



DCAF

a centre for security,
development and
the rule of law

Albania

Arjan Dyrmishi



**Strengthening Intelligence Governance in the
Western Balkans**

Intelligence Governance in Albania

Arjan Dyrmishi

Introduction¹

The gathering of intelligence is a basic function performed by every state to safeguard its national security, economic wellbeing, and public safety. So that these goals can be accomplished, states invest their intelligence services with substantial powers. If misused, these powers can endanger the fundamental rights and liberties of citizens, distort the political process, and undermine democracy. To prevent this from happening and also to ensure that intelligence services, like other public institutions, operate in an efficient, effective, and accountable manner, oversight is required. That is, every state needs to have an intelligence oversight system in place to guarantee that intelligence services perform their tasks lawfully and within the mandates established for them by the government while maintaining their political neutrality and providing taxpayers with good value for the money spent.

This paper analyzes intelligence oversight in Albania. The first section provides some background on the intelligence system, describing the historical forces that have shaped its evolution. The second section examines the country's intelligence services, identifying weaknesses and strengths in the legal framework used to establish them and paying close attention to the roles the services play in the area of counterterrorism, as well as their cooperation with foreign intelligence services. The third section analyzes the bodies that conduct intelligence oversight, focusing on the legal framework that defines their mandates and powers as well as in its implementation. The final section offers some recommendations for the strengthening of oversight of the intelligence services in Albania.

Background

The development of intelligence oversight in Albania can be understood only within the context of the two main events that have shaped Albanian politics during the past two decades: the collapse of the Communist regime in 1991 and the subsequent government

¹ This study was drafted as part of a DCAF project on Strengthening Intelligence Oversight in the Western Balkans, which was made possible by the generous support of the Ministry of Foreign Affairs of the Netherlands. The text will be published as a chapter in the forthcoming edited volume: *Intelligence Governance in the Western Balkans*. The opinions expressed in this study are those of the author and do not necessarily reflect the views or institutional positions of either DCAF or the Ministry of Foreign Affairs of the Netherlands.

collapse in 1997.² In both instances, tensions among the various political actors vying for control of the intelligence services has strongly influenced the manner of their oversight.

The intelligence service that existed under the Communist regime was closely controlled by the Communist party and used by the party primarily to maintain its grip on power. For this reason, when the Communist government collapsed, there was a broad political consensus that the country's new intelligence services should be established on a statutory basis so that its operations would be controlled by the rule of law. The post-Communist constitution adopted in 1991 provided for a democratic political system with a separation of powers among the legislative, executive, and judicial branches of government.³ It also established a legal basis for depoliticising the security apparatus⁴ and placing intelligence on a statutory basis.⁵

The Law on the Organization of the National Intelligence Service that created the State Intelligence Service (SIS)⁶ followed this approach—dividing responsibility for the new service among the Council of Ministers (CM), the Prime Minister (PM), and the Prosecutor General (PG). The CM was given the authority to regulate the methods used by SIS to collect intelligence.⁷ The PM was made responsible for the political guidance of SIS and for ensuring the effectiveness of its operations.⁸ The PG was given the authority to approve and control the use of special investigative measures.⁹ The Law on the Organization of the National Intelligence Service also gave the SIS police powers and placed it as part of the armed forces.¹⁰

Discarding the country's old authoritarian system was a significant achievement. Yet the first wave of intelligence reforms nevertheless failed to establish effective democratic

² In early 1997, thousands of Albanians lost their savings in fraudulent investment schemes. The violent riots that followed led to the collapse of the state and the establishment in several regions of the country (especially the south) of citizens' committees that assumed police powers. In these regions, protesters ransacked the offices of the State Intelligence Service (SIS) and targeted SIS personnel for vicious mistreatment and even slaughter. The new government that asserted control after the crisis made reform of the intelligence services a first priority of its program.

³ Law on Major Constitutional Provisions (No. 7491, 28 April 1991), Article 3

⁴ Law on the Depoliticization of Some State Bodies (No. 7492, 30 July 1991)

⁵ Law on the Organization of the National Intelligence Service (No. 7495, 2 July 1991)

⁶ Initially, the intelligence service created under the 1991 constitution was called the National Intelligence Service. However, with the passage of Law No. 8479 on 29 April 1999, the name was changed to the State Intelligence Service. In order to avoid confusion, the latter name is used throughout this paper.

⁷ Law on the Organization of the National Intelligence Service (No. 7495, 2 July 1991), Article 4

⁸ *Ibid*, Article 2

⁹ *Ibid*, Article 4

¹⁰ *Ibid*, Article 1

oversight mechanisms. Unclear legal provisions and escalating political partisanship led to distorted implementation of the Law on the Organization of the National Intelligence Service and misuse of SIS. A major problem was that, despite providing for a parliamentary system, the 1991 constitution allocated extensive powers to the President that were unchecked by the Parliament.¹¹ For example, by virtue of his chairmanship of the Defence Council (DC),¹² whose decisions the CM was obliged to implement,¹³ the President was able to circumvent the Law on the Organization of the National Intelligence Service and deprive the PM of the political control of SIS that the law granted him. Although Parliament had the authority to approve or reject members of the DC, it did not have the authority to approve or reject the President's and the DC's decisions.

By excluding Parliament in this way, the President effectively denied opposition parties any role in SIS oversight. Even worse, as the political partisanship escalated, the President began using SIS as a tool to control the opposition parties and other political opponents.¹⁴

Recognising that the 1991 constitution had concentrated too much power in the office of the President, Albanians used the political opportunity created by the 1997 crisis to adopt a new constitution, which weakened the President in relation to the PM and also replaced the DC with a National Security Council that lacked decision-making powers.¹⁵ The PM and the President were given shared responsibility to appoint SIS directors¹⁶ and control SIS activity.¹⁷ Government control was further reinforced through the creation of an Inspector General, appointed by the Council of Ministers, with a mandate to review SIS activity.¹⁸ A drawback of dividing responsibility in this way was that competition for control of SIS led to a decline in relations between the PM and the President.

¹¹ Law on Major Constitutional Provisions (No. 7491, 28 April 1991), Articles 24-32

¹² Ibid, Article 32

¹³ Law on the Functions of the Defence Council and the General Commander of the Armed Forces (No.7528, 11 December 1991)

¹⁴ Aleks Luarasi, *Legal and Institutional Reform in Albania after the Democratic Revolution (1991-1997)* (Tirana University, 1997), page 47, accessed February 2011 (available at: <http://www.nato.int/acad/fellow/95-97/luarasi.pdf>)

¹⁵ Constitution of the Republic of Albania, Article 168

¹⁶ Ibid, Article 92

¹⁷ Law on the State Intelligence Service (No. 8391, 28 October 1998), Article 5

¹⁸ Ibid, Article 14

Regarding parliamentary oversight, the 1998 constitution generally obligated the PM and other members of the CM to answer questions posed to them by members of Parliament on specific issues related to their activity.¹⁹ The October 1998 Law on the State Intelligence Service further provided for the establishment of a permanent parliamentary committee to oversee SIS activity.²⁰ The law on the Military Intelligence Service (MIS) too stipulated the obligation of the Minister of Defence to report to the parliamentary committee on defence on the activity of the MIS.²¹ Beyond generally promoting transparency and accountability, the 1998 constitution also established two independent bodies to carry out intelligence oversight: the People's Advocate, which was charged with ensuring respect for human rights; and the State Supreme Audit Institution (SSAI), which was charged with reviewing the ways in which state institutions executed their budgets. A decade later, in 2008, Parliament established a third such body, the Commissioner for the Protection of Personal Data (CPPD), whose mandate was to monitor and supervise the protection of personal data.²²

With the emergence of a free Albanian media after 1991, the intelligence services inevitably became a part of their reporting. Because of SIS's high visibility, as it performed police-like roles, the media closely monitored its activities and reported widely on abuses and corruption.²³ Nevertheless the media's role was not appreciated by the government, and as a result, several journalists were tried on charges that included defamation of SIS, publishing state secrets and insulting the President.²⁴ The constitutional and legal framework that was adopted after 1998 was more liberal and, thus, allowed for the media to be freer to scrutinise intelligence related issues. However, the media has not fully benefited from the new legal framework to develop investigative journalism to scrutinise the activity of the intelligence services. More recently, civil society organisations have attempted to enhance their own professionalism in order to provide expertise and advocacy on issues relating to the intelligence services and their oversight.

¹⁹ Constitution of the Republic of Albania, Article 80

²⁰ Law on the State Intelligence Service (No. 8391, 28 October 1998), Article 7

²¹ Law nr. 9074, date 29.05.2003, On the Military Intelligence Service, Article 18

²² Law on the Protection of Personal Data (No. 9887, 10 March 2008)

²³ Human Rights Watch, *World Report 1997: Albania*, accessed February 2011 (available at http://www.hrw.org/legacy/reports/1997/WR97/HELSINKI.htm#P66_26869)

²⁴ The New York Times, 'Albania Pardons 5 journalists', May 5, 1994

Intelligence Sector

Since the collapse of the Communist regime in 1991, intelligence reform in Albania has come in three waves. During the first wave, the Communist-era security apparatus was replaced with a new system grounded in statutory law. The second wave, which followed the 1997 crisis, addressed the failures of the first wave, detaching SIS from the armed forces and stripping it of police powers. Currently, Albania is experiencing a third wave.

