë: Hetim koncesioneve 250 milion euro në shëndetësi’, (Tirana: Investigation of 250 mln euros in health), 14 December 2015: <http://www.zeriamerikes.com/a/hetim-koncesione-shendetesi/3101847.html>; Koco Kokëdhima: Constitutional Court, Press Release, On incompatibility of Koco Kokëdhima’s mandate, 9 May 2016: http://www.gjk.gov.al/web/NJOFTIM_P_R_MEDIAN_1188_1-1.php

¹⁸⁰ European Commission, 2014 Progress Report, p.6: http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-albania-progress-report_en.pdf; Parliament, Resolution of political agreement between governing majority and opposition in the Assembly of the Republic of Albania: https://www.parlament.al/wp-content/uploads/sites/4/2016/01/rezoluta_e_marreveshjesmazhorance_opozite_dt_24_12_2014_20557_1.pdf; Parliament also never enforced two decisions of the Constitutional Court against the discharge of two Prosecutor Generals. See CC Decision no. 76, date 25 April 2002 and no. 26, date 4 December 2006 on Parliament’s discharge from office of former PGs Arben Rakipi and Theodhori Sollaku, respectively.

¹⁸¹ European Commission, Albania Report, 2015, p.7; European Commission, 2014 Progress Report, p.6; 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.

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

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

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

¹⁸² Parliament, Resolution on recognising and strengthening the role of civil society in democratic development processes in the country, 24 December 2014: https://www.parlament.al/wp-content/uploads/sites/4/2016/01/rezoluta_per_shoqerine_civile_dt_24_12_2014_20560_1-1.pdf; Parliament, Manual of public participation in the parliament's decision making process, 11 November 2014: https://www.parlament.al/wp-content/uploads/sites/4/2015/10/manuali_i_azhornuar_21298_1.pdf

¹⁸³ Request for information submitted by project assistant via e-mail on 16 May 2016. Parliament response by post, prot. 1853, dated 1 June 2016; Parliament, Annual Report, 2015, p.29; Parliament, Annual Report, 2014, p.34.

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 Tirana'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.

¹⁸⁷ 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.

¹⁸⁸ Article 70, Constitution.

¹⁸⁹ Reed, Q., The Legal and Institutional Framework for Financial Disclosure in Albania, ACFA assessment report, October 2014, p.10-12; See also European Commission, Albania Report, 2015, p.16.

¹⁹⁰ Article 11, Law on the Prevention of Conflicts of Interest.

activities, contracts, external income, and gifts and hospitality.¹⁹¹ 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*).¹⁹² 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.¹⁹³ The PCI initially regarded registers of conflicts of interests as official documents subject to freedom of information legislation, but this article was rescinded in 2006.¹⁹⁴

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.¹⁹⁵ 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*).¹⁹⁶

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.¹⁹⁷ They make reference to a Code of Conduct to govern the behaviour of MPs, but no such Code has ever been approved.¹⁹⁸ 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.¹⁹⁹

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.²⁰⁰ 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.²⁰¹ 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.

¹⁹² Reed, Q., Prevention and Regulation of Conflicts of Interest of Public Officials in Albania: Assessment and Recommendations, ACFA assessment report, December 2014, p.3.

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.

¹⁹⁵ Article 4/f, Law on the Declaration of Assets.

¹⁹⁶ Reed, Q., Prevention and Regulation of Conflicts of Interest of Public Officials in Albania: Assessment and Recommendations, ACFA assessment report, December 2014, p.3 and 20.

¹⁹⁷ Chapter 9, Articles 62-65, 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.

²⁰⁰ Ibid, p.12.

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.²⁰² 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.²⁰³

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.²⁰⁴ 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.²⁰⁵ 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).²⁰⁶ 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.²⁰⁷

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.²⁰⁸

²⁰² Bertelsmann Transformation Index, Albania Country Report, 2016, p.8.

²⁰³ For RakipSuli: The Constitutional Court is scheduled to decide on MP RakipSuli’s mandate on 14 July 2016: http://www.qjk.gov.al/web/Kuvendi_i_Republikes_se_Shqiperise_1210_1.php; For Koco Kokedhima: Gazeta Shqip, ‘Gjykata Kushtetuese i heq mandatin Koco Kokëdhimës’ (Constitutional Court removes mandate of Koco Kokedhima), 9 May 2016: <http://www.gazeta-shqip.com/lajme/2016/05/09/gjykata-kushtetuese-i-heq-mandatin-koco-kokedhimes/>; For Valentina Leskaj: Gazeta Tema, ‘Vendimi/ Kushtetuesja nuk merr në shqyrtim mandatin e deputetës së PS Valentina Leskaj’ (Decision/ Constitutional Court refuses to adjudicate on Valentina Leskaj’s mandate), 8 June 2016: <http://www.gazetatemra.net/web/2016/06/08/vendimikushtetuesja-nuk-merr-ne-shqyrtim-mandatin-e-deputetes-se-ps-valentina-leskaj/>

²⁰⁴ Interview with international expert on law enforcement, 27 October 2015; HIDAACI, Press Release, 12 January 2015: <http://www.hidaa.gov.al/12-janar-2015/>; Press Release, 22 April 2014: <http://www.hidaa.gov.al/22-prill-2014/>; Press Release: Criminal charges against declaring subject Tom Doshi, 15 May 2015: <http://www.hidaa.gov.al/15-mai-2015/>; Press Release: Criminal charges against declaring subject Ridvan Bode, 7 April 2015: <http://www.hidaa.gov.al/07-prill-2015/>; Panorama, ‘Zbardhet kallëzimi i ILDKP për Frrokun: Nuk deklaroi burimin e pasurisë prej 2.9 milion USD’ (HIDAACI raises charges against Frroku who failed to declare his source of wealth of 2.9 million USD), 3 April 2015: <http://www.panorama.com.al/tieter-akuze-per-mark-frrokun-ildkp-e-kallezon-per-pastrim-parash-dhe-refuzim-deklarimi-te-pasurive/>

²⁰⁵ Erebara, Gj., ‘Albania High Court dismisses MP’s assault case’ Balkan Insight, 10 June 2015: <http://www.balkaninsight.com/en/article/high-court-dismiss-case-of-the-socialist-mp-s-beating-their-colleague-in-albania>; Top Channel, ‘Konflikti fizik, masa disiplinore deputetëve’ (Physical confrontation, disciplinary measures against MPs), 11 July 2014: <http://top-channel.tv/lajme/artikull.php?id=281152>

²⁰⁶ Erebara, Gj., ‘Leaked OSCE document names “corrupt” Albanian MPs’, Balkan Insight, 15 September 2015: <http://www.balkaninsight.com/en/article/leaked-osce-report-on-albanian-politicians-crimes-makes-waves-09-14-2015>

²⁰⁷ Erebara, Gj., ‘Albania MP resigns over his criminal past’, Balkan Insight, 8 September 2015: <http://www.balkaninsight.com/en/article/albania-mp-with-criminal-background-resigns-09-07-2015>

²⁰⁸ Draft Law on Guaranteeing the Integrity of Persons who are Elected, Appointed or Exert Public Functions and related report: http://www.parlament.al/web/pub/dekriminalizimi_per_publikim_24579_1.pdf; Constitutional amendments: http://www.parlament.al/web/pub/ligj_nr_137_24917_1.pdf

Role

Executive oversight

Score: 50

TO WHAT EXTENT DOES THE LEGISLATURE PROVIDE EFFECTIVE OVERSIGHT OF THE EXECUTIVE?

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.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.²¹⁰ Inquiry committees cannot step on the competences of the Prosecution and courts.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.²¹²

In practice, these oversight tools are not sufficiently or effectively employed.²¹³ A tradition has been growing of organising public hearings with government representatives after the publication of the European Commission's progress reports.²¹⁴ However, in 2015, SIGMA reported that Parliament's scrutiny of government performance on the implementation of specific laws is rare.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 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.²¹⁶

Legal reform

Score: 50

TO WHAT EXTENT DOES THE LEGISLATURE PRIORITISE ANTI-CORRUPTION AND GOVERNANCE AS A CONCERN IN THE COUNTRY?

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).

²¹⁰ Article 77, Constitution.

²¹¹ Article 77, Constitution; Article 3/4, Law on Inquiry Committees.

²¹² Article 105, Constitution.

²¹³ European Commission, Albania Report, November 2015, p.7; 2014 Progress Report, October 2014, p.6.

²¹⁴ Parliament, 'National Council on European Integration gathered to discuss EU report on Albania':

<https://www.parlament.al/keshilli-kombetar-i-integrimit-europian-u-mblodh-per-te-diskutuar-raportin-e-komisionit-europian-per-shqiperine-2/>

²¹⁵ SIGMA, Baseline Measurement Report: The principles of public administration, Albania, April 2015, p.32.

²¹⁶ Human Rights Watch, Public Statement, 'Albania: Independent Inquiry Needed Into Protester Deaths: Prime Minister Should Refrain from Interfering in Case', 26 January 2011: <https://www.hrw.org/news/2011/01/26/albania-independent-inquiry-needed-protester-deaths>

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.²¹⁷ 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.²¹⁸

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.

²¹⁷ Law no. 60/2016 on Whistleblowing and the Protection of Whistleblowers, approved on 2 June 2016:

<https://www.parlament.al/wp-content/uploads/2016/06/ligi-nr.-60-dt.-2.6.2016.pdf>

²¹⁸ Ibrahim, 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, 10 and 13.

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.

EXECUTIVE			
Overall Pillar Score: 50			
Dimension	Indicator	Law	Practice
Capacity 62.5/100	Resources	-	75
	Independence	75	25
Governance 37.5/100	Transparency	75	25
	Accountability	50	25
	Integrity mechanisms	50	0
Role 50/100	Public sector management	50	
	Legal system	50	

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 2016.²¹⁹ 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.²²⁰ 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.²²¹ 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.²²²

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.²²³ 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

²¹⁹ The PMO had 227 planned employees in the 2015 Budget (see Table 2 of the 2015 Budget). The 2016 Budget foresees 530 employees:
[http://www.financa.gov.al/files/userfiles/Buxheti/Buxheti_ne_vite/buxheti_2016/tabelat/Tabela_2_-Numri_i_punonjesve_2016_\(sipas_institucioneve\).pdf](http://www.financa.gov.al/files/userfiles/Buxheti/Buxheti_ne_vite/buxheti_2016/tabelat/Tabela_2_-Numri_i_punonjesve_2016_(sipas_institucioneve).pdf)

²²⁰ SIGMA, Baseline Measurement Report: The Principles of Public Administration - Albania, April 2015, p.20:
http://www.sigmapublications.org/publications/Baseline_Measurement_2015_Albania.pdf

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 and were the result of successful lobbying for particular interests.²³¹ A former civil servant with considerable experience in

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 current high-ranking official in the Executive, 18 January 2016.

²²⁸ Çela, L., Marzouk, L., ‘How Berisha’s Inner Circle Profited from Multi-Million Euro Land Deals’, BIRN, Tirana and London ,14 July 2014: <http://www.balkaninsight.com/en/article/how-berisha-s-inner-circle-profited-from-multi-million-euro-land-deals>; Likmeta, B., ‘Albania PM’s Daughter Accused of Seeking Bribe’, BIRN, Tirana, 16 January 2013: <http://www.balkaninsight.com/en/article/albania-pm-s-daughter-accused-of-soliciting-bribe>

²²⁹ Bogdani, A., ‘Prokuroria nis hetimet për koncesionet multimillonëshe të Beqajt’ (Prosecution opens investigation for Beqaj’s multimillion concessions), BIRN, Tirana, 13 December 2015: <http://www.reporter.al/prokuroria-nis-hetimet-per-koncesionet-multimiloneshe-te-beqajt/>; Qyno, E., ‘Emigrant shqiptar fiton koncesionin 100 milion USD të Sterilizimit’ (Albanian immigrant wins 100 million USD sterilization concession), BIRN, Tirana, 24 November 2015: <http://www.reporter.al/emigranti-shqiptar-fiton-koncesionin-100-milion-usd-te-sterilizimit/>

²³⁰ Erebara, Gj., ‘Leaked OSCE Document Names ‘Corrupt’ Albanian MPs’, Balkan Insight, 15 September 2015: <http://www.balkaninsight.com/en/article/leaked-osce-report-on-albanian-politicians-crimes-makes-waves-09-14-2015>

²³¹ Monitor, ‘Reinke i FMN: Disa taksa janë ndryshuar për një numër të vogël përfituesish, në barrë të të tjerve’ (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-nje-numer-te-vogel-perfituesish-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

TO WHAT EXTENT ARE THERE REGULATIONS IN PLACE TO ENSURE TRANSPARENCY IN RELEVANT ACTIVITIES OF THE EXECUTIVE?

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

TO WHAT EXTENT IS THERE TRANSPARENCY IN RELEVANT ACTIVITIES OF THE EXECUTIVE IN PRACTICE

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.

²³⁴ Article 17, Law no. 9000 on the Organisation and Functioning of the Council of Ministers, 30 January 2003.

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.

²³⁸ Shala, B., 'Procedura të dyshimita pas koncesionit të fundit të madh energjetik në Shqipëri' (Suspicious procedures after the latest large energy concession in Albania), BIRN, Tirana, 7 January 2016: <http://www.reporter.al/procedura-te-dyshimta-pas-koncesionit-te-fundit-te-madh-energjetik-ne-shqiperi/>; Erebara, Gj., 'Qeveria prenton têrheqjen e propozimit pér dënimin e "shpifjes" si krim kundër shtetit' (Government promises withdrawal of proposal on considering "defamation" a crime against the state), BIRN, Tirana, 12 November 2015: <http://www.reporter.al/qeveria-prenton-terheqjen-e-propozimit-per-denimin-e-shpifjes-si-krim-kunder-shtetit/>

²³⁹ Erebara, Gj., 'Kuvendi fillon diskutimin e buxhetit në mungesë totale transparence' (Assembly starts discussing the budget amid complete lack of transparency), BIRN, Tirana, 19 November 2015: <http://www.reporter.al/kuvendi-fillon-diskutimin-e-buxhetit-ne-mungese-totale-transparence/>

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

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THAT MEMBERS OF THE EXECUTIVE HAVE TO REPORT AND BE ANSWERABLE FOR THEIR ACTIONS?

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

²⁴⁰ International Budget Partnership, The Open Budget Survey Albania, 2015: <http://www.internationalbudget.org/wp-content/uploads/OBS2015-CS-Albania-English.pdf>

²⁴¹ ResPublica, The Right to Information tested, December 2015, p.35 (in Albanian only):

<http://www.respublica.org.al/wp-content/uploads/2015/12/E-drejta-e-informimit-ne-bankoprove.pdf>

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-transparences> [last accessed 2 June 2016].

²⁴⁴ Ibid.

²⁴⁵ See contact details here: <http://www.kryeministria.al/al/kontakt/kontakto-me-kryeministrin>

²⁴⁶ That includes the Law on the Organisation and Functioning of the Council of Ministers, and its Rules of Procedure (Decision of the Council of Ministers no. 584, of 28 August 2003, amended).

²⁴⁷ Open Spending Albania, Money and Power <http://spending.data.al/en/moneypower/list> [last accessed 4 June 2016].

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

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

²⁵⁰ Law no. 146/2014 on Public Notification and Consultation: http://www.qbz.gov.al/botime/fletore_zyrtare/2014/PDF-2014/178-2014.pdf

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.

²⁵⁶ Interview with a current high-ranking official in the Executive, 18 January 2016; SIGMA, Baseline Measurement Report: The Principles of Public Administration - Albania, April 2015, p.37-38.

²⁵⁷ Interview with a current high-ranking official in the Executive, 18 January 2016; SIGMA, Baseline Measurement Report: The Principles of Public Administration - Albania, April 2015, p.27.

²⁵⁸ Interviews with a former civil servant in central administration, 22 December 2015 and a current high-ranking official in the Executive, 18 January 2016; SIGMA, Baseline Measurement Report: The Principles of Public Administration - Albania, April 2015, p.38.

²⁵⁹ Interview with a current high-ranking official in the Executive, 18 January 2016.

interpellations remain underused.²⁶⁰ 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.²⁶¹ 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.²⁶² 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.²⁶³ The SAI also referred the Minister of Energy and Industry to the Prosecution, which announced the opening of investigations.²⁶⁴ 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.²⁶⁵ 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.²⁶⁶

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).²⁶⁷ 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.²⁶⁸ 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.

²⁶⁰ European Commission, Albania Report, 2015, p.7; Interview with a current high-ranking official in the Executive, 18 January 2016.

²⁶¹ SAI, Report of the Audit of the Council of Ministers’ Apparatus, Tirana, 2013, p.2-5. The report was made available to the research team by the SAI upon request.

²⁶² Ibid, p.24-28.

²⁶³ 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.

²⁶⁴ 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_penalist_Ministrin_e_Enerqise_dhe_Industrise_dhe_Avokatin_e_Pergjithshem_te_Shtetit_1575_1.php

²⁶⁵ Article 103/2, Constitution.

²⁶⁶ Article 18, Law on the Organisation and Functioning of the Council of Ministers.

²⁶⁷ Reed, Q., Prevention and regulation of conflicts of interest of public officials in Albania: Assessment and recommendations, ACFA assessment report, December 2014, p.3.

²⁶⁸ Article 37, Ministerial Code of Ethics: http://www.qbz.gov.al/botime/fletore_zyrtare/2013/PDF-2013/157-2013.pdf

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).

²⁶⁹ Law no. 60/2016 on Whistleblowing and the Protection of Whistleblowers, approved on 2 June 2016: <https://www.parlament.al/wp-content/uploads/2016/06/ligj-nr.-60-dt.-2.6.2016.pdf>

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-bileten-e-ndeshjes-i-paguam-vete/>

²⁷⁴ Interview with a current high-ranking official in the Executive, 18 January 2016.

²⁷⁵ Erebara, Gj., 'Leaked OSCE Document Names 'Corrupt' Albanian MPs', Balkan Insight, 15 September 2015:

<http://www.balkaninsight.com/en/article/leaked-osce-report-on-albanian-politicians-crimes-makes-waves-09-14-2015>

²⁷⁶ Information request submitted by project assistant Megi Llubani, on 16 May 2016. HIDAACI response (e-mail) on 19 May 2016.

²⁷⁷ HIDAACI Press Release, 21 May 2015: <http://www.hidaa.gov.al/21-maj-2015/>

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

²⁷⁸ SIGMA, Baseline Measurement Report: The Principles of Public Administration - Albania, April 2015, pp.6-10, 13, 15, 76; Ibid. Public Administration Reform Assessment of Albania, April 2014, p.9-10; Interviews with a former civil servant in central administration, 22 December 2015 and a current high-ranking official in the Executive, 18 January 2016.

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.²⁸² 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.²⁸³

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.²⁸⁴ 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.

²⁸² Open Society Foundation Albania, Executive Summary of the Civic Monitoring Report of the Implementation of the Action Plan to Address the 12 EC Priorities for Albania, 2012, p.5:
http://www.osfa.al/sites/default/files/executive_summary_final.pdf; OSFA and the Institute for Democracy and Mediation, Civic Monitoring of the Implementation of the Anti-Corruption Action Plan, 2011-2012:
http://www.osfa.al/sites/default/files/monitoring-english_final-v3-web.pdf

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

²⁸⁴ Reed, Q., Prevention and Regulation of Conflicts of Interest of Public Officials in Albania: Assessment and Recommendations, ACFA assessment report, December 2014, p.3.

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.

JUDICIARY			
Overall Pillar Score: 36.1			
Dimension	Indicator	Law	Practice
Capacity 37.5/100	Resources	50	25
	Independence	50	25
Governance 45.8/100	Transparency	100	50
	Accountability	25	25
	Integrity mechanisms	50	25
Role 25/100	Executive oversight	25	
	Corruption adjudication	25	

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.

²⁸⁵ On the webpage of the Office for the Administration of the Budget of the Judiciary, under "Organizimi gjyqësor", click on the various categories of courts: http://zabqj.gov.al/web/Organizimi_Gjyqesor_154_1.php

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.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).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*.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.²⁹⁴ Also, the Ministry of Finance sets expenditure ceilings for all institutions whose opinions on the matter it is not bound by.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.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.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.²⁹⁸

Resources (Practice)

Score: 25

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.

²⁹² Decision of the Council of Ministers no. 545, of 11 August 2011, amended last with DCM no. 805, of 26 October 2014:
<http://www.dap.gov.al/attachments/article/192/Vendimi%20545%20i%20pagave%20te%20nepuens%20civile%20dhe%20nepunes%20...i%20perditesuar%20.pdf>

²⁹³ Ibid., Law on Judicial Power.

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).

²⁹⁵ Articles 23-25, Law no. 9936 on the Management of the Budgetary System, of 26 June 2008.

²⁹⁶ Article 8, Law on the Organization of Judicial Power.

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

²⁹⁸ Article 3, Law on the School of Magistrates.

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

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.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.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.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.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.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.³⁰⁴ The problem is chronic, with the HCJ failing to appoint 34 judges in 2011, 36 in 2012 and 2013, and 35 in 2014.³⁰⁵

²⁹⁹ Office for Administration of Judicial Budget, Annual Report, 2015, p.6:

http://www.zabqj.gov.al/web/raporti_vjetor_zabqj_2015_dt_01_03_2016_545.pdf

³⁰⁰ According to OABJ's calculation based on 2014 salary increases, they start their careers earning twice as much. European Commission for the Efficiency of Justice (CEPEJ), Report on "European judicial systems – Edition 2014 (2012 data): efficiency and quality of justice", p.302-310:
http://www.coe.int/t/dgih/cooperation/cepei/evaluation/2014/Rapport_2014_en.pdf.

³⁰¹ Albania's informal economy was estimated at 36.2 per cent of GDP for the 1996-2012 period. See Business Environment and Enterprise Performance Survey (BEEPS) V, Albania Country Profile: <http://ebrd-beeps.com/wp-content/uploads/2015/07/albania.pdf>; ILO refers to estimations of between 30-60 per cent of informal employment as part of total employment in Albania: http://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---sro-budapest/documents/publication/wcms_167170.pdf

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 Matlja, 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.

³⁰³ EU/CoE Support to Efficiency of Justice, In-depth assessment report of the justice system in Albania, 2015, p.13-15.

³⁰⁴ OABJ, Explanatory note, Report on the performance of budget products for January - June 2015, p.2.

³⁰⁵ See OABJ, 2011 Annual Report, p.14; 2012 Annual Report, p.6; 2013 Annual Report, p.6; 2014 Annual Report, p.8. All reports available here: http://www.zabqj.gov.al/web/Analiza_186_1.php

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

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

³⁰⁶ Interviews with Dorian Matlja, Director, ResPublica, 8 April 2015; Marsida Xhaferllari, Chief Inspector, High Council of Justice, 10 June and 24 July 2015, Gent Ibrahim, Constitutional, Anti-corruption and Judicial expert, 31 March and 8 April 2015 and Kathleen Imholz, expert on judiciary, 27 April 2015.

³⁰⁷ Group of High-Level Experts, Ad hoc Parliamentary Committee on Justice Reform, Analysis of the Justice System, June 2015, p.295, 331: http://reformanedreitesi.al/sites/default/files/dokumenti_shqip.pdf; see also GRECO, Fourth Evaluation Round: Corruption prevention in respect of members of parliament, judges and prosecutors, 27 June 2014, p.24.

³⁰⁸ GRECO, Fourth Evaluation Round: Corruption prevention in respect of members of parliament, judges and prosecutors, 27 June 2014, p.24; Interviews with Dorian Matlja, Director, ResPublica, 8 April 2015; Luljeta Laze, Head of Office, Management of the Judiciary Budget, 28 July 2015, Laerta Poda, Director, Finance Department of OMJB, 28 July 2015, Kathleen Imholz, expert on judiciary, 27 April 2015, Genti Ibrahim. Renowned lawyer, assisting the ad-hoc parliamentary committee on justice reform, 16 and 24 July 2015.

³⁰⁹ Interviews with Luljeta Laze, Head of Office, Management of the Judiciary Budget, 28 July 2015 and Laerta Poda, Director, Finance Department of OMJB, 28 July 2015; Group of High-Level Experts, Ad hoc Parliamentary Committee on Justice Reform, Analysis of the Justice System, June 2015.

³¹⁰ Part IX, Constitution.

³¹¹ See Group of High-Level Experts, Ad hoc Parliamentary Committee on Justice Reform, Analysis of the Justice System, June 2015, p.11, 13-15, 19, 23-25, 28-29, 32-33.

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.

brings the Executive directly into the process of appointing High Court judges.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.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.³¹⁷

The President makes district and appeal court appointments, upon proposals of the High Council of Justice.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.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.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”³²¹ – 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 member³²² – 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.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).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.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.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.³²⁷

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.

³¹⁶ Article 141, Constitution.

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

³¹⁸ Article 12, Law on Judicial Power.

³¹⁹ Article 9, National Judicial Conference Law.

³²⁰ Article 11, Law on the High Council of Justice.

³²¹ Article 4/2, Law on the High Council of Justice.

³²² Among others, the Vice-chair proposes to the HCJ the Chief Inspector and inspectors of the HCJ's Inspectorate.

³²³ Articles 13-14, HCJ Law; See also Group of High-Level Experts, Ad hoc Parliamentary Committee on Justice Reform, Analysis of the Justice System, June 2015, p.29 and European Commission for Democracy through Law, Venice Commission, Opinion no. 403 / 2006, 22 June 2007, paragraph 32:

[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2007\)028-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2007)028-e)

³²⁴ Articles 3 and 25, Law on the High Council of Justice.

³²⁵ Articles 12 and 13, Judicial Power Law.

³²⁶ Sanders, A., Report on the Individual Evaluation of Judges in Albania, January 2015; Ibrahim, G., Reed, Q., Corruption Prevention in the Judiciary in Albania: Assessment and Recommendations, ACFA assessment report, January 2015, p. 9-10; European Commission, Progress Report on Albania, October 2014, p.11:

http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-albania-progress-report_en.pdf; European Commission, Progress Report on Albania, 2013, p.38:

http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/al_rapport_2013.pdf.

³²⁷ Article 21, Law on Judicial Power; Ibrahim, G., Reed, Q., Corruption Prevention in the Judiciary in Albania: Assessment and Recommendations, ACFA assessment report, January 2015, p.10.

Independence (Practice)

Score: 25

TO WHAT EXTENT DOES THE JUDICIARY OPERATE WITHOUT INTERFERENCE FROM THE GOVERNMENT OR OTHER ACTORS?

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.³²⁸ 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.³²⁹ Parliament has rejected 14 presidential nominations to the High Court since 2008.³³⁰ 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.³³¹

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.³³²

³²⁸ Pasha, A., Islami, E., & Rexhepi, I., Impunity: Public Opinion on Understanding, Reasons and Role of Institutions, National Survey, IDRA, 2015, p.41-45.

³²⁹ Media reports: Gazeta Shqip, 'Akuza e forte e Ramës: Gjyqtari që pezulloi Cakon, vrasës me pagesë' (Rama's strong accusations: Judge who suspended Cako, paid killer), 8 June 2016: <http://www.gazeta-shqip.com/lajme/2016/06/08/akuza-e-forte-e-rames-gjyqtari-qe-pezulloi-cakon-vrases-me-pagese/>; Balkanweb, 'Haki Cako, Rama-Tahiri: Gjyqtari Aliaj, killer i drejtësisë, liroi vrasës. Basha: Presion gjyqtarëve, tani dhe ndaj apelit' (Haki Cako, Rama-Tahiri: Judge Aliaj, killer of the justice system, set murderers free. Basha: Pressure towards judges, now even the court of appeals), 8 June 2016: <http://www.balkanweb.com/site/haki-cako-rama-tahiri-gjyqtari-aliaj-killer-i-drejtësisë-liroi-vrases-basha-presion-gjyqtareve-tani-dhe-ndaj-apelit/>; Balkanweb, 'KLD, Unioni I Gjykatave dhe Prokurorëve dënojnë deklaratat e Ramës dhe Tahirit për gjyqtarin Aliaj: Kërcënimi I hapur', (HCJ, Union of Judges and Prosecutors condemn statements of Rama and Tahiri for judge Aliaj: Open threats), 8 June 2016: <http://www.balkanweb.com/site/kld-unioni-i-gjykatave-e-prokuroreve-denojne-deklaratat-e-rames-dhe-tahirit-per-gjyqtarin-aliaj-kercenimi-i-hapur/>

³³⁰ A number of these nominations were kept pending in Parliament, breaching its own Rules of Procedure which require presidential decrees to be immediately included in Parliament's work programme (see article 26/7). For rejected decrees, see Parliament's decisions no. 186-190, of 16 June 2008, no. 43 and 46; European Commission, Albania Report, November 2015, p.7 (Parliament rejected seven of the President's nominations to the High Court); Progress Report, October 2014 (Parliament rejected three presidential nominations to the High Court); 2010 Albania Analytical Report, 2010, p.12.

³³¹ Parliament's decisions no. 78, 79 and 80 on Approving the Final Report of the Inquiry Committee regarding dismissal of Lulzim Lelçaj and Elvis Cefa: http://www.qbz.gov.al/botime/fletore_zyrtare/2014/PDF-2014/165-2014.pdf; ResPublica, 'Komisioni hetimor I kërkon Kuvendit të shkarkojë nga KLD Elvis Cefën dhe Lulzim Lelçaj': <http://www.respublica.al/content/komisioni-hetimori-i-k%C3%ABrkon-kuvendit-t%C3%ABshkarkoj%C3%ABnaga-kld-elvis-cef%C3%ABn-dhe-lulzim-lel%C3%A7ajn>; Minutes of meetings of the Committee on Legal issues, Public Administration and Human Rights, of 23 September 2014: https://www.parlament.al/wp-content/uploads/2015/11/23_09_2014_19091_1.pdf

³³² 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: Perndo, N., 'Propozimi I Berishës: Elvis Cefa I pronave në vend të Spahiu në KLD' (Berisha's proposal: Elvis Cefa of properties replacing Spahiu in the HCJ), MAPO, 3 April 2012: <http://www.mapo.al/2012/04/propozimi-i-berishes-elvis-cefa-i-pronave-ne-vend-te-spahiut-ne-kld/>; Lulzim Lelçaj was serving as director of legislation in parliament during DP when he was proposed as member of the HCJ: Vizioni Plus TV, 'Lulzim Lelçaj kandidat në KLD' (Lulzim Lelçaj HCJ candidate): <http://vizioniplus.al/lulzim-lelcaj-kandidat-ne-kld/>; Shqiptarja.com, 'Topi: Elvis Cefa dhe Lulzim Lelçaj, janë personat e Berishës' (Topi: Elvis Cefa and Lulzim Lelçaj are Berisha's people), 21 September 2014: <http://shqiptarja.com/news.php?IDNotizia=240784%20http://www.sot.com.al/politike/mazhoranca-miraton-k%C3%ABshilltarin-e-topallit-si-an%C3%ABtar-t%C3%ABC3%AB-kld-ps-lulzim-lel%C3%A7aj-%C3%ABsht%C3%AB>

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.³³³ 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.³³⁴

Appointments, promotions and transfers of district and appeal court judges have been generally considered biased and subjective.³³⁵ 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.³³⁶ 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 2014.³³⁷

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.³³⁸ 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.³³⁹

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.³⁴⁰ Politicians who have been found guilty by the Court are only opposition

³³³ Albana Shtylla: High Council of Justice, Appointment of Albana Shtylla as member on 30 October 2014: <http://www.kld.al/component/k2/albana-shtylla> and Decision no. 86/2014, on appointment of Albana Shtylla as member of HCJ: https://www.parlament.al/wp-content/uploads/2015/10/vendim_nr_86_dt_30_10_2014_19555_1.pdf; Cenkollari, K., 'PS zgjedh emra politikë, në KLN Vangjel Kosta dhe Albana Shtylla' (SP appoints political figures in HCJ, Vangjel Kosta and Albana Shtylla), Ora News, 27 October 2014: <http://www.oranews.tv/vendi/rama-mbledh-deputetet-socialiste-ne-seline-e-ps-se/>

³³⁴ Group of High-Level Experts, Ad hoc Parliamentary Committee on Justice Reform, Analysis of the Justice System, June 2015, p.63.

³³⁵ Top Channel, 'KLD refuzon Ina Ramën si gjyqtare' (HCJ refuses Ina Rama as judge), 24 February 2014: <http://top-channel.tv/lajme/artikull.php?id=273325>

³³⁶ 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 Ibrahim, 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.

³³⁷ Decision no. 40 of 07 July 2014 of the Constitutional Court, paragraph 29:

http://www.gjk.gov.al/web/Vendime_perfundimtare_100_1.php

³³⁸ Inspectorate of the High Council of Justice, Annual Report, 2014, p.22-26.

³³⁹ See, for example, HCJ meetings of 11 June 2009, 1 April 2010, 7 May 2010, 15 June 2010, and 14 November 2011.

³⁴⁰ Group of High-Level Experts, Ad hoc Parliamentary Committee on Justice Reform, Analysis of the Justice System, June 2015, p.255. The interviewees who reported such a phenomenon, at times citing specific cases too, asked to remain fully anonymous.

³⁴¹ On Fatmir Mediu's case: Shqiptarja.com, 'Gerdeci, Gjykata e Lartë pushon çështjen ndaj Fatmir Mediut' (Gerdec, High Court ceases case against Fatmir Mediu), 10 December 2012: <http://shqiptarja.com/news.php?IDNotizia=136416>; On Ilir Meta's case: Top Channel, 'Ilir Meta found not guilty', 16 January 2012: <http://top-channel.tv/english/artikull.php?id=4409>; On Lulzim Basha's case: Saraci, R., 'Basha l pafajshëm, prokuroria nuk zbatoi afatet' (Basha innocent, prosecution missed deadlines), Gazeta Ballkan, 11 April 2009:

<http://www.ballkan.com/index.php?page=shownews&newsID=797>

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.³⁴¹ 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.³⁴²

Governance

Transparency (Law)

Score: 100

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 JUDICIARY?

