Albania - building integrity in defence

An analysis of institutional risk factors

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Preface

At the request of the Norwegian Ministry of Defence, the Agency for Public Management and eGovernment (Difi) has prepared this assessment of institutional risk factors relating to corruption in the defence sector in Albania. The report was prepared within the framework of the NATO Building Integrity (BI) Programme. The current report was written as part of a study covering 9 countries in South-Eastern Europe, 8 of them as a Norwegian contribution to the NATO BI Programme and 1 on a bilateral basis. Difi has prepared a separate methodological document for the study. The latter document provides an in-depth description of the content of international anti-corruption norms and includes a list of close to 300 questions that were used to identify the extent to which the 9 countries in the study had, in fact, institutionalised the norms. The document also provides a rationale for why each of the norms is considered to be important for reducing the risk of corruption.

A national expert in each of the countries involved has collected data in accordance with Difi's methodological document. Three principal types of data sources were used:

- Official documents/statutory texts.
- Interviews with relevant decision-makers and other local experts, as well as representatives of international organisations.
- Analyses and studies already available.

The national experts presented the results of the data collection in a separate report for each country, each one comprising 75-200 pages. The documentation they contained provided a direct response to Difi's approximately 300 questions. A representative for Transparency International UK/Defence and Security Programme (TI/DSP) provided comments to the reports. They were further discussed at three meetings where all of the local experts participated together with representatives from TI, NATO, the Norwegian Ministry of Defence and Difi. At one of the meetings an expert on the topic of corruption/good governance in the EU's expansion processes contributed.

Based on the reports from the national experts, Difi has prepared, with considerable assistance from the EU expert on corruption/good governance, an abbreviated and more concise Difi Report for each country, including recommendations for the Ministry concerned. These reports were then submitted to the Ministry in question for any comments or proposed corrections. The received answers have largely been included in the final reports. However, all evaluations, conclusions and recommendations contained in the reports are the sole responsibility of Difi.

Oslo, October 2015

Ingelin Killengreen
Director General

Abbreviations and acronyms

AAF	the Albanian Armed Forces
ACS	the Anticorruption Strategy
ASPA	the Albanian School of Public Administration
CAP	Code of Administrative Procedures
CHU	the Central Harmonisation Unit
CNS	the Parliamentary Committee on National Security
CoI	Conflict of interest
CoM	the Council of Ministers
CPPPL	Law on Concessions and Public Private Partnerships
CSC	the Department of Internal Administrative Control and Anti-corruption Civil Service Commission
CSL	Civil Service Law
DIACA	Department of Internal Administrative Control and Anti-corruption
DISA	the Defence Intelligence and Security Agency
DoPA	the Department of Public Administration
EC	the European Commission
EBRD	the European Bank for Reconstruction and Development
FMC	Financial Management and Control
GI	General Inspector
GRECO	Group of States against Corruption
HIDAA	the High Inspectorate for the Declaration and Audit of Assets
HRM	Human resources management
INTOSAI	the International Organisation of Supreme Audit Institutions
LGUs	urban municipalities and regional councils
MEICO	Military Export Import Company
MIS	the Military Information Service
MoU	Memorandum of understanding
NCAC	the National Coordinator against Corruption
NMPT	the National Mechanism for the Prevention of Torture
NSDI	the National Strategy for Development and Integration
OPCAT	the Provisions of the Optional Protocol of the Convention against Torture and other Inhuman and Degrading Treatments
PACA	Project against Corruption in Albania
PIFC	public internal financial control

PAR	Public administration reform
PPA	the Public Procurement Agency
PPC	the Public Procurement Commission
PPL	Public Procurement Law
PPP	Public Private Partnership
SAI	the State Supreme Audit Institution
SIS	the State Information Service
USAID	the United States Agency for International Development

Contents

Abbreviations and acronyms 3

1 Executive Summary 6

2 Introduction 9

3 Parliamentary Oversight over Defence Bodies 11
3.1 Control of the Intelligence Services 13

4 Independent bodies reporting to parliament 17
4.1 The Ombudsman institution 17
4.2 External Audit Institution 21
4.3 Prevention of Conflicts of Interest (CoI) 24
4.4 Transparency, Free Access to Information and Confidentiality 30

5 Policies under the Control of the Executive 36
5.1 Internal Financial Control 36
5.2 General Administrative Inspectorates 38
5.3 Public Procurement and Military Asset Surplus Disposal 40
5.3.1 Acquisitions 40
5.3.2 Asset Disposal 51
5.4 Human Resource Management 53

6 Anticorruption Policies and Anticorruption Bodies 63
6.1 Anticorruption Policies 63
6.2 Anticorruption Bodies 69

7 Recommendations 73

1 Executive Summary

The legal framework for the parliament to monitor the government and the armed forces is well designed, but parliament often disregards its oversight function. Investigative commissions, a tool for the opposition to control the government, are set in motion only if the ruling party agrees. Government's reports to parliament are too often insubstantial, and government officials tend to neglect Parliament queries. MPs of the ruling party are almost never critical to the government and never supported inquiry proposals from the opposition. The result is that in practice the parliament has played a marginal role in overseeing the armed forces, including the effective scrutiny of defence budgets. The budget discussion tends to be formulaic. MPs are reluctant to introduce substantial amendments. Moreover, the parliament in its military overseeing function, has not relied on independent expertise, information and analyses, but has exclusively used data from the executive and military, which are the very institutions it must oversee and make accountable.

Concerning control of the Intelligence Services, parliamentary oversight is generally weak and politically biased. The State Information Service (SIS) head can issue regulations and rules and special rules on staff recruitment and dismissal. The Labour Code, as the general law on employment, applies to the SIS staff. The labour code, unlike the Civil Service Law, can hardly protect the independence and impartiality of the staff. Under these conditions the SIS could easily become an uncontrolled institution.

The Ombudsman institution is well established, but its budget is low and its involvement in giving relevant opinions to relevant law drafting should improve. Parliament and Government should offer more backing to the institution.

Concerning external audit institution, the Constitution and Law on the State Supreme Audit Institution (SAI) form a sufficient legal basis for the SAI to audit public funds and resources and carry out all types of audits, including at the MoD. One weakness of the system is the recovery of financial loss caused to the state. Performance audit was introduced as a result of some twinning projects, but it did not take root fully. The percentage of the compliance-related recommendations implemented by auditees has increased over the years, demonstrating both a growing acceptance by auditees of the recommendations and the SAI's increased realism, which is a positive development. Despite the fact that the legal framework is in place and continuous training is being delivered, a lot remains to be done in mentality change in the area of financial management. The objectives set in the draft Strategy on Public Administration Reform PAR 2013–2020 may be useful, as it emphasises delegation and increase of accountability of public officials.

The regulation of conflict of interest (CoI) is fragmented in several laws inspired by different donors. Discrepancies in legislation create enforcement problems. Convictions on corruption cases remain rare, despite the fact that the

High Inspectorate for the Declaration and Audit of Assets (HIDAA) sent more cases to the prosecutor office in the last year, including high profile cases like mayors and one MP. The track record is poor concerning investigations, prosecutions and convictions in corruption cases at all levels. The CoI Law does not specifically regulate the issue of post-office employment. According to HIDAA staffers, the politicisation of the management is detrimental to the effectiveness of the institution.

A new Law on freedom of information, adopted in 2014, will speed up access to official documents and government data. The new law shifts from a "document-based" to an "information-based" approach. It places greater emphasis on the obligation to disclose information proactively. It shortens deadlines, speeds up the complaints process and establishes fines for officials unduly refusing information requests, and creates the institution of a Commissioner reporting to Parliament, among other improvements. However, the general restriction to the right to information is the main flaw of the law, especially in the military procurement and asset disposal domain, but not only. The exceptions go in line with the widespread administrative culture in the country that state institutions' information is generally for internal use only.

The public financial management legal framework, control and audit is comprehensive and quite modern. However, there is little practical understanding that financial management should also focus on improving the quality of public expenditure by using quality indicators. Progress is taking place though. Awareness among top officials is higher on the purpose of internal audit. But ministers and mayors are still attached to the old financial inspection, which lingers in the Albanian public administration where inspectorates were basically the only responsible for financial control. The same old staff remains in these inspection departments. For them shifting to a new concept is not easy.

In the case of public procurement the 2006 Procurement Law and the 2013 Law on Concessions, along with some legal amendments, contributed to aligning the legislation with the EU acquis. Despite some minor concerns, the procurement system is now considered generally in line with the acquis. Procurements in the defence area, however, are not aligned with the EU regulations and practice, with too many exceptions and too many non-competitive, single source procurements. Military asset disposal mechanisms are difficult to evaluate, as they are mostly tagged as classified information. Procedures for asset disposal can be glimpsed through the Defence Directive and the Dislodgement Plan of the Armed Forces, which are the sole public documents.

Concerning human resource management the new Civil Service Law (CSL) creates a more homogeneous legal regime for civil servants and improves the merit system in the management of public employment. This principle is clearly stated in the new CSL and reflected in the detailed procedures established in by-laws. However, a professional and de-politicized civil service still remains an objective to be attained. The new salary system in place is transparent and leaves no place for discretionary decisions of the institutions in determining

individual salaries, but legislation does not limit secondary employment, which may bear negative consequences. The staff in the armed forces is either military, or civilian, but in this case the governing legislation is the Labour Code, which results in a situation worse in the MoD than in civilian institutions where the Civil Service legislation is applied.

With regard to anticorruption policies and anticorruption bodies a Unit for Administrative Control and Anti-corruption reports to the Prime Minister. This unit has many functions and only one person dedicated to anti-corruption issues. Currently many tasks are discharged through resources provided by donors' projects. The reinforcement of the Secretariat capacities remain key to ensure the implementation of the anti-corruption strategy. At the MoD, a unit within the General Inspection is in charge of the implementation of anticorruption policies. This unit is insufficiently resourced.

A specialised body on conflicts of interest and asset disclosure was created in 2003, the High Inspectorate for Declaration and Audit of Assets (HIDAA), as an independent legal entity. This institution, established by the Law on the Declaration and Audit of Assets, is the central authority for the implementation the Law on the Declaration and Audit of Assets and the Law on Prevention of Conflict of Interest. During all these years, the HIDAA was unable to consolidate its professionalism and independence. Scarce cooperation from some institutions and the impossibility to effectively cross-check data led HIDAA to near failure. Despite these flaws, HIDAA succeeded in that the declaration of assets has become part of the administrative practice. The HIDAA managed to publish the asset declarations of senior officials in 2012–2013. The HIDAA audit capacity needs to be significantly improved and the number of inspectors increased. It would be advisable for the HIDAA to do both full audits of assets disclosure and checks based on suspicion of unjustified enrichment.

2 Introduction

The performance of NATO member countries as reliable allies within the organisation depends on a number of factors, including the actual functioning of the overall governance and administrative system. Evaluating these capacities entails scrutinising the main institutional settings and working arrangements that make up public governance systems and their resilience to corruption. This report carries out such an analysis of Albania.

The starting point is the observation that a holistic approach to security sector reform is increasingly called for.[1] Pro-integrity reforms internal to the defence sector should be set in a wider reform perspective including appropriate instruments within civilian policy sectors. The current report mainly focuses on the Albanian Ministry of Defence, not the armed forces. It treats the Ministry as part of and as embedded in its environment and takes into account legal and administrative arrangements cutting across the national system of public governance impacting on the MoD as on any other ministry.

To a large extent the report concentrates on checks and balances in the public sector, *i.e*. mechanisms set in place to reduce mistakes or improper behaviour. Checks and balances imply sharing responsibilities and information so that no one person or institution has absolute control over decisions. Whereas power concentration may be a major, perhaps *the* major corruption risk factor, a system of countervailing powers and transparency promotes democratic checks on corruption/anti-integrity behaviour.

We look at the integrity-promoting (or integrity-inhibiting) properties of the following main checks and balances:

a. Parliamentary oversight;
b. Anti-corruption policies;
c. Specialised anti-corruption bodies;
d. Arrangements for handling conflicts of interests;
e. Arrangements for transparency/freedom of access to information;
f. Arrangements for external and internal audit, inspection arrangements;
g. Ombudsman institutions.

In addition to examining the checks and balances, this gap analysis focuses on two high-risk areas susceptible to corruption/unethical behaviour:

h. Public procurement (or alternatively: disposal of defence assets);
i. Human resources management (HRM).

[1] See for instance OECD (2007) *The OECD DAC Handbook on Security System Reform (SSR) Supporting Security and Justice*.