The beginning of the last wave, which has been quieter than its predecessors, has been linked to the adoption of the Law on the Military Intelligence Service in May 2003. This legislation has since been followed by more laws establishing other intelligence agencies. As a result, SIS, once the great bulk of Albanian intelligence, now constitutes only half of the Albanian intelligence community.²⁵

The primary motive driving the devolution of SIS has been the inability of successive prime ministers to assert unilateral control over the agency. For example, nearly every PM who has held office since 1999 has attempted to dismiss the SIS director without success. The single exception occurred in 2002, when the director was dismissed as the result of a deal between the two major political parties involving the election of a consensual President.²⁶ Not surprisingly, when this President took office, he refused repeatedly to dismiss the SIS director, and the current President has similarly blocked the actions of the current PM (who recently accused the President of planning a coup d'état with the SIS director and the PG²⁷). Another motive was the need to address the poor coordination that existed between the intelligence agencies and law enforcement.²⁸ Creating new intelligence agencies to carry out specific tasks and objectives has divided responsibilities and reduced the need for coordination among the different security actors.

²⁵ This rough calculation is based on approximations of the number of people assigned to each service.

²⁶ Altin Raxhimi, "Sackings, Suits, and Siestas" (Transitions Online, 12 August 2002), accessed February 2011 (available at <http://relaunch.tol.org/client/article/6458-sackings-suits-and-siestas.html>)

²⁷ Testimony provided by Prime minister Sali Berisha on 21 January 2011 to the Parliamentary Investigative Committee on the Investigation, Identification, Confrontation, Neutralization, Disruption, and Punishment of the Criminally Organized Action to Violate the State Institutions and Reverse the Constitutional Order, accessed February 2011 (available at <http://www.keshilliministrave.al/?fq=brenda&m=news&lid=14269>)

²⁸ Interview with Fatos Klosi, SIS director from 1997 until 2002

The establishment of this setting with several actors may have contributed to some improvements in the interagency cooperation, but such cooperation still remains fragmented.²⁹ When driven by an international demand to address a particular transnational issue, cooperation has been especially successful.³⁰ When the demand has been domestically driven, however, the intelligence agencies still rely on ad hoc memoranda of understanding rather than on sustained, legally based mechanisms.³¹

The seven agencies that currently make up the Albanian intelligence community vary widely in size and expertise. Of these, SIS remains the largest and the only one referred to specifically in the Constitution.³² The 1991 Law on the Organization of the National Intelligence Service created the SIS as a cross between an intelligence service and a secret police. As discussed previously, numerous failures, including breaches of democratic norms and violations of human rights,³³ led to the adoption of legislation in 1998 redefining SIS's mandate.³⁴ The new law authorised SIS to gather intelligence both internally and externally on terrorism, narcotics, weapons of mass destruction and organised crime that threaten national security.³⁵ It also restricted many of SIS's former powers, including the right to use force, the authority to initiate criminal proceedings, the right to arrest people, and the power to compel cooperation.

Along with SIS, two smaller intelligence agencies were established in 1991: the Military Intelligence Service (MIS) and the Counterintelligence Service in the Ministry of the Interior (CSMI).³⁶ As a result of SIS dominance during the 1990s, MIS remained largely underdeveloped for more than a decade. During this time, the service underwent

²⁹ European Commission, *Commission staff working document on the fulfilment of the open benchmarks by Albania and Bosnia and Herzegovina in the framework of the Commission Proposal for a Council Regulation amending Regulation (EC) No 539/2001 listing the third [sic] countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement* (Brussels: 14 September, 2010), accessed March 2011 (available at www.ipex.eu/ipex/cms/home/Documents/doc_SEC20101085FIN)

³⁰ Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (Moneyval), *Albania: Progress Report* (24 September 2009), accessed March 2011 (available at [http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/Progress%20reports%20y/MONEYVAL\(2009\)18-ProgRep2ALB_en.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/Progress%20reports%20y/MONEYVAL(2009)18-ProgRep2ALB_en.pdf))

³¹ E.g. Memorandum of Understanding on the Establishment of Joint Investigation Units (No. 232, 6 May 2009) among the Prosecutor General, the Ministry of the Interior, the State Intelligence Service, the Ministry of Finances, the High Inspectorate for the Declaration and Audit of Assets, and the State Supreme Audit Institution

³² Constitution of the Republic of Albania, Article 92

³³ Aleks Luarasi, *Legal and Institutional Reform in Albania after the Democratic Revolution (1991-1997)* (Tirana University, 1997), page 16, accessed February 2011 (available at: <http://www.nato.int/acad/fellow/95-97/luarasi.pdf>)

³⁴ Law on the State Intelligence Service (No. 8391, 28 October 1998)

³⁵ *Ibid*, Article 3

³⁶ Law on the Organization of the Military Intelligence Service and the Counterintelligence Service in the Ministry of the Interior (No. 7530, 11 December 1991), amended with Law No. 7882 on 1 December 1994

continuous restructuring in an ongoing attempt to fine-tune its scope and activities.³⁷ However, it was not until Albania's desire to join the North Atlantic Treaty Organisation (NATO) led to a broad reorganisation of the country's armed forces that MIS finally found its footing. The 2003 law that reformed the service provided it with a new mandate to collect intelligence on threats to the country's integrity, its constitutional order, espionage, terrorism, sabotage, and subversive acts against the armed forces. Territorially, the law gave MIS the authority to operate both within and outside the country.³⁸

CSMI, the smallest of the original three agencies, was replaced in 2001 with the Service of Internal Control in the Ministry of the Interior (SICMI).³⁹ The new service's mandate was to investigate criminal acts committed by members of the State Police and other employees of the Ministry of the Interior. In 2008, SICMI's mandate and powers were greatly expanded. In addition to enforcing compliance with the Criminal Procedure Code, SICMI was granted the authority to conduct inspections as well.⁴⁰ Unlike SIS and MIS, which lack this power, SICMI can search for and confiscate materials that may produce intelligence or lead to criminal prosecutions. It can also compel physical or legal persons to surrender documents and information.⁴¹

The Service of Internal Control in the Prisons System (SICPS), established in 2005, has a similar mandate to that of SICMI.⁴² An even smaller agency, its task is to investigate criminal acts committed by Albania's prison staff. A part of the General Directorate of the Prisons, SICPS has a budget line dedicated to intelligence and a collection authority equal to that of SIS.⁴³ A 2009 amendment to the Law on the Interception of Telecommunications granted SICPS the additional power to conduct electronic surveillance.⁴⁴

The fifth agency, the Financial Intelligence Unit (FIU), operates within the Ministry of Finances. Created in 2008, it has a mandate to fight money laundering and the financing

³⁷ Eduart Bala, *Intelligence Reform in Albania: Its Relation to Democratization and Integration into the EU and NATO*, (Monterey, Ca.: Naval Postgraduate School, 2008)

³⁸ Law on the Military Intelligence Service (No. 9074, 29 May 2003), Article 4

³⁹ Law on the Service of Internal Control in the Ministry of Public Order (No. 8749, 1 March 2001)

⁴⁰ Law on the Service of Internal Control in the Ministry of the Interior (No. 10,002, 6 October 2008)

⁴¹ *Ibid*, Article 23

⁴² Law on the Service of Internal Control in the Prisons System (No. 9397, 12 May 2005)

⁴³ *Ibid*, Article 14

⁴⁴ Law on the Interception of Telecommunications (No. 9157, 4 December 2003), amended with Law No. 9885 on 3 March 2008 and Law No. 10,172 on 22 October 2009

of terrorism.⁴⁵ FIU's extensive powers give it access to data held by banks and other financial institutions. It also has the power to halt financial transactions and freeze bank accounts.