The legal framework for transparency of judicial activity is largely adequate. The Constitution requires that all court decisions are reasoned and public.³⁴³ It specifically requires the High Court to publish its decisions together with minority opinions.³⁴⁴ 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.³⁴⁵ Digital audio recording of court hearings is the standard method of holding minutes of court hearings, unless there are technical problems.³⁴⁶ 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

TO WHAT EXTENT DOES THE PUBLIC HAVE ACCESS TO JUDICIAL INFORMATION AND ACTIVITIES IN PRACTICE?

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.³⁴⁷ By May 2015, the media reported that according to a confidential USAID assessment, only six of 24 monitored courts were fully registering court hearings.³⁴⁸

³⁴¹ Albanian Daily News, 'Paloka and Ristani convicted and fined with lek 200 thousand by the High Court for slander', 5 June 2015: <http://www.albaniannews.com/index.php?idm=1699&mod=2>

³⁴² Top Channel, 'Court of Appeal punishes Saimir Tahiri', 21 December 2012: <http://top-channel.tv/english/artikull.php?id=7860>

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.

³⁴⁷ Group of High-Level Experts, Ad hoc Parliamentary Committee on Justice Reform, Analysis of the Justice System, June 2015, p.101; Interviews with Dorian Matlija, Director, ResPublica, 8 April 2015, Kathleen Imholz, expert on Judiciary, 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), Shqiptaria.com, 7 May 2015:

The practice of holding hearings in judges' offices persists, and clearly obstructs transparency.³⁴⁹ Experts raise doubts as to whether the situation is fully justified by insufficient courtrooms.³⁵⁰ The systematic publication of fully reasoned decisions, within a reasonable timeframe, remains a problem.³⁵¹ Court resources, and not necessarily lack of will, play a major part in the inability of courts to publish or deliver decisions.³⁵² 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.³⁵³ Furthermore, low court capacities and citizens' education have hampered the use of online solutions for access to judicial decisions.³⁵⁴ Only a few courts have websites, and only a few of those are easy to use and provide adequate information.³⁵⁵ 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.³⁵⁶ 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.³⁵⁷ However, there are some gaps in its transparency programme, and its registers of information requests and public procurement are not available online.³⁵⁸ 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.³⁵⁹

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,³⁶⁰ 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

http://shqiptaria.com/mobile/artikull_old.php?IDNotizia=290589&NomeCategoria=&Titolo=qiykatat-shmangin-regjistrimin-e-proceseve-mes-tyre-dhe-qj-lart-amp;IDCategoria=1&reply=471215

³⁴⁹ Group of High-Level Experts, Ad hoc Parliamentary Committee on Justice Reform, Analysis of the Justice System, June 2015, p.101.

³⁵⁰ Interview with Kathleen Imholz, expert on Judiciary, 27 April 2015; Ibrahimi, G., Reed, Q., Corruption Prevention in the Judiciary in Albania: Assessment and Recommendations, ACFA assessment report, January 2015, p.19.

³⁵¹ Ibrahimi, G., Reed, Q., Corruption Prevention in the Judiciary in Albania: Assessment and Recommendations, ACFA assessment report, January 2015, p.19.

³⁵² Interview with Dorian Matlja, Director, ResPublica, 8 April 2015 – he cited the case of the Gérdec decision which was 500 pages long.

³⁵³ Interviews with Dorian Matlja, Director, ResPublica, 8 April 2015 and Marsida Xhaferllari, Chief Inspector, High Council of Justice, 10 June and 24 July 2015.

³⁵⁴ Group of High-Level Experts, Ad hoc Parliamentary Committee on Justice Reform, Analysis of the Justice System, June 2015, p.79, 81.

³⁵⁵ Interview with Dorian Matlja, Director, ResPublica, 8 April 2015.

³⁵⁶ ResPublica, The right to information tested: Study on effectivity of Law no 119/2014 on the Right to Information and a comparison to Law 8503/1999, 2015, p.22: <http://www.respublica.org.al/wp-content/uploads/2015/12/E-drejt-e-informimit-ne-bankoprove.pdf>

³⁵⁷ Information request sent on 20 July 2015 by report author. Response received on 31 July 2015.

³⁵⁸ 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. 31: <http://www.respublica.org.al/wp-content/uploads/2016/04/Pandeshkuesheria-ne-procedimet-disiplinore-te-qiyqtareve-ne-veprimtarine-e-KLD-qjatevit-2015.pdf>. See also HCJ website: <http://www.kld.al/>

³⁵⁹ See OABJ website: <http://www.zabqj.gov.al/>

³⁶⁰ Article 31/2, Law on Judicial Power.

behaviours that seriously discredit judges' position and image".³⁶¹ 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.³⁶² 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.³⁶³ 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.³⁶⁴ 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.³⁶⁵ 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.³⁶⁶ Guarantees of due process for judges in disciplinary proceedings are in place and HCJ decisions can be appealed in court.³⁶⁷

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.³⁶⁸ 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.³⁶⁹ 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.

³⁶⁵ 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.27; Ibrahim, G., Reed, Q., Corruption Prevention in the Judiciary in Albania: Assessment and Recommendations, ACFA assessment report, January 2015, p.25.

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).

³⁶⁷ Articles 2/a and 11.4, Regulation of the High Council of Justice on Disciplinary Proceedings; Articles 35-36, Law on Judicial Power.

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.

³⁶⁹ GRECO, Fourth Evaluation Round: Corruption prevention in respect of members of parliament, judges and prosecutors, 27 June 2014, p.31-32; Ibrahim, G., Reed, Q., Corruption Prevention in the Judiciary in Albania: Assessment and Recommendations, ACFA assessment report, January 2015, p.23-24; 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.43.

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

TO WHAT EXTENT DO MEMBERS OF THE JUDICIARY HAVE TO REPORT AND BE ANSWERABLE FOR THEIR ACTIONS IN PRACTICE?

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.

³⁷¹ Sanders, A., Report on the Individual Evaluation of Judges in Albania, January 2015, p.20; Ibrahimi, G., Reed, Q., Corruption Prevention in the Judiciary in Albania: Assessment and Recommendations, ACFA assessment report, January 2015, p.21.

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.

³⁷⁴ Some sources mentioned in 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.7; US Department of State, Albania Human Rights Report, 2014, p.18; Freedom House, Nations in Transit Albania, 2016: <https://freedomhouse.org/report/nations-transit/2016/albania>; GRECO, Fourth Evaluation Round: Corruption prevention in respect of members of parliament, judges and prosecutors, 27 June 2014, p.23; Interview with Dorian Matlja, Director, ResPublica, 8 April 2015.

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.

³⁷⁶ HCJ Inspectorate, Annual Report, 2013, p.6-7.

³⁷⁷ 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.17-18.

Justice was insufficient to prove the breach.³⁷⁸ 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.³⁷⁹ 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.³⁸⁰ The High Court asked the HCJ to re-consider 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.³⁸¹ 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".³⁸² 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.³⁸³ The one-year deadline for the Minister of Justice to act on recommendations for disciplinary proceedings has often passed without a reasonable explanation.³⁸⁴ In 2014-2015, five cases were not sent by the Minister to the HCJ and one failed because it was sent after the deadline.³⁸⁵ 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.

³⁷⁹ 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.40.

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 Ibrahim, Constitutional, Anti-corruption and judicial expert, 31 March and 8 April 2015; Dorian Matlja, Director, ResPublica, 8 April 2015; Kathleen Imholz, 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.

³⁸⁵ 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.21.

debatable 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.³⁸⁷ 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

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

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.

³⁸⁷ HCJ Inspectorate, Annual Report, 2013, p. 6; Annual Report, 2014, p.10.

³⁸⁸ IHCJ, 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 195/2/a, of 5 July 2006).

³⁹⁰ HCJ Inspectorate, Annual Report, 2013, p.6, and Annual Report, 2014, p.10.

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.³⁹⁵ 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.³⁹⁶

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 2006.³⁹⁷ 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.³⁹⁸ 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.³⁹⁹ 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.⁴⁰⁰ 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

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.⁴⁰¹ 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.⁴⁰² 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

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.

³⁹⁷ Ibrahim. G., Corruption prevention in the Judiciary in Albania: Assessment and Recommendations, ACFA assessment report, January 2015, p.14; See also Code of Judicial Ethics: <http://kgjk.al/wp-content/uploads/2012/08/Kodi-i-Etikes-Gjyqesore-2.pdf>

³⁹⁸ HCJ Inspectorate, Annual Report, 2014, p.14.

³⁹⁹ Reed, Q., Prevention and Regulation of Conflicts of Interest of Public Officials in Albania: Assessment and Recommendations, ACFA assessment report, December 2014, p.3-4.

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.

⁴⁰¹ Pasha, A., Islami, E., & Rexhepi, I., Impunity: Public Opinion on Understanding, Reasons and Role of Institutions, National Survey, IDRA, 2015, p.41-45.

⁴⁰² HIDAACI, Annual Report, 2014, p.7-8; European Commission, Albania Report, 2015, p.52.

beyond their legal income. The media reported recently that the Prosecution had closed most of these files.⁴⁰³

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.⁴⁰⁴ 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.⁴⁰⁵ 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.⁴⁰⁶ 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.⁴⁰⁷ The Committee was mobilised by the HCJ Inspectorate in 2014-2015 to provide consultative opinions on eight cases under the Inspectorate's scrutiny.⁴⁰⁸ 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.⁴⁰⁹

Role

Executive oversight

Score: 25

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

⁴⁰³ Cela, L., 'Akuzat për fshehje pasurie; Prokuroria mbyll dosjet për peshqit e mëdhenj' (Accusations of hidden wealth; Prosecution closes files for high officials), BIRN Albania, 16 February 2016: <http://www.reporter.al/akuzat-per-fshehje-pasurie-prokuroria-mbyll-dosjet-per-peshqit-e-medhenj/>

⁴⁰⁴ Shqiptaria.com, 'Bashkia padit gjyqtaren Metalaj: E afërme me firmën Gener 2' (Municipality sues judge Metalaj: Close to Gener 2 company), 25 May 2016: <http://shqiptaria.com/aktualitet/2731/bashkia-padit-gjyqtaren-metalaj-e-afarme-me-firm-n--39-gener-2-39-357869.html>; Shqiptara.com, 'Dredhia e gjykatës për t'i bërë nderin Gjin Gjonit' (The Court's trick to favour Gjin Gjoni), 19 October 2014: <http://shqiptaria.com/news.php?IDNotizia=246805&NomeCategoria=home&Titolo=dredhia-e-gjykat-s-p-r-ti-b-r-nderin-gjyqtarit-gjin-gjoni&IDCategoria=1&reply=420445>; Domi, E., 'Skandali, Stavri Kallço gjykon çështjet e mbësës gjyqtare' (The scandal/ Stavri Kallço adjudicates cases of his judge niece), 7 December 2015: <http://www.panorama.com.al/skandali-stavri-kallco-gjykon-ceshtjet-e-mbeses-gjyqtare/>

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

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

⁴⁰⁷ Law No. 77/2012 on the National Judicial Conference', approved on 26 July 2012 and in force since 16 August 2012.

⁴⁰⁸ HCJ Inspectorate, Annual Report, 2014, p.38; Annual Report, 2015, p.12.

⁴⁰⁹ HCJ Inspectorate, Annual Report, 2014, p.10.

The Judiciary's oversight of the Executive is considered inadequate. Administrative courts are not perceived to be playing their role sufficiently.⁴¹⁰ 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.⁴¹¹ 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.⁴¹²

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.⁴¹³ However, these decisions also suffer inconsistent enforcement (see also *Independence (Practice)* above).⁴¹⁴

Corruption adjudication

Score: 25

TO WHAT EXTENT IS THE JUDICIARY COMMITTED TO FIGHTING CORRUPTION THROUGH SANCTIONING CORRUPTION OFFENCES AND OTHER ACTIVITIES?

Harmonised statistics on corruption-related offences remain a challenge and efforts are on-going to improve them.⁴¹⁵ 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.⁴¹⁶ 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

⁴¹⁰ Interviews with Kathleen Imholz, expert on judiciary, 27 April 2015; Dorian Matlja, Director, ResPublica, 8 April 2015; Ardian Visha, Lawyer, assisting the Ad-hoc Parliamentary Committee on Justice Reform, 16 and 24 July 2015; Gent Ibrahim, Constitutional, anti-corruption and judicial expert, 31 March and 8 April 2015.

⁴¹¹ Interview with Dorian Matlja, Director, ResPublica, 8 April 2015.

⁴¹² Ombudsman, Special Report, 2012: https://www.parlament.al/wp-content/uploads/2016/01/2012_raporti_per_vendimet_gjygesore_15413_1.pdf; NCHB contribution to justice reform consultations: <http://www.nchb.al/wp-content/uploads/2015/06/Vler%C3%ABsimi-i-sistemit-t%C3%ABC3%AB-Drejt%C3%ABsis%C3%AB.pdf>; Freedom House, Nations in Transit 2016: <https://freedomhouse.org/report/nations-transit/2016/albania>; Group of High-Level Experts, Ad hoc Parliamentary Committee on Justice Reform, Analysis of the Justice System, June 2015, p.41, 89, 103-104; Institute of Public and Legal Studies and OSFA, The executive and judicial system: Responsibility towards judicial decisions, Report 2011, p.3.

⁴¹³ Cenkollari, K., 'Kushtetuesja rrëzon Byronë e Hetimit: S'pajtohet me kushtetutën' (The Constitutional Court overturns the Bureau of Investigation: It contradicts the Constitution), Ora News, 17 April 2015, <http://www.oranews.tv/vendi/kushtetuesja-rrazon-byrone-kombetare-te-hetimit-eshte-antikushtetues/>; Constitutional Court Decision no. 43, of 26 June 2015, on National Bureau of Investigation; on the Central Construction Inspectorate see: Constitutional Court Decision no. 25, of 28 April 2014.

⁴¹⁴ European Commission, Progress Report, 2014, p.6 and Albania Report, 2015, p.7.

⁴¹⁵ Group of High-Level Experts, Ad hoc Parliamentary Committee on Justice Reform, Analysis of the Justice System, June 2015; European Commission, Albania Report, November 2015, p.14.

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 319/c 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

appealed.⁴¹⁷ 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 2014.⁴¹⁸ 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.⁴¹⁹ 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:

⁴¹⁷ Prosecution, Annual Report, 2015, p.213-214.

⁴¹⁸ Ibrahim, G., The adjudication of corruption-related offences by courts in Albania: Assessment and Recommendations, ACFA assessment report, January 2015, p.9-10.

⁴¹⁹ Ibid, p.21-25.

⁴²⁰ Parliamentary Document, Draft Law 2016 On some additions and changes to Law no. 8417 Constitution of the Republic of Albania', date 21 October 1998 changed: http://reformanedrejetesi.al/sites/default/files/projekt-amendamentet_kushtetuese-tekti_i_rishikuar_propozuar_nga_genl_0.pdf

- 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.

PUBLIC PROSECUTOR			
Overall Pillar Score: 31.9			
Dimension	Indicator	Law	Practice
Capacity 25/100	Resources	50	0
	Independence	25	25
Governance 45.8/100	Transparency	75	25
	Accountability	50	25
	Integrity mechanisms	75	25
Role 25/100	Corruption prosecution	25	

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.⁴²¹

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.⁴²² Centralisation entails the superior power of higher-level prosecutors over lower-level prosecutors on all decisions.⁴²³ Joint Investigative Units (JIUs) are established to strengthen cooperation in the fight against financial and economic crime, which includes corruption-related offences.⁴²⁴ 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.⁴²⁵ A separate directory within the OPG, the Anti-Corruption Task Force, focuses on economic crime and corruption.⁴²⁶ 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.⁴²⁷

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.⁴²⁸

Capacity

Resources (Law)

Score: 50

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

⁴²¹ Article 3/a, Law no. 8737 on the Organisation and Functioning of the Prosecution, of 12 February 2001.

⁴²² Articles 148-149, Constitution; Article 3, Law on the Organisation and Functioning of the Prosecution.

⁴²³ Articles 3/b, 3/c and 4/3, Law on the Organisation and Functioning of the Prosecution; Articles 24/4, 24/5, and 25/2, Criminal Procedure Code.

⁴²⁴ JIUs Memorandum of Cooperation: http://www.pp.gov.al/web/memorandum_bashkepunimi_418.pdf

⁴²⁵ Article 25/b, Criminal Procedure Code.

⁴²⁶ See OPG's organisational structure here: http://pp.gov.al/web/Organigrama_43_1.php#.V2KGz67fq-8

⁴²⁷ Articles 4 and 8, Law no. 8677 on the Judicial Police, of 2 November 2000, changed; Articles 30-33, Criminal Procedure Code.

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".⁴²⁹ The legal provisions in questions do not discriminate between a ministry and a constitutional independent institution (see *Judiciary pillar*).⁴³⁰

As the salaries of prosecutors and judicial police officers are pegged to those in the Judiciary, in qualified majority laws, they are stable.⁴³¹ 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.⁴³²

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.⁴³³ 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.⁴³⁴ 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.⁴³⁵ According to a prosecutor, the Prosecution relies entirely on the Police for the latter.⁴³⁶

The salaries of prosecutors are considered too low to afford dignified living and shield them from undue influence.⁴³⁷ 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.⁴³⁸ 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.⁴³⁹ The Transparency International research team asked

⁴²⁹ Article 57, Law on Prosecution. This is a qualified majority law.

⁴³⁰ Law no. 9936 on the Management of the Budgetary System and Part III of Parliament's Rules of Procedure.

⁴³¹ Article 52, Law on Prosecution; Article 12/a, Law on Judicial Police.

⁴³² Article 18, Law on Prosecution.

⁴³³ Interviews with David Grise, former OPDAT/US Embassy officer, 17 July 2015; Ardian Visha, Lawyer, expert assisting the Ad-hoc Parliamentary Committee for the Judicial Reform, 16 July 2015; Gent Ibrahim, Constitutionalist, anti-corruption and judiciary expert, 31 March and 8 April 2015.

⁴³⁴ Group of High-Level Experts, Ad hoc Parliamentary Committee on Justice Reform, Analysis of the Justice System, June 2015, p.311.

⁴³⁵ Group of High-Level Experts, Ad hoc Parliamentary Committee on Justice Reform, Analysis of the Justice System, June 2015, p.313-314; Ibrahim, G., Reed, Q., Investigation and Prosecution of Corruption-related Offences in Albania, December 2014, ACFA assessment report, p.18-23.

⁴³⁶ Interview with a prosecutor, 3 November 2015.

⁴³⁷ Interviews with David Grise, former OPDAT/US Embassy officer, 17 July 2015; Ardian Visha, Lawyer, expert assisting the Ad-hoc Parliamentary Committee for the Judicial Reform, 16 July 2015; Gent Ibrahim, Constitutionalist, anti-corruption and judiciary expert, 31 March and 8 April 2015; Kathleen Imholz, expert on judiciary, 17 July 2015.

⁴³⁸ Ibrahim, G. Reed, Q., Investigation and Prosecution of Corruption-related Offences in Albania, ACFA assessment report, December 2014, p.19-23.

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.⁴⁴⁰ 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.⁴⁴¹

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 junctures the legal framework is incoherent.

Prosecutors are subject to the Constitution and laws in the exercise of their duties.⁴⁴² However, and contrary to the case of judges, the Constitution never *explicitly* states their independent status or condemns interference in their work.⁴⁴³ The Criminal Procedure Code explicitly establishes the independence of prosecutors *within* court proceedings.⁴⁴⁴ 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.⁴⁴⁵ However, the Law on the Prosecution grants the Minister of Justice the right to check "the legality of prosecutors' activity".⁴⁴⁶ 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.⁴⁴⁷ 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.⁴⁴⁸ These provisions have been criticised for failing to meet European standards for the independence of the Prosecution.⁴⁴⁹

Provisions for the appointment and dismissal of the Prosecutor General do not guarantee independence. The President appoints the Prosecutor General for a renewable five-year mandate, with Parliament's simple majority consent.⁴⁵⁰ Any "jurist with no less than ten years of experience in the justice system, and renowned for his/her professional qualities and clean ethical-moral

appointed, of whom 11 prosecutors. See 2014 Performance Monitoring Report: http://www.pp.gov.al/web/raporti_2014_950.pdf. During the first nine months of 2013, 18 members of staff had not been appointed, of whom 13 prosecutors. See 2013 9-month Performance Monitoring Report: http://www.pp.gov.al/web/raport_monitorimi_9_mujori_2013_846.pdf; see also Ibrahim, G., Reed, Q., Investigation and prosecution of corruption-related offences in Albania: Assessment and recommendations, ACFA assessment report, December 2014, table 1, p.20.

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 Ibrahim, Constitutional, 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.

⁴⁴⁹ Perilli, L., Albania – Rule of Law Mission 2013: Judicial Independence, June 2013, p.31-33.

⁴⁵⁰ Article 149, Constitution. The PG's mandate was indefinite before the 2008 constitutional amendments.

reputation⁴⁵¹ can be nominated and appointed Prosecutor General. Thus, the power to appoint (and discharge) the Prosecutor General is distributed between two *partisan* institutions,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).⁴⁵³

The President can discharge the Prosecutor General upon Parliament's motivated proposal.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.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.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.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.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.⁴⁵⁹ Overall, the internal independence of prosecutors is not ensured.

⁴⁵¹ Article 7/1/1, Law on Prosecution.

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.

⁴⁵³ Articles 125 and 136, Constitution.

⁴⁵⁴ Article 149, Constitution.

⁴⁵⁵ See article 140 of the Constitution on the discharge from office of High Court judges.

⁴⁵⁶ Article 134, Constitution.

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.

⁴⁵⁸ Group of High-Level Experts, Ad hoc Parliamentary Committee on Justice Reform, Analysis of the Justice System, June 2015, p.311; Perilli, L., Albania – Rule of Law Mission 2013: Judicial Independence, June 2013, p.36-37.

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.

Independence (Practice)

Score: 25

TO WHAT EXTENT DOES THE PUBLIC PROSECUTOR OPERATE WITHOUT INTERFERENCE FROM THE GOVERNMENT OR OTHER ACTORS?

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.⁴⁶⁰ 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.⁴⁶¹ 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.⁴⁶² 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.⁴⁶³

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.⁴⁶⁴ The media has speculated on the Prosecutor General's ties to the junior coalition partner in government,⁴⁶⁵ 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.⁴⁶⁶ During an interview, a prosecutor claimed with examples that the Ministry of Justice had abused its inspection powers in order to influence on-going investigations (see *Accountability* below).⁴⁶⁷ 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).⁴⁶⁸ 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

⁴⁶⁰ Open Society Foundation Albania, Survey: Constitutional Reform in the optic of judges and prosecutors, 2014, p.6-7.

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 Theodori Sollaku.

⁴⁶² See Remarks to the Media of the then Head of the OSCE Presence to Albania, 12 September 2012: <http://www.osce.org/albania/93696?download=true>, and Freedom House, Nations in Transit Albania, 2013, p.54: https://freedomhouse.org/sites/default/files/NIT13_Albania_3rdProof_0.pdf

⁴⁶³ Freedom House, Freedom in the World 2012 report – Albania: <https://freedomhouse.org/report/freedom-world/2012/albania>

⁴⁶⁴ Panorama, 'Pezullimi i Cakos/Reagojnë prokurorët: Të mos lejohet politika që të na bëjë presion' (Cako suspension/prosecutors react: Politics should not be allowed to pressure us), 8 June 2016: <http://www.panorama.com.al/reagojne-prokuroret-te-mos-lejohet-politika-qe-te-na-beje-presion/>

⁴⁶⁵ ResPublica, 'Kush po e tund Llallën?', 8 February 2016: <http://www.respublica.al/2016/02/09/kush-po-e-tund-llall%C3%ABn>; 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/llalla-aty-ku-lsi-%C3%ABsh%C3%AB-n%C3%AB-koalicion-me-pd-n%C3%AB#.V2QIUGoUWUK>

⁴⁶⁶ Gjipali, G., Nations in Transit 2012: Albania, Freedom House, 2012, p.49-52: https://www.freedomhouse.org/sites/default/files/Albania_final_0.pdf; Deutsche Welle, 'Zbulime të pakëndshme, Frankfurter Allgemeine Zeitung për 21 janarin', 30 January 2012: <http://www.dw.com/sq/zbulime-t%C3%AB-pak%C3%ABn%C3%ABndshme-frankfurter-allgemeine-zeitung-p%C3%ABr-21-janarin/a-15702792>

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.

⁴⁶⁸ Office of Prosecutor General, 2015 Report on the State of Criminality, p.214, data on articles 245 and 260 of the Criminal Code

registered 12 criminal proceedings and decided non-initiation in 10 cases against MPs, and former MPs and ministers.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.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”.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.⁴⁷² One of the interviewees reported interference from superiors on the independence of case prosecutors during court proceedings contrary to legal provisions.⁴⁷³ Career decisions are not considered merit-based⁴⁷⁴ 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.⁴⁷⁵ Also, interlocutors generally considered the role of the Prosecutorial Council as superficial.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.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.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.⁴⁷⁹

⁴⁶⁹ Ibid, p.14

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

⁴⁷¹ European Commission, Albania Report, 10 November 2015, p.15.

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.

⁴⁷³ Interview with international expert on law enforcement, 27 October 2015.

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

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

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

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.

⁴⁷⁸ Pasha, A., Islami, E., & Rexhepi, I., Impunity: Public Opinion on Understanding, Reasons and Role of Institutions, National Survey, IDRA, 2015, p.41, 51-52; See also Çela, A., Lleshaj, S., Friedrich Ebert Stiftung, Albanians and the European Social Model: Towards a redefinition of the social contract, October 2014, p.48: <http://www.fes-tirana.org/media/publications/pdf-files/2015/t-150414-ripercaktimi-eng1.pdf>

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 Gérdec 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).

⁴⁸⁴ For internal regulations, see here: http://pp.gov.al/web/Rregullore_50_1.php#.V2QQG2oUWUk; For orders and instructions of the OPG, see here:

http://pp.gov.al/web/Urdhera_Udhezime_te_Prokurorit_te_Pergjithshem_51_1.php#.V2QQYWoUWUk

⁴⁸⁵ See decision no. 9, of 23 January 2015 of the Commissioner for the Protection of Personal Data and Right to Information: http://www.idp.al/images/inspektimi_di/vendim_09_pp.pdf

⁴⁸⁶ See 2013 Petition 'Reaction of Civil Society to Denied Justice': <http://www.respublica.org.al/reagim-i-shogerise-civile-per-drejesine-e-munguar/>

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

⁴⁸⁸ Information request sent by post on 6 November 2015. Response from the OPG dated 11 December 2015, prot. Nr. 1453/1.

⁴⁸⁹ Article 291, Criminal Procedure Code.

⁴⁹⁰ Article 53, Law on Prosecution.

⁴⁹¹ Perilli, L., Albania – Rule of Law Mission 2013: Judicial Independence, June 2013, p.32.

⁴⁹² See Constitutional Court decision no. 26, of 4 December 2006:

http://www.qjk.gov.al/web/Vendime_perfundimare_100_1.php

⁴⁹³ Article 56, Law on Prosecution.

⁴⁹⁴ Perilli, L., Albania – Rule of Law Mission 2013: Judicial Independence, June 2013, p.32.

are considered rejected.⁴⁹⁵ 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.⁴⁹⁶ 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.⁴⁹⁷ 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,⁴⁹⁸ 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.⁴⁹⁹ All prosecutors must undergo inspection and professional evaluations at least once every three years.⁵⁰⁰ 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.⁵⁰¹ 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.⁵⁰² 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

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.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.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).⁵⁰⁵ One interviewee noted that law enforcement agencies also complain constantly of the lack of justification by the Prosecution for dismissals and non-initiations.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.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.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.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.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.⁵¹¹ The number of prosecutions and disciplinary proceedings against prosecutors has been very limited over the years.⁵¹² For 2013, the Prosecutor General reported five disciplinary proceedings, two of which were still on-going.⁵¹³ Nothing is known of 2014, or of the nature of these breaches.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.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

⁵⁰³ Data on articles 244, 245, 248, 257/a, 259, 260, 319, and 319ç of the Criminal Code, received via post by the OPG, letter dated 11 December 2015, prot. no. 1453/1.

⁵⁰⁴ Office of the Prosecutor General, 2015 Report on the State of Criminality, p.21.

⁵⁰⁵ Written response from HIDAACI, 24 July 2015.

⁵⁰⁶ Interview with international expert, 17 July 2015.

⁵⁰⁷ Information request sent by post on 6 November 2015. Response from the OPG dated 11 December 2015, prot. no. 1453/1.

⁵⁰⁸ Group of High-Level Experts, Ad hoc Parliamentary Committee on Justice Reform, Analysis of the Justice System, June 2015, p.136.

⁵⁰⁹ Interview with a prosecutor, 3 November 2015.

⁵¹⁰ Ministry of Justice, Annual report on inspections conducted in the Prosecutor's Office, p.9-10, 27-28: <https://www.parlament.al/wp-content/uploads/2016/03/raport-i-ministrise-se-drejtesise.pdf>

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.

⁵¹² Group of High-Level Experts, Ad hoc Parliamentary Committee on Justice Reform, Analysis of the Justice System, June 2015, p.137.

⁵¹³ Office of the Prosecutor General, 2013 Report on the State of Criminality, p.16.

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.

⁵¹⁵ Office of the Prosecutor General, 2013 Report on the State of Criminality, p.17.

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

⁵¹⁶ Lapsi, 'Llalla: Pastrohemë 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/llalla-pastrohem-vet%C3%AB-nqa-t%C3%AB-korruptuarit#.V2f13WoUWUk>; GazetaDita, 'Llalla e llogarit me dy prokurorë të arrestuar luftën ndaj korruptionit' (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-luften-ndaj-korruptionit/>

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/ç, 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.

⁵²² Prosecutor General, Order no. 141, of 19 June 2014, on approving the rules of prosecutors' ethics and behavior: http://www.pp.gov.al/web/irregullat_e_etikes_dhe_sjelljen_e_prokuroreve_820.pdf

provided.⁵²³ The previous Code of Ethics was not enforced, and the new one entered into force fairly recently.⁵²⁴ All prosecutors received training on the new Code during the first half of 2015.⁵²⁵ The OPG did not provide any information on the Code's enforcement.⁵²⁶ HIDAACI recently started the full audit of prosecutors' asset declarations and it referred two prosecutors for asset declaration breaches in 2015,⁵²⁷ but HIDAACI and other sources have noted that the Prosecution is yet to properly follow-up on its referrals.⁵²⁸

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.⁵²⁹ 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.⁵³⁰ The Prosecution failed to continue the case of former Minister of Defence Fatmir Mediu for his involvement in the 2008 Gërdëc explosion, even after immunity for officials was limited in 2012.⁵³¹

In 2013, the Prosecution reported no cases of high-level officials, judges or prosecutors sent to court.⁵³² 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.⁵³³ 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, with the Prosecution claiming it received 69 in 2015, while HIDAACI claiming it made 84 referrals and that the Prosecution has not reported on the status of 21 of them.⁵³⁴

⁵²³ GRECO, Fourth evaluation round: Corruption prevention in respect of members of parliament, judges and prosecutors, 27 June 2014, p.38-41; Information request sent by post on 6 November 2015. Response from the OPG dated 11 December 2015, prot. Nr. 1453/1.

⁵²⁴ Ibid.

⁵²⁵ Office of the Prosecutor General, 2015 Report on the State of Criminality, p.22.

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.

⁵²⁸ European Commission, Albania Report, 2015, p.54; HIDAACI, Annual Report, 2015, p.17.

⁵²⁹ Office of the Prosecutor General, Report on the State of Criminality, 2013, p.183-184; Report on the state of criminality, 2015, p.214; European Commission, Albania Report, November 2015, p.4, 15; Interview with David Grise, former OPDAT/US Embassy officer, 17 July 2015; Cela, L., Erebara, Gj., 'Korrupsioni: Më shumë peshq të vegjël të dënuar' (Corruption: More small fish convicted), BIRN, 7 January 2016: <http://www.reporter.al/korrupsioni-me-shume-peshq-te-vegjel-te-denuar/>

⁵³⁰ High Court Decision no. 5, of 10 April 2009: http://www.giykataelarte.gov.al/web/Vendime_2009_402_1.php

⁵³¹ See 2013 Petition 'Reaction of Civil Society to Denied Justice': <http://www.respublica.org.al/reagim-i-shoqerise-civile-per-drejesine-e-munguar/>

⁵³² Office of the Prosecutor General, Report on the State of Criminality, 2013, p.187.

⁵³³ Media reports: Syri.net, 'Rikthehet Llalla, "tund prangat" për arrestime' (Llalla returns, "prepares handcuffs" for arrests), 12 September 2015: <http://www.syri.net/2015/09/12/rikthehet-llalla-tund-prangat-per-arrestime/>; Gazeta Shqip, 'Krijohet njësia e re antikorruption, priten arrestime të zyrtarëve' (The new anticorruption unit established, arrests of officials expected), 12 September 2015: <http://www.gazeta-shqip.com/lajme/2015/09/12/krijohet-njesia-e-re-antikorruption-priten-arrestime-te-zyrtareve/>; Top Channel, 'Antikorrupsioni, Nishani rrëzon Llallën' (Anticorruption, Nishani overturns Llalla), 17 October 2015: <http://top-channel.tv/lajme/artikull.php?id=310983>

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.⁵³⁵ 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.⁵³⁶

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.⁵³⁷ 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.⁵³⁸ The requirements for court authorisation of interceptions are self-defeating, as in order to obtain such an authorisation, the prosecutor must show "sufficient evidence to verify the charge" – which is precisely the objective of special investigative techniques like interception.⁵³⁹ Interception can only be authorised for criminal offences for which the maximum sentence is no less than seven years, which disqualifies most of the 22 offences that Albanian authorities classify as "corruption-related", including active corruption and abuse of office (see *Law Enforcement* pillar).⁵⁴⁰

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.