Both areas are of particular importance in the defence sector. Defence sector institutions are responsible for large and complex *procurements* that may facilitate corruption. In most countries, the MoD is one of the largest ministries in terms of number of staff and is responsible for a large number of employees outside the Ministry. *Human resources* are central to the quality of performance of defence sector organs.

The report mainly concentrates on the same areas as those listed in NATO's Building Integrity Programme launched in November 2007, whose key aim is to develop "practical tools to help nations build integrity, transparency and accountability and reduce the risk of corruption in the defence and security sector".

The report identifies a number of areas in need of reform in order to strengthen the protection of integrity in public life and to reduce vulnerability to corruption. The report is action oriented: it proposes a number of recommendations for reform action to be undertaken by the government.

3 Parliamentary Oversight over Defence Bodies

According to the 1998 Constitution, the parliament holds exclusive powers to pass laws, the national budget and endorse major policy decisions, including in the area of national security and defence. Article 19 of the rules of the assembly, as amended in 2013, prescribes the names and the fields of the parliamentary standing and sub committees. The Parliamentary Committee on National Security (CNS) debates and approves the draft budget of the armed forces, oversees the implementation of the defence budget and other defence policies, requests explanations from the minister of defence and makes recommendations. The specific remit of the CNS includes the organisation of the national defence and the armed forces, military cooperation, internal affairs, civil emergencies and public order and intelligence services.

The Constitution and the rules of procedures of the assembly (Parliament) regulate the control mechanism over state institutions. The main instruments are parliamentary questions, interpellations and motions. The Prime Minister and ministers shall answer parliamentary interpellations and questions within three weeks (article 80 of the Constitution). Article 101 of the Constitution allows for 1/5 of the MPs or more to file a reasoned motion of no confidence against the prime minister, while proposing at the same time a new prime minister. In 2012 the opposition requested the creation of a parliamentary investigative commission for a case of arms trade and military assets disposal. The request was rejected by the majority at that time. The parliament was then satisfied with the report of the minister to the CNS, but a parliamentary investigative commission was established in 2014 under a new political majority.

Parliament seems to disregard its oversight function. Investigative commissions, initially thought as a tool for the opposition to control the government, are set in motion only if the ruling party agrees. The opposition cannot set up a commission on its own initiative. Government reports to parliament are too often insubstantial. Moreover, government officials tend to fail to respond to parliament queries. MPs of the ruling party are seldom critical of the government and seldom support investigation requirements from the opposition. This is a result of the polarised political climate since 2005, which has been regularly conducive to protracted and inconclusive parliamentary debates on every issue.

All MPs participate in standing committees (2012 amendments to the constitution) whose membership shall mirror the political distribution in the assembly. The assembly may reshuffle the membership of standing committees, but there shall always keep a proportional share of parliamentary groups. Consensus is required to alter the committees' numbers and membership.

Committee decisions are valid if taken by a quorum of above half the committee membership. The committee decides with open voting on the approval of its programme and agendas for different sessions. It decides and

reports on the issues to be submitted to the assembly's plenum, as well as on other issues related to the functioning of the committee. Valid decisions are taken by majority vote in sessions effectively attended by more than half of all the nominal members of the committee. As a rule, committee sessions are open to the public, but the majority may decide to hold a session or part of it behind closed doors.

The committee appoints one or several rapporteurs to draft the reports. The rapporteur can ask specialised assistance from the Council of Ministers and the legal services of the assembly as well as from independent experts. The chairman of the committee orders the hearing of the rapporteur, next invites the committee members to address questions to the initiators of the bill and to the rapporteur and then he declares the debate on the bill open "in principle", a sort of first reading on the proposed draft law. The discussion "in principle" always takes place in the presence of a representative of the Council of Ministers. At the end of the discussion "in principle", the committee decides the approval or rejection of the draft law "in principle". Every MP has the right to give his opinions on the draft law under consideration in the committee meeting.

In practice, the parliament has played a marginal role in overseeing the armed forces, including the effective scrutiny of defence budgets. The budget discussion tends to be formulaic. MPs are reluctant to introduce substantial amendments and debates are general rather than focused on the budget. Especially MPs of the majority party avoid criticising government proposals, a practice which has led over time to the amalgamation of the ruling party with the state. Moreover, the parliament in its military oversight function, has not relied on independent expertise, information and analysis, but has exclusively used data from the executive and the military, which are the very institutions it must oversee and make accountable.

The parliament has relied on the individual knowledge of MPs, given the fact that some of them have been members of the CNS for several terms. This is also the case for the CNS, which has only three staffers – two specialised in security matters and one lawyer, plus the chairman's personal assistant. Staff numbers are insufficient considering the workload and activities this committee is called on to perform. The Parliamentary Research Service and the Legal Service produces policy reviews and recommendations for the MPs and committees, but they have been rarely used. Although they are civil servants, frequent turnover of expert personnel due to political changes and politicisation has prevented parliamentary personnel from improving their expertise. Likewise it has negatively affected the institutional memory. Before the 2013 elections, the parliamentary opposition mistrusted permanent civil servants. They preferred to listen to the advice of partisan experts. These shortcomings are aggravated because of the specificities of the defence sector, in which very often the topics to be discussed in the CNS are considered as classified information.

There were frequent political debates on the MoD in 2012 that were given wide press coverage. The opposition at the time alleged corrupt practices on arms

trade. The sale of arms used a complex dealers' network, including in Serbia and Montenegro. The opposition suspected the MoD of selling the same munitions with different prices for the same or different clients with the aim of making undue profit from these dealings. The MoD strongly asserted the legality of the deals. It explained the price differences as quotation changes in the international market for the relevant product. The MoD criticised the opposition for airing confidential documents. After the 2013 elections, a changeover of the ruling political party occurred so the former opposition is now the government.

The legal framework for the parliament to monitor the government and the armed forces is well designed, but Parliament often disregards its oversight function. Investigative commissions, a tool for the opposition to control the government, are set in motion only if the ruling party agrees. Government's reports to parliament are too often insubstantial. MPs of the ruling party are almost never critical to the government and never supported inquiry proposals from the opposition. The result is that in practice the Parliament has played a marginal role in overseeing the armed forces, including the effective scrutiny of defence budgets. The budget discussion tends to be formulaic. MPs are reluctant to introduce substantial amendments. Moreover, the parliament in its military overseeing function, has not relied on independent expertise, information and analyses, but has exclusively used data from the executive and military, which are the very institutions it must oversee and make accountable.

3.1 Control of the Intelligence Services

Two main intelligence services exist, namely the State Information Service (SIS) and the Defence Intelligence and Security Agency (DISA), which replaced the Defence Intelligence Agency (DIAin 2012 as a continuation of the Military Intelligence Service, which was officially established on 11 December 1991. The SIS is accountable to the Prime Minister, although its head and deputy are appointed by the President upon proposal of the Prime Minister. DISA is organised as a general department under the MoD and reports to the Minister of Defence. The head of DISA is appointed by the Minister of Defence. The Defence Intelligence and Security Agency, as part of the Ministry of Defence, was formally established by Law no. 65 of June 2014, "On the Defence Intelligence and Security Agency".

The legal framework for the control over the Defence Intelligence and Security Agency (DISA) is exercised through parliamentary oversight, and administrative/financial/legal control in accordance with the Constitution of the Republic of Albania and Law No. 65/2014 "For the Defence Intelligence and Security Agency".

According to the provisions of the Law No. 65/2014 the authorities that exercise this control are as follow:

- The Parliament, which exercises parliamentary oversight of the activities of the Defence Intelligence and Security Agency.
- The Prime Minister, who exercises control over the Defense Intelligence and Security Agency activities, as well as financial control of specific operational budget.
- The Minister of Defence, who exercises directly administrative, financial, and operational control in the Defence Intelligence and Security Agency activities.
- The Director General of the Defence Intelligence and Security Agency, or authorized personnel.

The DISA operates as a structure at the general directorate level within the Ministry of Defence. It is part of the armed forces, with dependent units located where the armed forces conduct their activity, both inside of the country and abroad. DISA is directly subordinate to the Minister of Defence. It supports the Armed Forces' missions in the framework of NATO, the EU and the UN. DISA is part of the NATO Intelligence Boards and Working Group on Intelligence, Counterintelligence and Security. It has regular cooperation relationships with all NATO intelligence agencies, as well as bilateral and multilateral relations with a considerable number of intelligence services in the country, in the region and beyond.

Both security institutions report to the parliamentary CNS. The SIS reports directly, with no obligation to submit the report first to the prime minister. This possibility gives the SIS a higher degree of independence from the Prime Minister. The DISA reports to the parliament through the Minister of Defence.

As stated, parliamentary oversight is generally weak and politically biased. Ruling party MPs abstain from criticising the government and its subordinate institutions. The quality of oversight very much depends on the personal knowledge of the committee's members. The number of technical staff for each committee is small, with little ability to provide adequate support to the MPs.[2] The oversight of the CNS is generally limited to receiving and discussing the reports from SIS or DISA. An issue raised within the CNS regarding reporting was the lack of reports from DISA before the end of 2011. The CNS was much more focused on the SIS whilst DISA was virtually forgotten, perhaps due to the size of this institution.

DISA became the centre of discussions in the CNS during 2012 following the opposition's allegations on the purchase of special communication interception equipment and other weapons by DISA. MPs accused the government of misusing DISA to purchase this equipment instead of SIS and of improperly

[2] Almanac on Security Sector Oversight in the Western Balkans (2012), available at: http://www.bezbednost.org/All-publications/4628/Almanac-on-Security-Sector-Oversight-in-the.shtml, p.36.

using this equipment, especially following the events of January 2011.[3] Despite requests to investigate the case, the investigation commission was only set up after the change of power in 2013. The commission issued a report in mid-2014, but the content is not public since it is classified information. A formal investigation started by the prosecution office related to taping phone calls of high profile politicians and foreign diplomats using DISA equipment. The case is still under investigation. The former head of DISA has been formally accused by the MoD.

The commission also investigated the SIS activity and several irregularities are noted[4] in handling routine job processes in the institution, videotaping of officials, etc. However, details have not been revealed because the information is classified. It is reported that there is a will to change these practices and it seems there is consensus from both political parties, although it is not clear yet how it will be proceeded.

The government controls both services directly and indirectly. Indirect control is exercised through the budget allocation and disbursement. The SIS benefited from greater autonomy, due to its dual reporting line. According to the law, the SIS reports both to the prime minister and to the president and does not need clearance of the report before reporting to the parliament. In the past, due to conflicts between the prime minister and the president and the support the president accorded to SIS despite the prime minister's criticism, the SIS gained a certain degree of independence but also experienced difficulties because the government was not collaborative and often circumvented it.[5] DISA is directly accountable to the government through the Minister of Defence. No other institution is involved in actively supervising the activity of DISA. DISA's budget is part of the MoD budget.

Recruitment and staff management in the SIS is regulated by the SIS law which prescribes that the head of the SIS appoints and dismisses the staff[6]. The law is silent on other aspects of personnel management, but it empowers the SIS head to issue regulations and rules and special rules on staff recruitment and dismissal. The Labour Code, as the general law on employment, applies to the SIS staff. The labour code, however, can hardly protect the independence and impartiality of the staff. Under these conditions the SIS could easily become an uncontrolled institution, even if both SIS and DISA laws proclaim the non-politicisation of the staff. Staffers are forbidden to hold political party membership.

The HR management of the DISA staff is regulated by the new law[7] promulgated in 2014. A full chapter is related to careers in DISA. The staff at

[3] In January 2011, after violent protests in front of the government office organised by the opposition, four protesters were killed by the National Guard.
[4] Based on the information received in the interview with Mr. Pajtim Lutaj, MP, member of CNS.
[5] Almanac of security sector oversight in the Western Balkans.
[6] Art. 5 of the law.
[7] Law no. 65/2014 of 26.06.2014.

DISA is mainly military and up to 40% can be civilians. The law describes the classification of the positions, recruitment conditions, promotion rules, disciplinary measures, etc. The law is complemented by the rules applying to grades in the army and other specific rules for civilians.

The SIS law establishes investigative procedures, which are under the purview of the general prosecutor.[8] Preventive provisions are determined by the head of SIS and approved by the general prosecutor. [9]The law does not require judicial authorisation prior to undertaking investigations. A similar scheme is set up in DISA. The rules of procedures are elaborated by DISA, approved by the Minister of Defence and should be endorsed by the general prosecutor, who can monitor the implementation of these procedures.