The Operational and Investigative Department in the General Directorate of the Customs (OID/GDC) was established pursuant to the Customs Code in 2006.⁴⁶ Beyond the protection of Albania's national security and public safety, OID/GDC's mandate includes the protection of the country's economic interests.⁴⁷ The service possesses both intelligence-collection authority and police powers that allow it to initiate criminal investigations.⁴⁸

The seventh agency, the Directorate on Tax Investigations in the General Directorate of Taxation (DTI/GDT), was established in 2008 pursuant the Law on Tax Procedures.⁴⁹ DTI/GDT's mandate is to investigate criminal acts committed in the area of taxes and duties.⁵⁰ DTI/GDT's powers include the authority to collect, analyze, and disseminate intelligence and the right to compel testimony from individuals who may possess information about tax offenses.⁵¹ Like OID/GDC, DTI/GDT has police powers that allow it to initiate criminal investigations.⁵²

Counterterrorism

The emergence of counterterrorism (CT) as a primary focus of intelligence activity in Albania has had a profound effect on the services and relations between them. Even before the 9/11 attacks, SIS had a functioning CT unit, established in 1995 with just a handful of officers. Three years later, this unit successfully disrupted a cell of Egyptian Islamic Jihad terrorists operating in Tirana.⁵³

⁴⁵ Law on the Prevention of Money Laundering and Terrorism Financing (No. 9917, 19 May 2008)

⁴⁶ Customs Code, Chapter 2, Section 1, Article 9

⁴⁷ Customs Service web site, "Mission of the Customs Service," accessed March 2011 (available at <http://www.dogana.gov.al/index.php?mid=24>)

⁴⁸ Council of Ministers Decision No. 172 (29 March 2006) on amendments to Council of Ministers Decision No. 205 (13 April 1999) on implementing provisions of the Customs Code

⁴⁹ Law on Tax Procedures (No. 9920, 19 May 2008)

⁵⁰ Council of Ministers Decision No. 400 (22 April 2009) on the definition of the tasks and functions of the Directorate of Tax Investigation

⁵¹ Ibid

⁵² Council of Ministers Decision No. 172 (29 March 2006) on amendments to Council of Ministers Decision No. 205 (13 April 1999) on implementing provisions of the Customs Code

⁵³ Office of the Coordinator for Counterterrorism in the Office of the Secretary of State, US Department of State Publication 10610 (April 1999), accessed March 2011 (available at http://www.fas.org/irp/threat/terror_98/index.html)

In the area of CT, SIS has played the lead role, followed by MIS, which has made effective use of its presence in Afghanistan and Iraq as part of Albanian military missions. Since Albania's entry into NATO in 2009, MIS has also participated in the alliance's Partnership Action Plan on Terrorism.⁵⁴ FIU, OID/GDC, and DTI/GDT have also made CT a top priority, especially with regard to the financing of terrorism.⁵⁵

The emergence of CT has affected the intelligence services in three distinct ways. First, the introduction of CT units has forced changes in internal structure. The initial introduction of the CT division led to the transformation of the organisational structure, which traditionally consisted of only two divisions, intelligence and counterintelligence.. The new CT units also changed the professional culture of the services (especially SIS), in that their involvement with nonstate actors has forced the agencies to become more sophisticated in their operations.⁵⁶ For example, SIS's CT analytical team was the first to make analysis a formal part of the intelligence cycle,⁵⁷ an innovation later adopted by the entire intelligence community. Second, the emergence of CT has changed the ways in which the intelligence services interact with other state institutions. Because of the high priority placed on CT throughout the government, the services have found politicians much more receptive to requests for resources and other forms of support.⁵⁸ Third, the close association of the intelligence services with CT has greatly improved the public image of the services. In particular, media reporting of SIS's 1998 disruption of the Egyptian Islamic Jihad terrorist cell did much to improve the service's reputation after the great damage it suffered during the 1997 crisis.

In the aftermath of the Yugoslav wars of the early 1990s, Albania's geographical position and its national interests, which often overlapped those of the Western democracies, led to the formation of closer ties with foreign countries and their intelligence services. In particular, the Kosovo crisis, the war on terrorism, and the fight against transnational criminal activity resulted in greater and greater cooperation between the Albanian intelligence community and the larger Western services.⁵⁹ This

⁵⁴ NATO web site, "NATO's relations with Albania," accessed March 2011 (available at http://www.nato.int/cps/en/natolive/topics_48891.htm#key)

⁵⁵ National Strategic Document "For the Investigation of Financial Crimes" (September 2009), accessed March 2011 (available at <http://www.fint.gov.al/doc/National%20Strategic%20Document.pdf>)

⁵⁶ *Christopher Deliso*, "Spy Book Reveals Operational Details of 1998 CIA Balkan Counter-Terrorism Operation," accessed March 2011 (available at <http://www.balkananalysis.com/albania/2011/02/>)

⁵⁷ Interview with Eduart Bala, director of the SIS Counterterrorism Directorate from 1998 until 2001

⁵⁸ Interview with Fatos Klosi, SIS director from 1997 until 2002

⁵⁹ Ibid

cooperation ranged from the sharing of information and expertise to the conduct of joint operations.⁶⁰ With Albania's entry into NATO, the process accelerated, with MIS joining the alliance's Military Intelligence Committee and its Intelligence Fusion Centre.⁶¹

No poll data currently exists by which one might gauge Albanians' attitudes toward their intelligence services. But it is safe to say that, because of the classified nature of most intelligence work and the lack of transparent assessments from credible oversight bodies, public opinion has largely been shaped by the ongoing political debates. Regardless of which party holds power,⁶² the opposition has consistently mistrusted the ways in which the government has utilised the intelligence community. Mixing speculation with facts, opposition parties have charged the government with using SIS to interfere with the political process⁶³ and even with carrying out political assassinations.⁶⁴

Since 2005, not a single law related to intelligence has gained any opposition support. Again and again, government proposals to reform SIS—by splitting it into two agencies,⁶⁵ for example, or by amending its legal framework⁶⁶—have been strongly resisted by the opposition.⁶⁷ As a result, the public has tended to assess the intelligence agencies based on their individual political affiliations. Media reporting has only reinforced this process because the media, like the public, is largely divided along political lines.

Oversight and Control

⁶⁰ *Council of Ministers Decision* No. 194 (10 April 2004) on the priorities, areas, and levels of cooperation of the State Intelligence Service with foreign intelligence services

⁶¹ Law on the Adherence of the Republic of Albania to the Memorandum of Understanding on the Organization, Administration, Security, Financing, and Staffing of the Intelligence Fusion Centre (No.10,330, 14 October 2010)

⁶² The Democratic Party controlled the Albanian government from 1992 until 1997, when the Socialist Party took control. In 2005, the Democratic Party returned to power.

⁶³ International Crisis Group, *Albania: State of the Nation 2003*, Europe Report No. 140 (11 March 2003), accessed February 2011 (available at <http://www.crisisgroup.org/en/regions/europe/balkans/albania/140-albania-state-of-the-nation-2003.aspx>)

⁶⁴ While in opposition, the Democratic Party accused SIS of murdering one of its most prominent leaders in 1998 and manipulating the results of the general elections in 2001.

⁶⁵ Voice of America web site, "Berisha: SIS in the Ministry of the Interior to Fight Organized Crime," (16 September 2005), accessed February 2011 (available at <http://www.voanews.com/albanian/news/a-30-2005-09-16-voa6-85698732.html>)

⁶⁶ Council of Ministers Decision on the proposal of the draft law on some amendments to Law No. 8391, accessed February 2011 (available at <http://www.keshilliministrave.al/?fq=brenda&m=news&lid=12538>)

⁶⁷ "The Socialist Party will not allow SIS to be kidnapped by Berisha," *Albania*, 6 February 2010, accessed February 2011 (available at <http://www.gazeta-albania.net/news.php?id=23999>)

Several mechanisms typically combine to ensure democratic control and oversight of intelligence work. These include internal controls managed by the services themselves, executive controls, parliamentary controls and oversight, oversight by independent state bodies, oversight by the judiciary, and oversight by the media and civil society organisations.⁶⁸ In Albania, where most of the emphasis has been on control, oversight has largely failed to develop. The oversight mechanisms that do exist tend to function in isolation and not in a coordinated manner.

Internal Bodies

The internal controls operating within each intelligence service vary according to the service's size and status. Because of SIS's status as an independent agency, it has developed an independent internal control system. The Law on the State Intelligence Service requires the SIS director to regulate the internal functioning of the organisation.⁶⁹ This is accomplished through the Operational Control branch, which monitors compliance with intelligence laws and regulations as well as with operational procedures established by the SIS director. In addition, the Personnel Security branch vets the staff.

In order to enhance internal accountability, the Law on the State Intelligence Service stipulates that SIS officers shall execute only those orders "that are not contradictory to this law."⁷⁰ SIS has also established a disciplinary commission to which SIS staff can appeal unfair disciplinary measures.⁷¹ Yet no mechanism exists for the protection of whistleblowers—and, indeed, no officer has yet denounced the SIS (or any other Albanian intelligence agency) for unlawful acts.