⁵³⁵ Interviews with David Grise, former OPDAT/US Embassy officer, 17 July 2015; Ardian Visha, Lawyer, expert assisting the Ad-hoc Parliamentary Committee for the Judicial Reform, 16 July 2015; Gent Ibrahimi, Constitutional, anti-corruption and judiciary expert, 31 March and 8 April 2015; Kathleen Imholz, expert on judiciary, 17 July 2015.

⁵³⁶ Ibrahimi, G., Assessments 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.10.

⁵³⁷ Varanese, M., Peer assessment mission to Albania on efficiency of investigations related to organised crime and corruption, 9 April 2014, p.5.

⁵³⁸ Ibid, p.6, and 10-11.

⁵³⁹ Article 222, Criminal Procedure Code; Ibrahimi, G., Investigation and Prosecution of Corruption, ACFA assessment report, p.32-33.

⁵⁴⁰ Article 221, Criminal Procedure Code; Ibrahimi, G., Investigation and Prosecution of Corruption, ACFA assessment report, p.32-33; Varanese, M., Peer assessment mission to Albania on efficiency of investigations related to organised crime and corruption, 9 April 2014, p.4.

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.

PUBLIC SECTOR			
Overall Pillar Score: 37.5			
Dimension	Indicator	Law	Practice
Capacity 43.75/100	Resources	-	50
	Independence	50	25
Governance 37.5/100	Transparency	75	25
	Accountability	50	25
	Integrity mechanisms	25	25
Role 31.25/100	Public education	25	
	Cooperate with public institutions, CSOs and private agencies in preventing/addressing corruption	25	
	Reduce corruption risks by safeguarding integrity in public procurement	50	
	Oversight of SOEs	25	

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.

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:
[http://www.financa.gov.al/files/userfiles/Buxheti/Buxheti_ne_vite/Buxheti_2015/akt_normativ_1/Copy_of_Tabela_2_-Numri_i_punonjesve_2015_\(sipas_institucioneve\).pdf](http://www.financa.gov.al/files/userfiles/Buxheti/Buxheti_ne_vite/Buxheti_2015/akt_normativ_1/Copy_of_Tabela_2_-Numri_i_punonjesve_2015_(sipas_institucioneve).pdf); SIGMA, Baseline Measurement Report: The principles of public administration Albania, April 2015, p.47.

Capacity

Resources (Practice)

Score: 50

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

Experts consider the overall wage bill for the public sector to be sustainable.⁵⁴³ SIGMA has assessed salaries and other benefits to be attractive in central administration, but not at the local level.⁵⁴⁴ 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.⁵⁴⁵ 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.⁵⁴⁶

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.⁵⁴⁷ According to a former civil servant, public administration has also failed to retain and develop human capacities adequately.⁵⁴⁸ 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).⁵⁴⁹

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.⁵⁵⁰ 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.⁵⁵¹ When asked by the Transparency International research team, the COCS could not provide the total number of civil servants, but estimated it at around 20,000.⁵⁵² 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 control⁵⁵³ and procurement,

⁵⁴³ Interview with Eralda Çani, Prime Minister's Adviser for Public Administration, 23 April 2015; Interview with former civil servant and public finance expert, 20 November 2015.

⁵⁴⁴ SIGMA, Public Administration Reform Assessment of Albania, April 2014, p.11.

⁵⁴⁵ Public Administration Department, Strategy on Public Administration Reform, p.14:
<http://www.dap.gov.al/publikime/dokumenta-strategjik/64-strategjia-ndersektoriale-e-reformes-ne-administraten-publike-2015-2020>

⁵⁴⁶ DoPA, Annual Report, 2014, p. 20; Interview with former civil servant in central administration, 22 December 2015.

⁵⁴⁷ Ministry of Innovation and Public Administration Press release, 20 October 2015:

<http://www.inovacioni.gov.al/al/newsroom/lajme/progres-i-qarte-dhe-i-prekshem-ne-reformimin-e-administrates-publike>

⁵⁴⁸ Interview with former civil servant in central administration, 22 December 2015.

⁵⁴⁹ Interview with Eralda Çani, Prime Minister's Adviser for Public Administration, 23 April 2015.

⁵⁵⁰ SIGMA, Public Administration Reform Assessment of Albania, April 2014, p.8 and 11.

⁵⁵¹ Also known as the Human Resource Management Information System (HRMIS), this is an electronic database of employees that should contain personnel file, calculate salaries automatically and generally provide accurate, quick and cross-sectoral information to human resource units and management bodies. SIGMA reported that this system had been functional for 16 ministries in November 2014 (Baseline Measurement Report: Albania, April 2015, p.49). A year later, the government launched the same system already reported as functional, and repeated the claim made by SIGMA about 16 ministries being covered (Press Release of the Minister of State for Innovation and Public Administration, 'Presentation of the system of human resource management in public administration', 2 November 2015: <http://www.inovacioni.gov.al/al/newsroom/lajme/prezantohet-sistemi-i-menaxhimit-te-burimeve-njerezore-ne-administraten-publike>). DoPA claimed the same in at the end of 2015 (response from DoPA dated 30 December 2015, prot. 5647/1, to the request for information sent by author on 16 November 2015). But the COCS claims the system is not functional (COCS, '2015 Annual Report, February 2016, p.105).

⁵⁵² Written response from COCS dated 23 November 2015 and telephone conversation between author and COCS's Director of Legal Affairs and External Relations, Enkelejda Hebibi on 11 December 2015.

⁵⁵³ Ministry of Finance, 2014 Report on the Functioning of the Public Internal Financial Control System, May 2015, p.27:

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

http://www.financa.gov.al/files/userfiles/Drejtore/Drejtoria_e_Pergjithshme_rregullatore_Kontrolluese/Raporte/raporte_te_perbashketa/Raporti_vjetor_2014.pdf.

⁵⁵⁴ Interview with former civil servant in central administration, 22 December 2015.

⁵⁵⁵ Articles 81/2.e and 107, Constitution.

⁵⁵⁶ Articles 1 and 5, Law on the Civil Servant, approved in May 2013 and amended in December 2014 Amendments: http://www.parlament.al/web/pub/ligi_nr_178_dt_18_12_2014_20839_1.pdf

⁵⁵⁷ Article 22, Law on the Civil Servant; Decision of the Council of Ministers no. 143, of 12 March 2014.

⁵⁵⁸ Articles 25-29, CSL.

⁵⁵⁹ Articles 12-13, CSL.

⁵⁶⁰ 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).

⁵⁶¹ Articles 22/6 and 32/3, CSL. See also Decision no. 243 of the Council of Ministers, of 18 March 2015.

⁵⁶² 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 customs⁵⁶⁸ 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.

⁵⁶³ European Commission, Albania Progress Report, October 2014, p.9.

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.

⁵⁶⁸ Mesi, H., 'Nepotizmi: Deputetët publikojnë të gjitha emëritet familjare në administratë' (Nepotism: MPs publish names of family members working in public administration), Gazeta Shqip, 28 March 2014: <http://www.gazeta-shqip.com/lajme/2014/03/28/nepotizmi-deputetet-publikojne-te-gjitha-emerimet-familiare-ne-administrate/>; Stafa, F., 'Deputetët e PS-së: Ja shkeljet me emëritet në administratën publike' (SP MPs: Infringements with appointments in public administration), Gazeta Shekulli, 15 November 2014: <http://www.shekulli.com.al/p.php?id=60352> ; See Syri.net, 'Skandal/Për të mos u hequr. Emëritet politike në tatime nga deputetëtë PS LSI' (Scandal/ Not to be removed).

Political appointments in tax administration by MPs of SP and SMI), 30 October 2015:

<http://www.syri.net/2015/10/30/skandal-per-te-mos-u-hequr-emerimet-politike-ne-tatime-nqa-deputete-te-ps-lsi/>:

BalkanWeb, 'Rama vizitë blic tek doganat, shkarkon 3 zv/drejtore: Turp, jeni institucioni më i dobët' (Rama quick visit at customs, dismisses 3 deputy directors: Shame on you, you are the weakest institution), 17 November 2015: <http://www.balkanweb.com/site/rama-vizite-blic-tek-doganat-shkarkon-3-zvdrejtore-turp-jeni-institucioni-me-i-dobet/>

⁵⁶⁹ See OSCE/ODIHR Election Observation Mission, Final Report: Republic of Albania, Local Elections, 21 June 2015, 8 September 2015, p.13; Final Report, Republic of Albania, Parliamentary Elections, 23 June 2013, 10 October 2013, p.14.

⁵⁷⁰ Articles 23 and 157/4, Constitution.

⁵⁷¹ Article 44, CSL; Articles 5-6, Code of Administrative Procedure.

⁵⁷² Law no. 119/2014 on the Right to Information', approved on 18 September 2014. Entered into force on 3 November 2014.

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.⁵⁷⁴ 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.⁵⁷⁵

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.⁵⁷⁶

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.⁵⁷⁷ 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.⁵⁷⁸

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.⁵⁷⁹ 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.⁵⁸⁰ 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).⁵⁸¹

⁵⁷⁴ Article 17, *Ibid.*

⁵⁷⁵ Articles 21, 23, 24, *Ibid.*

⁵⁷⁶ See Constitutional Court Decision no. 16, of 11 November 2004.

⁵⁷⁷ ResPublica, Testing the right to information: Study on efficacy of law 119/2014 "On the right to information" and a comparison to law no. 8503/1999, December 2015, p.16: <http://www.respublica.org.al/wp-content/uploads/2015/12/E-dreita-e-informimit-ne-bankoprove.pdf>

⁵⁷⁸ *Ibid.*, p.22-23.

⁵⁷⁹ Request for information submitted by project assistant to Ministry of Education and Sports, Ministry of Health, Ministry of Justice, Ministry of Transport and Infrastructure, Ministry of Urban Development, Ministry of Economic Development, Tourism, Trade and Entrepreneurship, Ministry of Foreign Affairs, Ministry of Interior Affairs via e-mail on 16 May 2016; Request for information submitted by author to COCS on 30 December 2015 and DoPA on 16 November 2015.

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.⁵⁸² 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.⁵⁸³ Upon exhausting relevant levels of administrative review, all parties have recourse to the Administrative courts.⁵⁸⁴

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.⁵⁸⁵ 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.⁵⁸⁶ 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 2017.⁵⁸⁷

A portal was launched in February 2015 by the National Anti-corruption Coordinator⁵⁸⁸ to receive and manage citizens’ notifications (including anonymously) on corrupt practices in state administration institutions.⁵⁸⁹ 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”.⁵⁹⁰

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.⁵⁹¹

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.

⁵⁸⁵ Reed, Q., Facilitating and protecting complaints of alleged official corruption and malpractice in Albania: The current system and recommendation for improvements, Technical paper in framework of the Project Against Corruption in Albania (PACA), June 2012, p.8-14:
[http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/Projects/Albania/Technical%20Papers/TP%202012/1917%20PACA%20TP%2011%202012%20-COMPLAINTS-August%20'12%20\(2\).pdf](http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/Projects/Albania/Technical%20Papers/TP%202012/1917%20PACA%20TP%2011%202012%20-COMPLAINTS-August%20'12%20(2).pdf)

⁵⁸⁶ Article 43, CSL; Article 31, Administrative Procedure Code; Articles 10/1 and 26/5, Labour Code.

⁵⁸⁷ Law no. 60/2016 on Whistleblowing and the Protection of Whistleblowers, approved on 2 June 2016:
<https://www.parlament.al/wp-content/uploads/2016/06/lijq-nr.-60-dt.-2.6.2016.pdf>

⁵⁸⁸ This is the role of the Minister of State for Local Affairs. The portal: <http://www.stopkorruptionit.al/>

⁵⁸⁹ Article 1/2, Order of Prime Minister no. 30, of 5 March 2015: http://www.ceshtjetvendore.gov.al/files/pages_files/15-04-01-06-06-31Urdher_KM_Rregullore_Protali_stopkorruptionit.al.pdf

⁵⁹⁰ Article 7/5/b, *Ibid.*

⁵⁹¹ Memorandum of Cooperation no. 4991, of 14 October 2014 between HIDAACI and Unit of Internal Control and Anti-Corruption: <http://www.hidaa.gov.al/memorandum/Marreveshje%20Bashkepunimi%20ILDKPKI-NJKBA.pdf>

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.⁵⁹² 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.⁵⁹³

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.⁵⁹⁴

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.⁵⁹⁵ Public sector employees are also criminally liable for a series of acts envisaged in the Criminal Code, including bribery.⁵⁹⁶

Accountability (Practice)

Score: 25

TO WHAT EXTENT DO PUBLIC SECTOR EMPLOYEES HAVE TO REPORT AND BE ANSWERABLE FOR THEIR ACTIONS IN PRACTICE?

The impact of the new Code of Administrative Procedures on the functioning of administrative complaints cannot yet be assessed. The existing framework on whistleblowing has never been implemented in practice and the new one is yet to enter into force.⁵⁹⁷

The portal where citizens denounce corrupt practices in the public sector has received a large number of notifications since its launch in February 2015 – in November 10,000 per week on average with about 70 per cent classified as “complaints [not corruption-related]” and about 10 per cent as “corruption” – concerning education, healthcare, tax, illegal construction, and the police. The NAC reports the vast majority of notifications as “closed/resolved”, but does not clarify *how* they have been resolved and closed.⁵⁹⁸ According to a former civil servant who worked with the portal, it

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.

⁵⁹⁷ Reed, Q., Facilitating and protecting complaints of alleged official corruption and malpractice in Albania: The current system and recommendations for Albania, Technical Paper, PACA, June 2012, p.13; See also Dyrnishi, A., Hroni, E., Gjokutaj, E., Whistleblowers protection in Albania: Assessment of the legislation and practice, November 2013, Institute for Democracy and Mediation: http://idmalbania.org/wp-content/uploads/2014/11/whistleblowers_final_tetor-nentor_2013_anglisht.pdf; Law no. 60/2016 on Whistleblowing and the Protection of Whistleblowers, approved on 2 June 2016: <https://www.parlament.al/wp-content/uploads/2016/06/ligj-nr.-60-dt.-2.6.2016.pdf>

⁵⁹⁸ See reports here: <http://www.ceshtjetvendore.gov.al/al/programi-transparencies/portali-antikorrupsion>

was undertaken seriously, but without the necessary legal and practical guidance for institutions at its launch, resulting in poor implementation.⁵⁹⁹

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.⁶⁰⁰ Accountability in public procurement has been weak in practice (see *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.⁶⁰¹

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.⁶⁰² 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.⁶⁰³ 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.⁶⁰⁴

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 2015.⁶⁰⁵ 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.⁶⁰⁶ 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.⁶⁰⁷ 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.⁶⁰⁸

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

⁵⁹⁹ Interview with former civil servant in central administration, 22 December 2015.

⁶⁰⁰ 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.

⁶⁰¹ IMF Albania, Staff Concluding Statement of the 2016 Article IV Mission and the Seventh Review Under the Extended Arrangement, 23 March 2016: <https://www.imf.org/external/np/ms/2016/032316a.htm>; Vizion Plus TV, 'Crown Agents: Dogaçat të zhytura në korrupcion e kontrabandë' (Crown Agents: Customs submerged in corruption and smuggling), 22 January 2016: <http://vizonplus.al/crown-agents-dogacat-te-zhytura-ne-korrupcion-e-kontrabande-2/>; Crown Agents, Assistance program for Albanian customs, Corruption prevention and uncovering: <http://www.crownagents.com/docs/default-source/default-document-library/crown-agents-preventing-detecting-corruption-sq-080216.pdf?sfvrsn=2>

⁶⁰² Directorate of Internal Audit of the Ministry of Finance, Annual Report, 2014, p.5-6:

http://www.financa.gov.al/files/userfiles/Drejtorete/Drejtoria_e_Auditit_te_Brendshem/raporti_vjetor_2014_i_redaktuar.pdf

⁶⁰³ 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.

⁶⁰⁴ Ibid.; SAI, State Budget Report, 2014, p.288-289:

http://www.klsh.org.al/web/pub/1_raporti_buxhetit_2014_2063_1.pdf

⁶⁰⁵ 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.

⁶⁰⁶ 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.

⁶⁰⁷ SAI, State Budget Report, 2014, p.43-44.

⁶⁰⁸ Analysis of the activity of the SAI, presented by the head of the SAI during its public 2015 performance reporting, 1 February 2016, p.14-16, and 35-38; Report to the Permanent Council from the Head of the OSCE Presence in Albania, 18 September 2014, p.6; See also SIGMA, Baseline Measurement Report – Albania, April 2015, p.116, though figures reported by SIGMA do not match those of the SAI.

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

⁶⁰⁹ Interview with former civil servant in central administration, 22 December 2015.

⁶¹⁰ Office of the Prosecutor General, Report on the state of criminality, 2015, p.214, data on articles 244 and 259 of the Criminal Code. European Commission, Albania Report, 10 November 2015 p.15.

⁶¹¹ SAI, Report State Budget, 2012, p.33: http://www.klsh.org.al/previewdoc.php?file_id=927

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-leke-kosto-per-taksapaguesit/>

⁶¹³ Law no. 9131, on Ethical Rules in Public Administration, of 8 September 2003.

⁶¹⁴ Amended twice in 2006, and then in 2012 and 2014: <http://www.hidaa.gov.al/ligji-nr-9367/>

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.

⁶¹⁷ Council of Europe, Recommendation No R (2000) 10 of the Committee of Ministers of Member States on Codes of Conduct for public officials, 11 May 2000: [https://www.coe.int/t/dghl/monitoring/greco/documents/Rec\(2000\)10_EN.pdf](https://www.coe.int/t/dghl/monitoring/greco/documents/Rec(2000)10_EN.pdf)

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,⁶¹⁹ 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:⁶²⁰ 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.⁶²¹

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.⁶²² 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.⁶²³ 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.⁶²⁴ 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”.⁶²⁵

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.⁶²⁶ 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.⁶²⁷ 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.⁶²⁸

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.⁶²⁹

⁶¹⁹ Article 4, Ibid.

⁶²⁰ Reed, Q., Prevention and Regulation of Conflicts of Interest of Public Officials in Albania: Assessment and Recommendations, ACFA assessment report, December 2014, p.3 and 10.

⁶²¹ Ibid., p.9-12; See also articles 3/4, 5/1/d, 5/1/dh, and 7/4, PCI.

⁶²² 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...”.

⁶²³ Articles 14 and 17, Decision of the Council of Ministers no. 714, of 22 October 2004.

⁶²⁴ 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.

⁶²⁵ Article 11, PCI.

⁶²⁶ Articles 18-20, EPA law.

⁶²⁷ Articles 57-60, CSL.

⁶²⁸ 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.

⁶²⁹ Draft law and related report: http://www.parlament.al/web/pub/dekriminalizimi_per_publikim_24579_1.pdf; Constitutional amendments: http://www.parlament.al/web/pub/ligi_nr_137_24917_1.pdf

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.⁶³⁰ 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.⁶³¹ 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.⁶³² Two interlocutors for this report corroborated claims that institutions rarely manage conflicts of interests in practice.⁶³³ 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.⁶³⁴

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.⁶³⁵ According to a recent NPO report, records on implementation of Albania's legal framework on ethics are either poor or absent.⁶³⁶ 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.⁶³⁷

⁶³⁰ US Department of State, Albania Human Rights Report, 2014, p.18-19: <http://www.state.gov/documents/organization/236704.pdf>; European Commission, Albania Report, November 2015, p.4; IDRA, Corruption in Albania – Perceptions and Experience 2015-2016: <http://www.idrainstitute.org/files/reports/Corruption%202016/Corruption%20English%20FINAL.pdf>;

⁶³¹ HIDAACI, Annual Report, 2015, p.11-13.

⁶³² Reed, Q., Prevention and Regulation of Conflicts of Interest of Public Officials in Albania: Assessment and Recommendations, ACFA 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.

⁶³⁴ Information requests submitted to Ministry of Interior Affairs, Ministry of Foreign Affairs, Ministry of Education and Sports, Ministry of Justice, Ministry of Health, Ministry of Economic Development, Tourism, Trade and Entrepreneurship, Ministry of Transport and Infrastructure and Ministry of Urban Development on 16 May 2016. The research team did not receive any answer from the Ministry of Justice, Ministry of Economic Development, Tourism, Trade and Entrepreneurship, Ministry of Interior Affairs, Ministry of Foreign Affairs Ministry of Education and Sports; the Ministry of Urban Development responded on 20 and 27 May via e-mail; Ministry of Health responded on 16 May and the Ministry of Transport and Infrastructure responded on 24 May.

⁶³⁵ ASPA, Annual report, 2014, p.3: http://www.aspa.gov.al/images/raporti_2014.pdf

⁶³⁶ Dhembo, E., Albanians and the European Social Model, Public administration in Albania: Between politics and citizens, 2014, Institute for Democracy and Mediation, p.36-46: <http://library.fes.de/pdf-files/bueros/albanien/11313.pdf>

⁶³⁷ Interview with former civil servant in central administration, 22 December 2015.

Role

Public education

Score: 25

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.⁶³⁸ 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).⁶³⁹ 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.⁶⁴⁰

A Council of Europe project developed a teacher’s manual on anti-corruption education in schools in 2012.⁶⁴¹ 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.⁶⁴²

Cooperate with public institutions, CSOs and private agencies in preventing/ addressing corruption

Score: 25

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.⁶⁴³ A government initiative to establish the National Council for Civil Society to foster and institutionalise

⁶³⁸ Draft Decision “On approving the crosscutting strategy for he fight against corruption 2015-2017”, p.19-20: http://www.ceshtjetvendore.gov.al/files/pages_files/Draft- Strategjia_Anti-korrupsion_2015-2017.pdf

⁶³⁹ State Ministry for Local Issues Press Release, ‘Fight corruption, change your life’, 9 December 2015: <http://www.ceshtjetvendore.gov.al/al/newsroom/deklarata-per-shtyp/lufto-korrupsionin-ndrysho-jeten>

⁶⁴⁰ See promotion video with English subtitles here: <https://www.facebook.com/406088576187907/videos/717902305006531/?theater>

⁶⁴¹ For the Manual, see: <https://www.coe.int/t/dghl/cooperation/economiccrime/corruption/Projects/Albania/Manuals/Edukimikunderkorrupsionit-finalversion20feb2012.pdf>

⁶⁴² See also CoE’s Cooperation Document with Albania, p.12-13: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680301bfa>

⁶⁴³ Interviews with Dorarta Hyseni, Program Manager, National Democratic Institute in Albania, 11 August 2015 and Dorian Matilja, Director, ResPublica, 21 December 2015.

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

⁶⁴⁴ Law no. 119/2015 on Creation and Functioning of the National Council on Civil Society: [http://www.amshc.gov.al/web/KKSHC/Liqji%20KKSHC%20\(119.2015\).pdf](http://www.amshc.gov.al/web/KKSHC/Liqji%20KKSHC%20(119.2015).pdf)

⁶⁴⁵ ASCS, Annual report, 2014 p.14: http://www.amshc.gov.al/web/raporte/vjetore/2014/Raporti_Vjetor_2014.pdf

⁶⁴⁶ Rusi, E., Likmeta, B., ‘Albanian Agency Turns NGO Funding Into Family Affair’, Balkan Insight, 17 April 2014: <http://www.balkaninsight.com/en/article/albanian-agency-turns-ngo-funding-into-family-affair>

⁶⁴⁷ Institute for Democracy and Mediation, Project citizen against corruption, 2015: <http://idmalbania.org/?p=5396>

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.

⁶⁴⁹ Articles 29-35, Law on Public Procurement.

⁶⁵⁰ Article 63/11, Law on Public Procurement; PPA, Annual Report, 2014, p.13 and 23; Annual Report, 2013, p.17; European Commission, Albania Report, 2015, p.34-35.

⁶⁵¹ Article 40, Decision of the Council of Ministers no. 914, of 29 December 2014, on the approval of public procurement rules.

⁶⁵² PPA, 2013 and 2014 annual reports.

⁶⁵³ See standard bidding documents here: <https://www.app.gov.al/ep/BiddingDocuments.aspx>; for provisions on corrupt practices, see article 4 of General Conditions of Contracts, annex 17 in any of the SBDs.

⁶⁵⁴ Article 23, LPP.

process.⁶⁵⁵ Grounds for exclusion and disqualification are regulated, and include participation in corruption or money laundering.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.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.⁶⁵⁸ According to *Res Publica*,⁶⁵⁹ winners are almost exclusively determined on the “lowest price” criterion.

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.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.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.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.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).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.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.⁶⁶⁶

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.

⁶⁵⁶ Article 45.1, LPP.

⁶⁵⁷ Articles 55-56, LPP.

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.

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.

⁶⁶⁰ Articles 1-2, 13, 19/6, 21, 33, LPP.

⁶⁶¹ Article 25, LPP.

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.

⁶⁶³ Article 66, LPP.

⁶⁶⁴ Data derived from the PPA’s 2013 and 2014 annual reports.

⁶⁶⁵ Article 19/1, LPP.

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

TO WHAT EXTENT DOES THE STATE HAVE A CLEAR AND CONSISTENT OWNERSHIP POLICY OF SOEs AND THE NECESSARY GOVERNANCE STRUCTURES TO IMPLEMENT THIS POLICY?

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

⁶⁶⁷ Ibid, p.33-35.

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.

⁶⁷¹ Public Procurement Commission, Annual Report, 2014: <http://kpp.gov.al/ppadv/AnnualReports.aspx>

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.

⁶⁷⁴ Decision no. 348 of the Council of Minister, of 11 May 2016 'On approval of National Strategy for Development and Integration 2015-2020'; Decision no. 438, of the Council of Ministers, of 2 July 2014 'On Approval of National Plan for European Integration', Official Journal, no. 110, 14 July 2014, p.4261; Ministry of Economic Development, Tourism, Trade and Entrepreneurship, Economic Reform Progamme, Albania 2016-2018, p.21-22, 40:

http://www.ekonomia.gov.al/files/userfiles/Albania_s_Economic_Reform_Programme_2016-2018.pdf

⁶⁷⁵ Ministry of Economic Development, Tourism, Trade and Entrepreneurship, Directory of Public Property Administration: <http://www.ekonomia.gov.al/ministria/drejtoria/drejtoria-e-pergjithshme-e-prones-shteterore/drejtoria-e-administrimit-te-prones-publike>

team.⁶⁷⁶ Interlocutors consider the Directorate to have limited power in strategic decisions, which are made at the level of the Council of Ministers.⁶⁷⁷

In the last two decades, all governments has pursued a policy of privatisation for the remaining large SOEs in key sectors and has progressively engaged in awarding concessionary agreements and private-public partnerships, coordinated now through a dedicated agency.⁶⁷⁸ Both policies have been marred by strong indications of mismanagement and corruption.⁶⁷⁹

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.⁶⁸⁰
- 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.

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.

⁶⁷⁸ Agency for the Treatment of Concessionary Agreements: <http://www.ekonomia.gov.al/al/institutionet-e-varesise/ajencia-e-trajtimit-te-koncesioneve-atrako>; European Commission, Albania Report, November 2015, p.36 and National Strategy for Development and Integration 2015-2020, Official Journal, no. 348, p.4795.

⁶⁷⁹ For Albpetrol see: European Commission, Albania Report, November 2015, p.36 and Lata, E., 'Ministry of Economy: Albpetrol Privatisation has failed', Shekulli Daily, 10 December 2012,: <http://www.shekulli.com.al/p.php?id=10746>; for ARMO see: Xama, O., 'Prapaskenat e kolapsit të gjigandit të hidrokarbureve ARMO' (The backstage of the collapse of the oil giant ARMO), BIRN Albania, 27 May 2016: <http://www.reporter.al/prapaskenat-e-kolapsit-te-gjigandit-te-hidrokarbureve-armo/> and Shqiptarja.com Daily, 'Gjiknuri: Albpetrol do vihet në punë, ARMO privatizim i dështuar' (Gjiknuri: Albpetrol to become operational. ARMO a failed privatization), 30 October 2013:

<http://shqiptarja.com/news.php?IDNotizia=184653>; For CEZ see: Law no. 114/2014, dated 31 July 2014, Agreement on amicable dissolution of privatisation agreement between Republic of Albania and CEZ, a. s.; For concessionary agreements in extractive industries, see Çobo, S. 'Kromi I përgjakur: "Mafia" me mbështetje politike kontrollon nëntokën e Bulqizës' (Bloody chrome: 'Mafia' controls Bulqiza's underground with political support), BIRN Albania, 28 June 2016: <http://www.reporter.al/kromi-i-pergjakur-mafia-me-mbeshtetje-politike-kontrollon-nentoken-e-bulqizes/>;

⁶⁸⁰ Interview with Besar Likmeta and Gjergj Erebara, journalists, BIRN Albania, 16 March 2016.

⁶⁸⁰ 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.

LAW ENFORCEMENT AGENCIES / POLICE			
Overall Pillar Score: 38.86			
Dimension	Indicator	Law	Practice
Capacity 37.5/100	Resources	-	25
	Independence	75	25
Governance 54.1/100	Transparency	75	50
	Accountability	75	50
	Integrity mechanisms	50	25
Role 25/100	Corruption investigation	25	

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

⁶⁸¹ Articles 2-5, 18-20, 23-24, 26, 37, 39, 51-52, Law no. 108/2014 on the State Police, of 31 July 2014: <http://www.asp.gov.al/images/lqieliqi/Perpoliceeshtetit.pdf>

⁶⁸² Articles 81, 137 and 139, Law on the State Police. Response of the Albanian State Police, dated 23 November 2015 and 5 December 2015, to the information request submitted by author on 6 November 2015.

⁶⁸³ Ministry of Interior Affairs Newsroom, Statement of Minister of Interior, Saimir Tahiri in the hearing session held by Parliament's Security Committee, 18 December 2013: <http://www.punetebrendshme.gov.al/al/newsroom/lajme/buxhetime-i-madh-ne-historine-e-mpb-dhe-police-se-shtetit&page=18>; Ministry of Finance, Report on the 2015 Draft Budget Law, October 2014, p.11:

http://www.financa.gov.al/files/userfiles/Buxheti/Buxheti_ne_vite/Buxheti_2015/relacioni_buxheti_2015.pdf; 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-thesari-borxhi/buxheti/buxheti-ne-vite>

⁶⁸⁴ 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 European Commission, Progress Report, October 2014, p.51 and Albania Report, 2015, p.18-19. Interview with David Grise, International Expert, 17 July 2015; Interview with international expert on law enforcement, 27 October 2015.

⁶⁸⁶ 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

the General Directorate of the State Police, eight at the Tirana office, and none in other offices.⁶⁸⁷ The numbers of police officers assigned to the Prosecution-led Joint Investigative Units are below the agreed numbers.⁶⁸⁸ The quality of human resources is another concern, with know-how in the investigation of corruption being particularly low.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 2012-2015.⁶⁹⁰ Police directorates at the regional/local level are reported to suffer extreme budget shortages even for basics, such as vehicles and gasoline.⁶⁹¹ Technical resources key to effective investigation – such as registration and surveillance equipment – are poor, out of date and centralised in Tirana.⁶⁹² Several sources report that the equipment used for interception, for instance, lasts for three hours at most, as the battery dies.⁶⁹³

Overall, Police resources are insufficient and unstable.

Independence (Law)

Score: 50

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.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.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.⁶⁹⁶ However, the legal framework fails to clearly demarcate the authorities of the two laws.⁶⁹⁷ In fact, given the detailed regulation of career and disciplinary

⁶⁸⁷ Group of High-Level Experts, Ad hoc Parliamentary Committee on Justice Reform, Analysis of the Justice System, June 2015, p.270; Ibrahim, G., Reed, Q., Investigation and Prosecution of Corruption-related Offences in Albania, ACFA assessment report, December 2014, p.18.

⁶⁸⁸ Ibrahim, G., Reed, Q., Investigation and Prosecution of Corruption-related Offences in Albania, ACFA assessment report, December 2014, pp.19-20.

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.

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-thesari-borxhi/buxheti-ne-vite>

⁶⁹¹ Interview with international expert on law enforcement, 27 October 2015.

⁶⁹² Group of High-Level Experts, Ad hoc Parliamentary Committee on Justice Reform, Analysis of the Justice System, June 2015, p.272; Ibrahim, G. Reed, Q., Investigation and Prosecution of Corruption-related Offences in Albania, ACFA assessment report, December 2014, p.23; Interview with international expert on law enforcement, 27 October 2015.

⁶⁹³ Ibid.

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

⁶⁹⁵ Articles 39, and 90-91, Ibid.

⁶⁹⁶ Article 3, Law on the Civil Servant.

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

TO WHAT EXTENT ARE LAW ENFORCEMENT AGENCIES INDEPENDENT IN PRACTICE?

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.

⁷⁰² See Part IV on career advancement: http://www.qbz.gov.al/botime/fletore_zyrtare/2015/PDF-2015/167-2015.pdf

⁷⁰³ Articles 8, 13, 14, 16, 27, and 61/2 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.