Two main intelligence services exist, namely the State Information Service (SIS) and the Defence Intelligence and Security Agency (DISA), which replaced the Military Information Service (MIS). The SIS is under the Prime Minister. The DISA is a department under the MoD and reports to the Minister of Defence. Parliamentary oversight is politically biased. The SIS head can issue regulations and rules and special rules on staff recruitment and dismissal. The Labour Code, as the general law on employment, applies to the SIS staff. The Labour Code, unlike the Civil Service Law, can hardly protect the independence and impartiality of the staff. Under these conditions the SIS could easily become an uncontrolled institution, even if both SIS and DISA laws proclaim the non-politicisation of the staff. The laws do not describe specific mechanisms for judicial control of the intelligence services.

[8] Article 6.
[9] *Ibid.*

4 Independent bodies reporting to parliament

4.1 The Ombudsman institution

The institution of the People's Advocate (Ombudsman) was firstly introduced by the 1998 Constitution, which describes the People's Advocate as an independent constitutional body guaranteeing the protection of the citizens' fundamental human rights and freedoms. The Constitution[10] defines the duties, status, and powers of the People's Advocate. Law No. 8454, dated 4 February 1999. "On the People's Advocate" complements the regulation of the organisation and functioning of the institution.

The mission of the People's Advocate, as set out in Article 60(1) of the Constitution and Article 2 of the law, is the protection of the legitimate rights, freedoms and interests of individuals from unlawful or improper actions or failures to act and omissions of public administration bodies, or third parties acting on their behalf. The People's Advocate and the three commissioners of the People's Advocate, who chair three specialised units, are elected by 3/5 of all members of the assembly for a five-year term and a three-year term respectively, with possible re-appointment.

The Office of the People's Advocate has three specialised sections[11]: 1) The first one deals with complaints and requests pertaining to central administration bodies, local government or other parties working on their behalf. 2) The second one deals with complaints and requests pertaining to the police, secret service, prisons, armed forces, the Office of the Prosecutor and the Judicial Authority. 3) The third or general section deals with issues that fall outside the two above-mentioned areas. It monitors cooperation with non-governmental organisations and conducts studies in the field of fundamental human rights and freedoms.

Furthermore, the Torture Prevention Unit, which is directly subordinate to the People's Advocate and consists of four assistant-commissioners, has been operational since January 2008. Part of this institution's structure is also the Ombudsman's Cabinet, which consists of the cabinet director and advisors, who are directly subordinate to the People's Advocate. The support sectors, which provide assistance in carrying out the main tasks of the institution, are the Directorate for Information, Public and Foreign Relations and the Directorate for Personnel and Administration, which are directly subordinate to the Secretary General. Important sectors in these directorates are: the Sector for Information and Reception of People and the Sector of Finance. The salary level of the People's Advocate's employees is in the upper range of the salaries' table for public administration employees.

[10] Articles 60, 61, 62 and 63.
[11] As stipulated in article 31 of Law no. 8454/1999 "On the People's Advocate."

The law vests upon the People's Advocate the determination of the structure and organisational chart (number of staff) of his office, but salaries are determined by a separate decision of the government – no. 500 dated 18 July 2003 "On approving the salary scale for employees in the Office of the People's Advocate". This heteronomy could undermine the independence of the Ombudsman by unduly increasing the government's influence on the institution. Legally, however, constitutional and legal provisions regulating the establishment and functioning of this institution guarantee its independence. The People's Advocate enjoys an immunity equal to that of a judge in the Supreme Court, which is an indication of its independence.

Pursuant to Article 60-3 of the Constitution, the People's Advocate runs his own budget. He puts forth the proposal for the budget pursuant to the law. The financial means available to the People's Advocate are provided for in the state budget through a specific line item. The draft budget proposal is submitted by the People's Advocate to the Permanent Parliamentary Committee on Economy, Finances and Privatisation, and to the Ministry of Finance. Next the draft budget is submitted to the parliament in plenum for adoption, in accordance with the budget management law in force.

The People's Advocate has only one headquarters office, but article 32 stipulates that, where the People's Advocate deems it reasonable, he may appoint a local representative in the territory to handle a given case for a specified period of time. The local government bodies are to assign an office to this representative and provide all the necessary working conditions for him, in accordance with the requirements of this law. This representative is paid out of the budget of the People's Advocate.

The People's Advocate usually runs the "Open days," twice a year, an event intended to promote closeness to the citizens. In "Open days", groups of experts from the institution, or the People' Advocate personally, visit municipalities or communes for one or more days. In so doing, they reach out to petitioners and instantly hear their complaints. At the same time, they check the performance of the local public administration bodies.

The People's Advocate is bound by the principles of objectivity, confidentiality, professionalism and independence. The provisions of the law include the protection of foreigners, who may or may not be legal residents, refugees, and non-citizens who are within Albanian territory in accordance with the provisions of the law. According to article 12 of Law 8454/1998, every individual, group of individuals or non-governmental organisations claiming the violation of their rights and freedoms by illegal actions or lack of action of public administration institutions, have the right to file a complaint or inform the People's Advocate and ask for his intervention to restore the violated rights or freedoms.

With reference to article 63 of the Constitution, the People's Advocate can make recommendations and propose measures when it observes violations of human rights and freedoms by the public administration. The People's

Advocate performs external administrative checks, but does not have decision-making and enforcement powers. The People's Advocate can only make recommendations, proposals for disciplinary actions against public officials and proposals to amend specific pieces of legislation. It can also appeal to the Constitutional Court to repeal laws deemed unconstitutional. The recommendation is the legal instrument used by the People's Advocate in its communication with public administration bodies and third parties when acting on their behalf to remedy human rights infringement situations. Recommendations of the People's Advocate may be used as evidence in judicial or administrative proceedings. The referral of a case to the People's Advocate is inconsequential in terms of withholding or suspending judicial review of that case. However, if the case is under judicial review in administrative or criminal court, it is up to the discretion of the People's Advocate to decide whether to discontinue the investigation or not.

If the ombudsman considers that the rights and freedoms of the appellant have been violated by the administration, it can issue a recommendation directly to the institution in question requesting it to redress the situation. The institution is obliged to answer to the ombudsman regarding the implementation of the recommendation and the measures taken. The answer should be justified. Following the investigation the ombudsman can propose disciplinary measures or even dismissal of the relevant officials. In cases that are deemed to be of a criminal nature, it recommends the prosecutor office to start a criminal investigation.

Subsequent to the ratification of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and its Optional Protocol, the People's Advocate serves as the National Mechanism for the Prevention of Torture (NMPT). To that effect, the Torture Prevention Unit has been established in this institution. Considering the need for better monitoring of institutions where the freedom of individuals is limited and the violation of rights is probable, it is important to follow up the Provisions of the Optional Protocol of the Convention against Torture and other Inhuman and Degrading Treatments (OPCAT). These provisions set out basic principles on inspections to detention precincts and guarantee that activities will be carried out in conformity with international standards.

Amendments of March 2010 to Law No. 8328 dated 2 April 1998 "On Rights and Treatment of sentenced and detained persons" gave greater leeway to the NMTP, allowing it to inspect penitentiary institutions. The People's Advocate in its capacity as NMTP, has the authority to regularly monitor the treatment of persons deprived of freedom in places they are arrested or detained with a view to strengthening the protection of the individual against torture, cruel treatment or punishment, inhuman or degrading treatment and submit reports and recommendations urging the improvement of situation. The ombudsman can request information or documents classified as state secrets that are relevant to the case under investigation. In such cases it shall comply with the rules for the protection of state secrets. All state bodies are obliged to make available any

information and documents required by the People's Advocate (article 63 of the Constitution).

When the People's Advocate responds to a complaint, request, or notice of examination, it undertakes an investigation by asking explanations from public administration bodies, as well as from prosecutor's offices in cases of arrests and detentions. It can recommend the Supreme State Audit to exercise its own functions. In the course of an investigation, the People's Advocate is entitled to access any files or materials useful to the investigation, conduct or request expert reports, and interview any person linked to the case under investigation.

If the People's Advocate deems the responses or measures taken as inadequate, it shall refer the case to a superior body. In recurrent cases, or when the relevant body does not react to the recommendations of the People's Advocate, the latter may report to the assembly, which shall include proposals for specific measures to remedy the violations.

The People's Advocate reports annually to parliament on its activities, and also reports when required to do so in addition to reporting on its own initiative on issues deemed important. These reports include statistical information on the activity of the People's Advocate's in handling complaints, the number of inquiries received, the number of cases resolved, cases investigated and investigations pending, recommendations made and whether or not those were followed, etc. During the years of activity up to 2013 the People's Advocate registered some 47 779 requests or complaints. Of these 9 500 cases have been resolved in favour of the complainant. As regards the defence sectors, there have been 71 requests and complaints from army officers or former army officers. Out of this number, 23 cases (35%) were resolved positively; 16 cases (26%) fell outside the jurisdiction of the People's Advocate. In 19 cases (30%) complaints were not sustained. In 4 cases (7%) recommendations have been accepted and in 1 case (2%) the recommendation was refused. During 2013 the People's Advocate reported 17 complaints in the defence sector by army officers or ex-army officers. Out of this number 10 cases were completed (out of this number 4 cases were not found in accordance with the law; 2 cases fell outside the jurisdiction of the People's Advocate, and 4 cases were found in accordance with the law); 7 cases are still pending.

The 2014 European Commission Progress Report stated that:

> "*The institution has continued to actively promote human rights. Further action is needed to ensure that the People's Advocate is properly informed and consulted by the government on draft legislation and reforms, notably those directly affecting his areas of competence. The budget allocated to the Ombudsman's Office was reduced and remains insufficient. The institution needs stronger political and financial support from both parliament and the government to continue to carry out its duties in a fully effective manner".*

The international community played an important role in the establishment and strengthening the performance of the People's Advocate's office. A twining project with the Danish ombudsman supported the strengthening of capacities and the design of administrative procedures in the early years after the creation of the Albanian institution.

The Ombudsman is well established, but its budget is low and its involvement in giving relevant opinions to relevant law drafting should improve. Parliament and Government should offer more backing to the institution.

4.2 External Audit Institution

The State Supreme Audit Institution (SAI) is the highest institution in charge of economic and external financial control. The SAI has constitutional standing. A special law regarding the SAI has been in force since 1997 (amended in 2000). A new draft law intended to bring the SAI in line with the International Organisation of Supreme Audit Institutions (INTOSAI) standards was under discussion for a lengthy period of time. This law was approved on 27 November 2014.

The SAI chairman is appointed or dismissed by the parliament upon proposal of the President of the Republic for a 7 years term, with possible re-appointment. He has the same immunity as the judges of the Supreme Court. The budget of the institution is approved by the parliament. The chairman has authority to decide on the SAI organisational structure.

In exercising its competencies the SAI is subordinate only to the Constitution and to the Law on State Supreme Audit Institution. The SAI submits its annual budget request directly to the parliament and has a separate budget line. The draft budget is proposed by the State Supreme Audit Institution to the Parliamentary Economic and Financial Committee and this committee submits it for approval to the parliament in plenum in accordance with the budget law.

The SAI decides its audit plan and audit activities, including decisions on what institutions will be audited. The SAI has authority to address questions to the audit subjects or their officials and the latter are obliged to answer. To audit the use of funds on classified contracts, SAI staff members need to be equipped with a security certificate in conformity with the level of the classified contract.

Currently, the SAI has 156 employees, 115 of whom are audit staff. SAI employees are civil servants. Recruitment is managed by the SAI itself. Due to the fact that the SAI as an institution is independent of the government, the Department of Public Administration (DoPA) cannot inspect the implementation of the Civil Service Law in this institution. The salary scheme is similar to that of other institutions in central public administration, but since the SAI manages the scheme independently, its employees are paid the best salaries within the civil service.

The Constitution and Law on the SAI, are generally considered as sufficient legal basis for the SAI's authority to audit public funds and resources and carry out all types of audits, including at the MoD. It can also audit private companies where the state is a shareholder of 50% or more. One of weaknesses of the system relates to the recovery of financial loss caused to the state. The SAI has estimated the financial irregularities every year in millions of euro, but no public record exists of a case where somebody was obliged to compensate the harm caused, especially in cases where substantial sums were involved. The SAI and primarily the government confined themselves to adopting administrative disciplinary measures.