Because the status of MIS is rather vague—the service was established legally as an independent agency but conceived organisationally as a directorate within the Ministry of Defence⁷²—its internal controls developed as a function shared by the MIS director and the Minister of Defence. The Law on the Military Intelligence Service makes the Minister of Defence responsible for the organisation of the service, the protection of its

⁶⁸ Hans Born and Ian Leigh, *Making Intelligence Accountable: Legal Standards and Best Practice for Oversight of Intelligence Agencies* (Oslo: Parliament of Norway, 2005)

⁶⁹ Law on the State Intelligence Service (No. 8391, 28 October 1998), Article 13

⁷⁰ *Ibid.*, Article 15

⁷¹ Law on the Status of the Employees of the State Intelligence Service (No. 9357, 17 March 2005), Article 49

⁷² Law on the Military Intelligence Service (No. 9074, 29 May 2003), Article 4

methods and sources,⁷³ and the appointment of its staff.⁷⁴ In contrast, the MIS director is legally empowered only to discipline employees for breaches of laws or regulations.⁷⁵ This leaves something of a vacuum with regard to internal controls. For example, none of the legislation relating to MIS includes any provision promoting accountability or offering protection from disciplinary action to officers who denounce violations of the law.

Like MIS, SICMI also has been established by law as a separate agency but viewed administratively as a part of the Ministry of the Interior. Although there is some vagueness in the service's enabling law with regard to internal controls, especially as they overlap with executive controls, the Law on the Service of Internal Control in the Ministry of the Interior is more clearly drawn than the Law on the Military Intelligence Service.⁷⁶ In fact, with regard to accountability, the SICMI law includes more detailed provisions than any other intelligence service enabling law, describing specific situations in which SICMI employees can lawfully disobey illegal orders.⁷⁷

The internal controls of the four remaining agencies are more complex and thus more difficult to analyze. Because of these agencies' small size and administrative position within larger bodies, they have no internal control mechanisms of their own. Instead, they are subject to control by the large departments of which they constitute only a part.⁷⁸

Executive

The 1998 constitution made the PM responsible for ensuring the implementation of legislation and policies and for coordinating and supervising the work of the members

⁷³ Ibid, Article 6

⁷⁴ Law on the Criteria for the Admission, Career, and Its Interruption in the Military Intelligence Service (No. 9295, 21 October 2004)

⁷⁵ Ibid, Articles 14–15

⁷⁶ Law on the Service of Internal Control in the Ministry of the Interior (No. 10,002, 6 October 2008), Articles 13–14

⁷⁷ Ibid, Article 44

⁷⁸ For SICPS, the organization chart of the General Directorate of the Prisons can be found at <http://www.dpbsh.gov.al/skedaret/1247586773-Struktura%20DPB.doc>. For FIU, the organization chart of the General Directorate of the Prevention of Money Laundering can be found at <http://www.fint.gov.al/index.php?mid=3>. For OI/GDC, the organization chart of the General Directorate of the Customs can be found at <http://www.dogana.gov.al/doc/organograma2008.pdf>. For DTI/GDT, the organization chart of the General Directorate of Taxation can be found at http://www.tatime.gov.al/gdt/DF_DocumentViewer.aspx?id=8e134d04-b202-400c-a8ee-a1b455a36dad.

of the Council of Ministers and other state institutions.⁷⁹ It also stipulated that ministers may issue orders within the parameters established by state policy.⁸⁰

The executive control of the intelligence services on the spending of the budget is performed by the Ministry of Finances, which operates internal financial control units within each institution.⁸¹ Those services that operate within ministries are subject to the internal financial control units of their respective ministry. (SIS, as an independent spending entity, has its own financial control unit that reports to the Ministry of Finances.) It should be noted, however, that funds for clandestine activities are not controlled in this way but under different rules, as regulated by the CM.⁸² Unlike the control of the finances, the control by the executive on the effectiveness and legality of the intelligence and security services is regulated by different laws and therefore is not unified.

As discussed previously, the PM, to whom the SIS director reports, and the President jointly share direct executive control of SIS—setting policy guidelines and priorities, appointing the service’s director, and supervising its performance. The PM also exerts control over SIS indirectly through the Inspector General, who also reports to the PM.⁸³

In the case of MIS, the PM has unilateral authority to set its policy guidelines and priorities and to appoint its director.⁸⁴ Although the PM does not directly supervise MIS operations, those operations are controlled by the Minister of Defence, who reports to the PM and the President at least once a year.⁸⁵ The Minister of Defence also defines the manner in which MIS cooperates with foreign agencies. Since Albania’s entry into NATO, the executive and internal controls on MIS have been adjusted to adhere more closely to NATO standards. Nevertheless, the service’s legal framework still requires revision in order to meet NATO standards fully.⁸⁶

⁷⁹ Constitution of the Republic of Albania, Article 102

⁸⁰ *Ibid*

⁸¹ Law on the Management of the Budgetary System (No. 9936, 26 June 2008), Article 62

⁸² Council of Ministers Decision No. 17 (21 January 2000) on the use and control of public funds for the specific and operational activity of the State Intelligence Service and Council of Ministers Decision No. 162 (18 March 2004) on the use and control of public funds for the specific activity of the Military Intelligence Service

⁸³ Law on the State Intelligence Service (No. 8391, 28 October 1998), Article 14

⁸⁴ Law on the Military Intelligence Service (No. 9074, 29 May 2003), Article 4

⁸⁵ *Ibid*, Article 6

⁸⁶ Interview with MIS director Ylli Zyla

With regard to SICMI, the Minister of the Interior is the responsible authority. He appoints the SICMI director, approves the organisational structure and annual policy guidelines, arranges the service's cooperation with other intelligence agencies, supervises its operations, and approves its methods of intelligence collection.⁸⁷

For SICPS, the responsible authority is the Minister of Justice.⁸⁸ He appoints the SICPS director and approves the procedures regulating the expenditure of funds for clandestine activities. The organisation's structure, however, is subject to approval by the PM.⁸⁹

The Minister of Finances is nominally responsible for the remaining three agencies—FIU,⁹⁰ OID/GDC,⁹¹ and DTI/GDT⁹²—whose operations he coordinates.⁹³ The CM, however, has the authority to regulate the activity of these agencies, and the PM is empowered to appoint the directors of both OID/GDC and DTI/GDT.

Parliament

The legal basis for parliamentary control and oversight of Albania's intelligence community is found in the Constitution—which, as noted previously, obligates the members of the CM (including the PM) to answer questions posed by members of Parliament.⁹⁴ Similarly, the directors of state institutions who are not members of the CM are equally required, upon the request of parliamentary committees, to give information on and provide explanations regarding their activities as the law permits.⁹⁵

Because SIS is not subject to a ministry, it falls under the latter category of state institutions that report directly to Parliament. As specified in the Law on the State Intelligence Service, the SIS director is obligated to report once a year to a special

⁸⁷ Law on the Service of Internal Control in the Ministry of the Interior (No. 10,002, 6 October 2008), Articles 12–14

⁸⁸ Law on the Service of Internal Control in the Prisons System (No. 9397, 12 May 2005), Article 4

⁸⁹ *Ibid*, Article 7

⁹⁰ Law on the Prevention of Money Laundering and Terrorism Financing (No. 9917, 19 May 2008), Article 21

⁹¹ Law on the Customs Code (No. 8449, 27 January 1999), Article 9

⁹² Law on Tax Procedures (No. 9920, 19 May 2008), Article 13

⁹³ Regulation No. 15 (16 February 2009) on the prevention of money laundering and the fight against the financing of terrorism in the customs system and Regulation No. 16 (16 February 2009) on the prevention of money laundering and the fight against the financing of terrorism in the tax system

⁹⁴ Constitution of the Republic of Albania, Article 80

⁹⁵ *Ibid*

permanent committee.⁹⁶ All other intelligence agencies report to Parliament through their respective ministers.

According to the Rules of Procedure of Parliament, three permanent committees conduct either ex ante or ex post oversight of the intelligence community.⁹⁷ The Committee on National Security (CNS) is responsible for national defence (including the armed forces), civil emergencies, and public order (including the secret services). The Committee on Legal Affairs, Public Administration, and Human Rights (CLAPHR) is responsible for those independent state institutions whose jurisdiction involves the implementation of human rights legislation (including the intelligence agencies). The Committee on the Economy and Finances (CEF) is responsible for endorsing and transmitting to the plenary final draft budgets and for reviewing audit reports on the implementation of those budgets.⁹⁸

Although CNS is fully involved in the drafting of all laws related to intelligence, it debates only the budgets of SIS, MIS, and SICMI. The budgets of the four other intelligence services, all subordinated to either the Ministry of Justice or the Ministry of Finances, are not discussed by CNS.⁹⁹

With regard to parliamentary oversight of intelligence service effectiveness and legality, CNS plays a more limited role. Of Albania's seven intelligence services and agencies, only SIS reports to CNS regularly (once a year). These reports are not released to the public, but CNS members occasionally comment publicly on their contents.¹⁰⁰ To date, none of the other agencies has reported to CNS, nor has CNS called upon the responsible ministers to make reports, nor is there evidence that CNS has used other mechanisms (such as inspections or the questioning of intelligence officials) to conduct oversight of these agencies.