⁷⁰⁵ European Commission, Annual Progress Report, October 2014, p.51-52; OSCE, Report to the Permanent Council by the Head of the OSCE Presence in Albania, 17 September 2015, p.3: <http://shqiptaria.com/pdf/new/OSBE.pdf>; OSCE, Report to the Permanent Council by the Head of the OSCE Presence in Albania, 18 September 2014, p.3-4: http://www.balkaneu.com/wp-content/uploads/2014/09/IBNA-OSCE-report_2014_ENG.pdf

rate, the scale of the problem is such that it cannot be *credibly* justified.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).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.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.⁷⁰⁹ The Minister also claimed that certain ranks had been obtained illegally, based on political party credentials rather than professional merit.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.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.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.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.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 2015.⁷¹⁵ 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

⁷⁰⁶ Interview with international expert on law enforcement, 27 October 2015.

⁷⁰⁷ Ibrahim, G. Reed, Q., Investigation and Prosecution of Corruption-related Offences in Albania, ACFA assessment report, December 2014, p.18.

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.

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

⁷¹⁰ Ibid, p.12.

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

⁷¹² WikiLeaks, Surprise Police Shakeup Reveals “Untouchable”, US Embassy in Tirana cable, 25 November 2009: https://wikileaks.org/plusd/cables/09TIRANA755_a.html

⁷¹³ ABC News, ‘Prokuroria mbyll hetimet për komplotin e vrasjes së deputetit Tom Doshi’ (Prosecution concludes investigation on the complot to murder MP Tom Doshi), 6 June 2015: <http://www.abcnews.al/lajme/aktualitet/2/57248>

⁷¹⁴ Likmeta, B., ‘Albanian MP wanted in Belgium for murder’, Balkan Insight, 30 March 2015: <http://www.balkaninsight.com/en/article/albania-mp-wanted-in-belgium-for-murder>

⁷¹⁵ Panorama Daily, ‘Fshehja e urdhërit për Frrokun, lirohet ish drejtori i Interpolit. Avokati: S’ka bërë asgjë të paligjshme, qëndrimi I Didit I papranueshëm’ (Hiding of order on Frroku, former Interpol director freed. Lawyer: He has not broken the law, Did’s stance not acceptable), 1 April 2015: <http://www.panorama.com.al/skandali-ne-interpol-tiraname-fshehjen-e-urdhrit-per-frrokun-ish-drejtori-dhe-specialistja-para-qivkates/>; Ikub, ‘Didi në Amerikë nis zyrtarisht detyrën e re’ (Didi in the US, officially in charge of new position), 26 July 2015: <http://www.ikub.al/lajme-category/15/07/26/Didi-ne-SHBA-nis-zyrtarisht-detyren-e-re-0015.aspx>

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

⁷¹⁶ Likmeta, B., ‘Albanian MPs brother convicted of murdering policeman’, Balkan Insight, 30 June 2015: <http://www.balkaninsight.com/en/article/brother-of-arrested-albanian-mp-convicted-of-murder>

⁷¹⁷ US State Department, Trafficking in Persons Report: Country Narratives A-C, 2014, p.71: <http://www.state.gov/documents/organization/226845.pdf>

⁷¹⁸ US State Department, Trafficking in Persons Report: Country Narratives A-C, 2015, p.65: <http://www.state.gov/documents/organization/243558.pdf>

⁷¹⁹ Erebara, Gj., ‘Albania ignoring suspected drug baron’s Greek arrest warrant’, Balkan Insight, 16 May 2016: <http://www.balkaninsight.com/en/article/albania-ignoring-suspected-drug-baron-s-greek-arrest-warrant-05-16-2016>

⁷²⁰ Interview with a prosecutor, 3 November 2015.

⁷²¹ Internal Control Service, Inspection Report on the Management of the Situation by the State Police Structures before, during and after the Demonstration of January 21st, 17 May 2011: <https://docs.google.com/uc?id=0B7xOEQYe9s3ddkxzVnR3UkF0bjQ&export=download>

⁷²² 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=0B7xOEQYe9s3da2pJdWViaE9idjA&export=download>; for the other annual reports, see: <http://shcba.gov.al/index.php/raporte>

⁷²³ See Reporter.al, Zgjedhje 2015, Bashkim Shehu Curriculum Vitae: <http://zgjedhje2015.reporter.al/bashkim-shehu-pd-appd-cv/>

⁷²⁴ Top Channel, ‘Noka removes head of ICS’, 31 July 2012: <http://www.top-channel.tv/english/artikull.php?id=6659>; Gazeta Shqip, ‘Head of ICS discharged, Arben Skëndo appointed’, 20 September 2013: <http://www.gazeta-shqip.com/lajme/2013/09/20/shkarkohet-drejtori-shkb-se-emerohet-arben-skendo/>

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THAT THE PUBLIC CAN ACCESS THE RELEVANT INFORMATION ON LAW ENFORCEMENT AGENCY ACTIVITIES?

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.⁷²⁵ 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.⁷²⁶ Complainants are entitled to monitor the progress of their complaint, and to information on its resolution and further complaint procedures.⁷²⁷

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.⁷²⁸ 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.⁷²⁹ 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

TO WHAT EXTENT IS THERE TRANSPARENCY IN THE ACTIVITIES AND DECISION-MAKING PROCESSES OF LAW ENFORCEMENT AGENCIES IN PRACTICE?

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.⁷³⁰ 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.⁷³¹

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.⁷³² The State Police responded to a very complex and voluminous request for information

⁷²⁵ Articles 5/ë 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.

⁷²⁹ Article 3/ë and 3/gj, Law on the Declaration of Assets.

⁷³⁰ Check Ministry of Interior Bulletins here: <http://www.punetebrendshme.gov.al/al/programi/buletini-i-mpb-se>

⁷³¹ Speech of Director of the State Police on occasion of the 2013 Yearly Analysis:

<http://www.asp.gov.al/index.php/en/january-2014/125-analiza-vjetore-e-policise-se-shtetit-2013-raporti-i-dreitorit-te-pergjithshem-te-policise>; Press release for the Yearly Analysis, 2014: <http://www.asp.gov.al/index.php/home/275-slideshow-home/6831-analiza-vjetore-e-veprimitarise-se-policise-se-shtetit-per-vitin-2014>

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.⁷³³

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

Accountability (Law)

Score: 75

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.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.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.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.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.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.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,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,⁷⁴⁴ and that there is a wide range of private work that can

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

⁷³⁴ See reports from 2010 onwards here: <http://shcba.gov.al/index.php/raporte>

⁷³⁵ See structure of SIAC here: <http://shcba.gov.al/images/banners/Struktura.pdf>

⁷³⁶ Two inspection reports available dating back to 2011. See SIAC website: <http://shcba.gov.al/index.php/raporte>

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

⁷³⁸ Articles 248-260, Criminal Code.

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

⁷⁴⁰ Articles 21-22, Law on the Ombudsman.

⁷⁴¹ Articles 94-96, Law on the State Police. Part V, State Police Regulation.

⁷⁴² Article 218, State Police Regulation.

⁷⁴³ Article 228, Ibid.

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”,⁷⁴⁵ 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.⁷⁴⁶

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.⁷⁴⁷ Similar to prosecutors, subordinates can challenge superiors’ orders that they consider illegal.⁷⁴⁸ Police officers can also address complaints to an Appeals Commission at any stage of the process of obtaining grades/ranks.⁷⁴⁹ 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.⁷⁵⁰ 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.⁷⁵¹

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,⁷⁵² and procedures for the conduct of inspections by the SIAC are also subject to the Minister’s approval.⁷⁵³ 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.⁷⁵⁴

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.⁷⁵⁵ 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.⁷⁵⁶ 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.⁷⁵⁷

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

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 –

⁷⁵⁸ SIAC, 2014 Annual Report, January 2015, p.2; 2013 Annual Report, p.9; 2012 Annual Report, p.13; 2011 Annual Report, p.3-4.

⁷⁵⁹ SIAC, Annual Report, 2014, p.14.

⁷⁶⁰ Mejdini F., 'Albanian PM slams Police Chief's suspension', Balkan Insight, 8 June 2016:
<http://www.balkaninsight.com/en/article/albanian-government-loses-patience-over-chief-of-police-suspension-06-08-2016>

⁷⁶¹ Annual analyses of the State Police for 2009-2014 obtained on 5 December 2015 via an information request submitted by the author on 6 November 2015. See also speech of Director of the State Police on occasion of the 2013 Yearly Analysis: <http://www.asp.gov.al/index.php/en/january-2014/125-analiza-vjetore-e-policise-se-shtetit-2013-raport-i-dreitorit-te-pergjithshem-te-policise>; Press release for the 2014 Yearly Analysis:

<http://www.asp.gov.al/index.php/home/275-slideshow-home/6831-analiza-vjetore-e-veprimtarise-se-policise-se-shtetit-per-vitin-2014>

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

TO WHAT EXTENT IS THE INTEGRITY OF LAW ENFORCEMENT AGENCIES ENSURED BY LAW?

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

⁷⁶⁴ Ombudsman, Annual Report, 2014, p.27:

<http://www.avokatipullit.gov.al/sites/default/files/ctools/RAPORTI%202014.pdf>

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.

⁷⁷¹ Reed, Q., Prevention and regulation of conflict of interest of public officials in Albania: Assessments and Recommendations, ACFA assessment report, December 2014, p.20. Article 18, Recommendation No. R (2000) 10, 'On Codes of Conduct for public officials'.

⁷⁷² Articles 112, 198 and 208, State Police Regulation.

⁷⁷³ Article 3/ë and 3/gj, Law on Asset Declarations.

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

⁷⁷⁴ Articles 5, 38 and 40, Law on Asset Declarations; Article 257/a, Criminal Code.

⁷⁷⁵ Articles 5/ç, 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.

⁷⁸¹ Draft law and related report: http://www.parlament.al/web/pub/dekriminalizimi_per_publikim_24579_1.pdf;

Constitutional amendments: http://www.parlament.al/web/pub/ligj_nr_137_24917_1.pdf

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 Xhelilit’ (Decriminalization. 6 police officers with precedents, son of Shukri Xhelili dismissed also), Panorama, 23 June 2016: <http://www.panorama.com.al/emrat-dekriminalizimi-6-punonjies-policie-me-precedente-12-zyrtare-u-dorehojen/>

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.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.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.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".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.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.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.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.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.⁷⁹³ This is particularly problematic in light of the very brief – though extendable – timeframe of preliminary investigations stipulated in law: three months.⁷⁹⁴

⁷⁸⁵ Mejdini, F., 'Albania hopes cameras will make police behave', Balkan Insight, 4 February 2016: <http://www.balkaninsight.com/en/article/albanian-policies-try-body-cameras-02-03-2016>

⁷⁸⁶ IDRA, Corruption in Albania – Perceptions and Experiences, 2015-2016, p.22.

⁷⁸⁷ European Commission, Albania Report, November 2015, p.15-16.

⁷⁸⁸ Ibid., p.54.

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).

⁷⁹⁰ Interview with a prosecutor, 3 November 2015; Ibrahim, G., Reed, Q., Investigation and prosecution of corruption related offences in Albania: Assessment and Recommendations, ACFA assessment report, December 2014, p.28-30. Varanese, M., Peer assessment mission to Albania on efficiency of investigations related to organised crime and corruption, 9 April 2014, p.7.

⁷⁹¹ Varanese, M., Peer assessment mission to Albania on efficiency of investigations related to organised crime and corruption, 9 April 2014, p.4; Ibrahim, G., Reed, Q., Investigation and prosecution of corruption related offences in Albania: Assessment and Recommendations, ACFA assessment report, December 2014, p.28-29.

⁷⁹² Varanese, M., Peer assessment mission to Albania on efficiency of investigations related to organised crime and corruption, 9 April 2014, p.3; Ibrahim, G., Reed, Q., Investigation and prosecution of corruption related offences in Albania: Assessment and Recommendations, ACFA assessment report, December 2014, p.34-35.

⁷⁹³ Varanese, M., Peer assessment mission to Albania on efficiency of investigations related to organised crime and corruption, 9 April 2014, p.8; Ibrahim, G., Reed, Q., Investigation and prosecution of corruption related offences in Albania: Assessment and Recommendations, ACFA assessment report, December 2014, p.34.

⁷⁹⁴ 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.⁷⁹⁵ 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.⁷⁹⁶ 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.⁷⁹⁷

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*).⁷⁹⁸ 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.⁷⁹⁹

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.⁸⁰⁰ A prosecutor contended that police investigations are the weakest link in the

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>

⁷⁹⁷ Varanese, M., Peer assessment mission to Albania on efficiency of investigations related to organised crime and corruption, 9 April 2014, p.6; Ibrahim, G., Reed, Q., Investigation and prosecution of corruption related offences in Albania: Assessment and Recommendations, ACFA assessment report, December 2014, p.14-15; Ibrahim, G., The adjudication of corruption related offences by courts in Albania: Assessment and Recommendations, ACFA assessment report, January 2015, p.7.

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.⁸⁰¹

The US State Department and the European Commission have openly spoken of the infiltration of crime in law enforcement agencies through politics.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.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.

⁸⁰¹ Interview with a prosecutor, 3 November 2015.

⁸⁰² European Commission, Albania Report, 2015, p.16; US State Department, Trafficking in Persons Report: Country Narratives A-C, 2015, p.65.

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.

CENTRAL ELECTION COMMISSION			
Overall Pillar Score: 40.97			
Dimension	Indicator	Law	Practice
Capacity 43.75/100	Resources	-	50
	Independence	50	25
Governance 41.6/100	Transparency	50	50
	Accountability	50	25
	Integrity mechanisms	50	25
Role 37.5/100	Campaign regulation	25	
	Election administration	50	

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 Premto 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

⁸⁰⁴ Articles 21.21, 21.24, 21.25, 24.1.e, and 25.2, Electoral Code.

⁸⁰⁵ Figures in Albanian Lek (ALL): 94 million ALL in 2012 to 90 million in 2016; 723 million ALL in 2013 to about 692 million ALL in 2015. See Budget Tables, <http://www.financa.gov.al/al/legislacioni/buxheti-thesariborxhi/buxheti/buxheti-ne-vite/buxheti-2015>

⁸⁰⁶ Coalition of Domestic Observers (CDO), Public Statement, 'Additional funds for the CEC budget of 2016 indispensable for real oversight of political party financing and campaigns', Tirana, 4 December 2015: <http://www.zgjedhje.al/uploads/File/2014-2015/KVV-Deklarate-BuxhetiShtesePerKQZ-DomosdoshmeriPerKontrollinRealTeFinancimitTePartive-04-12-2015.pdf>

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.

⁸⁰⁹ OSCE/ODIHR, Final Report: Local Elections 21 June 2015, 8 September 2015, p.16 and 24; Interview with Premto Gogo, Coalition of Domestic Observers, 3 February 2016.

⁸¹⁰ Coalition for Free and Fair Elections and Sustainable Democracy (CFFESD), Monitoring Local Elections 21 June 2015: Final Report, p.13 and 19: http://www.kzln.org.al/docs/Monitoring_Local_Elections_June_21_2015_In_Albania-Final_Report.pdf

⁸¹¹ Interview with Premto 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).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.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.⁸¹⁴ Minorities are not represented although the CEC has in the last few elections made efforts to engage temporary staff with special mobility needs.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.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.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.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.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.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.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).⁸²² This requirement is also the only protection for CEC mandates, as members' premature dismissal

⁸¹² Central Election Commission, 2014 Annual Activity Report, February 2015, p.5:
http://www.cec.org.al/Portals/0/Images/CEC/Legislacioni_2015/VENDIME_2015/VENDIM_29/KQZ-Raporti%20per%20Kuvend%202014.pdf; CEC,2013 Annual Activity Report, February 2014, p.70:
http://www.cec.org.al/Portals/0/Images/CEC/Raporti%20per%20Kuvend%202013_KQZ.pdf

⁸¹³ Article 12/b/c, Electoral Code.

⁸¹⁴ Article 29/ç, Ibid.

⁸¹⁵ Interview with Dorarta Hyseni, Program Manager, National Democratic Institute in Albania, 11 August 2015.

⁸¹⁶ Article 2, points 6-8, Electoral Code.

⁸¹⁷ Articles 13-16 and 20, Ibid.

⁸¹⁸ Articles 28-29, and 36, Ibid.

⁸¹⁹ Articles 12/d/dh/e, 30 and 37, Ibid.

⁸²⁰ Articles 13.3, 13.4 and 17.2, Ibid.

⁸²¹ Articles 17, 32, 39, Ibid.

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.⁸²³ 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".⁸²⁴ The OSCE-ODIHR as well as domestic civic actors have called for legislative amendments providing for an a-political electoral administration.⁸²⁵

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.⁸²⁶ 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.⁸²⁷

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),⁸²⁸ political pressure on the CEC and through to the administration and lower level commissions, and low confidence in an impartial complaint process.⁸²⁹

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.⁸³⁰

⁸²³ Articles 19 and 24/dh, Ibid.

⁸²⁴ Venice Commission, Code of Good Practice in Electoral Matters, CDL-AD(2002)023rev, II.3.1.b; Joint opinion on the electoral law and the electoral practice of Albania, CDL-AD(2011)042-e, IV.A.21.

⁸²⁵ OSCE-ODIHR, Final Report: Local Elections 21 June 2015, 8 September 2015, p.25;

CDO, 2013 Final Observation Report 23 June 2013 Parliamentary Elections, 27 September 2013. p.125; CFFESD, Monitoring Local Elections 21 June 2015: Final Report, p.19.

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.

⁸²⁹ OSCE-ODIHR, Final Report: Local Elections 21 June 2015, 8 September 2015, p.1, 2, 6-7, 20; Final Report: Parliamentary Elections 23 June 2013, 10 October 2013, p.1, 3, 6, 7-8, 18; Final Report: Local Elections 8 May 2011, 15 August 2011, p.1 and 30; CDO, Intermediary Report IV, 2015 Local Government Elections, 19-26 June 2015, 19 June 2015, p.1; 2013 Final Observation Report: 23 June 2013 Parliamentary Elections, 27 September 2013, p.9 and 125; CFFESD, Monitoring Local Elections 21 June 2015: Final Report, p.7-9, 19.

⁸³⁰ OSCE-ODIHR, Final Report: Parliamentary Elections 23 June 2013, 10 October 2013, p.7.

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.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.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.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.⁸³⁴

Detailed provisions are in place for the publicity of voters' lists.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.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

⁸³¹ Panorama, 'Anëtar i PS në KQZ, Denar Biba flet me gjuhën e Metës: Merreni me qetësi e dashuri' (SP member at CEC, Denar Biba uses Meta's language: With calmness and love), 2 June 2015: <http://www.panorama.com.al/anetari-i-ps-ne-kqz-denar-biba-flet-me-gjuhen-e-metes-merreni-me-qetesi-e-dashuri/>; Ora News, 'KQZ, debata të ashpra Subashi-Kosovrasti' (CEC, heated debates between Subashi and Kosovrasti), 14 July 2009: <http://www.oranews.tv/uncategorized/kqz-debate-t-ashpra-subashi-kosovrasti/>; Tirana Observer, 'KQZ zbaton ligjet nuk merrem me deklaratat e partive' (Ristani, CEC implements laws, I don't deal with parties' claims), 30 July 2012: <http://www.tiranaobserver.al/ristani-kqz-zbaton-ligjet-nuk-merrem-me-deklaratat-e-partive/>

⁸³² Interview with Premto Gogo, Coalition of Domestic Observers, 3 February 2016.

⁸³³ CEC decision no. 88, of 7 April 2015; Interview with Premto Gogo, Coalition of Domestic Observers, 3 February 2016; CDO, Public Statement, 'CEC lack of transparency and illegal changes to previously approved acts', Tirana, 16 April 2015: <http://www.zgjedhje.al/uploads/File/2014-2015/CDO-Statement-CEC-LackOfTransparencyAndIllegalChangingOfPreviouslyApprovedAct-16-04-2015.pdf>

⁸³⁴ Articles 22, 24, 35, 41, and 42, Electoral Code.

⁸³⁵ Articles 44-61, Ibid.

⁸³⁶ Article 119.2, Ibid.

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 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.cec.org.al

applications. However, records of meetings are not available and stakeholders have recommended that they are posted online and archived to improve transparency.⁸⁴⁸

Local groups have also called for signed/certified decisions to be made public rather than drafts only, as is the current practice.⁸⁴⁹ According to Premto Gogo of the Coalition of Domestic Observers, it is difficult to get copies of decisions in good time.⁸⁵⁰ The transparency of meetings and documents is not achieved at lower levels of the election administration.⁸⁵¹ Information on complaints and both CEC and Electoral College decisions have been published with delays.⁸⁵² The preliminary election results 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.⁸⁵³ 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).⁸⁵⁴ 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.⁸⁵⁵ 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.⁸⁵⁶ 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.⁸⁵⁷

Accountability (Law)

Score: 50

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

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

⁸⁴⁸ OSCE/ODIHR, Final Report: Local Elections 21 June 2015, 8 September 2015, p.2.

⁸⁴⁹ CFFESD, Monitoring Local Elections 21 June 2015: Final Report, p.1.

⁸⁵⁰ Interview with Premto Gogo, Coalition of Domestic Observers, 3 February 2016; CDO, Intermediary Report IV, 2015 Local Government Elections, 19-26 June 2015, Tirana, 19 June 2015, p.35-36.

⁸⁵¹ CFFESD, Monitoring Local Elections 21 June 2015: Final Report, p.12.

⁸⁵² OSCE/ODIHR, Final Report: Local Elections 21 June 2015, 8 September 2015, p.21.

⁸⁵³ Ibid, p.22-24.

⁸⁵⁴ CEC, 2014 Annual Activity Report, February 2015, p.8, and 22-27; 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) project, p.2 and 9-12; CDO, Public Stand on Transparency of Political Party Finance, 1 August 2015, p.2.

⁸⁵⁵ For parties' financial reports see: <http://www.cec.org.al/sq-al/raportet-financiare>; OSCE/ODIHR, Final Report: Local Elections 21 June 2015, 8 September 2015, p.2 and 14.

⁸⁵⁶ OSCE/ODIHR, Final Report: Local Elections 21 June 2015 8 September 2015, p. 16; Open Data Albania, 'Financial Dues of Political Party Subjects in the 2011 Electoral Campaign' (in Albanian): <http://open.data.al/sq/lajme/lajm/id/766/Detyrime-financiare-te-pashlyera-nga-parti-politike-subjekte-ne-Fushate-Zgjedhore-2011>; and 'Financial Dues of Political Party Subjects in the 2009 Electoral Campaign' (in Albanian): <http://open.data.al/sq/lajme/lajm/id/777/Detyrime-financiare-te-pashlyera-nga-parti-politike-subjekte-ne-Fushate-Zgjedhore-2009>

⁸⁵⁷ Interview with Dorarta Hyseni, Program Manager, National Democratic Institute in Albania, 11 August 2015.

from the Appeals Court of Tirana.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.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.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).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.⁸⁶²

The CEC is also accountable to Parliament through the requirement for annual reporting.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.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.⁸⁶⁵

The CEC regularly submits its annual reports to Parliament, which are published on the CEC website.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.⁸⁶⁷ The CEC was subject to an audit by the

⁸⁵⁸ Articles 124-144 and 145-159, Electoral Code.

⁸⁵⁹ Article 43, Constitution; Article 158/5, Electoral Code; OSCE/ODIHR, Final Report: Local Elections 21 June 2015, 8 September 2015, p.20.

⁸⁶⁰ Articles 55 and 145, Electoral Code; OSCE/ODIHR, Final Report: Parliamentary Elections 23 June 2013, 10 October 2013, p.19-20; Final Report: Local Elections 21 June 2015, 8 September 2015, p.19.

⁸⁶¹ Article 157, Electoral Code; OSCE/ODIHR, Final Report: Parliamentary Elections 23 June 2013, 10 October 2013, p.19.

⁸⁶² OSCE/ODIHR, Final Report: Parliamentary Elections 23 June 2013, 10 October 2013, p.19; Final Report: Local Elections 21 June 2015, 8 September 2015, p.21.

⁸⁶³ Article 21.13, Electoral Code.

⁸⁶⁴ OSCE/ODIHR, Final Report: Parliamentary Elections 23 June 2013, 10 October 2013, p.19-20; Final Report: Local Elections 21 June 2015, 8 September 2015, p.20; CDO, Monitoring Report on Electoral Justice, 2015 Local Elections, 1 June -10 August 2015, p.6, 24-29, 35-36.

⁸⁶⁵ OSCE/ODIHR, Final Report: Parliamentary Elections 23 June 2013, 10 October 2013, p.18; Final Report: Local Elections 21 June 2015, 8 September 2015, p.20.

⁸⁶⁶ See annual reports to Parliament on the CEC website: <http://www.cec.org.al/sq-al/raportet-per-kuvendin>

⁸⁶⁷ See the comments of the Ministry of Finance on the quarterly reports of the CEC for 2015:
<http://www.financa.gov.al/al/raportime/buxheti/raporte-monitorimi/viti-2015/raporte-monitorimi-nga-ministria-e-financave-2015>

SAI in 2012 for the 2010-2011 period.⁸⁶⁸ 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.⁸⁶⁹ 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.⁸⁷⁰

Integrity mechanisms (Law)

Score: 50

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

The Electoral Code provides for incompatibility of CEC membership with political, public or private activity and for independence in exercising of CEC functions.⁸⁷¹ Members take an oath committing them to free and fair elections, the integrity and privacy of the vote, neutrality and professionalism.⁸⁷² 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.⁸⁷³ The same principles are required of the CEC administration, as reflected in its respective regulation.⁸⁷⁴

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 *HIDAAC* 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.⁸⁷⁵ 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

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

The CEC failed to provide the Transparency International research team with any information on its register of conflicts of interest and gifts and hospitality.⁸⁷⁶ 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

⁸⁶⁸ SAI summary report on the auditing of the CEC in 2012:

http://www.klsh.org.al/web/pub/komisionin_qendror_t_zgiedhjeve_439_1.pdf

⁸⁶⁹ See CEC annual activity reports for 2013, 2014, and 2015: <http://www.cec.org.al/sq-al/raportet-per-kuvendin>

⁸⁷⁰ Parliament's Resolution on the Assessment of the Activity of the CEC for 2013, approved on 24 July 2014:

Http://Www.Parlament.Al/Wp-Content/Uploads/Sites/4/2016/01/Rezoluta_E_Kqz-Se_Dt. 24.7.2014.Pdf

and for 2014, approved on 30 April 2015:

http://www.parlament.al/wp-content/uploads/sites/4/2016/01/rezoluta_e_kqz_se_dt_30_4_2015_22333_1.pdf

⁸⁷¹ Articles 13.3, 13.4, and 17.2, Electoral Code.

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/Rregullore%20e%20Konfliktit%20te%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.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.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.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.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.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 2013.⁸⁸² Another former chair, Ilirjan Çelibashi (2001-2006), held political posts both before (1998) and after (2013) his CEC mandate in SP-led governments.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.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.⁸⁸⁵

⁸⁷⁷ HIDAACI Press releases, 10 November 2014: <http://www.hidaa.gov.al/10-nentor-2014/>; and 12 January 2015: <http://www.hidaa.gov.al/12-janar-2015/>

⁸⁷⁸ Request for Information submitted by project assistant via e-mail on 16 May 2016. Response received on 19 May via e-mail.

⁸⁷⁹ Top Channel, 'Ilirjan Muho Discharged', 15 April 2013: <http://top-channel.tv/lajme/artikull.php?id=255231>

⁸⁸⁰ OSCE/ODIHR, Final Report: Local Elections 21 June 2015, 8 September 2015, p.1-2, 6-8; CDO, Declaration, 'CEC exceeds legal deadlines in distributing mandates, 9 July 2015: <http://zgjedhje.al/>; CDO, Declaration, 'CEC lack of transparency and illegal changes of previously approved acts', 16 April 2015; CDO, Intermediate Report IV, 29 June 2015, p.4-5, 7-8, 19.

⁸⁸¹ Panorama, 'Subashi Ristanit: Fyerjen do ta ndjek ligjërisht' (Subashi to Ristani: I will take legal measures on the insult), 19 May 2011:<http://www.panorama.com.al/subashi-ristanit-me-keni-fyer-do-permballemi-ligjerisht/>

⁸⁸² Hoti, B., 'Ristani emërohet Zv. Ministër i Brendshëm', (Ristani appointed Deputy Minister of Interior Affairs), 17 October 2012, Gazeta Shqip: <http://www.gazeta-shqip.com/lajme/2012/10/17/ristani-emerohet-zv-minister-i-brendshem/> and CEC Results, 2013 Elections, MPs, p.9:

http://www.cec.org.al/Portals/0/Documents/CEC%202013/zgjedhje-perkuvend/2013/zgjedhje_2013_web/deputet_2015.pdf

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 Çelibashi's former career: Hoxha, A., 'Çelibashi dorëhiqet si minister, Rama e zëvendëson me deputeten Felaj' (Çelibashi resigns as minister, Rama replaces him with MP Felaj), Gazeta Shqip, 2 August 2014: <http://www.gazeta-shqip.com/lajme/2014/08/02/celibashi-dorehiqet-si-minister-rama-e-zevendeson-deputeten-felaj-2/>

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 Albana Shtylla as member of the High Council of Justice'.

⁸⁸⁵ Zyra e Regjistrimit të Pasurive të Paluajtshme, Chief Registration Officer: <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 unprosecuted 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

⁸⁸⁶ Articles 87-91, Electoral Code.

⁸⁸⁷ OSCE/ODIHR, Final Report: Local Elections 21 June 2015, 8 September 2015, p.13-14.

⁸⁸⁸ 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) project, p.4 and 7.

⁸⁸⁹ Articles 87-91 and 173, Electoral Code.

⁸⁹⁰ See articles 325-332, Chapter X of the Criminal Code.

⁸⁹¹ OSCE/ODIHR, Final Report: Local Elections 21 June 2015, 8 September 2015, p.2, 3, 13, 18 and 22.

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%20Political%20Party%20and%20Campaign%20Financing.docx

⁸⁹³ Mjaft! Movement, Electoral Spending Report: 2013 Elections:<http://www.lupazqjedhore2013.org/qellimi-dhemetodologjia/>

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%20Political%20Party%20and%20Campaign%20Financing.docx; see also CEC, 2014 Annual Activity Report, February 2015, p.22.

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.⁸⁹⁵ 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.⁸⁹⁶

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.⁸⁹⁷ Similarly, the right to vote of citizens in detention has been hampered to some extent in practice.⁸⁹⁸ 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.⁸⁹⁹

Voter registration is passive, except for citizens above 100 years of age, which the OSCE has considered discriminatory and contrary to international standards.⁹⁰⁰ 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.⁹⁰¹ 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.⁹⁰² There is a general agreement on the *overall* 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.⁹⁰³

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,

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.

⁸⁹⁷ OSCE/ODIHR, Final Report: Local Elections 21 June 2015, 8 September 2015, p.8 and 22.

⁸⁹⁸ Ibid, p.9 and 21.

⁸⁹⁹ Ibid, p.3 and 18.

⁹⁰⁰ Ibid, p.9.

⁹⁰¹ Articles 49-61, Electoral Code.

⁹⁰² Ibid.

⁹⁰³ OSCE/ODIHR, Final Report: Local Elections 21 June 2015, 8 September 2015, p.9.

posters, meetings, training sessions and videos that are also available online.⁹⁰⁴ However, they remain inadequate and donor-dependent.⁹⁰⁵

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.⁹⁰⁶ 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.⁹⁰⁷ In practice, election administration has made inconsistent decisions with respect to candidate registration and timely resignation has not materialised in all cases.⁹⁰⁸ 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 2015.⁹⁰⁹

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.⁹¹⁰ 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.⁹¹¹

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.⁹¹² 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.⁹¹³

⁹⁰⁴ CEC, Voter Education: <http://www.cec.org.al/sq-al/Edukimi-Zgjedhor>

⁹⁰⁵ OSCE/ODIHR, Final Report: Local Elections 21 June 2015, 8 September 2015 p.2, 18, 26-27; Interview with Dorarta Hyseni, Program Manager, National Democratic Institute in Albania, 11 August 2015.

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.

⁹⁰⁷ Articles 63 and 69-70, Electoral Code.

⁹⁰⁸ OSCE/ODIHR, Final Report: Local Elections 21 June 2015, 8 September 2015, p.10-11; Final Report: Parliamentary Elections of 23 June 2013, 10 October 2013, p.12.

⁹⁰⁹ Likmeta, B., 'Albanian MP wanted in Belgium for murder', Balkan Insight, 30 March 2015: <http://www.balkaninsight.com/en/article/albania-mp-wanted-in-belgium-for-murder>; Likmeta, B., 'Albanian MP's criminal past revealed', 14 July 2014: <http://www.balkaninsight.com/en/article/albanian-mp-s-criminal-past-revealed>; Hoxha, E., 'Arben Ndoka, e vërteta e akuzave ndaj meje për trafik', 29 July 2015: <http://www.shekulli.com.al/p.php?id=291771>; Likmeta, B., Biloslavo, P., Bogdani, A., 'Criminal pasts of Albanian election candidates exposed', 17 June 2015: <http://www.balkaninsight.com/en/article/criminal-pasts-of-albanian-election-candidates-exposed>.

⁹¹⁰ OSCE/ODIHR, Final Report: Local Elections 21 June 2015, 8 September 2015, p.3, 21-23; CFFESD, Monitoring Local Elections 21 June 2015: Final Report, p.9, 14, 15.

⁹¹¹ OSCE/ODIHR, Final Report: Local Elections 21 June 2015, 8 September 2015, pp.21-22; Final Report: Parliamentary Elections of 23 June 2013, 10 October 2013, p.22-23; CDO, Intermediary Report IV, 2015 Local Government Elections, 19-26 June 2015, p.26.

⁹¹² OSCE/ODIHR, Final Report: Local Elections 21 June 2015, 8 September 2015, p.23; CFFESD, Monitoring Local Elections 21 June 2015: Final Report, p.15-16; CDO, Intermediary Report IV, 2015 Local Government Elections, 19-26 June 2015, p. 11-12.