The SAI can carry out both regularity and performance audit. The regularity audit is the established, traditional audit. In 2007, the concept of performance audits was introduced as a result of several twinning projects.[12] A manual on performance audits was prepared and a few pilots were carried out in cooperation with international organisations. However, this type of audit did not take root. By the end of 2012, the SAI planned again to embark seriously on this type of audit and actually performed some audits, but it is too early to judge the effects of performance audits.

The SAI has no legal obligation to make its specific reports public. The SAI should submit its opinion on budget execution to the parliament as well as an annual report for its entire activity. The SAI publishes this report on its website. Besides the annual report, the SAI publishes quarterly reports on the audits performed. The reports on specific audits are not published.

Following an agreement between the two main political parties, the SAI Chairman was to be appointed from the ranks of the opposition, in order to better control the government. This agreement was respected only once. Later the ruling party put its own candidate in place. The relationship of the SAI with the government was not always good. In some cases the government openly criticised SAI's audit questioning the expertise and capacities of its staff. These criticisms, coming from the Minister of Finance, were unhelpful for the control of public funds.[13] The relations of the SAI with the Parliamentary Committee on Economy and Finance are limited to the discussion on the annual activity report of the SAI, issued in April, and the annual report on the budget execution, submitted in October. The committee does not deal with individual audit reports. Ideas that were conceived to establish a separate body or subcommittee to deal with those reports were never implemented. Neither the committee nor the parliament have appointed an independent body to audit the accounts of the SAI as foreseen in the Law on the SAI. Instead, the SAI's own internal auditors audit the accounts, which is not the optimal solution.

The impact of audit reports depends on the reaction of the auditees. The percentage of the compliance-related recommendations implemented by

[12] With the National Auditing Office, UK and the Netherlands Court of Accounts.
[13] During debates in the Parliamentary Committee for Economy and Finances in October 2009 the Minister of Finance criticised the SAI reports and findings.

auditees has increased over the years, demonstrating both a growing acceptance by auditees of the recommendations and the SAI's increased realism in providing them, which is a positive development. However, performance audit-related recommendations, which could surely increase the impact of the work of the SAI, are still lacking.[14]

The media sometimes comment on SAI findings. The media and international organisations were to some extent concerned about the relationship of the government with the SAI. The SAI is perceived as opposing the government's interests because the SAI monitors procurements and financial discipline. This is perhaps one reason why institutions often reject the SAI's proposals and recommendations. At a certain point in time, the SAI's reports were simply ignored by the institutions.

The reform of financial management and internal and external audit benefited from continuous support from the international community. The European Commission (EC) and the United States Agency for International Development (USAID) were present with several projects. As mentioned before, the SAI benefited from two twinning projects that boosted the performance audit. After these twinning projects were completed, the performance audit stagnated and was only revitalised in 2012 where support to SAI was again available. OECD-SIGMA provided assistance in both financial management and internal control and external audit. Experts of OECD-SIGMA supported the Ministry of Finance and the SAI in elaborating procedures and reform concept papers. Their support is highly appreciated by the institutions. The EC monitored the Financial Management and Control (FMC) and audit processes closely, highlighting issues to be addressed in the yearly progress reports. Pressure from international organisations was instrumental in pushing the government to adopt internationally recognised standards.

Despite the fact that the legal framework is in place and continuous training is being delivered, a lot remains to be done in changing the mentality in the area of financial management. The objectives set in the draft Strategy on PAR 2013 –2020 may be useful, as it emphasises delegation and increase of the accountability of public officials. The director of the Central Harmonisation Unit (CHU) was part of the consultation group for the PAR Strategy along with the Department of Public Administration (main stakeholder of PAR Strategy) and Ministry of Finance.

The Constitution and Law on the SAI form a sufficient legal basis for the SAI to audit public funds and resources and carry out all types of audits, including at the MoD. The SAI can also audit private companies where the state is a shareholder of 50 percent or more. One weakness of the system is the recovery of financial loss caused to the state. Performance audit was introduced as a result of some twinning projects, but it did not take root fully. The percentage of the compliance-related recommendations implemented by auditees has increased over the years, demonstrating both a growing

[14] SIGMA assessment 2012.

acceptance by auditees of the recommendations and the SAI's increased realism, which is a positive development. Despite the fact that the legal framework is in place and continuous training is being delivered, a lot remains to be done in mentality change in the area of financial management. The objectives set in the draft Strategy on PAR 2013–2020 may be useful, as it emphasises delegation and increase of accountability of public officials.

4.3 Prevention of Conflicts of Interest (CoI)

Apart from the 2013 Law on civil service and the 1999 Law on administrative procedures, specific pieces of legislation regulate the prevention of conflicts of interest, namely Law No. 9131/ 2003 "On the Rules of Ethics in the Public Administration" (law on ethics) and Law No. 9367/2005 "On Prevention of Conflict of Interest in the Exercise of Public Functions" (law on CoI). Other specific laws regulating independent institutions have provisions on conflicts of interest.

The Law on CoI as amended aims at the prevention of conflict between public and private interests of an official during the exercise of his functions. This law encompasses the whole administrative decision-making. Officials involved in the preparation of normative or administrative acts shall avoid conflicts of interest. Officials involved in decision-making shall disclose their private interest at the outset if the private interest of the official could cause a conflict of interest with his public duties. Likewise, officials, upon their appointment to a public function, shall consent to the appointing institution checking their personal data from all possible sources where they are registered (article 10 of the CoI Law). The law prohibits officials from entering into contracts either themselves or through relatives (i.e. spouse, children who are adults, and the parents of the official) with the institution where they perform their official duties, or with bodies subordinate to these institutions. A written declaration is not essential when verbal declarations of the official can be registered and documented. General rules on recusal, withdrawal and abstention in decision-making also apply to MoD officials and the armed forces, which are likewise subjected to the law.

The law on CoI was drafted with the support of the USAID, which supported also training and capacity building activities during the first stages of implementation. Other donors supported the development of the legal framework, i.e. the Council of Europe and the EC. The first legal definition of CoI was set out by Law No. 9131 of 8 September 2003 "On the Rules of Ethics in the Public Administration", whereby "a conflict of interest arises in the situation when an employee of the public administration has a personal interest that has an impact or is likely to have an impact on the impartiality or objectivity of his exercise of the official duty". According to this law, a public official should "not allow his private interest to conflict with his public position; he must avoid such conflicts of interest and never take undue advantage of his position for his private interest".

The 2003 Law on ethics defined in a broader way than the Law on CoI the "related persons" of the official for the purposes of defining restrictions to avoid conflicts of interest. The personal interest of the employee involves any priority for himself, his family and his relatives up to the second degree, the persons or organisations with which the employee has or has had business relations or political links. The conflict of interest also involves any kind of financial or civil liabilities of the employee. Discrepancies in legislation and the fact that the law on CoI is now the main law on conflict of interest create enforcement problems from the legal point of view. The body administering the CoI policy, i.e. the High Inspectorate for the Declaration and Audit of Assets (HIDAA) solves these incongruences in favour of the CoI law.

The 1999 Code of Administrative Procedures (CAP) was the first law to mention the CoI, but without defining it. The CAP describes the procedure each public official should follow to avoid a conflict of interest situation during a decision-making procedure. If the decision is approved in a conflict of interest situation, there are grounds to void the administrative act (relative nullity). Article 46 of the 2013 Civil Service Law regulates the conflict of interest by stating that civil servants shall avoid any conflict between their private interest and the public interest during the exercise of their duties. The Law refers to the provisions of the specific law on conflict of interest. Article 47 establishes a duty of declaration of interests and property, whereby a civil servant shall inform his superiors in advance of any profit activity he aims to exercise outside his duty in the civil service and can exercise such activity only if it is authorised in advance and in written form by the institution. Likewise, a civil servant shall inform his superiors without delay in the case of doubt regarding a possible conflict of interest or situation of incompatibility, and must obey their instructions for the prevention and avoidance of such a conflict of interest. Finally, civil servants shall submit the declaration of their private interests and assets in accordance with the law in force.

Law No. 9049, dated 10 April 2003 "On the declaration and audit of assets, financial obligations of elected persons and certain public officials" (law on declaration of assets), establishes the rules for the declaration and control of assets (properties), the lawfulness (legitimacy) of the sources creating such assets (property, wealth), as well as the financial obligations born by the elected officials, public employees, their family members as well as by the persons related to them. The statement includes the assets (properties) of the person subject to the law and of his family (spouse and adult children), their sources of creation and the financial obligations born by the subject. The number of subjects obliged to declare periodically their private interest reaches more than 5,000 officials. The number if officials increased with the amendments made by Law No. 9049 in September 2012. Included are now the directors of health and education sectors or other important institutions at district level; the "partner/cohabitant" (as defined in the Family Code) as a subject into the "Declaration upon request" among the people who must declare their individual interests.

The obligation of asset declaration applies to the official and his family members. Including all state high officials (President, prime minister, ministers, MPs and other dignitaries), judges and prosecutors; civil servants of medium and high level; prefects, mayors; department directors and commanders of the armed forces in the MoD; and a number of other high and mid-level officials. The declaration includes the assets of the subject as well as his family (spouse and grown children), the sources of creation and his financial obligations. If the property of members of the family is divided and registered as such in the state bodies or judicial administration, the declaration is submitted separately by each member of the family, with the property registered in his name and attached to the declaration of the person who has the obligation to make the declaration.

Restrictions on holding properties and being members of managing bodies in commercial companies are sharper for high level political officials (ministers, MPs etc.) than for civil servants. Higher officials are compelled to relinquish some of their assets (e.g. shares, company ownership) to a trusted person different from their close relatives (article 38 of the Law 9049 of 2003).

Officials shall declare to the HIDAA by March 31 each year the condition of their assets, the sources of their creation and their financial obligations up to 31 December of the previous year. The declaration shall include immovable properties rights; movable property that can be registered in public registers; objects of over €3.500 value; the value of shares, securities and parts of capital owned; the value of liquidities, the sums in cash, in current accounts, in deposits, treasury bonds and loans, in lek and in foreign currency; financial obligations to natural and moral persons, expressed in lek or in foreign currency; personal income for the year, from salary or participation on boards, commissions or another activity that brings personal income; licenses and patents that bring income.

Article 23 of the 2005 CoI law regulates the issue of gifts. The 2003 Law on Ethics had also regulated the matter, which may lead to interpretative conflicts. Private interests to be declared periodically are gifts or preferential treatment. Gifts or preferential treatment are not declared when their value is less than 10.000 lek (€70), or when two or more gifts or preferential treatment given by the same person together do not exceed this value during the same declaration period. An official to whom gifts, favours, promises or preferential treatment is offered should refuse them and, if the offer was made without his knowledge or in advance, return it to the offeror or, if this is impossible, surrender it officially to his superior or to the nearest superior institution. In any case, the official shall immediately inform his superior or the nearest superior institution about the gift, favour, promise or preferential treatment offered or given, the identity of the offeror when he can be identified and the circumstances. He must also give his opinion about the possible reasons for this event and its relation to his duties as an official. In actual practice, however, there are no reported cases of officials declaring gifts to the institution, or cases of disciplinary measures motivated by the accepting gifts.

According to Article 3, point 1, c) directors of directorates and commanders of the armed forces in the MoD shall also submit their declarations. For the civil staff, the rules on mid and high level civil servants are applicable. These rules also apply to armed forces and the MoD. Article 31 of the Law on CoI describes the incompatibilities of high and middle level officials of the state police and the armed forces, according to the system of ranks and duties applicable in those public institutions. No serious concerns have been raised about actual practices of external concurrent employment. The most usual type of secondary employment is teaching in universities, for which the official does not receive a salary but a fee. An employee shall not be remunerated for external activities when they are related to tasks he has been performing in line with his functions, or are a direct continuation of the latter (ex. participation in commissions in virtue of his position).

Officials submit declarations individually to HIDAA in a sealed envelope or to the employing authority. Beside the periodic declaration, officials shall submit an initial declaration of assets at the time of their appointment as well as when they leave the position.

The HIDAA audits the declarations. It collects data, carries out administrative research and investigations on the declarations in conformity with the Code of Administrative Procedures. It cooperates with the auditing bodies and other structures responsible for the fight against corruption and economic crime. When performing the audit and data verification, the High Inspectorate can use data stored anywhere in the state, public institutions, and public and private physical and moral persons. At the request of the Inspector General, banks and other subjects in the banking and financial sectors shall provide data about deposits, accounts and transactions ordered by persons included within the scope of this law. Those requested shall put all data at the disposal of the Inspector General within 15 days of his written request. Failure to comply with the law on asset declaration is considered to be an administrative infringement and is punishable with a fine, unless it constitutes a criminal act. Specifications for such penalties are provided by article 40 of the Law.