⁹⁶ Law on the State Intelligence Service (No. 8391, 28 October 1998), Article 7

⁹⁷ Rules of Procedure approved by Decision No. 166 (16 December 2004), amended by Decision No. 15 (27 December 2005), Decision No. 193 (7 July 2008), Decision No. 21 (27 December 2010), and Decision No. 88 (24 February 2011), accessed March 2011 (available at http://www.parlament.al/web/Rregullorja_e_Kuvendit_te_Republikes_se_Shqiperise_e_perditesuar_1154_1.php)

⁹⁸ Ibid, Article 19

⁹⁹ Minutes of the discussion of the budget of the Ministry of Defence, the Ministry of the Interior, and the State Intelligence Service for the year 2011 in the Committee on National Security on 19 November 2010, 22 November 2010, and 30 November 2010, accessed March 2011 (available at http://www.parlament.al/web/Procesverbalet_10060_1.php)

¹⁰⁰ "SIS report: the Mafia sponsors the politicians," *Shekulli*, 7 July 2010, accessed March 2011 (available at <http://www.shekulli.com.al/2010/07/07/zbardhen-detaje-nga-raporti-i-shish-mafia-po-sponsorizon-politikane.html>)

CEF's mandate is twofold: to provide final approval of all draft budgets before they are voted on by the plenary and to review and endorse SSAI audits detailing how budgeted funds have been spent. Concerning the approval of the budget, the CEF's role is minimal as it usually endorses the draft budget as proposed by the CNS. Concerning the spending of the budget, the CEF oversees the intelligence services through the adoption of the SSAI reports annual reports. However, this latter function is ill defined, in particular with regard to the control spending of the funds dedicated for secret operations or procurements.¹⁰¹ The analysis of the reports presented to the parliament reveals no evidence that the SSAI has controlled this part of the budget.¹⁰² On the other hand, the gap in the division of labour among CEF and CNS has left the oversight of secret funds in limbo. Similarly, CLAPHR's mandate is to provide final approval of all draft human rights legislation before it is voted on by the plenary and to assess compliance with the legislation once it is passed. CLAPHR performs the latter responsibility primarily by hearing and adopting reports made by the People's Advocate, the CPPD, the PG, and the Minister of Justice. Yet this reporting is hampered by the poor quality of the human rights provisions in intelligence-related legislation. Typically, the provisions refer simply to broad human rights principles without providing any guidance on how these principles should be implemented. Nor has CLAPHR shown much interest or initiative in the exercise of its legislative oversight responsibility. With the exception of a PG report that precipitated a brief discussion on the interception of telecommunications by intelligence services, CLAPHR has generally rubber-stamped the reports presented to it without any independent scrutiny of intelligence service compliance with human rights legislation.¹⁰³

Because none of the three committees is required to issue a report on how it has fulfilled its mandate (and none do), the only way to assess their performance is to examine the endorsement resolutions that the committees forward to the plenary for adoption. Unfortunately, the wording of these resolutions is so flat and formal that they allow for no insightful conclusions.

¹⁰¹ Law on the State Supreme Audit Institution (No. 8270, 23 December 1997), amended by Law No. 8599 (1 June 2000), Articles 21–22

¹⁰² Reports of the SSAI to the parliament for years 2005-2010, (available at <http://www.klsh.org.al/index.php?l=a>)

¹⁰³ Minutes of the parliamentary debate on the annual reporting of the People's Advocate and the Commissioner for the Protection of Personal Data, accessed March 2011 (available at http://www.parlament.al/web/Procesverbalet_10044_1.php)

One of the root causes for the committees' poor performance is the failure of the relevant legislation to articulate clear, consistent procedures for parliamentary interaction with the intelligence services. The 1998 Law on the State Intelligence Service provided for the establishment of a special permanent committee on intelligence oversight with the mandate to review and control SIS activity, including budgetary expenditures.¹⁰⁴ Such a committee was established in 1999,¹⁰⁵ but it ceased functioning in 2004, when CNS was created. At that point, CNS assumed the intelligence oversight role but performed no better.

In an attempt to formalise new procedures, CNS worked with the Organisation for Security and Cooperation in Europe (OSCE) to develop draft legislation in 2010 that would have established a select subcommittee of CNS to control and oversee the work of all government organisations collecting and using secret intelligence.¹⁰⁶ However, because opposition parties viewed the proposal as another attempt to place SIS under the PM's political control,¹⁰⁷ Parliament never took up the bill.¹⁰⁸

Another possible reason for the committees' poor performance may be the lack of administrative support, both in resources and in expertise.¹⁰⁹ Permanent parliamentary committees receive their main support from the Legislative Service, which is composed of three units: the Legal Service, the Commissions and Plenary Service, and the Legislation Approximation Service. With just two dozen staff positions, the Legislative Service is able to allocate only a limited number of advisers to the permanent committees—three each to CNS and CEF and eight to CLAPHR. In fact, because of staffing problems, the number of advisers provided does not always match the number

¹⁰⁴ Law on the State Intelligence Service (No. 8391, 28 October 1998), Articles 7–8

¹⁰⁵ Decision of the Parliament No. 404 (29 April 1999) on the establishment of the Permanent Subcommittee on the State Intelligence Service

¹⁰⁶ OSCE web site, "Recommendations for a Draft Law on Parliamentary Oversight of the Intelligence and Security Services," accessed March 2011 (available at <http://www.osce.org/sq/albania/71375>)

¹⁰⁷ "OSCE: 'Parliamentary oversight strengthens democracy,'" *Telegraf*, 15 July 2010, accessed July 2011 (available at <http://www.gazetatelegraf.com/index.php/news/5398.html>)

¹⁰⁸ According to the draft law, the new subcommittee would have been charged with overseeing:

- the lawfulness and proportionality of intelligence service activity, including whether the services complied with agreed-upon procedures
- the proper exercise of executive controls
- the proper use and accounting of financial resources;
- the collection, use, and protection of intelligence so that either the public is reassured or shortcomings are investigated
- the mandates, priorities, and effectiveness of the intelligence services.

¹⁰⁹ Sokol Berberi, "Democratic Control of the Intelligence Service" in Philipp Fluri and Jan Trapans (editors), *Defense and Security Sector Governance and Reform in South East Europe: Insights and Perspectives—Albania—A Self Assessment Study* (DCAF, 2003), page 82 (available at <http://www.dcaf.ch/content/download/36677/528571/file/Albania.pdf>)

allocated. High turnover has also stifled the accumulation of institutional memory and expertise—a process exacerbated by the tendency of the Legislative Service to employ people whose primary qualification is their loyalty to the parliamentary majority. Consequently, opposition deputies are usually reluctant to rely on Legislative Service personnel for support and good judgment.¹¹⁰

Independent State Bodies

The 1999 Law on the People's Advocate created the People's Advocate as an independent institution to oversee the work of the intelligence services, the police, the prisons staff, the armed forces, and the judiciary with respect to the protection of human rights and freedoms.¹¹¹ In order to carry out this responsibility, the People's Advocate was given the authority to access classified information, conduct inspections on the premises of suspect agencies, and compel testimony from agency officials.¹¹²

Since the election of the first People's Advocate in 2000, the oversight body has made annual reports to Parliament¹¹³ that can be accessed easily by the public at the People's Advocate web site.¹¹⁴ These reports contain data both on the number of complaints received by the People's Advocate and on specific cases that have developed from the complaints. Yet the number of complaints made to the People's Advocate and the scope of its cases have both been rather limited. Between 2001 and 2009, the People's Advocate received only sixty-five complaints, most of which are related to labour disputes involving SIS officers.¹¹⁵ Although the annual report of the People's Advocate for 2009 assessed the relationship between the oversight body and the intelligence services as "correct,"¹¹⁶ the complaint and case data suggests that little oversight has taken place with regard to the intelligence community's compliance with human rights laws.

This performance has mainly resulted from the rather narrow interpretation of the scope of the People's Advocate's mandate. By focusing on the performance of the

¹¹⁰ Interview with Ilir Gjoni, CNS member from 2005 until 2009

¹¹¹ Law on the People's Advocate (No. 8454, 4 February 1999), amended by Law No. 8600 (10 April 2000) and Law No. 9398 (12 May 2005)

¹¹² Ibid, Articles 18–20

¹¹³ The People's Advocate also reports to Parliament whenever called upon to do so or at his own request.

¹¹⁴ <http://www.avokatipopullit.gov.al/> (accessed March 2011)

¹¹⁵ Annual reports to Parliament on the activity of the People's Advocate for the years 2001–2009, accessed March 2011 (available at http://www.avokatipopullit.gov.al/?page_id=259)

¹¹⁶ Ibid, People's Advocate report for 2009 (presented to Parliament on 31 March 2010), accessed March 2011

intelligence services as part of the public administration, the People's Advocate has underestimated the interaction of the services with the wider public.¹¹⁷

Like the People's Advocate, SSAI has a broad mandate that includes, without being limited to, the intelligence community. As Albania's premier watchdog over public funds,¹¹⁸ SSAI has been charged with the responsibility to oversee the budgetary expenditures of state bodies, including the intelligence services. To carry out this responsibility, SSAI has been empowered to access classified information held by intelligence services and report on its findings to CEF.¹¹⁹ However only recently the SSAI has reported on security institutions, including intelligence services, to have spent 'considerable funds' for contracts related to 'vital state interests' and that this was done in complete absence of regulatory acts.¹²⁰

Created as an independent body in 2008, CPPD was charged with protecting Albanians' personal data from misuse. In addition to domestic monitoring, CPPD supervises the transfer of personal data internationally, granting or withholding clearance as appropriate.¹²¹ In order to strengthen the independence of the institution, the commissioner is elected by the Parliament and reports to it annually.