⁹¹³ OSCE/ODIHR, Final Report: Local Elections 21 June 2015, 8 September 2015, p.23.

Electoral subjects and Albanian and foreign NPOs are entitled to observe the entire electoral process, at all levels.⁹¹⁴ 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.⁹¹⁵

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.

⁹¹⁵ OSCE/ODIHR, Final Report: Local Elections 21 June 2015, 8 September 2015, p.23; CFFESD, Final Report Monitoring Local Elections 21 June 2015, p.15-16.

- 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.

OMBUDSMAN

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.

OMBUDSMAN			
Overall Pillar Score: 57.6			
Dimension	Indicator	Law	Practice
Capacity 56.25/100	Resources	-	50
	Independence	75	50
Governance 66.6/100	Transparency	75	75
	Accountability	75	50
	Integrity mechanisms	75	50
Role 50/100	Investigation	50	
	Promoting good practice	50	

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.⁹¹⁶ 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

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.⁹¹⁷ Currently the overall number of staff working at the Ombudsman Office is 54.⁹¹⁸ The only exceptions to the Ombudsman's jurisdiction are the President, the Prime Minister, and military orders of the armed forces.⁹¹⁹

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 2016.⁹²⁰ 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).⁹²¹

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.⁹²² The addition of two commissioners in the Ombudsman's Office in 2014 was not accompanied by budget increases until 2016.⁹²³

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.⁹²⁴ 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.⁹²⁵

Like some other independent institutions, the Ombudsman has also suffered mid-year budgetary cuts at times, for instance in 2013.⁹²⁶ 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.

⁹²⁰ Ministry of Finance. Budget in years. Excel table of budget distribution per institution. Online: <http://www.financa.gov.al/al/raportime/buxheti/buxheti-ne-vite>

⁹²¹ Ministry of Finance. Budget in years. Budget 2014, excel table of budget distribution per institution. Online: <http://www.financa.gov.al/al/raportime/buxheti/buxheti-ne-vite/buxheti-2014>

⁹²² Minutes of meeting of Parliament's Legal Affairs Public Administration and Human Rights Committee, 11 May 2015, p.24: http://www.parlament.al/wp-content/uploads/sites/4/2015/11/11_05_2015_22619_1.pdf; European Commission, Albania Report, 2015, p.8.

⁹²³ Interview with Mr. Igli Totozani, Ombudsman, 25 February 2016.

⁹²⁴ Commission for legal affairs, public administration and Human Rights continues discussing the 2016 Draft Budget: <http://komisionet.parlament.al/komisioni-per-ceshtjet-ligjore-administraten-publike-dhe-te-drejtat-e-njeriut-vijon-shqyrtimin-e-projektbuxhetit-te-vitit-2016-per-disa-institucion-2/>

⁹²⁵ Interview with Mr. Igli Totozani, Ombudsman, 25 February 2016. On the Danish Project see: <http://www.avokatipopullit.gov.al/sites/default/files/Informacin%20per%20projektin%20Danez%20dreituar%20Kuvendit%202015.pdf>

⁹²⁶ Ombudsman, Annual Report, 2013, p.294: <http://www.avokatipopullit.gov.al/sites/default/files/ctools/RAPORTI%202013.pdf>

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%.⁹²⁷ A 2015 audit report by the SAI noted several issues with the management of both financial and human resources.⁹²⁸

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.⁹²⁹

The Ombudsman considers his staff to be relatively small, but highly professional.⁹³⁰ 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 2015.⁹³¹ External actors have raised doubts about the level of professionalism in some cases.⁹³² 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.⁹³³ 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).⁹³⁴

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.⁹³⁵

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.⁹³⁶ 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

⁹²⁷ Ombudsman, Annual Report, 2014, 102-103.

⁹²⁸ SAI, Auditing Findings and Recommendations delivered to the Ombudsman on 26 December 2015: <http://www.avokatipopullit.gov.al/sites/default/files/ctools/css/AUDITIMI%201%20KLSH-s%C3%AB.pdf>

⁹²⁹ Ombudsman, Annual Report, 2015, p.28, 103, 135: <http://www.avokatipopullit.gov.al/sites/default/files/ctools/RAPORTI%202014.pdf>; Ombudsman's Order no. 167 of 12 September 2014 'On enhancing the professional capacities and training of employees of the Ombudsman's Office'.

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/AUDITIMI%201%20KLSH-s%C3%AB.pdf>

⁹³² Interviews with Mrs. Vjollca Mece, Executive Director, Albanian Helsinki Committee, 18 February 2016; and a human rights activist, 19 February 2016.

⁹³³ See for instance: <http://www.avokatipopullit.gov.al/sites/default/files/ctools/J.Rustemi%20Bio.pdf>

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.⁹³⁷ 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.⁹³⁸

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.⁹³⁹ 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.⁹⁴⁰

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.⁹⁴¹

Independence (Practice)

Score: 50

TO WHAT EXTENT IS THE OMBUDSMAN INDEPENDENT IN PRACTICE?

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).⁹⁴² 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.⁹⁴³

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.⁹⁴⁴

Several commissioners have had their mandates renewed, including by different political majorities in Parliament.⁹⁴⁵ The Albanian Helsinki Committee Director Vjollca Meçe 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

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 Meçe, 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 See 'History of the institution' on its official webpage: <http://www.avokatipopullit.gov.al/sq/historiku>

⁹⁴³ Ombudsman, Annual Report, 2014 p.9.

⁹⁴⁴ Interview with Mr. Igli Totozani, Ombudsman, 25 February 2016.

⁹⁴⁵ 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

⁹⁴⁶ Interview with Mrs. Vjollca 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.

⁹⁵⁶ Article 20, Law on Public Notice and Consultation:

http://www.financa.gov.al/files/userfiles/Liqii_nr_146_2014_Per_Njoftimin_dhe_Konsultimin_Publik.pdf

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, Vjollca Meçë 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/transparencia-e-institucionit>

⁹⁵⁸ See Ombudsman's official website: <http://www.avokatipopullit.gov.al/sq>

⁹⁵⁹ Interview with Mrs. Vjollca Meçë, 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.⁹⁶² 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).⁹⁶³ 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).⁹⁶⁴ 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.⁹⁶⁵ 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).⁹⁶⁶

Accountability (Practice)

Score: 50

TO WHAT EXTENT DOES THE OMBUDSMAN REPORT AND IS ANSWERABLE FOR ITS ACTIONS IN PRACTICE?

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.⁹⁶⁷ 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.⁹⁶⁸ These discussions rarely deal with the Office's internal management, even though problems have been reported in the past.⁹⁶⁹ The 2012 annual report was not discussed at all⁹⁷⁰ 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.⁹⁷¹

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

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: <https://www.parlament.al/wp-content/uploads/2016/06/lqj-nr.-60-dt.-2.6.2016.pdf>

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: http://www.parlament.al/wp-content/uploads/sites/4/2015/11/proc_14_05_2015_22513_1.pdf

⁹⁶⁸ See for instance, the discussion of the 2014 Annual Report on 11 May 2015: http://www.parlament.al/wp-content/uploads/sites/4/2015/11/11_05_2015_22619_1.pdf

⁹⁶⁹ Former Civil Service Commission: <http://www.avokatipopullit.gov.al/sites/default/files/ctools/RAPORT%20KSHC.pdf>

⁹⁷⁰ Interview with Mr. Igli Totozani, Ombudsman, 25 February 2016.

⁹⁷¹ The Ombudsman complained about this situation in 2013, during his hearing on the 2013 EC Progress Report, on 20 November 2013, Minutes of meeting, p.5-6: http://www.parlament.al/wp-content/uploads/sites/4/2015/11/lqjet_20_11_2013_14414_1.pdf; see Assembly webpage for the reports and the discussion dates for two of them: <http://www.parlament.al/dokumentacioni/raporte/> [accessed 15 March 2016]; European Commission, Albania Progress Report, 2013, p.8.

have demonstrated increasing interest by inviting the Ombudsman's Office to provide its opinion on several laws.⁹⁷²

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.⁹⁷³ 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.⁹⁷⁴ 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*).⁹⁷⁵

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.⁹⁷⁶ 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.⁹⁷⁷

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.⁹⁷⁸ There was no public investigation or clarification from any institution following these media

⁹⁷² Interviews with Mrs. Vjollca Meçë, Executive Director, Albanian Helsinki Committee, 18 February 2016; Human rights activist, February 19, 2016; and Mr. Igli Totozani, Ombudsman, 25 February 2016.

⁹⁷³ Article 61, Constitution; Articles 3/d, 10, and 33, Law on People's Advocate.

⁹⁷⁴ 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-sjelljes-s%C3%AB-mir%C3%AB-administrative-0>;

⁹⁷⁵ 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 in the Exercise of Public Functions, of 7 April 2005, amended.

⁹⁷⁶ Articles 3/b, 3/gj, 5/1, 7 and 7/1, Law on Asset Declarations: <http://www.hidaa.gov.al/ligji-nr/>

⁹⁷⁷ Article 25/1, Ibid.

⁹⁷⁸ 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-popullit-ne-afera-korruptive-me-te-shogen-2/>; TV Klan news report, 'HIDAA investigates Ombudsman, conflict of interest with wife's funds', 30 May 2014: <http://tvklan.al/ildkp-heton-avokatin-e-popullit-konflikt-interesi-me-fondet-e-grus-se-tij-2/>; Lapsi.al, 'Ombudsman's Adviser confesses corruption scandals of Igli Totozani', 16 July 2015: <http://www.lapsi.al/lajme/2015/07/16/k%C3%ABshilltari-i-avokatit-t%C3%AB%C3%AB-popullit-rr%C3%ABfen-aferat-korruptive-t%C3%AB-igli-totozanit#.VsrtwlQrJdh>

reports. 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.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.⁹⁸⁰ It was not possible to establish whether HIDAACI has ever fully audited the Ombudsman's Office's asset/interest declarations up until now.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).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.⁹⁸³ The interviewees from civil society expressed reservations about ethics awareness and enforcement within the Office, with Albanian Helsinki Committee Director Vjollca Meçe noting that generally, the Code has either been ignored or inefficient in practice.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.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.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.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.⁹⁸⁸ By law, complaints cannot be anonymous.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

⁹⁷⁹ Interview with Mr. Igli Totozani, Ombudsman, 25 February 2016.

⁹⁸⁰ See HIDAACI press releases of 10 November 2014, on Harallamb Bano: <http://www.hidaa.gov.al/10-nentor-2014/>; and on 28 February 2010, on Anastas Leka: <http://www.hidaa.gov.al/28-shkurt-2010/>

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.

⁹⁸² Interview with Mr. Igli Totozani, Ombudsman, 25 February 2016.

⁹⁸³ Ombudsman, Annual Report, 2014, p.153.

⁹⁸⁴ Interviews with Mrs. Vjollca Meçe, Executive Director, Albanian Helsinki Committee, 18 February 2016 and human rights activist, 19 February 2016.

⁹⁸⁵ See website page: <http://www.avokatipopullit.gov.al/pyeitedhepergjigje>; and Ombudsman, Annual Report, 2014, p.104-105.

⁹⁸⁶ Interview with human rights activist, 19 February 2016 and Mrs. Vjollca Meçe, Executive Director, Albanian Helsinki Committee, 18 February 2016.

⁹⁸⁷ Ombudsman, Annual Report, 2014, p.105.

⁹⁸⁸ See online complaint form: <http://www.avokatipopullit.gov.al/ankese>; See the Q&A section: <http://www.avokatipopullit.gov.al/pyeitedhepergjigje>

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.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.⁹⁹¹ In the view of Albanian Helsinki Committee Director, Vjollca Meçe, this indicates problems with the public understanding of the mandate of the Ombudsman and efforts to clarify its role.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.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.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).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.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.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.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.⁹⁹⁹ For that same year, the Ombudsman reported that 20 per cent of its recommendations remained unanswered by public institutions, 3 per cent were still in process, and 8 per cent were turned down.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.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.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

⁹⁹⁰ Articles 18-23, *Ibid.*

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.

⁹⁹² Interview with Mrs. Vjollca Meçe, Executive Director, Albanian Helsinki Committee, 18 February 2016.

⁹⁹³ Interviews with Mrs. Vjollca Meçe, Executive Director, Albanian Helsinki Committee, 18 February 2016 and human rights activist, 19 February 2016.

⁹⁹⁴ Institute for Democracy and Mediation, Trust in government: Public Opinion Poll 2015, December 2015, p.31-32.

⁹⁹⁵ Ombudsman, Annual Report, 2014, p.9 and 143. For full statistics on complaints, see p.139-144.

⁹⁹⁶ *Ibid.*, p.28; European Commission, Albania Report, November 2015, p.57.

⁹⁹⁷ Interview with human rights activist, 19 February 2016.

⁹⁹⁸ Albanian Helsinki Committee, 2015 Report on the Human Rights Situation in Albania, p.41:
http://ahc.org.al/web/images/publikime/al/Raporti_per_te_Drejtat_Njeriut.pdf

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.

¹⁰⁰⁰ Ombudsman, Annual Report, 2014, p.124.

¹⁰⁰¹ *Ibid.*, Annex 2, p.148.

¹⁰⁰² Interview with Mr. Igli Totozani, Albanian Ombudsman, 25 February 2016.

sanctions for cases of non-cooperation on the part of state institutions.¹⁰⁰³ The implementation of the accepted recommendations is not adequately tracked, but is nevertheless reported to be unsatisfactory.¹⁰⁰⁴

Promoting good practice

Score: 50

TO WHAT EXTENT IS THE OMBUDSMAN ACTIVE AND EFFECTIVE IN RAISING AWARENESS WITHIN GOVERNMENT AND THE PUBLIC ABOUT STANDARDS OF ETHICAL BEHAVIOUR?

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.¹⁰⁰⁵ In an interview, the Ombudsman noted that public institutions are routinely consulted before the issuing of reports.¹⁰⁰⁶ 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.¹⁰⁰⁷

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 2015.¹⁰⁰⁸ 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.¹⁰⁰⁹ 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.¹⁰¹⁰

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.¹⁰¹¹ 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,

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.

¹⁰⁰⁴ 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.

¹⁰⁰⁵ Ombudsman, Annual Report, 2014, p.10, 106, and 109-110.

¹⁰⁰⁶ Interview with Mr. Igli Totozani, Albanian Ombudsman, 25 February 2016.

¹⁰⁰⁷ Ombudsman, Annual Report, 2014, p.113-118.

¹⁰⁰⁸ Ombudsman, Annual Report, 2015, p. 5; Interview with Mr. Igli Totozani, Albanian Ombudsman, 25 February 2016; Parliament, Resolution on the prevention of the phenomenon of blood feuds in Albania, approved on 5 March 2015, Official Journal no. 38, 2015.

¹⁰⁰⁹ Interview with Mr. Igli Totozani, Albanian Ombudsman, 25 February 2016.

¹⁰¹⁰ Ombudsman, Annual Report, 2014, p. 10.

¹⁰¹¹ See full recommendation here:

<http://www.avokatipopullit.gov.al/sites/default/files/field/image/02.03.2016Rekomandimi%20per%20Administraten%20Publike.pdf>; For the European Code, see: <http://www.ombudsman.europa.eu/en/resources/code.faces#/page/1>

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.¹⁰¹² 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 bonuses¹⁰¹³ – 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.

¹⁰¹² Interviews with Mrs. Vjollca Meçë, 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-s%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.

SUPREME AUDIT INSTITUTION			
Overall Pillar Score: 59			
Dimension	Indicator	Law	Practice
Capacity 56.25/100	Resources	-	50
	Independence	75	50
Governance 70.8/100	Transparency	100	75
	Accountability	75	50
	Integrity mechanisms	75	50
Role 50/100	Effective financial audits	50	
	Detecting and sanctioning misbehaviour	50	
	Improving financial management	50	

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.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.¹⁰¹⁶

The SAI has significantly enhanced its investment in training and professionalism in recent years, reporting 26 days of training per staff member in 2014.¹⁰¹⁷ 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.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.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.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.¹⁰²¹ The SAI staff enjoy civil servant status, with recruitment and careers

¹⁰¹⁵ Interviews with Mrs. Luljeta Nano, Secretary General, Supreme Audit Institution, 20 February 2015 and a public finance expert, 20 November 2015; Minutes of meeting of the Economic and Finance Parliamentary Committee, discussion of the SAI 2014 Annual Performance Report, 15 July 2015, p.10: http://www.parliament.al/wp-content/uploads/sites/4/2015/11/komisioni_i_ekonomise_date_15_07_2015_copy_1_23618_1.pdf

¹⁰¹⁶ Interviews with Mrs. Luljeta Nano, Secretary General, Supreme Audit Institution, 20 February 2015 and a public finance expert, 20 November 2015.

¹⁰¹⁷ SIGMA, Baseline Measurement Report – The principles of public administration Albania, April 2015, p.116.

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.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.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.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.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.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.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.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.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.¹⁰³⁰

The level of staffing is generally stable, with a reported average stay of about eight years in 2014.¹⁰³¹ 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 2012.¹⁰³² 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

¹⁰²² Article 37 and 38/2, Ibid.

¹⁰²³ Article 36, Ibid.

¹⁰²⁴ Article 21, Ibid.

¹⁰²⁵ Article 162/2, Constitution.

¹⁰²⁶ Article 20, Law on the SAI.

¹⁰²⁷ SIGMA, Baseline Measurement Report - The principles of public administration Albania, April 2015, p.114.

¹⁰²⁸ Minutes of meeting of the Economic and Finance Parliamentary Committee, discussion of the SAI 2014 Annual Performance Report, 15 July 2015, p.30-32: http://www.parlament.al/wp-content/uploads/sites/4/2015/11/komisioni_i_ekonomise_date_15_07_2015_copy_1_23618_1.pdf

¹⁰²⁹ 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.

¹⁰³⁰ Minutes of meeting of the Economic and Finance Parliamentary Committee, discussion of the SAI 2014 Annual Performance Report, 15 July 2015, p.36-37: http://www.parlament.al/wp-content/uploads/sites/4/2015/11/komisioni_i_ekonomise_date_15_07_2015_copy_1_23618_1.pdf

¹⁰³¹ SAI, Annual Performance Report, 2014, p.47.

¹⁰³² SAI, 2012 Annual Performance Report, 2012, p.45.

President with a similar background in the same party.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.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 *operational* independence.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.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.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.

Governance

Transparency (Law)

Score: 100

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.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.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.¹⁰⁴⁰ The Law on the Right to Information also applies to the SAI (see *Public Sector* pillar for more detail on this law).

Transparency (Practice)

Score: 75

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,

¹⁰³³ BalkanWeb, 'Kallëzmi për CEZ, Gjiknuri: KLSH është vënë në shërbim 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/>

¹⁰³⁴ 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_24037_1.pdf

¹⁰³⁵ Interview with Mrs. Luljeta Nano, Secretary General, Supreme Audit Institution, 20 February 2015.

¹⁰³⁶ 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.

¹⁰³⁷ Interview with public finance expert, 20 November 2015.

¹⁰³⁸ Articles 33, Law on the SAI.

¹⁰³⁹ Articles 29/2 and 34/b, Ibid.

¹⁰⁴⁰ Articles 31 and 34, Ibid.

annual audit plans, annual performance reports, strategic institutional development plans, its Code of Ethics, relevant international documents, organisational chart, and the CVs of key staff, etc.

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.¹⁰⁴¹ The SAI responded to information requests by the Transparency International research team, mostly in full.¹⁰⁴² The SAI publishes summaries of audit reports but not the full versions, separately or in its bulletins, as required by law.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 *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.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.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.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.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.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

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

¹⁰⁴² Information requests by the research team were submitted in September 2015, and February and May 2016.

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

¹⁰⁴⁴ Article 31/3, Law on the SAI.

¹⁰⁴⁵ Article 103, Parliament's Rules of Procedure.

¹⁰⁴⁶ Article 31, Law on the SAI.

¹⁰⁴⁷ Article 29/2, Ibid.

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

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

¹⁰⁴⁹ See, for instance, the 2014 Annual Performance Report:

http://www.klsh.org.al/web/pub/rap_performances_klsh_2014_2068_1.pdf

¹⁰⁵⁰ See, for instance, the latest discussion in Parliament of the SAI's performance: http://www.parlament.al/wp-content/uploads/sites/4/2015/11/komisioni_i_ekonomise_date_15_07_2015_copy_1_23618_1.pdf

¹⁰⁵¹ 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.

¹⁰⁵² 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".

¹⁰⁵³ Article 41, Law on the SAI.

¹⁰⁵⁴ SAI Code of Ethics, approved with Decision no. 56 of 30 April 2015 of the Head of the SAI:

http://klsh.org.al/web/pub/kodi_i_etikes_se_klsh_se_30_04_2015_1825_1.pdf

¹⁰⁵⁵ Articles 13, 15 and 16, Ibid.

¹⁰⁵⁶ Article 26, Ibid.

¹⁰⁵⁷ Article 28, Ibid; For the previous Code, see: http://www.klsh.org.al/web/pub/20120104140046kodietikiklsh_77_1.pdf

¹⁰⁵⁸ Article 11.17, SAI Internal Regulation, approved by Decision no. 85, of 30 June 2015 of the Head of the SAI:

http://www.klsh.org.al/web/pub/rregullore_e_brendshme_e_organizimit_dhe_funksionimit_admisnitrativ_te_klsh_1894_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.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.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.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 2013.¹⁰⁶² 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.¹⁰⁶³ Measures have varied from reprimands, to demotions and discharges from office, and they have affected various levels of staff.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.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",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

¹⁰⁵⁹ Article 3, Law Nr. 9049, of 10 April 2003, On the Declaration of Assets (changed): <http://www.hidaa.gov.al/ligji-nr/>

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.

¹⁰⁶¹ Annex 4, Table of referrals for prosecution for 2013, SAI 2013 Annual Performance Report:

http://www.klsh.org.al/web/pub/raporti_performances_se_klsh_2013_1159_1.pdf

¹⁰⁶² Hardcopy response to request for information, given to the project assistant Megi Llubani on 26 May 2016, at the SAI office in Tirana.

¹⁰⁶³ 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: http://www.klsh.org.al/web/pub/analiza_2015_z_bleskai_2407_1.pdf

¹⁰⁶⁴ Hardcopy response to request for information, given to the project assistant Megi Llubani on 26 May 2016, at the SAI office in Tirana.

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.

¹⁰⁶⁶ Hardcopy response to request for information, given to the project assistant Megi Llubani on 26 May 2016, at the SAI office in Tirana.

2014.¹⁰⁶⁷ 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.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.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.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.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.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 2015.¹⁰⁷³ 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.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.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.¹⁰⁷⁶

¹⁰⁶⁷ Ibid.

¹⁰⁶⁸ Ibid; HIDAACI Press Release, 2 September 2014: <http://www.hidaa.gov.al/02-shtator-2014-2/>

¹⁰⁶⁹ Hardcopy response to request for information, given to the project assistant Megi Llubani on 26 May 2016, at the SAI office in Tirana.

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.

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

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.

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.

¹⁰⁷⁴ European Commission, Albania Report, November 2015, p.73; SIGMA, Baseline Measurement Report - Albania, April 2015, p.115-116; Minutes of meeting of the Economic and Finance Parliamentary Committee, discussion of the SAI 2014 Annual Performance Report, 15 July 2015, p.18: http://www.parlament.al/wp-content/uploads/sites/4/2015/11/komisioni_i_ekonomise_date_15_07_2015_copy_1_23618_1.pdf

¹⁰⁷⁵ European Commission, Albania Report, November 2015, p.73; Interview with public finance expert, 20 November 2015.

¹⁰⁷⁶ Top Channel, ‘SAI, Leskaj: Parliamentary inquiry into CEZ administration’, 2 November 2015: <http://top-channel.tv/lajme/artikull.php?id=312156>

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

DOES THE AUDIT INSTITUTION DETECT AND INVESTIGATE MISBEHAVIOUR OF PUBLIC OFFICEHOLDERS?

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

TO WHAT EXTENT IS THE AUDIT INSTITUTION EFFECTIVE IN IMPROVING THE FINANCIAL MANAGEMENT OF GOVERNMENT?

¹⁰⁷⁷ Interview with Mrs. Luljeta Nano, Secretary General, Supreme Audit Institution, 20 February 2015.

¹⁰⁷⁸ Article 26, Law on the SAI.

¹⁰⁷⁹ Article 15/gj/h, Ibid.

¹⁰⁸⁰ European Commission, Albania Report, November 2015, p.35-36.

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.

¹⁰⁸² Ibid, p.7.

¹⁰⁸³ Ibid, p.37-38; SIGMA, Baseline Measurement Report - Albania, April 2015, p.115-116.

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.¹⁰⁸⁵

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.¹⁰⁸⁶ 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.

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.

¹⁰⁸⁶ 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.3; SAI, 2014 Annual Performance Report, p.10-18; Interview with Luljeta Nano, Secretary General, Supreme Audit Institution, 20 February 2015; 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.

ANTI-CORRUPTION AGENCIES			
Overall Pillar Score: 40.95			
Dimension	Indicator	Law	Practice
Capacity 31.25/100	Resources	50	25
	Independence	25	25
Governance 66.6/100	Transparency	75	75
	Accountability	75	75
	Integrity mechanisms	50	50
Role 25/100	Prevention	25	
	Education	25	
	Investigation	25	

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".¹⁰⁸⁷ 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.¹⁰⁸⁸

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.¹⁰⁸⁹ HIDAACI drafts its own separate budget, within ceilings determined by the Ministry of Finance and subject to final approval by Parliament.¹⁰⁹⁰ 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.¹⁰⁹¹ 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?

¹⁰⁸⁷ Transparency International, NIS Assessment Toolkit, September 2012, p.93.

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 to 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.

¹⁰⁹⁰ Article 16/4, Law no. 9049 on Declaration and Control of Assets and Financial Obligations of Elected Officials and some Civil Servants, of 10 April 2003.; http://www.pp.gov.al/web/lijq_deklarimi_i_pasurive_25.pdf

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

¹⁰⁹² See European Commission 2011, 2012, 2013 and 2014 Progress Reports for Albania; GRECO, Fourth Evaluation Round, Albania Evaluation Report: Corruption prevention in respect of members of parliament, judges and prosecutors, adopted March 2014, published June 2014, p.18.; Reed, Q., The Legal and Institutional Framework for Financial Disclosure in Albania, ACFA assessment report, October 2014, p.4-5; Dymishi, A., Çela, M., Conflict of Interest in Albania: Regulatory Framework and Challenges to Implementation, Institute for Democracy and Mediation, October 2014, p.6.

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.

¹⁰⁹⁴ HIDAACI, Annual Report, 2013, p.19-20; Reed, Q., The Legal and Institutional Framework for Financial Disclosure in Albania, ACFA assessment report, October 2014, p.22-24.

¹⁰⁹⁵ Reed, Q., The Legal and Institutional Framework for Financial Disclosure in Albania, ACFA assessment report, October 2014, p.29.

¹⁰⁹⁶ Ibid, p.26-27.

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_Ligjet.xls; for the revised figures, see the tables attached to Normative Act no. 7, dated 14 December 2013.

budgetary planning, etc. 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

TO WHAT EXTENT IS THE HIDAACI INDEPENDENT BY LAW?

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 government controls 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

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 in/dependence 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.

¹¹⁰³ See Reed, Q., The Legal and Institutional Framework for Financial Disclosure in Albania, ACFA assessment report, October 2014, p.10-11.

¹¹⁰⁴ Interview with Mr. Shkëlqim Ganaj, Inspector General, HIDAACI, 12 February 2015.

¹¹⁰⁵ See Reed, Q., The Legal and Institutional Framework for Financial Disclosure in Albania, ACFA assessment report, October 2014, p.11.

¹¹⁰⁶ Article 13, Asset Declarations Law.

¹¹⁰⁷ Article 16.4, Ibid.

¹¹⁰⁸ Decision of the Council of Ministers no. 545, of 11 August 2011. See list of amending acts at the end of the latest version:

<http://www.dap.gov.al/attachments/article/192/Vendimi%20545%20i%20pagave%20te%20nepuens%20civile%20dhe%20nepunesve%20...i%20perditesuar%20.pdf>

Independence (Practice)

Score: 25

TO WHAT EXTENT IS THE HIDAACI INDEPENDENT IN PRACTICE?

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.¹¹⁰⁹ The President and the opposition addressed the matter to the Constitutional Court, without success.¹¹¹⁰

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.¹¹¹¹ 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.¹¹¹²

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.¹¹¹³ 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.

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.qjk.gov.al/web/Vendime_perfundimtare_100_1.php

¹¹¹¹ GRECO, Fourth Evaluation Round, Albania Evaluation Report, adopted March 2014, published June 2014, p.18.

¹¹¹² Interview with International expert, 17 July 2015; HIDAACI Press Release, 11 September 2015:

www.hidaa.gov.al/11-shtator-2015/; HIDAACI Press Release, 12 January 2015: <http://www.hidaa.gov.al/12-janar-2015/>; Press Release, 22 April 2014: <http://www.hidaa.gov.al/22-prill-2014/>; Press Release: 'Criminal charges against declaring subject Tom Doshi', 15 May 2015: <http://www.hidaa.gov.al/15-mai-2015/>; Press Release: 'Criminal charges against declaring subject Ridvan Bode', 7 April 2015: <http://www.hidaa.gov.al/07-prill-2015/>; Panorama, 'Zbardhet kallëzimi i ILDKP për Frrrokun: Nuk deklaroi burimin e pasurisë prej 2.9 milion USD' (HIDAACI raises charges against Frroku who failed to declare his source of wealth of 2.9 million USD), 3 April 2015: <http://www.panorama.com.al/tjeter-akuze-per-mark-froku-ildkp-e-kallezon-per-pastrim-parash-dhe-refuzim-deklarimi-te-pasurive/>

¹¹¹³ HIDAACI Press Release, 21 May 2015: <http://www.hidaa.gov.al/21-maj-2015/>

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 HIDAACI?

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.¹¹¹⁴

The Law on Asset Declarations allows the publication of data gathered from such declarations in line with freedom of information and personal data protection legislation.¹¹¹⁵ It also requires HIDAACI to publish cases of refusals to declare.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.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

TO WHAT EXTENT IS THERE TRANSPARENCY IN THE ACTIVITIES AND DECISION-MAKING PROCESSES OF HIDAACI IN PRACTICE?

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.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.¹¹¹⁹

¹¹¹⁴ Article 7, Law no. 119/2014 on the Right to Information.

¹¹¹⁵ Article 34, Asset Declarations Law.

¹¹¹⁶ Article 5, Asset Declarations Law.

¹¹¹⁷ Decision no. 16 of 11 November 2004 of the Constitutional Court, paragraph 5.

¹¹¹⁸ Article 7/1/ë, Law on the Right to Information.

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

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

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

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

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.

¹¹²² 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/ligj-nr.-60-dt.-2.6.2016.pdf>

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.

¹¹²⁴ HIDAACI, Annual Report to Parliament, 2015, p.9.

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.¹¹²⁵ 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.¹¹²⁶

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.¹¹²⁷ Similar problems have been noted with gifts and hospitality requirements (see *Public Sector* pillar for more details).¹¹²⁸

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

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

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.¹¹²⁹ 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.¹¹³⁰ 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.¹¹³¹

¹¹²⁵ 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.

¹¹²⁶ 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.

¹¹²⁷ 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.

¹¹²⁸ 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.

¹¹²⁹ Interview with Mr. Shkëlqim Ganaj, Inspector General, HIDAACI, 12 February 2015.

¹¹³⁰ Interview with Mr. Shkëlqim Ganaj, Inspector General, HIDAACI, 22 July 2015, and written response from HIDAACI, 24 July 2015.

¹¹³¹ Ibid.

Role

Prevention

Score: 25

TO WHAT EXTENT DOES THE HIDAACI ENGAGE IN PREVENTIVE ACTIVITIES REGARDING FIGHTING CORRUPTION?

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.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 v) inadequate definitions in the law, etc.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.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.¹¹³⁵ Fines are also considered to be too low to really affect and deter future malpractice.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.¹¹³⁷

¹¹³² Articles 10-11, and 41-42, Law on the Prevention of Conflicts of Interest.

¹¹³³ Reed, Q., Prevention and Regulation of Conflicts of Interest of Public Officials in Albania, ACFA assessment report, December 2014; GRECO, Fourth Evaluation Round, Albania Evaluation Report, adopted March 2014, published June 2014; Dyrmishi, A., Çela, M., Conflict of Interest in Albania: Regulatory Framework and Challenges to Implementation, Institute for Democracy and Mediation, October 2014.

¹¹³⁴ GRECO, Fourth Evaluation Round, Albania Evaluation Report, adopted March 2014, published June 2014, p.30 and 41.

¹¹³⁵ See Shqiparja news article "Gjykata anulon gjobën ndaj ish-ministrit Dritan Prifti" of 23 May 2012: <http://shqiptarja.com/aktualitet/2731/gjykata-anulon-gjoben-ndaj-ish-ministrit-dritan-prifti-85767.html>; See also HIDAACI Press Release on the fine, 2 November 2010: <http://www.hidaa.gov.al/2-nentor-2010/>

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.

¹¹³⁷ Article 42 of the Law on the Prevention of Conflicts of Interest. HIDAACI, Annual Report, 2013.

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.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.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 2013.¹¹⁴⁰ 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.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.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”

¹¹³⁸ HIDAACI, Annual Report, 2014, p.16-17. Written response from HIDAACI on 24 July 2015.

¹¹³⁹ The NAC is authorised to launch educational and awareness-raising activities on a national scale aiming at the prevention and elimination of corruption, which it plans to do in the near future. See Decision of the Council of Ministers no. 1012, of 22 November 2013, and the Anti-corruption Action Plan, Activity A.4.20.