Declarations and all documents accompanying them are official documents. Submitting false data is a criminal offence under the Penal Code. One of the main instruments of the High Inspectorate is the cooperation with other law enforcement agencies through data exchanges on any case under investigation. The HIDAA is part of the Task Forces established with other law enforcement agencies such as the Prosecution Office, Police, Supreme State Audit, Money Laundering Directorate etc., to investigate suspected corruption. The declarations submitted by the officials are further investigated by other state agencies, if necessary.

According to article 34 of the law, the data obtained from declarations are available to the public, in conformity with the law "On the right to obtain information about official documents" and the law "On protection of Personal Data". The declarations of high officials are usually made public on the media.

Some NGOs collect the declarations of the MPs.[15] Declarations are not available on the HIDAA website.

Based on statistics and the reports published by the High Inspectorate on the performance of this institution, it can be said that asset declaration has been improving over the years. The number of investigations has increased in recent years and fines have been imposed on officials who have not submitted the declaration of assets, or that submitted incorrect data. However, despite the improvements and the MoU signed with various state institutions, the investigations of HIDAA still remain formulaic. Convictions on corruption cases remain rare, despite the fact HIDAA sent more cases to the prosecutor office in the last year, including high profile cases involving mayors and one MP.

The track record is not convincing concerning investigations, prosecutions and convictions in corruption cases at all levels, including senior officials. According to the 2012 Progress Report of the EC, lack of expertise in financial investigations and of technical equipment for special investigative measures hampers the effectiveness of investigations in corruption cases. A particular concern is the general culture of investigating corruption cases in a reactive way with an almost complete lack of proactive investigations. Intelligence from different sources has not systematically been followed up on and risk assessment is not systematically used.

The media often air claims targeting politicians for their wealth. But no case handled by law enforcement agencies has shown unjustified wealth on the part of any high official so far. A case involving a MoD official was exposed in the press in the summer of 2012. A MoD investigation on weapons dealings uncovered that the Military Secret Service director's wife was a co-owner of a company involved in transactions with the MoD. The official resigned from his position. Shortly thereafter, he was appointed Chief of the Military Police. The media has devoted a lot of space in recent years to issues involving the MoD, especially on arms' trade and military asset disposal. Open accusations of wrongdoing were made against the minister of defence and his inner staff. The opposition demanded a special parliamentary investigative commission but this was never accepted by the then ruling party.

After the change in government and reporting of the case to the prosecutor office, a formal investigation started, but criminal proceedings were not initiated. Another case was reported by HIDAA and the media in September 2014 with regard to one of the members of the High Council of Justice. He is under investigation for the criminal offence of false declaration of assets and falsification of documents. The investigation was started by the police and HIDAA based on the relatively high amounts of funds he invested in movable

[15] NGO Mjaft in the framework of the project "*une votoj*", aimed to monitor the activity of MPs and of the Parliament in all possible aspects (financial, participation in the debate, voting of laws ethics in the plenary sessions and in commissions' meetings etc.).

and immovable property, which could not be justified in relation to his income from salary or his businesses and aroused suspicion of illicit enrichment.

The CoI Law does not specifically regulate the issue of post-office employment. The 2003 law on ethics contains some restrictions on employment after leaving the public office. A former official cannot use any information received based on his position in external employment. For a period of two years after leaving public office, the official cannot represent any organisation in a contract or commercial relationship with the public administration if the case relates to the duties he performed for the public administration. However, it is very difficult to enforce these statutory rules. No cases are registered of the enforcement of the Law.

Following media, civil society and peer reports, six MPs were subject to ad hoc audits in 2010–2011. In 2012, one MP was fined ALL 300 000 /€ 2 100 for incompatibility in the exercise of his function as Minister (appointment of a "trusted person" as a member of the supervisory board of an institution subordinate to his Ministry). Another MP was forced to resign following his involvement in private companies that had entered into contracts with public entities, and one MP is currently under parliamentary scrutiny because of similar accusations.

For the first time ever, in 2013, the HIDAA did not file any criminal charges with the prosecutor under article 257-a of the Criminal Code, a fact that may be due to the faulty functioning of this institution since June 2013, but it probably could also be traced back to earlier times, as evidenced by the institution's staff members. In September 2013 the staff of the institution sent an open letter to the Prime Minister uncovering the fiasco of this institution. According to them, at the HIDAA the law and ethics are ignored, the declaratory entities and employees' rights are disregarded, and old files are blocked while new files are not considered. Staffers attribute these failures to the politicisation of the General Inspector, a political appointee, among other reasons.

Since the HIDAA is an independent body there is no specific minister responsible for the development of policies/legal frameworks regarding conflicts of interests. However, the Minister who is in charge of dealing with the corruption issues also deals with conflict of interest issues.

The Council of Europe's GRECO (Groups of States against Corruption) stated in its report from the fourth evaluation round that regulations remain highly complex, and that legal certainty has been undermined by frequent amendments of the legislation on conflicts of interest and asset declaration, which are often subject to contradictory interpretations.

The regulation of conflict of interest is fragmented in several laws inspired by different donors. Discrepancies in legislation create enforcement problems. The body administering the CoI policy is the High Inspectorate for the Declaration and Audit of Assets (HIDAA). It gives precedency to the CoI Law. The number of subjects obliged to declare periodically their assets and

private interest now reaches more than 5,000 officials, subsequent to the 2012 amendments to the Law. Convictions on corruption cases remain rare, despite the fact HIDAA sent more cases to the prosecutor office in the last year, including high profile cases like mayors and one MP. The track record is poor concerning investigations, prosecutions and convictions in corruption cases at all levels. The CoI Law does not specifically regulate the issue of post-office employment. According to HIDAA staffers, the politicisation of the management is detrimental to the effectiveness of the institution.

4.4 Transparency, Free Access to Information and Confidentiality

The Constitution (article 23) states that "the right to information is guaranteed". Everybody has the right according to the law to receive information on the activities of the State bodies as well as the activity of persons exercising State functions and everyone is given the opportunity to follow the meetings of the collective elected bodies". Law No. 8503, dated 30 June 1999 "On the right to information on official documents" (law on right to information) regulated the constitutional right to access to information until 2014.

A new Law on Freedom of Information, which parliament adopted on 18 September 2014 will speed up access to official documents and government data. The new law shortens the deadlines, speeds up the complaints process and establishes fines for officials who unreasonably refuse information requests. The new law also includes a number of new concepts on freedom of information, such as the reclassification of secret documents, the release of partial information and the introduction of widespread use of information technology.

The new law, which supersedes the 1999 legal framework, was drafted by the Ministry of Justice in cooperation with the Open Society Foundation in Albania. The law introduces the concept of personal responsibility in decisions of public officials on not releasing public information, which is a novelty in Albanian law. The sanctions prescribed in the law are a first for Albanian legislation. The law obliges public institutions to appoint coordinators for access to information and creates the institution of a Commissioner. The law has been assessed by the international community as a very good basis for reform, notably in shifting from a "document-based" to "information-based" approach. It places a greater emphasis on the obligation to disclose information proactively. It entrusts the responsibility for oversight along with significant enforcement and sanctioning powers to the Commissioner for the Right to Information and Data Protection instead of to the People's Advocate, who has had this responsibility since 2014.

Under the new law everyone is entitled, upon his request, to obtain information about an official document without being obliged to explain the motives for such a request. Within 6 months of the law entering into force, public authorities must apply an institutional programme for transparency, where the

categories of information to be made public without request and the manner of public disclosure of this information shall be determined.

The Commissioner for Access to Information and Protection of Personal Data will report to the assembly on the right to information and transparency programmes; it may propose disciplinary measures against responsible subjects and make decisions on administrative sanctions. The law foresees a transition period allowing the government to prepare the necessary secondary legislation. It is thus too early to assess the implementation and impact of the new Law.

A number of provisions in the 1999 Code of Administrative Procedures state certain rights to access to documents in the context of an administrative procedure, for example, the right of the parties to an administrative procedure to access information[16]; the right of interested parties to access information[17]; communication with interested parties[18]; asking the opinion of interested parties.[19]

The 1999 law on the right to information was prepared with the support of the international community. Drafting the law was part of a larger public administration reform implemented in 1998–2000. A number of "modern" laws were passed at that time following the approval of the Constitution in 1998, i.e. the Code of Administrative Procedures, the law on the civil service, the law on extra contractual liabilities of public administration bodies and the law on the right to information itself. These laws were suggested by the international community. The Albanian public administration was culturally unprepared to implement the new legislation. A general restriction clause to access information was introduced in the law. The implementation of the law was trusted to a then newly created institution, the People's Advocate (Ombudsman), with no tradition in Albania, which highlights the cultural heteronomy of the 1999 law on access to information and other pieces of legislation and their problematic implementation.

Some other pieces of legislation restricted the right to access to information and to official documents: Law no. 8457 dated 11 February 1999 "On information classified as state secret", and Law no. 9887 dated 10 March.2008 "On protection of personal data". The law on classified information forbids information from being disclosed to the public for national security reasons. The law on protection of personal data restricts the provision of information to the public about individual persons, as described in the law. Several reports have assessed[20] such general restrictions as the main flaw of the law on the right to information.

[16] Article 20.
[17] Article 51.
[18] Article 47.
[19] Article 50.
[20] See Technical document- Implementation analysis of the law on the right to information, Institute of Public and Legal Studies and the SOROS foundation Albania, 2012, available at: http://soros.al/2010/foto/uploads/File/Dokument%20teknik_Analize%20e%20zbatimit%20te%20se%20Drejtes%20se%20Informimit_OSFA-ISPL.pdf

The new law foresees some deadlines related to the request for information: First, if the public authority is unclear regarding the content and the nature of the information request, it should contact the applicant to make the necessary clarifications no later than 48 hours from the date of application. If after reviewing the request the public authority determines that it does not hold the requested information, it shall notify the competent authority no later than 10 calendar days from the date of submission of the request and inform the applicant. The only reason that justifies sending the request to another authority is the lack of required information.

Second, the public authority must process the request for information as soon as possible, but no later than 10 working days from the date of its submission, unless otherwise provided by a special law. In the case of the public authority sending the request for information to another institution, the deadline for replying is 15 working days from the date of arrival of the first request to the authority. The time limits provided for in the law – 10 and 15 days respectively – can be extended by no more than 5 working days for one of the following reasons: a) The need to search and explore multiple voluminous documents; b) The need to expand research in offices and premises that are physically distant from the central authority; c) There is a need to consult with other public authorities before taking a decision. In any case, the applicant should be immediately notified of the decision to postpone the deadline. Failure to treat the request within the time provided shall be considered a refusal.

In accordance with the new law, access to information is free of charge. Disclosure can be made for a fee, previously determined and made public by a public authority on its website and in public reception areas. The fee is the cost of reproducing the information requested and, where appropriate, of mailing. Information requested electronically is free. The cost of reproduction cannot be higher than the actual cost of the material. The cost of delivery cannot be higher than the average cost of the same service in the market. In collaboration with the Ministry of Finance, the Commissioner for Right to Information and Protection of Personal Data examines fees charged by public authorities periodically and, where appropriate, changes the fees by issuing an order.

The new law on the right to information states detailed restrictions on this right. In accordance with the law, the right to information is restricted if it is necessary, proportional and if the disclosure damages the right to the private life, commercial secrets, copyright law and patents. This restriction does not apply when the holder of such rights has himself consented to the disclosure or if at the time of disclosure he is considered a public official under the provisions of this law.

See also the Centre for Public Information Issues (2014), available at: http://siteresources.worldbank.org/PUBLICSECTORANDGOVERNANCE/Resources/285741-1343934891414/8787489-1344020463266/8788935-1399321576201/RTI_Case_Studies_Implementation_WEBfinal.pdf

National security and criminal investigations are the most obvious limits to the right to access information. Notwithstanding these limitations the requested information may not be refused if there is a higher public interest to grant it.

In summary, the above restrictions do not apply where the relevant data are facts, analyses of facts, and technical and statistical data that have been already published.

The right to information is restricted also if information dissemination would violate professional secrecy guaranteed by law, and if the request is unclear and it is impossible to identify the information required.