As a relatively new body, CPPD has had to prioritise its activities, focusing initially on oversight of the private sector—especially banks, telecommunication companies, and other businesses that process large amounts of personal data.¹²² However, a main impediment to the control of intelligence services is that the law lacks provisions for access of the CPPD to classified information as such access may be limited for national security purposes, foreign policy or other important state interests.¹²³ Consequently, the use of personal data by intelligence services has thus far escaped its oversight. CPPD has issued only two annual reports since its establishment in 2008, but both have indicated that the intelligence and security services have yet to be subject to inspection.

Judiciary

¹¹⁷ Interview with People's Advocate inspector Iljaz Çeço

¹¹⁸ Constitution of the Republic of Albania, Articles 162–165

¹¹⁹ Law on the State Supreme Audit Institution (No. 8270, 23 December 1997), amended by Law No. 8599 (1 June 2000), Article 22

¹²⁰ Report of the activity of the SSAI to the parliament for the year 2009, p.37

¹²¹ Law on the Protection of Personal Data (No. 9887, 10 March 2008)

¹²² Interview with Flora Çabej, Commissioner for the Protection of Personal Data

¹²³ Law on the protection of personal data, Article 12

The legal basis for judicial oversight of the intelligence services can be found in the constitutional articles that provide for the independence of the judiciary and equality before the law.¹²⁴ In practice, though, judicial oversight has hardly been balanced. During the mid-1990s, politically biased judges imposed unfairly heavy sentences on journalists and other citizens who dared to “mess with” the intelligence services. Since that time, court rulings in intelligence cases have tended to favour the public, but the high degree of corruption that currently exists in the court system makes the fairness of these rulings suspect as well.

Media and Civil Society Organisations

Media oversight of the intelligence services has grown in recent years as the number of independent media outlets operating in Albania has surged. On the other hand, the development of media expertise has lagged behind this growth. That is, while the amount of coverage has increased, the quality of the investigative reporting remains largely unprofessional. Because of this lack of professionalism, the general division of the media along partisan lines has led to politically biased reporting.

The Albanian think tanks and nongovernmental organisations that concern themselves with intelligence matters have generally taken a more objective approach, but these civil society organisations have yet to overcome two difficult challenges. The first is the scarcity of relevant data. Parliament, the government, and the intelligence services do not release much information to the public. The second challenge is that the decision-making bodies in government have shown very little interest for the expertise of the civil society organisations and only rarely take their recommendations into account.

Strengthening Oversight and Control

Albania has now passed from the first generation of intelligence reform, concerned primarily with institutional restructuring, to the second, which is more focused on issues of effectiveness and accountability.¹²⁵ Yet, the establishment of intelligence organisations and oversight institutions has been an ongoing process.

¹²⁴ Constitution of the Republic of Albania, Articles 18, 135-147

¹²⁵ Andrew Cottey, Timothy Edmunds, and Anthony Forster, “The Second Generation Problematic: Rethinking Democracy and Civil-Military Relations,” *Armed Forces and Society*, Vol. 29, No. 1 (Fall 2002)

Most importantly, the legislation establishing the legal basis for the intelligence agencies needs to be revised and harmonised in order to resolve problems of mandate overlap and mission creep. The current mandate of MIS, for example, authorises the service to collect intelligence on non-military threats,¹²⁶ even though such a charge risks inappropriate military interference in civilian affairs.¹²⁷ More generally, Albania needs to abandon the current system of ad hoc arrangements and personality-based decision making and replace it with a coordinated, cooperative system grounded in statutory law.¹²⁸

Another important focus of legislative reform is data protection. Presently, only the Law on the Service of Internal Control in the Ministry of the Interior provides for the protection of personal data.¹²⁹ New legislation should remedy this omission and also specify procedures, based on European Union standards,¹³⁰ by which citizens can access the personal data held on them by the intelligence and security services.

Internal Bodies

The proliferation of intelligence services inevitably risks fragmented oversight.¹³¹ Effective internal controls can mitigate this problem, especially by serving as a resource for other oversight mechanisms. At the same time, safeguards need to be established so that service directors cannot abuse robust internal control for their own political benefit. Moreover, as noted previously, new legislation should include procedures for protecting whistleblowers from disciplinary reprisals. As the People's Advocate has observed, current legislation needs to be improved in order to provide whistleblowers with credible, independent protection mechanisms.¹³²

Executive

¹²⁶ Law on the Military Intelligence Service (No. 9074, 29 May 2003), Articles 2 and 5

¹²⁷ "Interview of Defence Minister Mr. Arben Imami given to the program 'Opinion' of the journalist Blendi Fevziu on the National TV 'KLAN'" (26 January 2011), accessed March 2011 (available at http://www.mod.gov.al/index.php?option=com_content&view=article&id=957:interviste-e-ministrit-te-mbrojtjes-arben-imami-ne-emisionin-opinion-te-gazetarit-blendi-fevziu-ne-tv-kombetar-klan&catid=42:lajme&Itemid=52&lang=en)

¹²⁸ Interview with Fatos Klosi, SIS director from 1997 until 2002

¹²⁹ Law on the Service of Internal Control in the Ministry of the Interior (No. 10,002, 6 October 2008), Article 2

¹³⁰ For more information on European Union standards, see http://ec.europa.eu/justice/policies/privacy/index_en.htm (accessed March 2011)

¹³¹ Hans Born and Ian Leigh, *Making Intelligence Accountable: Legal Standards and Best Practice for Oversight of Intelligence Agencies* (Oslo: Parliament of Norway, 2005), page 32

¹³² People's Advocate Recommendation No. 146/1 (25 November 2009) to the Minister of Justice, "Opinion on the draft decision on the approval in principle of the Council of Europe Convention 'On Access to Official Documents,'" accessed April 2011 (available at <http://www.avokatipopullit.gov.al/Korrespondenca/Korr%2025112009.htm>)

There are three main problems that the Albanian government needs to address with regard to executive control of the intelligence community. The first of these is the rivalries between the President and the PM over control of SIS. The shared responsibility that was implemented in the aftermath of the 1997 crisis succeeded in reducing the dangerous concentration of power in the presidency, but several deleterious side effects have made it unworkable as a long-term strategy. The most serious of these is the negative effect the new arrangement has had on SIS's relations with other government ministries. The empowerment of previously irrelevant intelligence agencies within the various ministries has followed from these strained relations.¹³³

A related problem is that the President has come to be seen as the "protector" of SIS as well as the "preferred" consumer of its intelligence product. Such an alliance was understandable during the mid-1990s, when the President used the power of SIS for political purposes. Following the 1998 reforms, however, their cosy relationship appears to have no practical governmental purpose. Under the current political system, the President lacks the authority to initiate legislation or make policies that the collection of intelligence is designed to support. Therefore, the purpose for which he continues to consume SIS intelligence remains vague. More often than not, after reading intelligence reports, the President simply shreds them.¹³⁴ Although another system might not provide the same institutional stability to SIS, the government's legitimate desire for an effective intelligence service capable of informing its policies must also be considered. A possible solution would be to add Parliament to the mix as a balancing factor between the President and the PM.

The second major executive control problem relates to the intelligence services operating within government ministries. Clear and unbreachable boundaries need to be established between the political interests of the ministers and the administrative control they exercise over the services.

The third problem concerns the vesting of responsibility for these intelligence services with their respective ministers, rather than with the PM. As a matter of principle, the PM

¹³³ Arjan Dyrnishi, "The need to reform the intelligence services system in Albania," *Security Sector Reform Issues in Albania*, Volume II, 2011

¹³⁴ Interview with Fatos Klosi, SIS director from 1997 until 2002

should be made responsible for the activities of the intelligence services and held to account for those activities by Parliament and the public. The current system, according to which the services report directly to Parliament without any link to the executive, has discouraged political accountability, especially with regard to the use of special investigative measures. Current practice allows the PG to both authorise and supervise such special measures as eavesdropping and electronic surveillance. This arrangement needs to be revised so that the executive authorises the use of special measures and Parliament oversees their use through an independent body established for this purpose.

Parliament

For these recommendations (once implemented) to be sustained, the current parliamentary oversight system needs to be transformed. Administratively, improvements need to be made in the structuring of committee mandates, the coordination of committee work, and the resources made available. Specifically, Parliament should adopt the law on intelligence oversight, as proposed in 2010 by OSCE.¹³⁵ Additionally, Parliament should enhance human rights oversight, which has thus far been overlooked by the respective permanent committees.