¹¹⁴⁰ HIDAACI, Annual Report, 2013, p.7; Reed, Q., The Legal and Institutional Framework for Financial Disclosure in Albania, ACFA assessment report, October 2014, p.36.

¹¹⁴¹ Reed, Q., The Legal and Institutional Framework for Financial Disclosure in Albania, ACFA assessment report, October 2014, p.29-38.

¹¹⁴² Ibid; Interview with Mr. Shkëlqim Ganaj, Inspector General, HIDAACI, 12 February 2015 and 22 July 2015.

or no good reason, according to HIDAACI.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.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.

¹¹⁴³ Ibid.

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.

POLITICAL PARTIES			
Overall Pillar Score: 40.95			
Dimension	Indicator	Law	Practice
Capacity 56.25/100	Resources	50	50
	Independence	75	50
Governance 41.6/100	Transparency	50	25
	Accountability	50	25
	Integrity mechanisms	100	0
Role 25/100	Interest aggregation and representation	25	
	Anti-corruption commitment	25	

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

TO WHAT EXTENT DOES THE LEGAL FRAMEWORK PROVIDE A CONDUCIVE ENVIRONMENT FOR THE ESTABLISHMENT AND OPERATION OF POLITICAL PARTIES?

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

¹¹⁴⁶ Central Election Commission, Annual Report to Parliament, 2013, p.16-18, and Annual Report to Parliament, 2015, p.27.

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.¹¹⁵⁵ Finally, independent candidates are exempt from public funding, which the OSCE has noted goes against international standards.¹¹⁵⁶

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.¹¹⁵⁷ 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.¹¹⁵⁸ However, domestic and international actors agree that private funding is significantly underreported.¹¹⁵⁹ 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.¹¹⁶⁰

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.¹¹⁶¹

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.¹¹⁶² Parties are subject to the oversight of the

¹¹⁵⁵ Reed, Q., Regulation and oversight of political finance in Albania: Assessment and recommendations, ACFA assessment report, July 2014, p.7.

¹¹⁵⁶ OSCE/ODIHR, Final Report: Local Elections 21 June 2015, 8 September 2015, p.13-14.

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.

¹¹⁵⁸ Analysis of financial reports submitted to the CEC by different political parties for 2013 (electoral year) and 2014 (non-electoral year): <http://www.cec.org.al/sq-al/Raportet-vjetore-financiare-t%C3%AB-partive-politike>

¹¹⁵⁹ OSCE/ODIHR, Final Report: Local Elections 21 June 2015, 8 September 2015, p.14; Reed, Q., Regulation and oversight of political finance in Albania: Assessment and recommendations, July 2014, p.7; Dervishi, I., 'Financime jo transparente per partite politike ne Shqiperi' (Non transparent political party finance in Albania), BIRN, Tirana, 27 October 2015: <http://www.reporter.al/financime-jo-transparente-per-partite-politike-ne-shqiperi/>

¹¹⁶⁰ Shekulli, 'Bojaxhi publikon finançuesit e fushates se tij' (Bojaxhi publishes his campaign donors), 25 May 2015: <http://www.shekulli.com.al/p.php?id=263956>

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 2015.¹¹⁶³ There have also been claims of illegal wiretapping of MPs by the military and state intelligence service, but these remain unverified.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.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.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.¹¹⁶⁷ Also, while it should be recorded, data on donors of less than 710 euro does not have to be published.¹¹⁶⁸ Parties are not required to report and publish their

¹¹⁶³ OSCE/ODIHR, Final Report: Local Elections 21 June 2015, 8 September 2015, p.13; 2013 Final Report: Parliamentary Elections June 23, 2013, 10 October 2013, p.13.

¹¹⁶⁴ Koçiko, A., 'Përgjimet, nga SHIU...në breshër', Dita, 25 September 2014: <http://www.gazetadita.al/dajte-dalin-nga-shish-i/>; Hoxha, E., 'Emrat, ja kë përgjoi Berisha', Shekulli, 10 October 2014: <http://www.shekulli.com.al/p.php?id=57576>; Likmeta, B., 'Albania spy agency accused of illegal surveillance', Balkan Insight, Tirana, 3 March 2014: <http://www.balkaninsight.com/en/article/albania-spy-agency-accused-of-illegal-eavesdropping>

¹¹⁶⁵ Mejdini, F., 'Albanian opposition fined for protest damage', Balkan Insight, Tirana, 10 December 2015: <http://www.balkaninsight.com/en/article/albanian-opposition-charged-and-fined-over-violent-rally-12-09-2015>

¹¹⁶⁶ Article 9, Constitution; Article 15/1.2, Law on Political Parties.

¹¹⁶⁷ Ibid.

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).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.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).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.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.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.¹¹⁷⁴ 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.¹¹⁷⁵ 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

¹¹⁶⁹ Reed, Q., Regulation and oversight of political finance in Albania: Assessment and recommendations, ACFA assessment report, July 2014, p.7; OSCE/ODIHR, Final Report: Parliamentary Elections 23 June 2013, 10 October 2013, p.15; OSCE/ODIHR, Final Report: Local Elections 21 June 2015, 8 September 2015, p.14.

¹¹⁷⁰ Ibid.

¹¹⁷¹ Central Election Commission, Yearly Financial Reports of Political Parties: <http://www.cec.org.al/sq-al/Raportet-vjetore-financiare-t%C3%AB-partive-politike>

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-transparente-fondet-e-fushatave-kerkese-qiykates-administrative-apeli-per-pershpeitim-te-shqyrtimit-qiyqesor/>

¹¹⁷³ Article 15/2, Law on Political Parties; Article 21/15, Electoral Code; Article 10/f, Law no. 154/2014 on Organization and Functioning of High State Council.

¹¹⁷⁴ Article 23, Law on Political Parties.

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.

¹¹⁷⁸ Reed, Q., Regulation and oversight of political finance in Albania: Assessment and recommendations, ACFA assessment report, July 2014, p.4 and 7.

¹¹⁷⁹ Articles 23-23/4, Law On Political Parties; Article 91, Electoral Code.

¹¹⁸⁰ Reed, Q., Regulation and oversight of political finance in Albania: Assessment and recommendations, ACFA assessment report, July 2014, p.13.

¹¹⁸¹ Picari, M., 'Nesër afati I fundit – Auditimi I 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/vendi/financimi-partite-politike-fshehin-fondet-kqz-asnje-mase-ndeshkimore/>

¹¹⁸² CEC, Annual Report, 2015, p.42; CEC, Annual Report, 2013, p.73-74.

¹¹⁸³ Reports for 2011-2015 here: <http://www.cec.org.al/sq-al/Raportet-vjetore-financiare-t%C3%AB-partive-politike>

¹¹⁸⁴ Article 23/4.4, Law on Political Parties; CEC Press Release, 29 April 2016: <http://www.cec.org.al/sq-al/Njoftime/deklarata-shtypi/ID/460/Njoftim-per-shtyp-29042016>

¹¹⁸⁵ CEC, Annual Report 2015, February 2016, p.42.

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

TO WHAT EXTENT ARE THERE ORGANISATIONAL REGULATIONS IN PLACE REGARDING THE INTERNAL DEMOCRATIC GOVERNANCE OF THE MAIN POLITICAL PARTIES?

The statutes of the three biggest Political Parties (SMI, SP and DP) espouse principles of internal democracy in leadership elections, and other decision-making processes, including on party programmes and platforms.¹¹⁹¹ All three parties apply the one-member-one-vote principle based on secret ballots of alternative candidates. Each party has internal regulations that detail the modalities of elections.¹¹⁹²

The statutes generally envisage a bottom-up approach for candidate selection for central and local elections, with lower levels of party structures proposing candidates, who are then approved by leadership structures or national conventions.¹¹⁹³ Similarly, party programmes and electoral platforms are designed to result from the free contributions of all party levels. They are subject to change and approval by leadership structures.¹¹⁹⁴ Experts have noted that the statutes in question pay insufficient attention to mechanisms of protection of different opinions within parties.¹¹⁹⁵

¹¹⁸⁶ CDO, Public Statement, 1 August 2015, p.9: <http://www.zgjedhie.al/uploads/File/2014-2015/KVV-Qendrim%20Publik%20mbi%20transparencen%20e%20financim%20te%20partive-01-08-2015.pdf>

¹¹⁸⁷ European Commission, Progress Report Albania, October 2014, p.45; Albania Report, November 2015, p.55; Reed, Q., Regulation and oversight of political finance in Albania: Assessment and recommendations, ACFA assessment report, July 2014, p.11-12.

¹¹⁸⁸ Reed, Q., Regulation and oversight of political finance in Albania: Assessment and recommendations, ACFA assessment report, July 2014, p.7.

¹¹⁸⁹ CEC Decision no. 969, of 10 August 2015: <http://www.cec.org.al/sq-al/Legislacioni/Aktet-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.

¹¹⁹¹ Socialist Party Statute, 5 November 2011: <http://www.ps.al/wp-content/uploads/2012/12/Statuti-2011.pdf>; Democratic Party Statute, September 2014: <http://www.pd.al/statut/>; Socialist Movement for Integration Statute: http://www.lsi.al/index.php?option=com_content&view=article&id=5&Itemid=118&lang=AL

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.

¹¹⁹⁵ Krasniqi, A., Hackaj, A., Shqiptarët dhe Modeli Social Evropian: Demokracia e brendshme në partite politike shqiptare (Albanians and the European Social Model: Internal Democracy in Albanian Political Parties), Friedrich Ebert Stiftung, p.53: <http://library.fes.de/pdf-files/bueros/albanien/11316.pdf>

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.¹¹⁹⁶ 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.¹¹⁹⁷ 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.¹¹⁹⁸ 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 1990.¹¹⁹⁹ 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).¹²⁰⁰ 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-member-one-vote principle.¹²⁰¹ 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.¹²⁰² 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.¹²⁰³

¹¹⁹⁶ Krasniqi, A., 'Një leksion demokracie për "britanikët" e Tiranës', (A democracy lecture for Tirana's British), Ora News, 12 September 2015: <http://www.oranews.tv/analiza/nje-leksion-demokracie-per-britaniket-e-tiranes/>; Manaj, A., 'Vonë, deputetët ikën...' (Late MPs left), Tema, 6 February 2013: <http://www.gazetatema.net/web/2013/02/06/vone-deputetet-iken/>; Bifi, Y., 'Partitë politike dhe kriza e demokracisë përfaqësuese' (Political parties and the crisis of representative democracy), Panorama, 3 September 2012: <http://shtetiweb.org/2012/10/01/partite-politike-dhe-kriza-e-demokracise-perfaqesuese/>; Barbulushi, O., Albanian Political Parties, Inter-Party relations and the EU, in EU integration and party politics in the Balkans, European Policy Center, p.87-88: http://www.epc.eu/documents/uploads/pub_4716_eu_inteqration_and_party_politics_in_the_balkans.pdf;

¹¹⁹⁷ Top-Channel, 'Blushi: Political parties, profitable companies', 26 November 2015: http://top-channel.tv/lajme/english/artikull.php?id=15702#.Vx-WY0aVN_A; Gazeta Shqip, 'Majko: Statuti I PS është shkelur. Por jam me Ramën jo me Blushin' (Majko: SP Statute was violated. However I take sides with Rama, not Blushi), 8 February 2016: <http://www.gazeta-shqip.com/lajme/2016/02/08/majko-statuti-i-ps-eshte-shkelur-por-jam-me-ramen-jo-me-blushin/>; TV Klan, 'Arta Dade në krah të Blushit: Statuti i partisë duhet zbatuar' (Arta Dade supports Blushi: The statute needs to be respected) , 9 February 2016: <http://tvklan.al/arta-dade-ne-krah-te-blushit-statuti-i-partise-duhet-zbatuar/>; Politike.al, 'Zgjedhjet për kryetar në PS' (SP elections for chairman), 12 March 2016: <http://politike.al/sq/zgjedhjet-per-kryetar-ne-ps/>

¹¹⁹⁸ Shqiptarja.com, 'Surprizon Rama: Referendum për mandatin tim në krye të PS' (Rama surprises: Referendum for my mandate as SP chair), 9 March 2016: <http://shqiptarja.com/news.php?IDNotizia=346016>

¹¹⁹⁹ Rrozhani, A., 'PD, si u bë Sali Berisha Kryetar I përjetshëm' (DP, How Berisha became chairman for life), Shekulli, 31 March 2016: <http://www.shekulli.com.al/p.php?id=409281>

¹²⁰⁰ Politike.al, 'Zgjedhjet për kryetar në PD' (DP elections for chairman), 12 March 2016: <http://politike.al/sq/zgjedhjet-per-kryetar-ne-pd/>

¹²⁰¹ Shqiptarja.com, 'Gara për kreun e PD, Ollodashi: S'i dija kaq shumë mungesa në lista' (Race for DP chairman, Ollodashi: I was unaware of so many omissions in lists), 22 July 2013: <http://shqiptarja.com/home/1/basha-olldashi-pd-ne-zgjedhje-anetaret-s--39-qjeine-emrat-ne-lista-168382.html>

¹²⁰² Dita, 'Nuk ka surpriza në PD, Basha zgjidhet kryetar me 80% të votave' (No surprises in DP, Basha gets elected with 80% of votes), 23 July 2015: <http://www.gazetadita.al/nuk-ka-surpriza-ne-pd-basha-zgjidhet-kryetar-me-80-per-qind-te-votave/>; Gazeta Shqip, 'Zgjedhjet për kryetarin e PD, anëtarët akuzojnë për manipulime listash' (DP elections for chairman, members accuse of manipulations with lists), 23 July 2013: <http://www.gazeta-shqip.com/lajme/2013/07/23/zgjedhjet-per-kryetarin-e-pd-anetaret-akuzojne-per-manipulime-listash/> ;

¹²⁰³ High Court, Decision no. 5 of 10 April 2009.

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.¹²⁰⁴ 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.¹²⁰⁵ 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.¹²⁰⁶ Such concentration of power is facilitated by an electoral system based on closed party lists.¹²⁰⁷ 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 programmes 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.

¹²⁰⁴ Krasniqi, A., Hackaj, A., Shqiptarët dhe Modeli Social Evropian: Demokracia e brendshme në partite politike shqiptare (Albanians and the European Social Model: Internal Democracy in Albanian Political Parties), Friedrich Ebert Stiftung, p.56-57, 83.

¹²⁰⁵ Krasniqi, A., Hackaj, A., Shqiptarët dhe Modeli Social Evropian: Demokracia e brendshme në partite politike shqiptare (Albanians and the European Social Model: Internal Democracy in Albanian Political Parties), Friedrich Ebert Stiftung, p.47.

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.

¹²⁰⁸ National Democratic Institute, Albania Election Watch, Volume 1, 22 May 2013, p.3: <https://www.ndi.org/files/2013-Albania-Election-Watch-Report-May-22.pdf>

1209 Kajsiu, B., at Cela, A., Islami, E., Political Parties in Albania: The necessary return to ideology, Albanian Institute of International Studies, 2013, p.20: <http://www.aiis-albania.org/sites/default/files/PoliticalParties.pdf>

1210 Open Society Foundation Albania, 'The Foundation Publishes the Political Discourse Report', 17 December 2012: <http://www.osfa.al/printpdf/98>

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.ilfattoquotidiano.it/2014/12/30/renzi-sponsor-dellalbania-in-ue-rama-niente-sindacati-tasse-15/1305270/>

¹²¹² Likmeta, B., 'Women Given Unprecedented Role in Albania Cabinet', Balkan Insight, 1 August 2013: <http://www.balkaninsight.com/en/article/six-women-in-albania-s-new-government>

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

¹²¹³ Lame, E., Papa, A., Trust in Government: Public Opinion Poll 2015, December 2015, Institute for Democracy and Mediation, p.14.

¹²¹⁴ Ibid, p.39.

¹²¹⁵ Duci, V., Dhembo, E., Audit of Political Engagement in Albania 2016, Institute for Democracy and Mediation, 2016, p.25-29.

¹²¹⁶ Erebara, Gj., ‘Këshilltarët bashkiakë, 66 vetë kanë pasur problem me drejtësinë’ (Municipal Councillors, 66 with problems with justice), BIRN Albania, 23 May 2016: <http://pushtetivendor.reporter.al/keshillaret-bashkiake-66-vete-kane-pasur-probleme-me-dreitesine/> ; Ibid., ‘Five on the left and five on the right with criminal records in Parliament’, 20 May 2016: <http://www.reporter.al/pese-te-majte-dhe-pese-te-djathte-me-precedente-penale-ne-parlament/> ; Bogdani, A., ‘Pesë kryetarë bashkish të PS dhe PD pranojnë problemet me drejtësinë’ (Five SP and DP mayors admit problems with justice), BIRN, Tirana, 20 May 2016: <http://pushtetivendor.reporter.al/pese-kryetare-bashkish-te-ps-dhe-pd-pranoine-problemet-me-dreitesine/>

¹²¹⁷ Nations in Transit, Albania Profile, 2006, p.2: http://www.europarl.europa.eu/meetdocs/2004_2009/documents/fd/dsee20061010_12/dsee20061010_12en.pdf; The Economist, ‘Berisha beacon: The comeback of a discredited former prime minister’, 7 July 2005: <http://www.economist.com/node/4154570>

¹²¹⁸ Socialist Party Program, Re-establishing democracy pillar: <http://ps.al/files/programi/Rivendosja-e-demokracise.pdf>
¹²¹⁹ For more check: Dita, ‘Rama: Korruksioni luftohet duke përmirësuar sistemin’ (Rama: corruption is fought by improving the system), 13 November 2013: <http://www.gazetadita.al/rama-korruksioni-luftohet-duke-permiresuar-sistemin/>; and Lata, E., ‘Edi Rama, Korruksioni shqiptar i shpërndarë në çdo qelizë’ (Rama: Corruption spread in every cell), Shekulli, 10 December 2013: <http://www.shekulli.com.al/p.php?id=36354>; Democratic Party Official Website, ‘Basha in EPP: Crime and corruption have captured the state’: <http://www.pd.al/2015/10/basha-ne-ppe-krimi-dhe-korruksioni-kane-kapur-shtetin/>; Democratic Party Official Website, Speeches, ‘Albanians are facing today the tyranny of poverty, crime and corruption’: <http://www.pd.al/2016/02/shqiptaret-perballen-sot-me-tiranine-e-varferise-krimit-dhe-korruksionit/>

accountability and elite impunity.¹²²⁰ The leaders of two of Albania's three main parties have stood trial on corruption charges and have been acquitted in highly controversial judgements.¹²²¹

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.

¹²²⁰ Barbulushi, 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.

¹²²¹ High Court, Decision no. 5 of 10 April 2009; On Ilir Meta: Top Channel, 'Ilir Meta found not guilty', 16 January 2012: <http://top-channel.tv/english/artikull.php?id=4409>

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.

MEDIA			
Overall Pillar Score: 37.5			
Dimension	Indicator	Law	Practice
Capacity 50/100	Resources	75	50
	Independence	50	25
Governance 37.5/100	Transparency	75	25
	Accountability	75	25
	Integrity mechanisms	25	0
Role 25/100	Investigate and expose cases of corruption practice	25	
	Inform public on corruption and its impact	25	
	Inform public on governance issues	25	

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.¹²²² There are no official statistics on the print media and online media portals, but they are numerous.

¹²²² Audiovisual Media Authority, Media List, Radio: <http://ama.gov.al/mediat/radio/> and TV: <http://ama.gov.al/mediat/tv/>

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.¹²²³ 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.¹²²⁴ 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.¹²²⁵ 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.¹²²⁶ 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.¹²²⁷ 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.¹²²⁸ Based on legally defined principles and its own administrative needs, the AMA sets and periodically reviews licence and annual tariffs.¹²²⁹ All AMA decisions are subject to judicial control.

Political parties/organisations, financial institutions, state authorities and religious communities cannot apply for a broadcasting licence.¹²³⁰ 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.¹²³¹

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.¹²³² 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

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 Articles 31, 54-56, Law no. 97/2013 on Audiovisual Media in the Republic of Albania, of 4 March 2013.

¹²²⁷ Article 56.7, LAM.

¹²²⁸ Article 132, paragraph 4, Ibid.

¹²²⁹ Articles 26-27, Ibid.

¹²³⁰ Article 61, Ibid.

¹²³¹ Article 62, Ibid.

¹²³² Articles 7, 11, 94, 136, Ibid.

competition to *existing* national operators and those with experience in digital broadcasting, even though this has not been previously regulated.¹²³³ 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.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.¹²³⁵ 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.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.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.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,¹²³⁹ claims of cross-ownership of three of the invited contenders,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

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/Rregullore_BC.pdf

¹²³⁴ Articles 122/3, 126, LAM.

¹²³⁵ 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.64: http://mediaobservatory.net/sites/default/files/media%20integrity%20matters_za%20web_1.pdf; Freedom House, 'Freedom of the Press 2014: Albania', 2014: <http://freedomhouse.org/report/freedom-of-the-press/2014/albania#VDu2vhaPuf4>

¹²³⁶ Interview with Mr. Remzi Lani, Executive Director of Albanian Media Institute, 14 October 2014.

¹²³⁷ Londo, I., Media Integrity Matters: Albania, at South East European Media Observatory, Media Integrity Matters: Reclaiming public service values in media and journalism, p.62; Freedom House, 'Freedom of the Press 2014'; BIRN Albania, 'Politikë – biznes – media; rrjeti vicioz që prodhon vetë censure', 1 December 2015: <http://www.reporter.al/politike-biznes-media-rrjeti-vicioz-qe-prodhone-vetecensure/>

¹²³⁸ Interview with Besar Likmeta, Editor, BIRN Albania, 21 December 2015.

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/Rreth-procedures-Beauty-Contest.pdf>

¹²⁴⁰ Vizion Plus TV Lawsuit against AMA in the First Instance Administrative Court; Bogdani, A., Likmeta, B., 'Beauty Contesti kthehet në garë të shëmtuar për frekuencat dixhitale' (Albania's Beauty Contest turns into an ugly race for digital frequencies), BIRN Albania, 21 December 2015: <http://www.reporter.al/beauty-contesti-kthehet-ne-gare-te-shemtuar-per-frekuencat-dixhitale/>

consideration by the European Court of Human Rights.¹²⁴¹ 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.¹²⁴² 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 2013.¹²⁴³ 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.¹²⁴⁴ 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.¹²⁴⁵ 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.¹²⁴⁶

Independence (Law)

Score: 50

TO WHAT EXTENT ARE THERE LEGAL SAFEGUARDS TO PREVENT UNWARRANTED EXTERNAL INTERFERENCE IN THE ACTIVITIES OF THE MEDIA?

The legal framework protects the freedom of media establishment and activity, bans censorship and guarantees the right to information.¹²⁴⁷ 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.¹²⁴⁸

The sponsorship of news and informative programmes on politics is prohibited, but overall the regulation of public sponsorship of the media is ambiguous.¹²⁴⁹ Institutional advertising is allowed, but its association with specific parties is explicitly forbidden.¹²⁵⁰ 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.¹²⁵¹ The production and broadcast of advertising and media programmes is exempt from public 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.¹²⁵²

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

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.

¹²⁴³ European Commission, Albania Report, 2015, p.21-22:

¹²⁴⁴ Freedom House, 'Freedom of the Press 2014'; US Department of State, Report on Human Rights Practices Albania, 2014, p.14: <http://www.state.gov/documents/organization/236704.pdf>

¹²⁴⁵ Interview with Mr. Aleksander Cipa, Chair of the Albanian Union of Journalists, 29 September 2014; Balkan Investigative Reporting Network (BIRN) Albania, A blind eye on news: Self-censorship in the Albanian media, Tirana, 2015, p.28-29: <http://birn.eu.com/en/file/show/Report%20on%20self-censorship%20in%20the%20Albanian%20media.pdf>

¹²⁴⁶ Interview with Besar Likmeta, Editor, BIRN Albania, 21 December 2015. Balkan Investigative Reporting Network (BIRN) Albania, A blind eye on news: Self-censorship in the Albanian media, Tirana, 2015, p.30.

¹²⁴⁷ Article 22, Constitution; Article 4, LAM; Law no.8239 on the Press, of 3 September 1997.

¹²⁴⁸ Articles 4, 34, 87, LAM.

¹²⁴⁹ Article 45.4, LAM; Article 3, Law no. 7892 on Sponsorships, of 21 December 1994.

¹²⁵⁰ Article 40, LAM.

¹²⁵¹ Articles 80, paragraph 4 and 84, paragraph 10, Electoral Code.

¹²⁵² Article 7/b, Law no 9643 on Public Procurement, of 20 November 2006 ; Article 5/c, Law no. 125/2013 on Concessions and Public-private 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

TO WHAT EXTENT IS THE MEDIA FREE FROM UNWARRANTED EXTERNAL INTERFERENCE IN ITS WORK IN PRACTICE?

¹²⁵³ Articles 7-11, LAM.

¹²⁵⁴ Article 94, *Ibid.*

¹²⁵⁵ Draft law on amendments to Law on Audio-Visual Media, submitted to Parliament on 24 April 2015 by MP Taulant Balla:

http://www.parlament.al/web/PROJEKTLIGJ_P_R_DISA_SHTESA_DHE_NDRYSHIME_N_LIGJIN_NR_97_2013_P_R_MEDIAT_AUDIOVIZIVE_N REP_19946_1.php; OSCE, Press Release, 'OSCE representative urges progress on public service broadcasting reform and safeguarding media pluralism in Albania', 12 May 2015:

<http://www.osce.org/fom/156676>; Council of Europe, Londo, I., 'Parliament discusses proposed amendment on removal of ownership regulation for audiovisual media', 2015: <http://merlin.obs.coe.int/article.php?id=15407>

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.

¹²⁶¹ Report on draft law on changes in Law 7895 date 27 January 1995, Criminal Code of the Republic of Albania: https://www.parlament.al/wp-content/uploads/2015/11/relacion_ndryshime_7895_kodi_penal_19837_1.pdf; OSCE Representative on the freedom of the media, Press Release, 'Albania should reject bill introducing imprisonment for libel of public officials, says OSCE representative and calls for full decriminalization', Vienna, 12 November 2015: <http://www.osce.org/fom/199446>

¹²⁶² European Commission, Albania Report, 2015, p.21.

¹²⁶³ Parliamentary Assembly of the Council of Europe (PACE), Report: The honouring of obligations and commitments by Albania, 2 September 2014, p.17: https://www.ecoi.net/file_upload/1226_1409652833_xrefviewpdfalbania.pdf

The media is strongly influenced by economic and political interests, channelled mainly through the politicisation of the AMA, hidden media ownership, and state advertising.¹²⁶⁴ 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.¹²⁶⁵ 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).¹²⁶⁶ Overall, the proximity of the regulator's board members to political or other interests is not a new occurrence, exacerbating issues of credibility.¹²⁶⁷ The delayed process of digital switch-over and reform of the public broadcaster¹²⁶⁸ 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.¹²⁶⁹ In breach of legal provisions, many media outlets are supported by business holdings, mainly in trade, construction, telecommunication and oil.¹²⁷⁰ 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.¹²⁷¹

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.¹²⁷² 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.¹²⁷³

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.¹²⁷⁴ 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.¹²⁷⁵

¹²⁶⁴ Freedom House, 'Freedom of the Press 2014'; Parliamentary Assembly of the Council of Europe (PACE), Report: The honouring of obligations and commitments by Albania, 2 September 2014, p.16.

¹²⁶⁵ Bogdani, A., Likmeta, B., 'Albania's Digital TV 'Beauty Contest' Turns Ugly', Balkan Insight, 7 January 2016.

¹²⁶⁶ European Commission, Albania Report, 2015, p.21

¹²⁶⁷ Ibid.; Albanian Media Institute, Monitoring of the Implementation of the Law on Audio-visual Media, June 2015, p.9; US Department of State, Report on Human Rights Practices Albania, 2014, p.12.

¹²⁶⁸ OSCE, Report to Permanent Council by the Head of the OSCE Presence in Albania, 17 September 2015, p.12-13: <http://shqiptaria.com/pdf/new/OSBE.pdf>

¹²⁶⁹ Bogdani, A., Likmeta, B., 'Albania's Digital TV 'Beauty Contest' Turns Ugly', Balkan Insight, 7 January 2016.

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.

¹²⁷¹ US Department of State, Report on Human Rights Practices: Albania, 2014, p.13; Freedom House, 'Freedom of the Press 2014'; Balkan Investigative Reporting Network (BIRN) Albania, A blind eye on news: Self-censorship in the Albanian media, Tirana, 2015.

¹²⁷² Likmeta, B., 'Big advertisers subvert Albanian media freedom', Balkan Insight, 20 December 2013: <http://www.balkaninsight.com/al/article/big-advertisers-subvert-albanian-media-freedom>

¹²⁷³ ResPublica, Use of Public Funds for Advertising and Other Forms of Publicity, July 2015, p.11-14, 21-23.

¹²⁷⁴ Albanian Media Institute, State and Private Advertising in Albanian Media, 2014, p.26-27: <http://www.institutemedia.org/Documents/PDF/Reklamat%20shqip%20per%20botim.pdf>

¹²⁷⁵ Balkan Investigative Reporting Network (BIRN) Albania, A blind eye on news: Self-censorship in the Albanian media, Tirana, 2015, p.36.

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.¹²⁷⁶ 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.¹²⁷⁷ While police protection is sometimes provided and investigations are initiated, interviewed journalists were not aware of any prosecutions or convictions.¹²⁷⁸ Libel charges against journalists are rare, but hostile statements from politicians against journalists have been noted.¹²⁷⁹ International partners have continuously demanded further steps to fully decriminalise defamation.¹²⁸⁰

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.¹²⁸¹

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.¹²⁸² 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.¹²⁸³ Fines are envisaged for failure to inform the regulator of changes in the ownership structure.¹²⁸⁴ 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.¹²⁸⁵ 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.

¹²⁷⁷ Engjell Serjani, Telnis Skuqi, Armand Bajrami, Artan Hoxha, Aurora Koromani, AgimBlloshmi, A1 Report Television vehicle incident in Lazarat. Balkan Investigative Reporting Network (BIRN) Albania, A blind eye on news: Self-censorship in the Albanian media, Tirana, 2015; Interview with Mr. Aleksander Cipa, Chair of the Albanian Union of Journalists, 29 September 2014; US Department of State, Report on Human Rights Practices: Albania, 2014; European Commission, Albania Report, 2015, p.20-21.

¹²⁷⁸ Interview with Gjergj Erebara and Besar Likmeta, Journalists, BIRN Albania, 21 December 2015.

¹²⁷⁹ Gazeta Tema, 'Zyrtari I Berishës kërkon dy vjet burg për gazetaren' (Berisha's official asks two years imprisonment for journalist), 27 March 2012: <http://www.gazetatemra.net/web/2012/03/27/zyrtari-i-berishes-kerkon-burg-per-gazetaren/>; European Commission, Albania Report, 2015, p.21.

¹²⁸⁰ European Commission, Progress Report Albania, 2013, p.10.

¹²⁸¹ OSCE/ODIHR, Final Report: Local Elections 21 June 2015, 8 September 2015, p.15-17.

¹²⁸² Article 32, Law on National Registration Center.

¹²⁸³ Article 56, LAM.

¹²⁸⁴ Article 133, Ibid.

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 Code¹²⁹¹ 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

¹²⁸⁸ *Audiovisual Media Authority, Annual Report 2014*, February 2015, p.35: <http://ama.gov.al/preview/wp-content/uploads/2015/04/RAPORTI-VEJTOR-AMA-2014.pdf>

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.

¹²⁹¹ Decision no. 1, date 27 January 2014, 'On Approving the Broadcasting Code of Audiovisual Media Authority': <http://ama.gov.al/images/stories/Kodi%20i%20transmetimit.pdf>

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.¹²⁹⁹

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

¹²⁹⁷ Articles 617, 625, Code of Civil Procedure.

¹²⁹⁸ Articles 85, 85.1, Electoral Code.

¹²⁹⁹ OSCE Presence in Albania, 'OSCE encourages creation of media self-regulation mechanisms in Albania', 19 August 2009: <http://www.osce.org/albania/57754>; Balkan Investigative Reporting Network (BIRN) Albania, A blind eye on news: Self-censorship in the Albanian media, Tirana, 2015, p.31.

¹³⁰⁰ European Commission, Albania Report, 2015, p.21.

¹³⁰¹ Ibid.

¹³⁰² AMA, 2014 Annual Report, February 2015, p.4-5.

¹³⁰³ AMA, 2013 Annual Report, February 2014, p.8,10: <http://ama.gov.al/preview/wp-content/uploads/2015/04/Raporti-vjetor-2013.pdf>

¹³⁰⁴ Ibid.

¹³⁰⁵ AMA, 2014 Annual Report, February 2015, p.21.

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.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.¹³⁰⁹ However, it lacks implementation mechanisms despite several efforts in that regard, and its endorsement by media outlets and journalists is unclear.¹³¹⁰ There is one case on record of an ethical bureau within a daily newspaper, but it no longer exists.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.¹³¹² Overall, efforts to uphold media ethics, including through self-regulation, have been persistent but unsuccessful.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.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.¹³¹⁵

¹³⁰⁸ OSCE/ODIHR, 2015 Local Elections Final Report, 8 September 2015, p.16-17; OSCE/ODIHR, 2013 General Election Final Report, p.16-17.

¹³⁰⁹ Code of Ethics of Albanian Media, 2006: <http://www.osce.org/albania/21234?download=true>

¹³¹⁰ OSCE Presence in Albania, 'OSCE encourages creation of media self-regulation mechanisms in Albania', 19 August 2009: <http://www.osce.org/albania/57754>; ResPublica, 'Respublica përgatit udhëzuesin për themelin e Këshillit të Mediave' (Respublica prepares manual for establishing the Media Council), 17 January 2014: <http://www.respublica.org.al/res-publica-pergatit-udhezuesin-per-themelin-e-keshillit-te-mediave/>; 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.