Regarding classified documents, the disclosure of information may not be refused automatically. A review procedure is prescribed, a classification review by the public authority that has ordered the classification in accordance with Law no 8457, dated 11 February 1999 "On classified information as state secret". The public authority notifies the applicant of the initiation of the review procedure and decides any postponement of the disclosure within 30 working days. If the restriction affects only part of the information requested, the applicant is not refused access to the remainder. The public authority clearly shows the relevant parts of the documents that are rejected, and the article on which this rejection is based.

The new law prescribes that the Commissioner for the right to information and protection of personal data is the authority entitled to review the complaints and also added some competencies on the right to information. Both laws – the law regarding the protection of personal data and right to information and the law on access on information entered into force in November 2014 and the director of HRM is responsible for implementing this law. The procedure before the Commissioner is the general administrative procedure regulated by the 1999 Code. An administrative appeal to the Commissioner must be filed within 30 working days of the date. The Commissioner shall take the decision within 15 working days of the date when the request was submitted. The applicant or the public authority has the right to appeal the commissioner's decision before the administrative court. The implementation of the law is finally referred to the administrative courts on a case by case basis. Any person who has suffered injury due to the violation of the provisions of this law has the right to seek compensation for damage caused, in accordance with Law no. 7850, dated 29 July 1994, "Civil Code of the Republic of Albania".

The new law includes a wide range of information which will be made public on the official website of the public authority. This information will be provided in accordance with the approved transparency programme for each public authority. On the webpage of the MoD all information is published with the exception of cases related to national security and NATO. At the MoD there is a responsible unit for establishing and updating the official website. The information is published by other means such as publication by the press office of the MoD.

The budget of the MoD is published for each year and for the next three years on the website of the Ministry of Finance and the MoD. On MoD's website, special monitoring reports are published in a special section entitled "Monitoring reports" every three months.

The MoD does not sell properties since that is the responsibility of the Ministry of Finance. The Ministry of Finance is entitled to sell any state properties. The revenues from the sales are divided as follows: 5% for the Ministry of Finance, 35% for the Ministry of Economy, 65% for the state budget.

The sale of materials is realized through public auction. The sales of arms and ammunition is realised by the MEICO Company (Military Export Import Company), a state-owned enterprise. The Department of Assets Management publishes only the amounts of weapons and ammunition sold but not financial data. There are no data with regard to the percentage of the defence and security budget dedicated to spending on secret items related to national security and intelligence services.

The approval of the new law on access to information demonstrates the will of the current government to increase transparency and guarantee access to public information. Although this initiative should be commended, it is only a first step. Further measures by the government will be needed to truly implement the right to information for citizens.

The new law still leaves some issues unaddressed: 1) Some further clarification of the range of bodies to which the law applies, in particular relating to information related to the work of the Cabinet and the intelligence agencies and armed forces. More important still, the coverage of the law should be extended to private entities that receive public funds and to companies which the state controls or has decisive influence in without holding a majority stake, and extending the concept of "public functions" to include more private/legal persons whose activities relate to such functions. 2) The asset declarations of public officials should be included in the list of information that must be proactively disclosed. 3) The Commissioner for Data Protection's staff, material resources and funding will need to be increased in a way that matches the additional competencies. The extra resources needed should be determined using a proper regulatory impact assessment.

A new Law on freedom of information, adopted in 2014, will speed up access to official documents and government data. The new law shifts from a "document-based" to an 'information-based' approach. It places greater emphasis on the obligation to disclose information proactively. It shortens deadlines, speeds up the complaints process and establishes fines for officials unduly refusing information requests, and creates the institution of a Commissioner reporting to Parliament, among other improvements. However, the general restriction to the right to information is the main flaw of the law, especially in the military procurement and asset disposal domain, but not only. The exceptions go in line with the widespread administrative culture in

the country that state institutions' information is generally for internal use only.

5 Policies under the Control of the Executive

5.1 Internal Financial Control

A comprehensive and quite modern public financial management legal framework, control and audit exists. The basic laws were approved from 2008 on with the Organic Law on Budget Management[21]. This law mandates all government units to establish an internal financial management control system and an independent internal audit function in order to secure effective public internal financial control and budget implementation, based on principles of transparency and legality.

A series of laws was passed in 2010. The first internal audit law was passed by parliament in 2003, which was replaced by the 2007 law still in force. The 2007 Internal Audit Law[22] was amended in 2010. It regulates the internal audit in the public sector by determining the area of operations, organisation, functioning and responsibilities. The main aim of the amendment was to separate internal audit from financial inspection. This latter function was introduced as detached from auditing in the law "On Public Financial Inspection"[23], which provided for the establishment of a financial inspection service. The inspection function continues to be operational, while a better understanding of the distinction between inspection and internal audit is taking root.

The Law on Financial Management and Control [24](FMC) defines the principles, procedures, administrative structures and methods for a well-functioning financial management and control in the public sector. The FMC Law introduced fundamental changes to public expenditure management. Those changes promote a more effective implementation of programme budgeting and improve the efficiency and effectiveness of public expenditure management. The Central Harmonisation Unit (CHU) developed a FMC implementation plan, which covers the period up to 2016.[25] Given the scale of changes required, the CHU took a pilot approach to the plan. Currently all secretaries general are nominated as authorising officers, receiving this function from the political level. The new financial management and control system is being implemented in a pilot phase in the Ministry of Transport and Infrastructure, at the General Department of Roads. The aim of this pilot project is to define the managerial structures, the operational information, the financial information and the accountability arrangements that ought to exist to secure the effective implementation of FMC. The outcomes of this project are designed to provide a model for the application of FMC throughout the public sector.

[21] Law n. 9936 of 26.06.2008 "On the management of the budgetary system in the Republic of Albania", entering into force in 2009.
[22] Law n. 9720 of 23.04.2007 "On internal audit in the public sector", amended by the law no. 10318 of 16 September 2010.
[23] Law n. 10294 of 01.07.2010 "On public financial inspection".
[24] Law n. 10297 of 08.07.2010 "On financial management and control".
[25] The plan was approved by the Minister of Finance in June 2011 and covers the period 2011–2016.

This wide-ranging reform benefited from assistance from the EU and USAID. SIGMA also supported the CHU and the Ministry of Finance with advice as well as assessment (IT audit) of the electronic Treasury System. The legal framework is compliant with EU recommendations. However, Albania has a lot to do before having a fully-fledged public internal financial control (PIFC) system, as SIGMA emphasised in 2012: "Despite the transfer of administrative responsibilities for FMC to the authorising officer from the minister, there is a narrow understanding of the Law on Financial Management and Control and of the practical implementation of financial management, as opposed to financial control. This is a reflection of the traditional Albanian administrative arrangements with the emphasis upon control, and with every activity having to be prescribed in law or regulations. Financial control dominates managerial perceptions of what FMC is about, with the focus of accounting being almost entirely upon ensuring that spending does not exceed the budget. There is little understanding that financial management should also focus on improving the quality of public expenditure using indicators to assess this quality. Even the control of spending is often misunderstood with some managers believing that deferring payments from one year to the next represent savings even though they are merely accumulating debts".

SIGMA continues by stating that "the control and accountability arrangements that should exist between first and second-level organisations, regardless of the importance and size of the second-level organisation, including over state owned enterprises, remain weak. The position and responsibility of the executing officer is unclear. Also executing officers consider it impossible to fulfil all the responsibilities of the post because of their small sized staffs and their inability, and also unwillingness, to delegate even routine tasks to subordinates".

Despite the challenges, progress was noted. The CHU prepared a clear and comprehensive implementation plan with a pilot exercise. This step-by-step approach may ensure the sustainability of the system. In all institutions, the authorising officer was appointed from among civil servants. Their accountability is being strengthened and responsibilities are more clearly established. The Financial Management Information System (electronic treasury system) is being successfully implemented. Some past errors are being rectified.

The law on internal audit expressly introduces international auditing standards, but some gaps still appear in practice. There is more awareness among top officials of the purpose of internal audit. But ministers and mayors are still attached to the old financial inspection which lingers in the Albanian public administration whereby only inspectorates were basically responsible for financial control. The same old staff remains in these inspection departments. For them shifting to a new concept is not easy.

The central coordination of the PIFC and internal audit is entrusted to three units at the Ministry of Finance: 1) The CHU on Financial Management and

Control in charge of issuing instructions and guidelines to public organisations for the implementation of FMC procedural requirements. The unit has one director and five experts. 2) To carry out *ex-post* financial control, the Department for Public Financial Inspection was set up with one director and five inspectors. They inspect all public institutions and can temporarily "hire" inspectors from other public administration bodies. 3) The CHU coordinates all activities on internal audit. It is composed of two departments: a) The Department for Analysis and Professional Development, and b) The Department for Methodologies, Monitoring and Quality Assessment. These central coordination units provide guidelines to public institutions. They organise training and seminars for managers and internal audit officers in the institutions. They have elaborated compiled several manuals and guidelines to support their activities in the day-to- day work.

In the MoD, there is an Internal Audit Department, which is divided into two sectors: a) Internal Audit and b) Procedures' Elaboration. The Internal Audit Department reports directly to the Minister of Defence and to the Central Harmonisation Unit for Audit in the Ministry of Finance. The Audit Directorate is composed by the director and eight professional, certified and trained auditors.

5.2 General Administrative Inspectorates

A Department of General Inspection, under the direct supervision of the minister, exists in the MoD. This department is the higher inspection for the MoD and armed forces. It inspects the activity of all organisations under the MoD and armed forces regarding implementation of legal and sub-legal acts and directives in the defence area. The inspection also focuses on the implementation of strategies and action plans, as well as of specific orders and guidelines of the minister.

The Department of General Inspection has a large inspection remit. It covers rule implementation, human resources management, training and setting up operational standards for the armed forces, good administration of resources and properties of the armed forces, logistical support, quality of life in army facilities, etc. The department also deals with processing personnel complaints, financial treatment, and security at work of the members of the armed forces. It holds responsibility for the implementation of the MoD's anticorruption measures and shall preliminarily investigate corruption cases within the MoD. If anything suspicious is detected, it forwards the case for further investigation to other competent authorities. The department coordinates the anticorruption efforts with other state structures.

The department has two sectors: a) Sector of General Inspection – this is the unit actually doing the planned inspections; and b) Sector for Information and Public Relations – despite the name, this sector deals with complaints by former and existing military staff, complaints from external sources, investigation of single cases, etc. Subsequent to the inspections, the department prepares inspections' reports and can recommend remedial measures and activities to be

undertaken. It can also propose amendments of acts and procedures. The inspection is planned and approved by the minister. The department can initiate inspections ex-officio upon authorisation by the minister.

The MoD General Inspector (GI) is selected from among the military staff for a period of 2 to 5 years. The GI is under the direct supervision of the Minister. His career is subject to military law. The staff is carefully selected, although high turnover characterised the department. All the current staff were appointed after the new government came into office. The Department has five employees, four of whom are military personnel, including the director. Only one is a civilian. The activity of the Department is entirely based on the Internal Regulation of the MoD and General Staff of Armed Forces and on the staff job descriptions. A particular government decision, or a specific order of the minister to regulate the activity of the Department does not exist. Almost 99% of the activity and inspections relates to the armed forces or military staff.

The GI selection procedure is described in Article 13 of Law no. 64/2014 "For the powers and authorities of direction and command of the Armed Forces of the Republic of Albania", This provides the competencies of the Minister of Defence to appoint, release or discharge active officers of the armed forces, with the exception of higher ranking officers, on the proposal of the Chief of General Staff.

The GI works independently, in accordance with the law. The GI remit is wide, ranging from the implementation of rules, to human resources management practices, training and operational standards for armed forces, good administration of resources and properties of armed forces, logistical support, quality of life in army facilities, etc. The GI also examines complaints in HRM practice, financial treatment, and security at work for the armed forces. Following an inspection, the GI issues recommendations. If approved by the Minister they must be implemented by the subordinate structures. The GI defines an annual inspection plan.

The Directorate of Internal Audit coordinates and interacts with the Directorate of General Inspection and Anticorruption when requested and necessary. Together they can implement common inspections and control.

The public financial management legal framework, control and audit is comprehensive and quite modern. However, there is little practical understanding that financial management should also focus on improving the quality of public expenditure by using quality indicators. Progress is taking place though. Awareness among top officials is higher on the purpose of internal audit.