But there is an even more important issue to be considered: how to develop the political will necessary to make these changes. Certainly, no changes will be made until relations between the majority and opposition parties begin to improve. During the first wave of intelligence reform, the opposition parties were almost completely excluded from the decision-making process. Since the 1997 crisis, Parliament has taken a more participatory approach in many areas; but with regard to intelligence matters, decisions are still being made by the majority with almost no input or support from the opposition (which considers the process rigged from the start¹³⁶). This has contributed to further polarisation along party lines and made it difficult for Parliament to scrutinise the legal framework and performance of the intelligence services. One way to create a new spirit of consensus would be to appoint a member of the opposition to chair a new

¹³⁵ See press release at OSCE web site, "OSCE Presence supports parliamentary oversight of security services," accessed March 2011 (available at, <http://www.osce.org/albania/72077>)

¹³⁶ Interview with Ilir Gjoni, CNS member from 2005 until 2009

permanent committee on intelligence oversight—or at least to establish a rotation system similar to that used by the German parliament.¹³⁷

Additionally, any overhaul of the parliamentary oversight system should include a review of the authorisation and use of special investigative measures by the intelligence services and the requirement that parliamentary oversight committees produce regular reports and make them available to the public.

Independent State Bodies

The People's Advocate should reconsider the self-imposed policy that limits its reviews to the activities of SIS and instead scrutinise the practices of all intelligence services. Furthermore, the People's Advocate should take advantage of the legal framework and be more proactive in controlling the respect of human rights by the intelligence services, not only in reaction to citizens complaints but also on own initiative. Currently, the Prosecutor General both authorises the use of special investigative measures by the intelligence services and oversees the warrants (in acting as an independent oversight body). As long as this system remains in place, the PG should report fully to Parliament so that the Parliament and the public can appraise the appropriateness of the PG's discretion.

Because CPPD is a relatively new body, any definitive assessment of its operations would be premature. However, CPPD would likely benefit from a more proactive stance toward the intelligence services. Specifically, it should initiate its own investigations rather than wait for citizens to make complains.

Resources and Expertise

Each of these intelligence oversight bodies has different needs for resources and expertise. The most glaring need is that of the PM for more advisers and assistants to help him manage intelligence matters. The status quo seems to have arisen neither out of individual management styles nor through an inability to allocate resources properly but as the result of an inclination to run the intelligence community as informally as possible. The solution to this, of course, is simple: establish an institutional structure to

¹³⁷ Greg Hannah, Kevin O'Brien, and Andrew Rathmell, *Intelligence and Security Legislation for Security Sector Reform* (RAND Corporation, 2005)

interface with the intelligence community on behalf of the PM and serve as an institutional memory.

The parliamentary situation is more difficult to remedy. First, the permanent committees have many fewer resources available to them. Second, the resources that are made available are distrusted by the opposition deputies, who see them as “controlled” by the majority.¹³⁸ To address this problem, Parliament should first assign more people with the necessary expertise to assist the committees. Then, to build confidence in their work, these experts should be assigned to produce reports as well as policy papers that are widely disseminated.

Interviews with officials of the independent oversight bodies reveal that none suffer from shortages in resources or expertise. This may be because they have not been completely fulfilling their responsibilities. It may be that if they were to exercise their mandates more fully, they would indeed require additional resources.

Conclusions

Although Albania’s intelligence oversight system nominally adheres to the norms and standards of the Western democracies, in practice it has obvious weaknesses that gainsay Albania’s status as a member of NATO and an aspiring member of the EU. One such weakness is the lack of coordination among its various oversight bodies. Each is perceived as a standalone mechanism rather than as part of an integrated whole. Making matters worse are the legal, structural, and functional flaws that impede each part of the system.

Internal controls are fragmented, reflecting the management problems that trouble the entirety of public administration in Albania. The recent proliferation of intelligence services, including many that combine security and intelligence functions, has made the standardisation of internal controls much more difficult. As a result, internal accountability remains difficult to assess.

Executive controls also lack the basic structures necessary for effective control. For example, the direct contact that exists between senior officials of the government and of

¹³⁸ Interview with Ilir Gjoni, CNS member from 2005 until 2009

the intelligence services poses the risk that intelligence may be shaped to fit segmented interests. Behind-the-scenes appointment procedures and the lack of safeguards for whistleblowers also undermine the professionalism of the services.

Although Parliament has the legal authority to exert direct control over the intelligence services through the budgetary process it simply endorses the draft budgets placed before it with little or no substantial inputs. Similarly, Parliament has a constitutional responsibility to scrutinise the activities of the intelligence services, but so far it has chosen to do so only partially, paying attention only to SIS. Meanwhile, the permanent committees do little more than rubber-stamp the various reports submitted to them.

A problem shared by all of these bodies is a general lack of transparency. The parliamentary committees, in particular, should be compelled to inform the public about their hearings and how their activities have impacted the work of the intelligence services. Without such information, the public cannot assess or properly judge the effectiveness of the intelligence services or the bodies charged with their oversight.

Bibliography

Primary sources

Assembly's Rules of Procedure, approved by Decision nr.166, date 16.12.2004, amended by Decision Nr. 15, date 27.12.2005, Decision Nr. 193, date 07.07.2008, Decision Nr. 21, date 27.12.2010, and Decision Nr. 88, date 24.02.2011, Accessed March 2011,

http://www.parlament.al/web/Rregullorja_e_Kuvendit_te_Republikes_se_Shqiperise_e_perditesuar_1154_1.php

Constitution of the Republic of Albania

Council of Ministers Decision nr.17, date 21.1.2000, On the use and control of the public funds on the specific and operational activity of the State Intelligence Service

Council of Ministers Decision Nr .194, Date 10.4.2004, On the priorities, areas and levels of cooperation of the State Intelligence Service with foreign intelligence services.

Council of Ministers Decision Nr.162, date 18.3.2004, On the use and control of the public funds on the specific activity of the Military Intelligence Service

Council of Ministers Decision Nr. 172, date 29.3.2006, On some amendments to the Council of Ministers Decision Nr.205, date 13.4.1999 On the implementing provisions of the customs code

Council of Ministers Decision nr. 400, date 22.4.2009, On the definition of the tasks and functions of the Directorate of the Tax Investigation

Council of Ministers Decision, On the proposal of the draft law on some amendments on the law nr. 8391, date 28.10.1998, On the state intelligence service, Accessed February 2011, <http://www.keshilliministrave.al/?fq=brenda&m=news&lid=12538>,

Law nr. 7491, date 24.09.1991, On major Constitutional Provision

Law nr. 7492, date 30.07.1991, On the depoliticisation of some state bodies.

Law nr. 7495, date 2.7.1991, On the organisation of the National Intelligence Service

Law nr.7528, dated 11.12.1991 'For functions of Defence Council and General Commander of the Armed Forces'

Law Nr.7530, date 11.12.1991, On the organisation of the Military Intelligence Service and the Counterintelligence Service in the Ministry of Interior, amended with Law Nr.7882, date 1.12.1994.

Law 8270, date 23.12.1997, On the State Supreme Audit Institution, amended by Law 8599, date 01.06.2000

Law on Nr.8391, date 28.10.1998, On the National Intelligence Service

Law Nr.8449 date 27.1.1999, The Customs Code of the Republic of Albania

Law 8454, date 4.2.1999, On People's Advocate, amended by law 8600 date 10.04.2000
law 9398, date 12.05.2005

Law Nr.8749, date 1.3.2001, On the Service of Internal Control in the Ministry of Public Order

Law nr. 9074, date 29.05.2003, On the Military Intelligence Service

Law Nr.9157, date 4.12.2003, On the Interception of the Telecommunications, amended by law Nr.9885, date 3.3.2008, and law Nr.10172, date 22.10.2009

Law nr. 9295, date 21.10.2004, On the criteria for the admission, career and its interruption in the Military Intelligence Service.

Law Nr. 9357, date 17.3.2005, On the status of the employee of the State Intelligence Service,

Law Nr.9397, date 12.5.2005, On the Service for the Internal Control in the Prisons System

Law Nr.9936, date 26.6.2008, On the management of the budgetary system Law Nr.9917, date 19.05.2008, On the prevention of money laundering and terrorism financing

Law Nr.9920, date 19.5.2008, On the tax procedures in the Republic of Albania

Law Nr.9887, date 10.3.2008 On the Protection of Personal Data

Law Nr.10 002, date 06.10.2008, On the Service of Internal Control in the Ministry of Interior

Law Nr.9917, date 19.05.2008, On the prevention of money laundering and terrorism financing

Law Nr.9920, date 19.5.2008, On the Tax Procedures in the Republic of Albania

Law Nr.10 330, date 14.10.2010, On the adherence of the Republic of Albania to the Memorandum of Understanding on the Organisation, Administration, Security, Financing and Staffing of the Intelligence Fusion Centre.