¹³¹¹ Friedrich-Ebert-Stiftung (FES), Balkan Media Barometer: Albania 2013, p.48: <http://www.fes-tirana.org/media/publications/pdf-files/2013/pub-131218-bmb-albanian-eng.pdf>

¹³¹² Balkan Investigative Reporting Network (BIRN) Albania, A blind eye on news: Self-censorship in the Albanian media, Tirana, 2015, p.28.

¹³¹³ Friedrich-Ebert-Stiftung (FES), Balkan Media Barometer: Albania Barometer, 2013, p.48.

¹³¹⁴ Interview with Mr. Remzi Lani, Executive Director of Albanian Media Institute, 14 October 2014.

¹³¹⁵ Dervishi, I., 'Raporti: Trafikimi i personave ende i reportuar përciptazi në median shqiptare' (Report: Human trafficking continues to be superficially covered in Albanian media), BIRN Albania, 23 February 2016: <http://www.reporter.al/raporti-trafikimi-i-personave-ende-i-reportuar-percuptazi-ne-median-shqiptare/>; see also Vehbiu, A., 'Hallet e një punëtori të mediave' (Problems of a media employee), Peizazhe të fjalës, 16 January 2016: <https://peizazhe.com/2016/01/16/hallet-e-nje-punetori-te-mediave/>; Vehbiu, A., 'Tallava e lajmit', Perizazhe të fjalës, 12

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.¹³¹⁶ 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’.¹³¹⁷ Furthermore, online news portals, including the pages of mainstream newspapers, are dominated by pieces on the latest revealing photos and ‘provocations’ of female celebrities.¹³¹⁸ 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.¹³¹⁹ Rectifications are not a practice among Albanian media.

Role

Investigate and expose cases of corruption (Practice)

Score: 25

TO WHAT EXTENT IS THE MEDIA ACTIVE AND SUCCESSFUL IN INVESTIGATING AND EXPOSING CASES OF CORRUPTION?

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.¹³²⁰ There are a few investigative TV programmes that seek to uncover corruption of mainly mid- or low-level officials.¹³²¹ 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.¹³²² Furthermore, corruption the media does not systematically follow up on cases, thus weakening public pressure for accountability.¹³²³

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-shokohemi/>

¹³¹⁶ Kaziar, E., ‘Kur fémijet 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/>; Kazaj, E., ‘Fémijet 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-keqpërdorur-nga-politika/>

¹³¹⁷ Opinion, ‘Sherr grash në PD’ (Women fight in DP), 2 March 2016: <http://opinion.al/sherr-grash-ne-pd/>; Tema, ‘Fotot Modele seks? Jo, janë deputetet e PD-së’ (Pictures/ Sexy models? No, they are DP’s MPs), 1 October 2015: <http://www.gazetata tema.net/web/2015/10/01/fotot-modele-seksi-jo-jane-deputetet-e-pd-se/>

¹³¹⁸ Vehbiu, A., ‘Provoke or perish’, Peizazhe të fjalës, 23 January 2016: <https://peizazhe.com/2016/01/23/provoke-or-perish/>; Toska, S., ‘Përtëritja e shëmtuar e femrave të bukur’ (The ugly renewal of beautiful women), Gazeta Shqip, 6 January 2014: <http://www.gazeta-shqip.com/lajme/2014/01/06/perteritura-e-shemtuar-e-femrave-te-bukura/>

¹³¹⁹ Historia Ime, ‘Historia ime publikon gjeljet e monitorimit mbi gjuhën e urrejtjes 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-gjeljet-e-monitorimit-mbi-gjuhjen-e-urrejtjes-dhe-diskriminimit-ne-media/>

¹³²⁰ IREX, Media Sustainability Index: Development of sustainable independent media in Europe and Eurasia, 2014, p.8.

¹³²¹ “Fiks Fare” on Top Channel TV, and “Alarm” on Ora News TV, “Stop” in TV Klan, “Xhungel” in News24.

¹³²² Çela, A., Erebara, Gj., Reporting corruption in broadcast and print media: The case of Albania, BIRN, December 2014, p.17-18.

¹³²³ Interview with Besar Likmeta, Editor, BIRN Albania, 21 December 2015.

Inform public on corruption and its impact (Practice)

Score: 25

TO WHAT EXTENT IS THE MEDIA ACTIVE AND SUCCESSFUL IN INFORMING THE PUBLIC ON CORRUPTION AND ITS IMPACT ON THE COUNTRY?

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.¹³²⁴ 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

TO WHAT EXTENT IS THE MEDIA ACTIVE AND SUCCESSFUL IN INFORMING THE PUBLIC ON THE ACTIVITIES OF THE GOVERNMENT AND OTHER GOVERNANCE ACTORS?

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.¹³²⁵ 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.¹³²⁶ 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.¹³²⁷

Many journalists complain that a lack of employment contracts frequently hinders their ability to report objectively.¹³²⁸ 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.¹³²⁹ A 2014 survey with about 120 journalists and editors in chief confirmed the same concerns.¹³³⁰

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.

¹³²⁶ US Department of State, Report on Human Rights Practices Albania, 2014, p.14.

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.

¹³²⁹ Freedom House, 'Freedom of the Press 2015': <https://freedomhouse.org/report/freedom-press/2015/albania>

¹³³⁰ Balkan Investigative Reporting Network (BIRN) Albania, A blind eye on news: Self-censorship in the Albanian media, Tirana, 2015.

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 programming 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.

CIVIL SOCIETY			
Overall Pillar Score: 34.7			
Dimension	Indicator	Law	Practice
Capacity 62.5/100	Resources	75	25
	Independence	100	50
Governance 16.6/100	Transparency	-	25
	Accountability	-	25
	Integrity	-	0
Role 25/100	Hold government accountable	25	
	Policy reform	25	

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.¹³³¹ According to Open Data Albania, the number of Albanian and foreign NPOs that currently declare taxes at the Tax Office is only 2,378.¹³³²

The law recognises membership and non-membership forms of organisation for NPOs, with the former being associations, and the latter being centres or foundations.¹³³³ 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.¹³³⁴

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.¹³³⁵ 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.¹³³⁶

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.¹³³⁷

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.¹³³⁸ 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.¹³³⁹ The centralisation of the procedure in Tirana has been criticised for increasing difficulties for CSOs outside the capital.¹³⁴⁰ These decisions can be appealed to a higher court.¹³⁴¹

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,

¹³³¹ USAID, The 2014 CSO Sustainability Index for Central and Eastern Europe and Eurasia, 2015, p.13: https://www.usaid.gov/sites/default/files/documents/1863/EuropeEurasia_FY2014_CSOSI_Report.pdf

¹³³² Open Data Albania, Statistical indicators for NPOs 2005-2014:

<http://open.data.al/sq/lajme/lajm/id/1447/titull/Tregues-statistikor-per-Organizata-Jofitimprurese-2005-2014>

¹³³³ Civil Code and Law no. 8788 on Non-profit Organisations, of 7 May 2001.

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.

¹³³⁶ Articles 8/3, 20, Law no. 9917 on Prevention of Money Laundering and Financing of Terrorism, of 19 May 2008.

¹³³⁷ Articles 22-23, 46-47, 81, and 150, Constitution.

¹³³⁸ Article 46, Constitution; Law no. 8789, 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.

¹³⁴⁰ Vidačak, I., Doci, M., Roadmap of Government's Policy for the Creation of an Enabling Environment for the Development of CSOs (Draft), November 2014, p.19; Partners Albania, Monitoring Matrix on Enabling Environment for the Development of Civil Society, Country Report for Albania 2015, February 2016, p.18-19:

<http://partnersalbania.org/publication/monitoring-matrix-on-enabling-environment-for-civil-society-development-country-report-for-albania-2/>

¹³⁴¹ Article 25, Law on the Registration of NPOs.

suspending the case in the meantime.¹³⁴² Following court registration, NPOs must apply for registration with the tax authority, which must process the registration within five days.¹³⁴³

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.¹³⁴⁴ 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.¹³⁴⁵ Exemptions from VAT entered into force in 2015 and they are defined in minute, and at times unclear detail.¹³⁴⁶

In 2015, the National Accounting Standard was approved, finally distinguishing NPOs from businesses for financial reporting requirements.¹³⁴⁷ 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).¹³⁴⁸ A recent legal amendment removed the eligibility of business donors to fiscal reductions, thus reducing incentives for these donors.¹³⁴⁹ 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.¹³⁵⁰

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.¹³⁵¹ 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).

¹³⁴⁶ Articles 51-52, Law no. 92/2014 on VAT' (in Albanian); see also Decision of the Council of Ministers no. 953, of 29 December 2014, and the following summary: <https://www.osfa.al/njoftime/te-reja-mbi-legislacionin-fiskal-per-oif-te-partnersalbania.org>

¹³⁴⁷ For more information on the National Accounting Standard see:

[http://www.kkk.gov.al/foto/uploads/File/Varianti%20SKK%20per%20OJF,%20pas%20mbledhjes%20se%20majit%20\(1\).pdf](http://www.kkk.gov.al/foto/uploads/File/Varianti%20SKK%20per%20OJF,%20pas%20mbledhjes%20se%20majit%20(1).pdf)

¹³⁴⁸ Partners Albania, Monitoring Matrix on Enabling Environment for Civil Society Development: Country Report for Albania 2015, p.20.

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.

¹³⁵¹ Partners Albania, Monitoring Matrix on Enabling Environment for the Development of Civil Society, Country Report for Albania 2015, February 2016, p.18-19; Technical Assistance for Civil Society Organizations in the IPA Countries TACSO, Albania: Revised Needs Assessment Report, December 2013, p.2, 8, 10:
http://www.tacso.org/doc/nar_al2014april.pdf

Gledis Gjipali, businesses tend to support emergency cases and have difficulty understanding and promoting the work of think-tanks and research centres.¹³⁵²

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.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 2015.¹³⁵⁴ 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.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.¹³⁵⁶

According to two interviewees and a recent assessment, volunteerism remains underdeveloped.¹³⁵⁷ CSOs membership is often a formality and constituency bases remain weak, despite some good efforts to confront this.¹³⁵⁸ Turnout in protests organised by civil society tends to be significantly lower than in those organised by Political Parties.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.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.¹³⁶¹

Independence (Law)

Score: 100

TO WHAT EXTENT ARE THERE LEGAL SAFEGUARDS TO PREVENT UNWARRANTED EXTERNAL INTERFERENCE IN THE ACTIVITIES OF CSOS?

¹³⁵² Partners Albania, Monitoring Matrix on Enabling Environment for the Development of Civil Society, Country Report for Albania 2015, February 2016, p.24; Interview with Gledis Gjipali, Executive Director, European Movement Albania, 1 March 2016.

¹³⁵³ European Commission Progress Reports: 2013, p.8; 2014, p.14 and 17; 2015, p.9. See also Parliament's Resolution of 24 December 2014 'On recognizing and strengthening the role of civil society in the process of democratic developments in the country'.

¹³⁵⁴ Partners Albania, Monitoring Matrix on Enabling Environment for the Development of Civil Society, Country Report for Albania 2015, February 2016, p.24-26; Technical Assistance for Civil Society Organizations in the IPA Countries TACSO, Albania: Revised Needs Assessment Report, December 2013, p.2; Vidačak, I., Doci, M., Roadmap of Government's Policy for the Creation of an Enabling Environment for the Development of CSOs (Draft), November 2014, p.19; Partners Albania, Monitoring Report on Philanthropic Activity, 2015, p.3:
<http://partnersalbania.org/News/monitoring-report-on-philanthropic-activity-in-albania-during-2015/>

¹³⁵⁵ 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.

¹³⁵⁶ European Commission, Albania Report, November 2015, p.9.

¹³⁵⁷ Partners Albania, Monitoring Matrix on Enabling Environment for the Development of Civil Society, Country Report for Albania 2015, February 2016, p.32-33; USAID, The 2014 CSO Sustainability Index, p.13; Interview with Gledis Gjipali, Executive Director, European Movement Albania, 1 March 2016; Interview with Dorarta Hyseni, Program Manager, National Democratic Institute in Albania, 11 August 2015.

¹³⁵⁸ Freedom House, Nations in Transit 2015, p.54; USAID, The 2014 CSO Sustainability Index for Central and Eastern Europe and Eurasia, p.14; Interview with Dorarta Hyseni, Program Manager, National Democratic Institute in Albania, 11 August 2015; see also, Bertelsmann Transformation Index, Country Report Albania, 2016, p.25: https://www.bti-project.org/fileadmin/files/BTI/Downloads/Reports/2016/pdf/BTI_2016_Albania.pdf

¹³⁵⁹ Interview with Dorarta Hyseni, Program Manager, National Democratic Institute in Albania, 11 August 2015.

¹³⁶⁰ Technical Assistance for Civil Society Organizations in the IPA Countries TACSO Albania, Albania: Revised Needs Assessment Report, December 2013, p.4 and 23.

¹³⁶¹ 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 are 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, dissolutions, 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 *Mjaft! 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.

¹³⁶⁶ Partners Albania, Monitoring Matrix on Enabling Environment for Civil Society Development, Country Report for Albania 2015, p.19.

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.

¹³⁶⁹ Freedom House, Nations in Transit 2015: Albania, p.54.

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.

¹³⁷¹ Rusi, E., Likmeta, B., ‘Albanian Agency turns NGO Funding into family affair’, Balkan Insight, 17 April 2014: <http://www.balkaninsight.com/en/article/albanian-agency-turns-ngo-funding-into-family-affair>.

In 2015, an independent investigation by the Ombudsman of claims of violence in the Tirana Police Directorate in the case of arrested student protesters who threw eggs at the Prime Minister was reportedly obstructed.¹³⁷² While the right to assembly and protest is generally respected in practice, police violence against activists protesting construction at the Tirana Lake was reported in 2016, and the shooting of four citizens by the Guard of the Republic at the 21 January 2011 protest against corruption has not been independently investigated, prosecuted, and adjudicated.¹³⁷³ The European Court of Human Rights in Strasbourg is now considering this case.¹³⁷⁴

Governance

Transparency (Practice)

Score: 25

TO WHAT EXTENT IS THERE TRANSPARENCY IN CSOS?

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,¹³⁷⁵ 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.¹³⁷⁶

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.¹³⁷⁷ 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.¹³⁷⁸

Accountability (Practice)

Score: 25

TO WHAT EXTENT ARE CSOS ANSWERABLE TO THEIR CONSTITUENCIES?

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

¹³⁷² Albanian Helsinki Committee, 2015 Report on the Human Rights Situation in Albania, p.41: http://ahc.org.al/web/images/publikime/al/Raporti_per_te_Drejtat_Njeriut.pdf

¹³⁷³ Partners Albania, Monitoring Matrix on Enabling Environment for the Development of Civil Society, Country Report for Albania 2013, February 2014, p.18: <http://partnersalbania.org/publication/monitoring-matrix-on-enabling-environment-for-civil-society-development-country-report-for-albania-2/>; Agolli, I., 'KSHH: Vendimi i gjykatës nuk të bind përdrejtësi dhe paanshmëri' (AHC: Court decision insufficiently convincing on providing justice and impartiality), Voice of Albania VoA, 10 February 2013: <http://www.zeriamerikes.com/content/reagime-te-tjera-per-vendimin-e-21-janarit/1600636.html>

¹³⁷⁴ Top Channel, 'January 21st in Strasbourg, Court demands information', 12 April 2016: <http://m.top-channel.tv/lajme/english/artikull.php?id=16798>

¹³⁷⁵ USAID, The 2014 Civil Society Sustainability Index for Central and Eastern Europe and Eurasia, p.14 and 19.

¹³⁷⁶ IPSOS and TACSO, Civil Society Organisations in Albania, March 2014, p.9-10: http://www.tacso.org/doc/ipsos_report_al.pdf

¹³⁷⁷ Interview with Gledis Gjipali, Executive Director, European Movement Albania, 1 March 2016.

¹³⁷⁸ Interview with Dorarta Hyseni, Program Manager, National Democratic Institute in Albania, 11 August 2015.

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.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 2015.¹³⁸⁰ 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.¹³⁸¹

Integrity (Practice)

Score: 0

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.¹³⁸² A very small number of NPOs have codes of ethics.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.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.¹³⁸⁵

Role

Hold government accountable

Score: 25

TO WHAT EXTENT IS CIVIL SOCIETY ACTIVE AND SUCCESSFUL IN HOLDING GOVERNMENT ACCOUNTABLE FOR ITS ACTIONS?

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.

¹³⁸⁰ USAID, The 2014 Civil Society Sustainability Index, 2015, p.14-15, and 19; Lame, E., Papa, A., Trust in Government 2015: Opinion Poll, Institute for Democracy and Mediation, 2016: http://idmalbania.org/wp-content/uploads/2016/02/Opinion-Poll_trust-in-government_2015.pdf

¹³⁸¹ Freedom House, Nations in Transit: Albania 2015, p.54.

¹³⁸² See in particular article 46 of the Civil Code, and articles 26-27 of the Law on NPOs.

¹³⁸³ USAID, The 2014 Civil Society Sustainability Index, 2015, p.19.

¹³⁸⁴ Rusi, E., 'Albanian Agency Turns NGO Funding into Family Affair', Balkan Insight, 17 April 2014:

<http://www.balkaninsight.com/en/article/albanian-agency-turns-ngo-funding-into-family-affair>

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

TO WHAT EXTENT IS CIVIL SOCIETY ACTIVELY ENGAGED IN POLICY REFORM INITIATIVES ON ANTI-CORRUPTION?

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

¹³⁸⁶ USAID, The 2014 Civil Society Sustainability Index, 2015, p.16; OGP: For an overview see: Vurmo, Gj., Albanian CSOs got the "OGP message". Did the Government?, Open Government Partnership, 4 April 2014: <http://www.opengovpartnership.org/blog/gjergji-vurmo/2014/04/04/albanian-csos-got-%E2%80%9Cogp-message%E2%80%9D-did-government>; Public Procurement: Likmeta, B., 'Albanian public procurement unfair, report says', Balkan Insight, 3 June 2015: <http://www.balkaninsight.com/en/article/albania-public-procurement-procedures-lack-integrity-report-says>; Judiciary impunity: ResPublica, 'Pandëshkueshmëria në procedimet disiplinore të gjyqtarëve nga KLD gjatë vitit 2015' (Impunity in disciplinary proceedings of judges from HJC during 2015), 2 April 2016: <http://www.respublica.org.al/pandeshkueshermia-ne-procedimet-disiplinore-te-gjyqtareve-nga-kld-qjate-vitit-2015-2/>; Mjaft's monitoring: Mejdini, F., 'Albania NGO lists Rama's broken promise', Balkan Insight, 22 December 2015: <http://www.balkaninsight.com/en/article/albania-government-failed-to-meet-the-promises-12-22-2015>; Anti-corruption monitoring: Likmeta, B., 'Albanian Government fails corruption homework', Balkan Insight, 21 December 2011: <http://www.balkaninsight.com/en/article/albania-fails-its-own-homework-on-corruption-report-says>; Gjipali, G. et. al. "Albania", in Civil Society in the EU Integration of the Western Balkan, (ed. Tomasz Żornaczuk), October 2014, p.22: https://www.pism.pl/files/?id_plik=18260;

¹³⁸⁷ USAID, The 2014 Civil Society Sustainability Index, 2015 p.16; USAID, The 2013 Civil Society Sustainability Index, 2014, p.14; USAID, The 2012 Civil Society Sustainability Index, p.19-2; For more see: The Guardian, 'Albania rejects US request to host disposal of Syria's chemical weapons', 15 November 2013: <http://www.theguardian.com/world/2013/nov/15/albania-rejects-request-disposal-syrian-chemical-weapons>; for more information see Likmeta, B., 'Albania's new govt bans waste import', Balkan Insight, 17 September 2013: <http://www.balkaninsight.com/en/article/albania-bans-waste-imports>

¹³⁸⁸ Freedom House, Nations in Transit: Albania, 2015, p.55.

¹³⁸⁹ USAID, The 2014 Civil Society Sustainability Index, 2015, p.16; USAID, The 2013 Civil Society Sustainability Index, 2014, p.14; USAID, The 2012 Civil Society Sustainability Index, 2013, p.19-20.

However, a recent survey of 102 NPOs found that a half of them claim that they do not routinely receive timely invitations for consultation.¹³⁹⁰ 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.¹³⁹¹ 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.¹³⁹²

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.¹³⁹³ The Law on Public Consultation provides CSOs with an important tool to access policy reform processes, including anti-corruption reform.¹³⁹⁴

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.¹³⁹⁵ 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.

¹³⁹⁰ Partners Albania, Monitoring Matrix on Enabling Environment for Civil Society Development, Country Report for Albania, 2015, p.7 and 35-36.

¹³⁹¹ Ibid; Partners Albania, Monitoring Matrix on Enabling Environment for Civil Society Development, Country Report for Albania 2014, p.29; IPSOS and TACSO, Civil Society Organisations in Albania, March 2014, p.6.

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.

¹³⁹³ Parliament's Resolution of 24 December 2014 'On recognizing and strengthening the role of civil society in the process of democratic developments in the country': http://www.qbz.gov.al/botime/fletore_zyrtare/2014/PDF-2014/203-2014.pdf

¹³⁹⁴ Law no. 146/2014 on Public Notification and Consultation: http://www.hidaa.gov.al/ligje/Ligji_146-2014_per_njoftimin_dhe_konsultimin_publik.pdf

¹³⁹⁵ Law no. 119/2015 on Creation and Functioning of National Council of Civil Society: https://www.parlament.al/wp-content/uploads/sites/4/2016/01/ligj_nr_119_dt_6_11_2015_24473_1.pdf

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.

BUSINESS			
Overall Pillar Score: 40.26			
Dimension	Indicator	Law	Practice
Capacity 50/100	Resources	75	50
	Independence	50	25
Governance 45.8/100	Transparency	75	50
	Accountability	75	25
	Integrity mechanisms	50	0
Role 25/100	Anti-corruption policy engagement	25	
	Support for engagement with civil society	25	

Structure and organisation

The private sector contributes around 80 per cent of the GDP and employment in Albania.¹³⁹⁶ 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.¹³⁹⁷ The total number of

¹³⁹⁶ European Commission, Albania Report, 2015, p.27 and 30 and Progress Report on Albania, 2013, p.15.

¹³⁹⁷ Data retrieved from the Institute of Statistics (INSTAT) official website, section Regjistri Statistikor i Ndermarrjeve: <http://www.instat.gov.al/al/themes/regjistri-statistikor-i-nd%C3%ABrmarrieve.aspx>

active enterprises in 2015 was 152,288.¹³⁹⁸ 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.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.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.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.¹⁴⁰²

Capacity

Resources (Law)

Score: 75

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.¹⁴⁰³ Likewise, in 2016 the World Bank assessed in its *Doing Business* report that while business

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.

¹³⁹⁹ Kondi, G., 'Bursa e Tiranes, Qeveria prenton aktivizimin e saj' (Tirana's Stock Exchange, government promises its activation), Shqiptarja, 25 September 2013: <http://shqiptarja.com/ekonomi/2733/bursa-e-tiranes-qeveria-prenton-aktivizimin-e-saj-178824.html>; Xhajanka, E., 'Bursa e pare private shqiptare aplikon per miratim prane AMF', Agjensia Telegrafike Shqiptare, 16 June 2016: <http://www.ata.gov.al/bursa-e-pare-private-shqiptare-aplikon-per-miratim-prane-amf/>

¹⁴⁰⁰ Information request submitted to the Ministry of Economic Development, Tourism, Trade and Entrepreneurship via e-mail on 16 May 2016.

¹⁴⁰¹ Article 1, Law on Creation and Functioning of the National Economic Council.

¹⁴⁰² DCM no. 294, date 8 April 2015 'On the Establishment of the Investment Council'.

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.¹⁴⁰⁴

Overall regulatory reform in 2007 and legislative amendments in 2013 and 2015 have simplified procedures and lowered the costs of starting a business.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.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 underway¹⁴⁰⁷ 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.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.¹⁴⁰⁹ In 2012 and 2015 time limits were set for land registration, and property transfer was facilitated by electronic records of immovable property.¹⁴¹⁰ Intellectual property legislation is somewhat harmonised with the EU and a new Law on Copyright has been approved.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.¹⁴¹²

Fragmentation in institutional responsibilities is considered a key challenge to the provision of quality state services.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.¹⁴¹⁴

Business registration is considered to function reasonably well and work is being done to improve and encourage online services¹⁴¹⁵ According to *Doing Business*, in 2015 business registration

¹⁴⁰⁴ World Bank, Doing Business, Albania, 2016: <http://www.doingbusiness.org/data/exploreeconomies/albania/>

¹⁴⁰⁵ Ibid., p.19. By respectively making the notarisation of incorporation documents options, and by lowering registration fees.

<http://www.doingbusiness.org/reports/global-reports/-/media/giawb/doing%20business/documents/profiles/country/ALB.pdf>

¹⁴⁰⁶ European Commission, Albania Report, 2015, p.27.

¹⁴⁰⁷ Interview with expert of an international organisation, 25 April 2016; European Commission, Albania Report, 2015, p.27-28.

¹⁴⁰⁸ European Commission, Albania Report, 2015, p. 28.

¹⁴⁰⁹ 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, 'Liqji i Pronave ne Venecia' (Property Law in Venice), 28 June 2016: <http://www.panorama.com.al/liqji-i-pronave-ne-venecia-kushtetuesja-kerkon-keshillim/>

¹⁴¹⁰ World Bank. Doing Business, Albania, 2016, p.42.

¹⁴¹¹ European Commission, Albania Report, 2015, p.36.

¹⁴¹² Interview with expert of an international organisation, 25 April 2016.

¹⁴¹³ Ibid.

¹⁴¹⁴ European Commission, Albania Report, 2015, p.24, 27-28.

¹⁴¹⁵ Ibid. p.27-28; Interview with expert of an international organisation, 25 April 2016.

required six procedures and five and a half days.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.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.¹⁴¹⁸

Exiting the market remains problematic and bankruptcy procedures are slow with the recovery rate for debtors in most cases low.¹⁴¹⁹ In *Doing Business* 2016, Albania had a rather positive insolvency resolution index (13 out of 16).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.¹⁴²¹ According to business chambers, verification procedures on business liquidation are often very lengthy and understood as solicitations for bribes.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.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.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.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.¹⁴²⁶ These principles are reflected in the legal framework regulating enterprises, tax and customs legislation, inspections, administrative appeals and court dispute resolution mechanisms.¹⁴²⁷

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.

¹⁴¹⁷ Ibid (0.00 per cent of income per capita).

¹⁴¹⁸ Interview with a representative of a trade chamber in Albania, 22 April 2016.

¹⁴¹⁹ European Commission, Albania Report, 2015, p.27-28.

¹⁴²⁰ World Bank, Doing Business, Albania, 2016, p.88.

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.

¹⁴²² Interview with a representative of a trade chamber in Albania, 22 April 2016.

¹⁴²³ World Bank, Doing Business, Albania, 2016, p.79.

¹⁴²⁴ Ibid. p.81.

¹⁴²⁵ IMF, Albania: Staff Concluding Statement of the 2016 Article IV Mission and the Seventh Review Under the Extended Arrangement, 23 March 2016: <https://www.imf.org/external/np/ms/2016/032316a.htm>;

Koleka, B., IMF warns Albania against government payment arrears, Tirana, 28 June 2016:

<http://uk.reuters.com/article/albania-imf-idUKL8N19K592>; European Commission, Progress Report Albania, 2013, p.14.

¹⁴²⁶ Article 11, Constitution.

¹⁴²⁷ Law no. 7512 on the Sanctioning and Protection of Private Property of Free Enterprise, Independent Private Activity and Privatisation, of 10 August 1991, amended. Official Journal 6, p.299.

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.¹⁴²⁸ 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.¹⁴²⁹ 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.¹⁴³⁰

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.¹⁴³¹ It proposed legal amendments and implementation measures to enhance compliance and accountability of both business and public administration. Proposals included amendments to up-front payments of obligations and penalties, the establishment of collegial appeal bodies, the centralisation of appeals on inspections, and unified deadlines.¹⁴³² 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.¹⁴³³

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.¹⁴³⁴ Albania is also party to international arbitration agreements.¹⁴³⁵ 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.¹⁴³⁶

For provisions on state-owned enterprises and public procurement see *SOE* and *Public Sector* pillars.

Independence (Practice)

Score: 25

TO WHAT EXTENT IS THE BUSINESS SECTOR FREE FROM UNWARRANTED EXTERNAL INTERFERENCE IN ITS WORK IN PRACTICE?

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.

¹⁴³¹ Investment Council, Dispute Resolution: https://www.investment.com.al/wp-content/uploads/2015/08/Alb_Dokument-Permbledhes_-Zgjidhja-e-Mosmarreveshjeve.pdf

¹⁴³² Investment Council, Dispute Resolution Matrix: https://www.investment.com.al/wp-content/uploads/2015/08/AL_Matrica-e-Rekomandimeve-15-03-2016.pdf

¹⁴³³ Law no. 9920 on Taxation Procedures, of 19 May 2008, amended.

¹⁴³⁴ ResPublica, Funksionimi i Gjykates Administrative dhe pasojet e para ne praktike (The Functioning of the Administrative Court and first effects in practice): <http://www.respublica.org.al/funksionimi-i-gjykates-administrative-dhe-pasojet-e-para-ne-praktike/>; 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.

¹⁴³⁵ Signatory to United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, the International Centre for the Settlement of Investment Disputes (ICSID).

¹⁴³⁶ SAI, State Budget Report, 2014, p.43-44.

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.¹⁴³⁷ 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 of rule of law.¹⁴³⁸ 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.¹⁴³⁹ 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.¹⁴⁴⁰

Inspections and appeals are a particular concern for tax and customs authorities. In 2016 the IMF repeated concerns of corruption in tax inspections.¹⁴⁴¹ 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.¹⁴⁴²

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.¹⁴⁴³ 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.¹⁴⁴⁴ 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.¹⁴⁴⁵

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.¹⁴⁴⁶

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.¹⁴⁴⁷ 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.

¹⁴³⁸ Interview with a representative of a trade chamber in Albania, 22 April 2016.

¹⁴³⁹ Albania Investment Council, February 2016, Dokument Permbledhes: Per permiresimin e mekanizmit te zgjidhjes se mosmarreveshjeve midis biznesit dhe administratates publike: https://www.investment.com.al/wp-content/uploads/2015/08/Alb_Dokument-Permbledhes_Zgjidhja-e-Mosmarreveshjeve.pdf

¹⁴⁴⁰ Investment Council, Dispute Resolution Matrix, p.1.

¹⁴⁴¹ IMF, Albania: Staff Concluding Statement of the 2016 Article IV Mission and the Seventh Review Under the Extended Arrangement, 23 March 2016 <https://www.imf.org/external/np/ms/2016/032316a.htm>

¹⁴⁴² Vizioni Plus TV, 'Crown Agents: Doganat të zhytura në korruption e kontrabandë' (Crown Agents: Customs submerged in corruption and smuggling), 22 January 2016: <http://vizonplus.al/crown-agents-doganat-te-zhytura-ne-korruption-e-kontrabande-2/>; Crown Agents, Assistance program for Albanian customs, Corruption prevention and uncovering:

<http://www.crownagents.com/docs/default-source/default-document-library/crown-agents-preventing-detecting-corruption-sq-080216.pdf?sfvrsn=2>

¹⁴⁴³ European Commission, Albania Report, November 2015, p.30.

¹⁴⁴⁴ Ibid p.30 and 37.

¹⁴⁴⁵ Ibid, p.37.

¹⁴⁴⁶ Gazeta Dita, 'Manjani, probleme te medha ne afatet e shqyrtimit ne gjykatat administrative', 14 June 2016: <http://www.gazetadita.al/manjani-probleme-te-medha-ne-afatet-e-shqyrtimit-ne-gjykatat-administrative/>; see also INFOCIP, Evaluation of legal deadlines in Administrative Courts' adjudication and delivery of decisions, 2015: <http://www.osfa.al/sites/default/files/vonesat-ne-shqyrtimin-gjyqesor-administrativ-vleresimi-kombetar-infocip.pdf>

¹⁴⁴⁷ US Department of State, Albania Investment Climate Statement 2015, p.11: <http://www.state.gov/documents/organization/241665.pdf>

needed, but that the lengthy reform process has also led to failures in addressing issues in the meantime.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.¹⁴⁴⁹ Only 52.7 per cent of companies stated that firms in their sector never had to make informal payments.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.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.¹⁴⁵² Election monitoring groups also claim that there is a lack of transparency in party campaign financing.¹⁴⁵³

Governance

Transparency (Law)

Score: 75

TO WHAT EXTENT ARE THERE PROVISIONS TO ENSURE TRANSPARENCY IN THE ACTIVITIES OF THE BUSINESS SECTOR?

There are considerable business disclosure provisions in place; principally set out by the Law on Merchants and Commercial Enterprises, the Law on Regulating Business Registration, as well as laws on Financial Reporting and Statutory Auditing, all of which are assessed to have a high degree of alignment with the EU standards.¹⁴⁵⁴ New framework laws and amendments from 2008 onwards

¹⁴⁴⁸ Interview with a representative of one of the Trade Chambers in Albania, 22 April 2016.

Interview with an expert of an international organisation, 25 April 2016.

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.

¹⁴⁵⁰ BEEPS V, Business environment in the transition region, 2014, p.14: <http://ebrd-beeps.com/wp-content/uploads/2015/07/BEEPSV-complete.pdf>; Marking an increase and approached the average of 56.2 per cent for transition countries.