5.3 Public Procurement and Military Asset Surplus Disposal

5.3.1 Acquisitions

The first Public Procurement Law (PPL) was introduced in Albania on 26 July 1995[26]. The purpose of this law was to encourage an economic and effective use of public funds, while promoting fairness, transparency and non-discrimination in public procurement. The law was complemented with very detailed secondary legislation. Unfortunately the legal framework displayed abundant loopholes to bypass the legal provisions. To overcome the shortcomings of the 1995 law, the government introduced a reform of the procurement system by means of a technical assistance project. This reform produced the new law on PPL, adopted on 20 November 2006, which entered into force on 1 January 2007. The law was further complemented by secondary legislation to allow full implementation of the legal provisions.[27] The new law is aligned with EU standards, but it also reflects influences from other sources such as UNICTRAL Model Law[28] on Public Procurement.

The introduction of a generalised electronic procurement system is the most significant novelty. All public authorities shall publish all procurement notices and tender dossiers on the Public Procurement Agency web site. This system has led to an increase in the transparency of public procurement, improved access to information and reduced procedural costs for economic operators. In January 2009, the Public Procurement Agency adopted a detailed instruction "On procurement procedures with electronic means". In 2009 the Ministry of Interior was assigned to procure a number of goods and services centrally on behalf of the Council of Ministers, Ministries and subordinate institutions. From January 2013 the e-procurement platform is available and mandatory also for procurements of "small value".

The purpose of the current PPL is to set out the applicable rules for procurement of goods, works and services by contracting authorities. The same PPL rules apply throughout the entire public administration, except for procurement of military goods as envisaged in article 5-6 of the PPL. The government approved in 2008 a special decision on procedures for procurement of military goods[29], but *e-procurement* is not allowed for the procurement of military goods.

The public procurement reform benefited from the support of various international organisations and technical assistance projects. The EU and

[26] PPL no. 7971, dated 26 July 1995 (The website of the official gazette is www.qpz.gov.al).
[27] PPL no. 9643 dated 20 November 2006 "On Public Procurement" as amended, and the Decree of the Council of Ministers no 1, dated 10 January 2007 "For public procurement rules".
[28] United Nations Commission on International Trade Law.
[29] Decision of the Council of Ministers no. 521 of 8 August 2007 "On procedures for purchase of military goods by the Ministry of Defence exempted from the PPL", amended by the DCM no. 1403 of October 2008.

SIGMA played an important role in the adoption of the new legal framework. The Public Procurement Agency (PPA) had a very productive cooperation with the European Commission Delegation to Albania on various aspects in the procurement area, including the joint work on the implementation of the Twinning Project for PPA.

The PPA received support from USAID in the framework of the Millennium Challenge Corporate Account programme. This support focused on legal improvements to allow electronic procurement, the training of staff and users, and the creation of an electronic system (software and hardware) to support the e-procurement. Another important cooperation which took place during 2011 was between PPA and the World Bank, which also assisted PPA in improving electronic procurement. The European Bank for Reconstruction and Development (EBRD) also supported the PPA in e-procurement procedures.

Article 4 of the PPL prescribes its application to all procurement procedures. As a general rule, under article 5 the PPL is applicable to all public contracts awarded in the field of defence. The only exceptions are set out in articles 5, 6, 7, 8 and 9 of the Law. Exceptions from the general procurement rules in the defence sector are as follows: a) when a contracting authorities shall be obliged to supply information whose disclosure is contrary to the essential interests of national security; b) for the purchase of arms, munitions and war material, or related services. This exception shall not adversely affect the conditions of competition regarding products not specifically intended for military purposes; in specific circumstances caused by natural disasters, armed conflicts, war operations, military training and participation in military missions outside the country.

Specific exceptions from general procurement rules are as follows: a) The PPL is not applicable in the case of security contracts or contracts requiring special security measures; b) The PPL is not applicable to public service contracts for i.a:

- the acquisition or rental by whatever financial means of immovable property, or the rights thereon. Nevertheless, financial service contracts concluded at the same time as, before or after the contract of acquisition or rental, in whatever form, shall be subject to the PPL;
- the acquisition, development, production or co-production of programme material or commercials intended for broadcasting by broadcasters or publication in the media, and contracts for broadcasting time;
- arbitration and conciliation services;
- financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments, in particular transactions by contracting authorities to raise money or capital, and central bank services;
- research and development services whose outcome is used by all on a non-discriminatory basis, other than those where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting authorities.

In 2013, the total number of defence procurement procedures was 4 152, of which 1 713 were uncompetitive, single-source based procurement. This represents 33.2% of the procedures and almost 16.8% of the funds spent in public procurements. In the Directorate of Auctions and Procurements six military procurement procedures have been conducted, five of which are based on single-source procurement while one is a restricted procedure. Data show that 51% of funds are spent through single-source procedure while 49% are through restricted procedures.

The Ministry of the Interior serves as the central procurement body for a number of goods and services. This function was allocated to the Ministry of Interior in 2009. By Council of Ministers (CoM) decision no. 53, dated 21 January 2009, the Ministry of Interior was appointed as the central procurement body for a defined list of common use items[30]. For this purpose, the Directorate for Central Purchasing was created at the Ministry. This directorate is responsible for procuring goods like fuel, consumable items, etc. in a centralised way. However, in terms of the EU Directives, the directorate is not a central purchasing body. It does not award framework agreements nor does it undertake purchasing on behalf of contracting authorities in the capacity of a contracting party. The contract is always signed between the contracting entity and the supplier. The directorate operates as a procurement agent or as an intermediary in the process.

A rather crowded institutional public procurement landscape is being overhauled. The oldest institution is the Public Procurement Agency, a government body. Initially this agency had policy making functions, appeal resolution functions and served as procurement body for large procurements. Recently, with the public procurement reform, this agency has only policy making functions and maintains also the e-procurement system. The appeal resolution functions were transferred to the Public Procurement Commission, created in 2010. The Commission is a body reporting to the government and has quasi-judicial functions. In 2007 a Public Procurement Advocate, an institution reporting to the parliament, was also created. The main task was to recommend action to the procuring bodies if, following a complaint by an individual, breaches in the procurement procedures had been observed. It was non-mandatory for public institutions to follow this recommendation. An amendment in 2012 abolished this institution (the law was passed on 27 December 2012). From 2013 on the Public Procurement Advocate is no longer operational.

The central body responsible for public procurement is the Public Procurement Agency (PPA). The PPA has legal personality, is financed from the state budget

[30] DCM No. 139, dated 3 March 2010 for some amendments into the DCM 53, dated 21 January 2009 "For the appointment of the Ministry of Interior for the conduct of public procurement procedures in name and on the behalf of CM, Ministries and subordinate institutions, for some goods and services", as subsequently amended.

and reports to the Prime Minister. The PPA is not a central procuring entity. Its main responsibilities are to:

- prepare policies in the public procurement area;
- draft legislation and regulations on public procurement;
- monitor procurement activities;
- draft and produce the *Public Procurement Bulletin*;
- promote and organise training of central and local government officials involved in public procurement activities;
- assist procuring entities with advice and other support to ensure proper and uniform application of the PPL;
- advise procurement entities in cases when they consider a conflict of interest may hamper the procedure; and
- maintain and develop the e-procurement system.

The PPA staff is recruited and promoted according to the Civil Service Law. This law is not applicable to the Head of PPA, who is appointed and dismissed by the Prime Minister. Great emphasis has been placed on introducing electronic procurement. In general, the introduction of e-procedures is perceived as the best tool for increasing transparency and reducing the costs of procurement procedures[31] for the government and operators alike.

The Public Procurement Commission (PPC) is the highest administrative appeal body on procurement in compliance with the requirements established by PPL[32]. The PPC is a public legal body subordinate to the Council of Ministers and financed by the State Budget. The PPL clearly mandates that nobody can influence the decision-making of the PPC members. Every effort, either direct or indirect to influence shall be penalised with a fine in accordance with the PPL, irrespective of the civil or penal proceedings that might have already started. In 2013, the PPA published 4 152 public procurement announcements. The PPC received 561 complaints on public procurements, concessions, auctions and mining authorisations. That represented a decrease of 5% compared to 2012. The institutions that have the largest number of procurement procedures and the largest number of complaints are the Ministry of Interior, the Ministry of Economic Development, Trade and Entrepreneurship and the General Directorate of Roads.

In its 2013 annual report, the PPC reported that the main difficulty in performing its duties is the infringement of the legal deadlines for reviewing complaints and making decisions, which originates from delays by contracting authorities in sending the required documentation and information. Secondly, the staff of seven inspectors available for handling and reviewing the complaints turns out to be insufficient to deal with the case load. In November 2014 the PPC board was completely renewed. Three members including the

[31] On 3 October 2007 the decision on endorsing e-procurement rules was adopted by the Council of Ministers (Decision no. 659).
[32] Law no 10170, dated 22 October 2009 "For some amendments on PPL no 9643, dated 20 November 2006.

chairman resigned from office and the other two were replaced by the Government. The reasons are unclear.

In its annual reports, the PPC stresses two generic cases that influence public procurement. The first case is the wrong interpretation by the courts of the procurement law. In cases when an applicant submits a claim to the court, the court usually suspends the procurement procedure until a final court ruling is pronounced. This happens despite the fact that the law clearly states that the claim does not influence the course of the procurement procedure. The stance of the courts, which often are not sufficiently trained and do not have adequate knowledge of legislation on public procurement, concessions and auctions, has established a harmful precedent, because now it suffices for an economic operator to initiate a judicial procedure to inhibit the activity of an institution in providing services, making investments or carrying out public works.

The second case is the decisions of contracting authorities to cancel procurement procedures in order to avoid decisions of the Public Procurement Commission, using the argument that each contracting authority has the right to revoke the procedures at any time for the sake of the public interest. But there was not a single case in which the public interest argument was justified. The actions of the contracting authorities led to the reduction of legal certainty, the loss of confidence of economic operators and the establishment of serious doubts about corruption.

The Concessions' Treatment Agency is responsible for promoting and assisting the contracting authority in the identification, evaluation and negotiation of concessions. The Concessions' Treatment Agency functions under the Minister of Economy, Trade and Energy. Its main responsibilities are: a) analysis and evaluation of the concession project; b) drafting the request proposal, prequalification documents and other documents on the selection procedure (draft contract included); c) proposal evaluation; d) determination of the successful bidder; e) contract negotiation.

In May 2013 a new Law on Concessions and Public Private Partnerships (CPPPL) was approved by parliament, replacing the Law on Concessions of 2006. A number of subsequently adopted implementing regulations helped to create a comprehensive set of rules on the preparation, award and monitoring of concessions and public private partnerships (PPPs). According to SIGMA, progress has been made on the legislative framework on concessions and Public Private Partnership (PPP). The Law and its implementing regulations comply with the EU *acquis* and also to a large extent with the new EU 2014 Concession Directive. The regulatory framework on concession introduces a whole new set of skills and expertise needed for effective implementation in the areas of concessions and PPPs. No investments in that regard have been made. The concession unit and the staff dealing with those issues in the PPA should receive training.

In MoD, the responsible structure dealing with procurements is the Directorate of Auctions and Procurement. The Department has the following structure: a) Auction and Military Procurement Sector; b) Auction and Civil Procurement

Sector. Each sector is composed of one Head of Sector and two experts. The Directorate of Auctions and Procurements has altogether seven officials dealing with procurements and auctions. The staff was reduced at the end of 2013, following reorganisation of the ministry after the new government took office. During the interviews they reported the need for training in the Department of Procurement included training on anticorruption. In the MoD there is no specific manual approved by the Minister on integrity and ethics.

The Auctions and Procurement Directorate is responsible for procuring all goods, services and works for the needs of the MoD and the armed forces based on the PPL, and also for the procurement of military equipment, exempted from the PPL rules.[33] Procurement at the MoD is regulated by two legal regimes. The civilian procurements are regulated by the PPL and published in the electronic system of the PPA. The military procurements (the exceptions) are regulated by a special decision of the Council of Ministers and a special regulation[34]. In 2014 military procurements were three times higher than the civilian procurements.

Procurement planning is done in conformity with the law and special regulations. For civilian procurements the plan is elaborated by the civilian staff of the MoD and follows the same publishing rules as in other public institutions. For military goods and equipment, the requests are submitted by each military organisation and analysed by the special "Modernisation Board". This is a special structure created at the General Staff of the Armed Forces that analyses all requirements and approves or rejects procurement requests. It also chooses the procurement method. The activity of the board is supported by the Directorate of Modernisation. Based on the PPL, all institutions are obliged to publish the recruitment plan at the beginning of the year. The plans are published on the PPA website, which serves also as procurement portal. The plans are accompanied by the implementation report. Plans and implementation reports have been published on the PPA website since 2007, but the procurement of military equipment exempted from PPL is not published.