Memorandum of Understanding Nr. 232, date 6 May 2009, between the General Prosecution, the Ministry of Interior, the State Intelligence Service, the Ministry of Finances, the High Inspectorate of Declaration and Audit of Assets, the State Audit Institution, On the establishment of joint investigation units.

Regulation Nr.15, date 16.2. 2009, On the prevention of Money laundering and the fight against financing of terrorism in the customs system and Regulation Nr.16, date 16.2. 2009, On the prevention of Money laundering and the fight against financing of terrorism in the tax system

Organisation chart of the General Directorate of the Customs, Accessed February 2011,

<http://www.dogana.gov.al/doc/organograma2008.pdf>

Organisation chart of the Central Tax Administration, Accessed February 2011,

http://www.tatime.gov.al/gdt/DF_DocumentViewer.aspx?id=8e134d04-b202-400c-a8ee-a1b455a36dad

Organisation chart of the General Directorate of the Prisons, Accessed February 2011

<http://www.dpbsh.gov.al/skedaret/1247586773-Struktura%20DPB.doc>

Organisation chart of the General Directorate of the Prevention of Money Laundering, Accessed February 2011, <http://www.fint.gov.al/index.php?mid=3>,

Minutes from the discussion of the budget of the MoD, MoI and the NIS, for the year 2011 in the Committee on National Security on 19.11.2010, on 22.11.2010, and on 30.11.2010, Accessed March 2011,

http://www.parlament.al/web/Procesverbalet_10060_1.php,

Minutes of the MPs debate during the annual reporting of the Prosecutor General for year 2009, date 25.05.2010, in the Committee on the Legal Affairs, Public Administration and Human Rights, Accessed March 2011,

http://www.parlament.al/web/pub/ligjet_25_1_5_2010_7247_1.doc

Minutes of the MPs debate from the annual reporting of the People's Advocate and the Commissioner for the Protection of the Personal Data, Accessed March 2011

http://www.parlament.al/web/Procesverbalet_10044_1.php

Press release, OSCE Presence supports parliamentary oversight of security services, Accessed March 2011, <http://www.osce.org/albania/72077>

Testimony of Prime Minister Berisha to the parliamentary investigative committee on the investigation, identification, confrontation, neutralisation, disruption and punishment of the criminal organised action to violate the state institutions and reverse the constitutional order on the 21 January 2011, Accessed February 2011, <http://www.keshilliministrave.al/?fq=brenda&m=news&lid=14269>

Secondary sources

Aleks Luarasi, Legal and institutional reform in Albania after the democratic revolution (1991-1997), Tirana University 1997, Accessed February 2011, <http://www.nato.int/acad/fellow/95-97/luarasi.pdf>

Andrew Cottey, Timothy Edmunds, Anthony Forster, 'The second generation problematic: rethinking democracy and civil-military relations', *Armed Forces and Society*, vol. 29, no. 1 (December 2002)

Arjan Dyrmishi, 'The need to reform the intelligence services system in Albania', in Security Sector Reform Issues in Albania, Volume II, 2011, TOENA, Tirana

Eduart Bala, Intelligence Reform in Albania: Its Relation to Democratization and Integration into the EU and NATO. Monterrey: Naval Postgraduate School, 2008.

Greg Hannah, Kevin O'Brien, and Andrew Rathmell, 2005, *Intelligence and Security Legislation for Security Sector Reform*, RAND Corporation

Hans Born and Ian Leigh, Making Intelligence Accountable: Legal Standards and Best Practice for Oversight of Intelligence Agencies, Oslo 2005

Sokol Berberi, "Democratic Control of the Intelligence Service, In Philipp Fluri and Jan Trapans (eds.) Defense and Security Sector Governance and Reform in South East Europe: Insights and Perspectives, Albania, a Self Assessment Study. Vol 1, DCAF, 2003

Newspaper articles

Altin Raxhimi, Sackings, Suits, and Siestas, TRANSITIONS ONLINE, 12 August 2002, Accessed February 2011,

<http://relaunch.tol.org/client/article/6458-sackings-suits-and-siestas.html>

Christopher *Deliso*, Spy Book Reveals Operational Details of 1998 CIA Balkan Counter-Terrorism Operation, Accessed March 2011,

<http://www.balkananalysis.com/albania/2011/02/>

Voice of America, Berisha: SIS in the Ministry of Interior to fight organised crime, 16 September 2005, Accessed February 2011,

<http://www.voanews.com/albanian/news/a-30-2005-09-16-voa6-85698732.html>

Newspaper Albania, 'The Socialist Party will not allow SIS to be kidnapped by Berisha', 6 February 2010, Accessed February 2011,

<http://www.gazeta-albania.net/news.php?id=23999>,

Newspaper Telegraf, OSCE: 'The parliamentary oversight strengthens democracy', 15 July 2010. Accessed July 2011,

<http://www.gazetatelegraf.com/index.php/news/5398.html>

Interview of Defence Minister Mr. Arben Imami given to the program 'Opinion' of the journalist Blendi Fevziu on the National TV 'KLAN', Wednesday, 26 January, Accessed March 2011,

http://www.mod.gov.al/index.php?option=com_content&view=article&id=957:intervis-te-e-ministrit-te-mbrojtjes-arben-imami-ne-emisionin-opinion-te-gazetarit-blendi-fevziu-ne-tv-kombetar-klan&catid=42:lajme&Itemid=52&lang=en,

SIS report: the Mafia sponsors the politicians. Newspaper Shekulli, 07 July 2010, Accessed March 2011, <http://www.shekulli.com.al/2010/07/07/zbardhen-detaje-nga-raporti-i-shish-mafia-po-sponsorizon-politikane.html>,

Reports

Human Rights Watch, World Report 1997, [Human Rights Watch/Helsinki Overview](#), Albania, Accessed February 2011,

http://www.hrw.org/legacy/reports/1997/WR97/HELSINKI.htm#P66_26869

SEC/2010/1085 FIN, Commission staff working document on the fulfilment of the open benchmarks by Albania and Bosnia and Herzegovina in the framework of the Commission Proposal for a Council Regulation amending Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, Accessed March 2011,

www.ipex.eu/ipex/cms/home/Documents/doc_SEC20101085FIN

MONEYVAL (2009)18 REV1, ALBANIA, Progress report, 24 September 2009, Accessed March 2011,

[http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/Progress%20reports%202y/MONEYVAL\(2009\)18-ProgRep2ALB_en.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/Progress%20reports%202y/MONEYVAL(2009)18-ProgRep2ALB_en.pdf)

Department of State Publication 10610, Office of the Secretary of State, Office of the Coordinator for Counterterrorism, Accessed March 2011,
http://www.fas.org/irp/threat/terror_98/index.html

National Strategic Document 'For the Investigation of Financial Crimes', Accessed March 2011, <http://www.fint.gov.al/doc/National%20Strategic%20Document.pdf>

International Crisis Group, Albania: State of the Nation 2003, Balkans Report N°140, 11 March 2003, Accessed February 2011,
<http://www.crisisgroup.org/en/regions/europe/balkans/albania/140-albania-state-of-the-nation-2003.aspx>

OSCE Presence Recommendations on Bill on Parliamentary Oversight of Intelligence and Security Services, <http://www.osce.org/sq/albania/71375>, Accessed March 2011

NATO's relations with Albania, Accessed March 2011,
http://www.nato.int/cps/en/natolive/topics_48891.htm#key

Reports on the activity of the PsA presented to the Parliament for the years: 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, Accessed March 2011,
http://www.avokatipopullit.gov.al/?page_id=259

Report of the People's Advocate presented to the Parliament on 31.03.2010, Accessed March 2011, http://www.avokatipopullit.gov.al/Raporte/Raporti_2000.pdf

People's Advocate Recommendation to the Minister of Justice, Nr. 146/1, date 25/11/2009, Opinion on the draft decision on the approval in principle of the Council of Europe Convention 'On Access to Official Documents', Accessed April 2011,
<http://www.avokatipopullit.gov.al/Korrespondenca/Korr%2025112009.htm>,

Interviews

Interview with Fatos Klosi, former Director of the State Intelligence Service for the 1997 to 2002 period

Interview with Eduart Bala, former Director of the Counter Terrorism Directorate in the State Intelligence Service during 1998-2001

Interview with Ylli Zyla, Director of the Military Intelligence Service

Interview with Ilir Gjoni, member of the parliament and the Committee on National Security during the 2005-2009 and the current legislatures

Interview with Iljaz Çeço, Inspector in the People's Advocate institution

Websites

Customs Official Website. Accessed March 2011,

<http://www.dogana.gov.al/index.php?mid=24>,

European Commission official website. Accessed March 2011

http://ec.europa.eu/justice/policies/privacy/index_en.htm,

Peoples' Advocate official website. Accessed March 2011,

<http://www.avokatipopullit.gov.al/>