¹⁴⁵¹ Global Competitiveness Report 2015-2016: <http://reports.weforum.org/global-competitiveness-report-2015-2016/economies/#economy=ALBv>

- Public institutions – 3.5 (7 = best)
- Property rights – 3.1 (no major difference between property and IP)
- Ethics and corruption – 3.2 (irregular payments and bribes (mainly utilities and tax) 3.7; lowest scores on: Awarding of public contracts and licenses and on obtaining favourable judicial decisions)

- Undue influence – 3 (judicial independence 2.6; favouritism in decision-making of government officials – 3.4)
- Public sector performance – 3.6 (burden of government regulation – 4.5; efficiency of legal framework in settling disputes – 2.8; efficiency of legal framework in challenging regulations 2.9)

¹⁴⁵² Interview with a representative of a trade chamber in Albania, 22 April 2016.

¹⁴⁵³ Mjaft! Movement, Electoral Spending Report: 2013 Elections: <http://www.lupazgjedhore2013.org/qellimi-dhemetodologjia/>; Global Integrity Report. Money, Politics and Transparency. 2014:

<https://data.moneypoliticstransparency.org/countries/AL/>; Coalition for Free and Fair Elections and Sustainable Democracy (CFFESD), Monitoring Local Elections 21 June 2015: Final Report, CDO, 2013 Final Observation Report 23 June 2013 Parliamentary Elections, 27 September 2013. p.63, 68, 71.

¹⁴⁵⁴ World Bank, Financial Sector Assessment Program Albania, Corporate Sector Financial Reporting, Technical Note February 2014, p.1-2:

addressed missing disclosure provisions, which the European Bank on Reconstruction and Development assessed to be the greatest weakness in corporate governance legislation in early 2008.¹⁴⁵⁵

Business registration requires disclosure of statutes, ownership structures and annual financial reports, including independent audit reports, where relevant.¹⁴⁵⁶ 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.¹⁴⁵⁷ Amendments in February 2015 provided for the online submission of annual balance sheets and audit reports.¹⁴⁵⁸ 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.¹⁴⁵⁹

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.¹⁴⁶⁰ Large enterprises, as well as listed and financial sector enterprises, are required to apply international reporting standards,¹⁴⁶¹ and all economic units can implement international standards voluntarily.¹⁴⁶²

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*).¹⁴⁶³ 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.¹⁴⁶⁴ The provisions on the disclosure of audit reports of insurance and securities enterprises are considered inadequate,¹⁴⁶⁵ and the non-financial disclosure by banks is also assessed to be an area for improvement.¹⁴⁶⁶

Transparency (Practice)

Score: 50

TO WHAT EXTENT IS THERE TRANSPARENCY IN THE BUSINESS SECTOR IN PRACTICE?

[http://lnweb90.worldbank.org/FPS/fsapcountrydb.nsf/\(attachmentwebSI\)/Albania_Update_TN_A&A_Public.pdf/\\$FILE/Albania_Update_TN_A&A_Public.pdf](http://lnweb90.worldbank.org/FPS/fsapcountrydb.nsf/(attachmentwebSI)/Albania_Update_TN_A&A_Public.pdf/$FILE/Albania_Update_TN_A&A_Public.pdf); European Commission, Albania Report, 2015, p.36.

¹⁴⁵⁵ EBRD, Commercial Laws of Albania, An Assessment by the EBRD, January 2013, p.1.

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.

¹⁴⁵⁹ Especially following amendments in 2015. European Commission, Albania Report, 2015, p.36; Article 15. Law no. 9901 on Merchants and Commercial Enterprises, of 14 April 2008.

¹⁴⁶⁰ Ibid.; Article 1.3. Law on Merchants and Commercial Enterprises. National accounting standards adopted in July 2014 apply to statements filed from January 2015 onwards.

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%20njesive%20ekonomike%20qe%20duhet%20te%20zbatoine%20SNK_VKM%20742_7.11.2007.pdf; large enterprises are those enterprises that exceed both annual income of 1 250 000 000 leke and average 100 employees employed, for two consecutive years.

¹⁴⁶² Article 25, Law on Accounting and Financial Reports, amended.

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 leke (about 200 000 euro), average of 30 employees during the reporting period.

¹⁴⁶⁴ Article 45, Law on Accounting and Financial Reports, amended.

¹⁴⁶⁵ World Bank, Financial Sector Assessment Program Albania, Corporate Sector Financial Reporting, Technical Note February 2014, p.1-2.

¹⁴⁶⁶ EBRD, Commercial Laws of Albania, An Assessment by the EBRD, January 2013, p.11-13.

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).¹⁴⁶⁷

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.¹⁴⁶⁸ 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.¹⁴⁶⁹

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.¹⁴⁷⁰ 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.¹⁴⁷¹

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.¹⁴⁷² 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 2007-2014.¹⁴⁷³ Annual reports on Banking Oversight of the Bank of Albania are available on its website for the period 1998-2015.¹⁴⁷⁴

Overall, business and business associations do not have anti-corruption, social corporate responsibility or sustainability reports.¹⁴⁷⁵

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.¹⁴⁷⁶ 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 2016.¹⁴⁷⁷

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.

¹⁴⁷² World Bank, Financial Sector Assessment Program Albania, Corporate Sector Financial Reporting, Technical Note, February 2014, p.1-2.

¹⁴⁷³ Financial Monitoring Authority, Oversight Reports: <http://www.amf.gov.al/publikime.asp?id=4>

¹⁴⁷⁴ Bank of Albania, Annual Reports of Banking Oversight:

https://www.bankofalbania.org/web/Raporti_vjetor_i_Mbikqyries_Bankare_56_1.php?evn=srmB&rpp=2&msv=

¹⁴⁷⁵ Interview with a representative of a trade chamber in Albania, 22 April 2016.

¹⁴⁷⁶ EBRD, Commercial Laws of Albania, An Assessment by the EBRD, January 2013, p.11.

¹⁴⁷⁷ World Bank. Doing Business, Albania, 2016, p 60 (10= best score, per sub-indicator).

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.¹⁴⁷⁸ Administrators manage and report to the Assembly and supervisory boards.¹⁴⁷⁹ 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,¹⁴⁸⁰ as well as personal and shared liability in cases of abuse of office and company.¹⁴⁸¹ In 2016, the World Bank ranked Albania eighth globally, on minority shareholder protection, with a score of 7.3 out of 10.¹⁴⁸² The amendments in 2015 made immediate public disclosure of related-party transactions obligatory.¹⁴⁸³ 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.¹⁴⁸⁴ Secondary banks are required to establish more complex internal structures with a Steering Council, Managing Directorate and Audit Committee.¹⁴⁸⁵

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).¹⁴⁸⁶ 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.¹⁴⁸⁷ Such enterprises are also required to have an Auditing Committee that ensures and monitors internal compliance.¹⁴⁸⁸ 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.¹⁴⁸⁹

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.¹⁴⁹⁰ They have suggested that financial sector regulators are also included in the Public Oversight Board.¹⁴⁹¹ 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.¹⁴⁹²

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

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.

¹⁴⁸⁶ 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 leke (about 200 000 euro), average of 30 employees during the reporting period.

¹⁴⁸⁷ Article 45, Ibid.

¹⁴⁸⁸ Article 46, Ibid.

¹⁴⁸⁹ World Bank, Financial Sector Assessment Program Albania, Corporate Sector Financial Reporting, Technical Note, February 2014, p.1-2.

¹⁴⁹⁰ European Commission, Albania Report, 2015, p.36 ; World Bank, Financial Sector Assessment Program Albania, Corporate Sector Financial Reporting, Technical Note, February 2014, p.1-2.

¹⁴⁹¹ Ibid.

¹⁴⁹² 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.¹⁴⁹⁴ 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).¹⁴⁹⁵ 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.¹⁴⁹⁶ The role of banks in promoting good corporate governance is also considered weak.¹⁴⁹⁷ The Bank of Albania has been called to enhance prudential reporting (in addition to general purpose reporting),¹⁴⁹⁸ and the Financial Supervisory Authority (FSA) has also been assessed to require improvement, by financial independence and enhanced operational capacity.¹⁴⁹⁹

Interlocutors from business chambers and international organisations also stated that there is very little awareness of voluntary instruments such as the Corporate Governance Code.¹⁵⁰⁰

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.¹⁵⁰¹

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?

¹⁴⁹³ European Corporate Governance Institute:

http://www.ecgi.org/codes/documents/cg_code_unlisted_companies_albania_14apr2008_en.pdf

Corporate Governance Institute: <http://cgt-albania.org/corporate-governance-in-emerging-markets/>

¹⁴⁹⁴ Interview with a representative of a trade chamber in Albania, 22 April 2016.

¹⁴⁹⁵ European Commission, Albania Report, 2015, p.36; World Bank, Financial Sector Assessment Program Albania, Corporate Sector Financial Reporting, Technical Note, February 2014, p.1-2.

¹⁴⁹⁶ EBRD, Commercial Laws of Albania, An Assessment by the EBRD, January 2013, p.1-13.

¹⁴⁹⁷ Ibid.

¹⁴⁹⁸ World Bank, Financial Sector Assessment Program Albania, Corporate Sector Financial Reporting, Technical Note, February 2014, p.1-2.

¹⁴⁹⁹ Ibid.

¹⁵⁰⁰ Interview with a representative of a trade chamber in Albania, 22 April 2016; Interview with an expert of an international organisation, 25 April 2016.

¹⁵⁰¹ Global Competitiveness Report 2015-2016: <http://reports.weforum.org/global-competitiveness-report-2015-2016/economies/#economy=ALBv>

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 2017.¹⁵⁰²

Albania criminalises abuse of power and both active and passive corruption.¹⁵⁰³ 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).¹⁵⁰⁴ 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.¹⁵⁰⁵ A list of excluded operators is published.¹⁵⁰⁶

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.¹⁵⁰⁷ Personal and shared liability in cases of abuse of office and company form is also provided.¹⁵⁰⁸

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.¹⁵⁰⁹ 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.¹⁵¹⁰ Blacklisting and screening for ethics in business associations is not common, and in cases where it is conducted, it tends to be done informally.¹⁵¹¹ Internal integrity mechanisms at the level of the enterprise are also not well developed,¹⁵¹² and when they exist, internal codes of ethics mainly deal with regulation towards employees on matters such as attire and working hours.¹⁵¹³

Integrity mechanisms (Practice)

Score: 0

TO WHAT EXTENT IS THE INTEGRITY OF THOSE WORKING IN THE BUSINESS SECTOR ENSURED IN PRACTICE?

¹⁵⁰² Law no. 60/2016 on Whistleblowing and the Protection of Whistleblowers, approved on 2 June 2016: <https://www.parlament.al/wp-content/uploads/2016/06/lqi-nr.-60-dt.-2.6.2016.pdf>

¹⁵⁰³ Articles 164/a, 164/b, 244, 244/a, 245, 259, 259/a, 260, 312, 319 a-e and 164.248, Criminal Code. Provisions are in place for state officials, elected officials and members of the judiciary.

¹⁵⁰⁴ Article 26. Law no .9643 on Public Procurement, of 20 November 2006 amended.

¹⁵⁰⁵ Article 13.3, Article 45 and Article 47, Ibid.

¹⁵⁰⁶ Article 13.2.c, Ibid.

¹⁵⁰⁷ Article 13, Law on Merchants and Commercial Enterprises.

¹⁵⁰⁸ Article 15, 98 (Shpk), 163, 164, Ibid.

¹⁵⁰⁹ American Chamber, Year Book, 2016. p.13.

¹⁵¹⁰ International Chamber of Commerce, 'Six ways the ICC helps businesses fight corruption': <http://www.icc-albania.org.al/six-ways-icc-helps-businesses-fight-corruption/>; ICC on Combating Corruption: <http://www.iccwbo.org/advocacy-codes-and-rules/areas-of-work/corporate-responsibility-and-anti-corruption/ICC-Rules-on-Combatting-Corruption/>

¹⁵¹¹ Interview with a representative of a trade chamber in Albania, 22 April 2016.

¹⁵¹² Ibid.; Interview with an expert of an international organisation, 25 April 2016

¹⁵¹³ Interview with a representative of a trade chamber in Albania, 22 April 2016.

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.¹⁵¹⁴

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".¹⁵¹⁵

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.¹⁵¹⁶

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.¹⁵¹⁷ 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.¹⁵¹⁸ 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.¹⁵¹⁹

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.¹⁵²⁰ 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.¹⁵²¹ 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

¹⁵¹⁴ Ibid.

¹⁵¹⁵ BEEPS V, Business environment in the transition region, 2014.

¹⁵¹⁶ Interviews with Gjergj Erebara, Journalist, BIRN Albania, 13 April 2016 and a representative of a trade chamber in Albania, 22 April 2016.

¹⁵¹⁷ Law no. 146/2014 on public notification and consultation, of 30 October 2014, Official Journal 178. p.9189

¹⁵¹⁸ Interview with a representative of a trade chamber in Albania, 22 April 2016.

¹⁵¹⁹ Interview with Gentian Elezi, Expert, 22 March 2016.

¹⁵²⁰ Article 1, Law on Creation and Functioning of the National Economic Council.

¹⁵²¹ Interview with a representative of a trade chamber in Albania, 22 April 2016.

business members.¹⁵²² 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.¹⁵²³

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.¹⁵²⁴ 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.¹⁵²⁵ 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.¹⁵²⁶

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.¹⁵²⁷ 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.¹⁵²⁸ 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.¹⁵²⁹ 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.¹⁵³⁰

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.

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.

¹⁵²⁴ Interviews with an expert of an international organisation, 25 April 2016 and Gentian Elezi, Expert, 22 March 2016.

¹⁵²⁵ Interview with a representative of a trade chamber in Albania, 22 April 2016.

¹⁵²⁶ Interview with Gjergj Bojaxhi, former Director of KESH and business administrator in the oil sector, 8 April 2016.

¹⁵²⁷ Interviews with Gentian Elezi, Expert, 22 March 2016 and an expert of an international organisation, 25 April 2016.

¹⁵²⁸ 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.

¹⁵²⁹ Interview with a representative of a trade chamber in Albania, 22 April 2016.

¹⁵³⁰ 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.

STATE-OWNED ENTERPRISES			
Overall Pillar Score: 39.5			
Dimension	Indicator	Law	Practice
Capacity 37.5/100	Independence	50	25
Governance 41.6/100	Transparency	75	25
	Accountability	75	25
	Integrity mechanisms	50	0

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.¹⁵³³ 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 2013.¹⁵³⁴

Starting in 1995, most public enterprises were transformed into state-owned commercial enterprises.¹⁵³⁵ They operate in the market under the same regulatory framework as all other private enterprises, principally the 2008 Law on Merchants and Commercial Enterprises,¹⁵³⁶ 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.¹⁵³⁷ 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.¹⁵³⁸ State enterprises that have not been transformed into commercial state enterprises operate under the 1992 Law on State Enterprises.¹⁵³⁹ 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.¹⁵⁴⁰ Through the Directorate of Public Property, the Ministry of Economy is in charge of both privatisation and management of state-owned enterprises.¹⁵⁴¹ 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.¹⁵⁴² 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).¹⁵⁴³

on the Sanctioning and Protection of Private Property of Free Enterprise, Independent Private Activity and Privatisation, of 10 August 1991, amended. Official Gazette 6, p.299.

¹⁵³³ Panorama Newspaper, 'INSIG privatisation, offers of four companies made public', 11 March 2016: <http://www.panorama.com.al/privatizimi-i-insig-ja-ofertat-e-kater-kompanive/>

¹⁵³⁴ Law no. 114/2014, on Agreement on Amicable Dissolution of Privatisation Agreement between Republic of Albania and CEZ, a. s., of 31 July 2014; Law no. 10 116 on Approval of the Sale contract of 76 % of the Shares of the Distribution System Operator sh.a. (OSSH) between the Ministry of Economy, Trade and Energy of the Republic of Albania, and CEZ a.s a and Energy Regulatory Entity, of 23 April 2009; Decision no. 4 of 21 January 2013, 'Removal of License on Distribution and Supply of Electric Energy': http://www.ere.gov.al/doc/VENDIM_NR.4_2013.pdf

¹⁵³⁵ Articles 3 and 16, Law no. 7926 on the Transformation of State Enterprises into Commercial Enterprises, of 20 April 1995, amended.

¹⁵³⁶ Article 213.2, Law no. 9901 on Merchants and Commercial Enterprises, of 14 April 2008, amended; Article 2.b and 3, Law on the Transformation of State Enterprises into Commercial Enterprises, amended.

¹⁵³⁷ Such as Law on Procurement, Law on Internal Audit, Law on Right to Information, Law on Asset Declaration, Law on Conflict of Interest, Law on Integrity of Public Officials.

¹⁵³⁸ Law no. 43/2015 on the Sector of Electrical Energy; Law no. 8102 on the Regulatory Framework of the Sector of Water Supply and Removal and Treatment of Sewage Waters, of 28 March 1996, 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 Article 4, 8, Law on the Transformation of State Enterprises into Commercial Enterprises, amended.

¹⁵⁴³ 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

TO WHAT EXTENT DOES THE LEGAL AND REGULATORY FRAMEWORK FOR SOES PROTECT THE INDEPENDENT OPERATION OF SOES AND ENSURE A LEVEL-PLAYING FIELD BETWEEN SOES AND PRIVATE SECTOR COMPANIES?

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.¹⁵⁴⁴ 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.¹⁵⁴⁵ Albania has no state-owned second-level banks. The state can guarantee loans only when authorised by law.¹⁵⁴⁶ The legislation on minority shareholder protection relevant to commercial SOEs with joint public-private holdings is advanced.¹⁵⁴⁷

SOEs are free to set prices and economic programmes, with the exception of the energy and water sectors where prices are regulated.¹⁵⁴⁸ Energy and water sectoral laws also set out public service obligations.¹⁵⁴⁹ 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.¹⁵⁵⁰ The legal framework on ERRU 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.¹⁵⁵¹ The Law on Collegial Bodies also regulates the functioning of independent entities.¹⁵⁵²

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.¹⁵⁵³ 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.

¹⁵⁴⁷ Article 15, Law on Merchants and Commercial Enterprises; Doing Business, Index of Minority Shareholder Rights 8 out of 10, June 2015, p.58: <http://www.doingbusiness.org/data/exploreeconomies/albania/protecting-minority-investors/>.

¹⁵⁴⁸ See Articles 5, 6, and 14.2, Law on State Enterprises, amended.

¹⁵⁴⁹ Articles 18, 19, 47 and 85 of Law on the Sector of Electrical Energy; Articles 13 and 21, Law 8102 on the Regulatory Framework of the Sector of Water Supply and Removal and Treatment of Sewage Waters, of 28 March 1996, 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.

¹⁵⁵² Law 8480 on the Functioning of Collegial Bodies of Public Administration and Public Entities, of 27 May 1999.

¹⁵⁵³ Article 4, Law on the Transformation of State Enterprises into Commercial Enterprises, amended.

ownership-structure decisions, as well as the transfer of use and development rights (rents, concessionary agreements etc.).¹⁵⁵⁴ 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.¹⁵⁵⁵

The daily operation of commercial SOEs is generally independent, but the legal framework on supervisory boards allows for politicisation 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.¹⁵⁵⁶ The Ministry of Economy, however, does not appoint SOE administrators/directors, who are appointed by and report to the supervisory council/board.¹⁵⁵⁷

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.¹⁵⁵⁸ Their replacement has reflected a rotation of political power, while poor financial or service-delivery performance has not led to dismissals.¹⁵⁵⁹

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.¹⁵⁶⁰ Gjergj Bojaxhi, former executive director of the Albanian Electrical

¹⁵⁵⁴ Ministry of Economic Development, Tourism, Trade and Entrepreneurship, General Directory of Public Property: <http://www.ekonomia.gov.al/ministria/dreitorite/dreitoria-e-pergjithshme-e-prones-shteterore/dreitoria-e-administrimit-te-prones-publike>

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.

¹⁵⁵⁶ 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 of members, during 1 October 2013 – 30 June 2015. Report and Measures for Improvement approved via Decision of SAI Chair No.137, of 30 September 2015.

¹⁵⁵⁷ Articles 9 and 11, CMD no. 271, of 9 May 1998, 'On approval of template statute of state joint-stock enterprises', Official Gazette Extra XII. p.9; CMD no. 642, of 11 October 2005, 'On supervisory councils of state joint-stock enterprises', Official Gazette 73, p.2482; for water and sewage at the local level - CMD no. 63, of 27 January 2016, 'On the reorganization of operators that provide drinking water supply, collection, removal and treatment of wastewater', Official Gazette 11, p 638.

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 Erebara, 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.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.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.¹⁵⁶³ Political interference mainly takes the form of political patronage as in staffing and the use of SOE resources for political campaigning and advertising.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.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.¹⁵⁶⁶

The appointment system also leads to politicisation of members of steering bodies of regulatory entities.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.¹⁵⁶⁸ Likewise, leaders of regulatory entities have been accused of links with private operators in their sector.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.¹⁵⁷⁰ Nevertheless, the number of cases taken to/by the Competition Authority remains low (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.¹⁵⁷¹ State aid without loan guarantees granted to the state-owned power company KESH is low and in 2014

of members, during 1 October 2013 – 30 June 2015. Report and Measures for Improvement approved via Decision of SAI Chair Nr.137, of 30 September 2015; 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 01 January 2012 to 31 December 2013, approved by Chair of SAI via Decision 179, of 23 December 2014:

http://www.klsh.org.al/web/pub/dividenti_1562_1.pdf

¹⁵⁶¹ Interviews with Gjergj Bojaxhi, Former KESH Director, 8 April 2016 and Besar Likmeta and Gjergj Erebara, Journalists, BIRN Albania, 16 March 2016.

¹⁵⁶² Interview with Gjergj Bojaxhi, Former KESH Director, 8 April 2016.

¹⁵⁶³ 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.

¹⁵⁶⁴ Ibid.

¹⁵⁶⁵ Ibid.

¹⁵⁶⁶ Interview with Gjergj Bojaxhi, Former KESH Director, 8 April 2016.

¹⁵⁶⁷ 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.

¹⁵⁶⁸ Shqiptarja.com Newspaper, 'Bodes's Letter Revealed': <http://www.arkivalajmeve.com/Zbulohet-letra-e-Bodes-Berishafavorizoi-CEZ-Brace-shtet-krim.1047631824/>

¹⁵⁶⁹ Tema Newspaper, 'ERE Chairman Should Resign', 13 September 2015:

http://www.gazetataema.net/web/2015/09/13/dossier-ja-pse-duhet-te-dorehqet-kryetari-aktuali-i-ere-petrit-ahemtaj-ortak-me-ismailaj-dhe-inciator-i-skemes-korruptive/12002249_448727785332088_6871201502937183421_n-2/

¹⁵⁷⁰ IFIMES, 'Albania: Retirement of Berisha and return of the left wing', 19 June 2013: <http://www.ifimes.org/en/8625-albania-retirement-of-berisha-and-return-of-the-left-wing#sthash.5x2PmYc9.dpuf>

¹⁵⁷¹ European Commission, Albania Report, November 2015, p.30; Liperi, O., 'Fluska e kredive në sektorin e energjisë rezikon të shpërthejë', BIRN Albania, 22 June 2016: <Http://www.reporter.al/fluska-e-kredive-ne-sektorin-e-energjiise-rezikon-te-shpertheje/>

dropped to 0.5 per cent of GDP.¹⁵⁷² Subsidies are limited and concentrated in a few sectors, mainly energy.¹⁵⁷³

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.¹⁵⁷⁴

Governance

Transparency (Law)

Score: 75

TO WHAT EXTENT ARE THERE PROVISIONS TO ENSURE TRANSPARENCY IN THE ACTIVITIES OF SOES?

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).¹⁵⁷⁵ The Law on Registration of Business requires submission and online publication of statutes, ownership structures, steering organs, annual financial reports and audit reports.¹⁵⁷⁶ Joint-stock enterprises are also required to make the information available on the companies' websites.¹⁵⁷⁷ 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.¹⁵⁷⁸

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.¹⁵⁷⁹ National accounting standards have been strengthened as of 2015, but international accounting standards are not yet fully transposed.¹⁵⁸⁰ Large enterprises, defined by income and number of employees, are also required to apply International Financial Reporting Standards.¹⁵⁸¹ 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.¹⁵⁸²

¹⁵⁷² European Commission, Albania Report. November 2015. p.30.

¹⁵⁷³ Ibid, p.27.

¹⁵⁷⁴ Interview with Besar Likmeta and Gjergj Erebara. Journalists, BIRN Albania, 16 March 2016.

¹⁵⁷⁵ Article 61. Law 9723 on the National Registration Centre, of 3 May 2007, amended.

¹⁵⁷⁶ Articles 31-36, 43, 46, Ibid.

¹⁵⁷⁷ Articles, 106. Law on Merchants and Commercial Enterprises.

¹⁵⁷⁸ European Commission, Albania Report. November 2015, p.36; GiZ. Support for the Implementation of EU-Compliant Albanian Legislation: <https://www.giz.de/de/downloads/giz2014-en-eu-compliant-albanian-legislation.pdf>

¹⁵⁷⁹ Article 1.3. Law on Merchants and Commercial Enterprises, amended.

¹⁵⁸⁰ European Commission, Albania Report. November 2015, p.36.

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':

http://www.kkk.gov.al/foto/uploads/File/udhezime/2.%20Kriteret%20e%20njesive%20ekonomike%20qe%20duhet%20e%20zbatojne%20SNK_VKM%20742_7.11.2007.pdf

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.¹⁵⁸³ Procurement in SOEs where the state is a majority shareholder is also subject to transparency provisions provided by the Law on Procurement.¹⁵⁸⁴ 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.¹⁵⁸⁵

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.¹⁵⁸⁶ The World Bank also stated that audited accounts of public interest entities are not publicly available.¹⁵⁸⁷ 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.¹⁵⁸⁸ 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.¹⁵⁸⁹ Only a few SOEs have online and offline mechanisms for the filing of complaints or denouncement of corruption, such as the energy distributor.¹⁵⁹⁰

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. ç. 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.

¹⁵⁸⁷ World Bank, Financial Sector Assessment Program Albania, Corporate Sector Financial Reporting, Technical Note, February 2014, p.1-2.

¹⁵⁸⁸ Albanian Electroenergy Corporation. <http://www.kesh.al/>

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.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.).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.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.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.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.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.¹⁵⁹⁷ Likewise, the coordination unit/directorate at the Ministry of Economy is also subject to audits by the SAI.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.¹⁵⁹⁹ To enhance accountability, it is deemed that the

¹⁵⁹¹ Interview with Besar Likmeta and Gjergj Erebara, Journalists, BIRN Albania, 16 March 2016.

¹⁵⁹² Ministry of Economic Development, Tourism, Trade and Entrepreneurship:

<http://www.ekonomia.gov.al/ministria/drejtorete/drejtoria-e-pergjithshme-e-prones-shteterore/drejtoria-e-administrimit-te-prones-publike>

¹⁵⁹³ Article 3, Law no. 7512 on the Sanctioning and Protection of Private Property of Free Enterprise, Independent Private Activity and Privatisation, of 10 August 1991, amended. Official Gazette 6, p.299; Article 156, Constitution.

¹⁵⁹⁴ Article 18, Law on State Enterprises, amended and Article 8, Law on the Transformation of State Enterprises into Commercial Enterprises, amended.

¹⁵⁹⁵ Article 3, Ibid.

¹⁵⁹⁶ Article 8, Ibid; Articles 95, 154, 166 and 167, Law on Merchants and Commercial Enterprises, amended.

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/lippi_klsh_al_1622_1.pdf

¹⁵⁹⁸ Article 10, point c, Law on Organisation and Functioning of the SAI.

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*).¹⁶⁰⁰

Independent regulatory entities monitor the implementation of price regulations and technical performance standards, ensuring market regulation and consumer protection (see *Transparency*).¹⁶⁰¹ The Law on Public Procurement is also obligatory for commercial state enterprises where the state is a majority shareholder.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.

Accountability (Practice)

Score: 25

TO WHAT EXTENT IS THERE EFFECTIVE OVERSIGHT OF SEOS IN PRACTICE?

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.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*).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.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.¹⁶⁰⁶

The enforcement of competition provisions and ownership rights is challenging.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

¹⁶⁰⁰ World Bank, Financial Sector Assessment Program Albania, Corporate Sector Financial Reporting, Technical Note, February 2014, p.1-2.

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.

¹⁶⁰² Articles 3.4.ç, Law on Public Procurement, amended.

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.

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.

¹⁶⁰⁵ SAI, Audit Reports: http://www.klsh.org.al/web/Raporte_Auditimi_1084_1.php

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.

¹⁶⁰⁷ European Commission, Albania Report, November 2015, p.27-30.

political and operational power, or personal connections.¹⁶⁰⁸ 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.¹⁶⁰⁹

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.¹⁶¹⁰ 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

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

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.¹⁶¹¹ Likewise, officials with decision-making power in SOEs with controlling state shares are subject to the Law on Conflicts of Interest.¹⁶¹² 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.¹⁶¹³ 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 2017.¹⁶¹⁴

Financial or material support of Political Parties by public entities and entities with state-owned shares is prohibited by legislation on Political Parties.¹⁶¹⁵

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.¹⁶¹⁶ Board members cannot be employed in the enterprise.¹⁶¹⁷ Administrators are not allowed to work for competitors in the sector unless there is prior authorisation.¹⁶¹⁸ Personal and shared liability in cases of abuse of office and company form is provided for.¹⁶¹⁹ The law also stipulates shareholders' rights to

¹⁶⁰⁸ Interview with Besar Likmeta and Gjergj Erebara, Journalists, BIRN Albania, 16 March 2016; Interview with Gjergj Bojaxhi, Former KESH Director, 8 April 2016.

¹⁶⁰⁹ Competition Authority, Decisions no. 395, 388, 385, 381, 367, 363, 355: <http://www.caa.gov.al/decisions/read/id/601>

¹⁶¹⁰ Interview with Gjergj Bojaxhi, Former KESH Director, 8 April 2016.

¹⁶¹¹ Article 3, points e, gj, 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/lqji-nr/>

¹⁶¹² Article 4, point 1.d, Law no. 9367 on Prevention of Conflict of Interests in the Exercise of Public Functions, of 7 April 2005, amended: <http://www.hidaa.gov.al/lqji-nr-9367/>

¹⁶¹³ Article 2g, Law no. 138/2015 on Guarantee of Integrity of Persons Elected, Appointed or Exercising Public Functions.

¹⁶¹⁴ Law 60/2016 on Whistleblowing and Protection of Whistleblowers

¹⁶¹⁵ Article 21, Law on Political Parties.

¹⁶¹⁶ Article 13, Law on Merchants and Commercial Enterprises.

¹⁶¹⁷ Article 8, Law on the Transformation of State Enterprises into Commercial Enterprises, amended.

¹⁶¹⁸ Article 17, Law on Merchants and Commercial Enterprises.

¹⁶¹⁹ Article 15, 98 (Shpk), 163, 164, Ibid.

information.¹⁶²⁰ 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.¹⁶²¹ 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.¹⁶²²

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.¹⁶²³

As regards asset declaration, HIDAACI pressed charges against the KESH director in May 2015 on asset declarations during his service (2003-2005).¹⁶²⁴ 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 2014.¹⁶²⁵ 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.¹⁶²⁶ 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.¹⁶²⁷

¹⁶²⁰ Article 15, Ibid.

¹⁶²¹ Article 134, 2, Ibid.

¹⁶²² European Corporate Governance Institute:

http://www.ecgi.org/codes/documents/cg_code_unlisted_companies_albania_14apr2008_en.pdf

Corporate Governance Institute: <http://cqi-albania.org/corporate-governance-in-emerging-markets/>

¹⁶²³ SAI, Annual Report, 2015, p.64-84.

¹⁶²⁴ HIDAACI, KESH Andis Harasani, 8 May 2015: <http://www.hidaa.gov.al/08-mai-2015/> and Ora News, 'HIDAACO presses charges against Harasani for 2.6 million dollar wealth', 8 May 2015: <http://www.oranews.tv/vendi/ildkpi-padit-andis-harasanin-ne-prokurori-per-pasurine-2-6-mln-dollareshe/>

¹⁶²⁵ HIDAACI, In 2015: Neritan Gjoideshi - Director- Ujesjelles Kanalizime Tirane, Redin Kusta - Director - Ujesjelles Kanalizime Berat, Beglje Censi, Director- Ujesjelles Kanalizime Kruje, Mark Molla - Administrator - Ujesjelles Kanalizime - Shkoder, Kastriot Marku, Drejtore dhe Arben Kacorri Administrator, Ujesjelles Kanalizime. Another eight in 2014. Demir Gjana - (2014) Former administrator of KESH Security: <http://www.hidaa.gov.al>

¹⁶²⁶ Arben Seferi, former executive of OSHE: Mapo, 'Prokuroria, hetim pas kallëzimit të KLSH-së ndaj Arben Seferit' (Prosecution launches investigation against Arben Seferi following SAI charges), 21 October 2015: <http://www.mapo.al/2015/10/prokuroria-hetim-pas-kallezimit-te-klsh-se-ndaj-arben-seferit>; Andi Beli, former head of KESH: BBC, 'Former KESH Director accused of abuse', 21 August 2007: http://www.bbc.co.uk/albanian/regionalnews/2007/08/070821_albania_energycorruption.shtml

¹⁶²⁷ Coalition for Free and Fair Elections and Sustainable Democracy (CFFESD), Monitoring Local Elections 21 June 2015: Final Report, CDO, 2013 Final Observation Report 23 June 2013 Parliamentary Elections, 27 September 2013.

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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