The procurement plan foresees the goods, services and works to be procured, the timelines and estimated costs. The type of the procurement is also planned. The implementation reports present the actual value of the contact after the tender, the winner and if the procurement procedure was changed from the planned one. From the procurement plan, it can be seen that 75-80% of procurement procedures are classified as procurement for small sums.[35] This type of procurement was not required to be published before. As of January 2013 these procurements are electronically published. The conditions under which each procedure can be applied and the monetary limit when using procurement for small sums are further detailed in the CoM Decision "On

[33] www.mod.gov.al Internal regulation of the MoD.
[34] Decision of the CoM no. 521 of 8 July 2007 "On procedures of purchasing goods exempted from the general procurement rules by the MoD" as amended. The DCM is published in the Official Gazette; the regulation on procurement is not published.
[35] The limit for this kind of procurement was 400.000 Albanian Lek, cc. 2.900 Euro, but it increased in 2014 to 800.000 ALL and it is expected to ease procurement in the case of small sums.

Public Procurement Rules".[36] The number of bids for small value purchase was 8 104 in 2013. This was one of the successes of the Public Procurement Agency in 2013.

Article 29 of the PPL defines the types of procedures to be used for the award of public procurement contracts: a) open procedures; b) restricted procedures; c) negotiated procedures, with or without prior publication of a contract notice; d) request for proposals; e) architectural design; f) consultancy services. The final decision regarding the type of public procurement procedure that is going to be applied is made by the contracting authority, within certain limits.

The open procedures shall be the general rule in procurement, but in practice it is used only for large tenders with significant amounts of money, which makes its use rather exceptional. The contracting authority may use the negotiated procedure without prior publication of a contract notice for all contracts of a value above the lower threshold, but only in specific circumstances expressly provided for in the rules. Such circumstances shall be strictly interpreted. This procedure shall not be used in order to avoid competition or in a manner that would discriminate among candidates.

The special procurement regulation of the MoD for military equipment[37], prescribes three types of procedures for procurement: a) Restricted procedures; b) Single source procedures; and c) Procurements state to state. Detailed rules on each of these procedures are prescribed in the annex to the Decision of the Council of Ministers, but that document is not publicly available.

In compliance with the PPL and the procurement rules, the PPA shall publish electronically every Monday the bulletin of public announcements in the procurement portal. In this bulletin each call for proposals is published. However, open publication for the procurement of military goods is not used since the bid invitation is sent only to previously selected candidates by the contracting authority. In all types of procurement procedures governed by the public procurement law, only negotiated procedures without prior publication of a contract are exempted from publication. In military procurement procedures no obligation for publication exists.

Article 43 of PPL defines the time-limits for the reception of tenders and requests to participate. In the case of open procedures above the highest value thresholds, the minimum time-limit for the reception of tenders shall be not less than 52 days from the date when the contract notice was published. In the case of restricted or negotiated procedure with publication of a contract notice, the minimum time-limit for receiving requests to participate shall be 20 days from the date when the contract notice was published. In the case of restricted procedures, the minimum time-limit for the receipt of tenders shall be 20 days from the date when the invitation to tender was sent to candidates. In the case of

[36] DCM n. 1 of 10.01.2007 "On public procurement rules", as amended.
[37] Decision of the CoM n. 521 of 8 July 2007 "On procedures of purchasing goods excepted from the general procurement rules by the MoD" as amended.

open procedures between the highest and the lowest value thresholds, the minimum time-limit for submitting offers shall be 30 days from the date when the contract notice was published.

There is a legal obligation to establish a tendering committee. This committee is responsible for the evaluation of the offers submitted by the bidders. The committee is set up before commencing the procurement procedure. Tendering committees are appointed by order of the head of the contracting authority. The committee is composed of at least three persons, who should be specialists on the field. In the case of complex contracts or contracts requiring special technical or legal knowledge, the contracting authority may appoint external specialists as members of the tendering committee. The chairman of the tendering committee shall be appointed among senior officials in the contracting authority and is fully responsible for the organisation of its activities. At the beginning of the year, heads of institutions may set up a single procurement committee for the whole year to evaluate all small sum procurements.

The public procurement rules, however, (Chapter V, point 1), prescribe that all employees participating in procurement processes shall subscribe to a declaration stating the absence of conflict of interest under the conflict of interest law. The procedure is then dealt with under the provisions of CoI law.

All decisions occurring in a public procurement procedure are published. The tender committee shall compile a written report on the technical and economic evaluation of the bids, which is based on points. Based on this report, the procuring authority decides on the most advantageous bid and adjudicates the contract. This decision is notified to all bidders and participants in the procurement procedure. All documents and decisions of the contracting authority for awarding the contract are published on the PPA website – public procurement portal.

The procurement system is decentralised. A minister, including the minister of defence, does not need prior authorisation by the Council of Ministers or the parliament for initialling a procurement procedure. The MoD has many budget spending units due to the special nature of the organisation. Likewise, many military units act under the umbrella of the MoD. All these budget spending units (e.g. the Defence Academy, different armed forces – naval, territorial, etc. army units) can carry out their own procurements. This is the reason why the MoD has numerous procurement proceedings when compared to other ministries. The last parliamentary debate on MoD procurements concerned the purchase of helicopters for the army. The debate was mostly political, not technical.

The approval of long-term contracts affecting the national security and defence is the direct responsibility of the Council of Ministers. For all procurement procedures in the defence sector, the Minister of Defence makes the final decision, with the exception of small purchases. The Directorate of Administration and Services is in charge of small procurements. Negotiated

procedures are used only when deemed necessary and when there is a compelling argument for the necessity of using this procedure in accordance with the law on public procurement. In such cases, the Head of the Contracting Authority consults the Legal Directorate.

In accordance with article 23 of the PPL in procurement announcements, technical specifications on works, goods or services should describe the technical results to be achieved, including plans, drawings, models, etc. On works or goods, the technical specifications should clearly and neutrally describe their scope in order to indicate all the conditions and circumstances which are important for preparing the bid. The description shall also indicate the technical, economic, aesthetic and functional characteristics required. In order to allow for comparison among bidders, the bidders shall be provided with precise requirements for the functions or performance. Specifications on environmental protection shall also be indicated in the description of works. There shall be no requirement or reference in the technical specifications to a particular trademark or name, patent, design or type, specific origin, producer or service provider, unless there is no sufficiently precise or intelligible way of describing the procurement requirements, and provided that words such as "or equivalent" are included in the specifications.

Qualification requirements should be designed in such a way as to stimulate the participation of small and medium sized businesses. Bidders must declare works, services or goods, or part thereof, that they intend to subcontract if they win the contract, and identify the subcontractor. The subcontractor must possess the technical qualifications for the work or service. Before signing the contract, the successful bidder shall submit to the contracting authority a certified copy of the subcontracting agreement and proof of the qualifications and technical requirements of the subcontractor, in such a way that the contracting authority may approve the subcontracting.

Contracting authorities shall reject a tender, or a request to participate, if: a) the tenderer or candidate gives, or promises to give directly or indirectly to any current officer a gratuity in any form, an employment or any other good or service of value, as an inducement to acting or deciding; b) the tenderer or candidate is in a conflict of interest. The PPA can also exclude an economic operator from participation in procurement procedures for a period of one to three years in the case of serious misrepresentation and submission of documents containing false information for purposes of qualification, corruption, conviction for having participated in a criminal organisation, fraud, money laundering, forgery; or in case of non-fulfilment of contractual obligations for public contracts during the last 3 years. However, during the last two years there have been no cases of disqualification of economic operators by the Contracting Authority or exemptions from the PPA for corrupt practices.

The procurement by the MoD of non-military goods and services is regulated by the general PPL and secondary legislation. The procurement of military materials is regulated by a special procurement regulation, which requires very detailed technical specifications so as to prevent useless interpretative disputes

on the characteristics and the quality of the goods to be purchased. Specifications have to consider NATO standards. The contracting authority can request the would-be provider to submit certificates on the origin of the goods, carry out quality examinations and also to provide test samples. The contracting authority analyses the samples to ascertain the quality. The samples are treated confidentially. Contract execution is monitored at the MoD by the Sector of Contracts' Monitoring and Management of the Department of Modernisation Projects. Once the goods or services have been delivered, this sector issues a compliance certificate on the quality of goods and services provided under the contract.

Companies wanting to participate in a procurement procedure at the Ministry of Defence or the armed forces must meet the general criteria and specific qualifications described by the law and standard documents published by the PPA, such as professional qualifications, technical ability, economic, financial and legal capacity. The contracting authority may require a certificate issued by independent bodies attesting to the candidate or tenderer's compliance with the required quality standards, including standards for environmental protection.

Article 63 of the PPL foresees the administrative complaint procedure. The complaint is evaluated by the Public Procurement Commission (PPC). The procedure is designed to protect the bidder's rights. A complaint may be submitted by any person with an interest in concluding a contract. The complaint can be lodged with the contracting authority and with the PPC. If the contracting authority fails to examine the complaint within the time limits specified in the PPL or rejects the complaint, the complainant may file a written appeal with the PPC within 7 days. The complainant shall in any case submit a copy of the complaint to the contracting authority. Complaints shall be submitted within five days in the case of military procurements, and the procurement unit shall issue a decision within the ensuing ten days.

The PPC is a specific quasi-judicial state body whose mandate is to ascertain the legality of public procurements. The PPC adjudicates in complaint proceedings. The PPC is established by the Public Procurement Law as the highest body in the procurement system. It shall provide legal protection for individual tenderers and the public interest alike at all stages of the public procurement procedure, concessions, auctions and licenses of mines.

The PPC has five members, one of whom acts as its head and one as deputy head. Members of the PPC are appointed to and dismissed from duty by the Council of Ministers, upon proposal by the Prime Minister, for a five-year term. They may be reappointed thereafter. The PPC adopts written decisions and conclusions at closed door meetings on a majority vote. Commission members cannot abstain from voting. PPC members shall be exempted from participating in voting decisions at their own request or by legally grounded recusal requested by a third party. The PPA significantly contributed to elaborating procurement rules and guidelines for different users and stakeholders. The procurement portal provides a good deal of information to potential bidders and the public at large on procurement procedures.

The voting deadlines for each appeal are published on the PPC web page. There are no mandatory hearings during a complaint procedure (Article 65 of the PPL). Nevertheless, prior to making its decision, the Commission may request additional information from the contacting authority, the claimant or other participants. It can also appoint an expert and review other documents held by the parties in a public procurement procedure, as well as collecting additional information necessary to assist in decision making.

According to the decision of Council of Ministers n. 261 of March 17th, 2010, the claimant shall pay a fee for conducting the review procedure. The fee is equivalent to 0.5% of the budget of the procurement procedure. According to the 2006 Concessions Law, the fee for reviewing a complaint by PPC shall be 10% of the guarantee value of the concession offer, but Decision no. 56 of the Council of Ministers from 19 January 2011, modifies the fee, which now is 0.5% of the initial auction value. The fee is returned to the public procurement, auction or concession complainant if the complaint is accepted. If the complaint is not accepted, the fee is considered as revenue for the state budget. The PPC is financed from the national budget. Compensations collected by the PPC represent budgetary entries to the treasury. The PPC has a complaints directory and a support services sector.

The PPL does not foresee any special integrity check of bidders in cases of high value procurements. The law on conflict of interest is applied in this case as well. In 2003 The Council of Ministers approved the EU Code of Conduct on Weapons Exports. Public procurement procedures have been developed and brought in line with EU directives during the last years. Several international organisations have supported this process from the very beginning and recently the PPA was supported by a twinning project in the framework of IPA projects.[38]

The 2006 Law together with other amendments, contributed to aligning the legislation with the EU *acquis*. Despite some minor concerns, the procurement system is now considered generally in line with the *acquis*.[39] Procurements in the defence area, however, are considered not to be in line with the EU regulations and practice.[40]

Even if the introduction of e-procurement contributed to increase transparency in procurements and the trust of economic operators in the procurement procedures, the high percentage of direct procurements is a concern. The 2013 rule whereby all procurements shall be published on the procurement portal should improve the situation, but that remains to be seen.

[38] Twinning with Polish and Romanian public procurement bodies.
[39] EC Progress Reports 2010-2012 and SIGMA Assessments.
[40] SIGMA Public Procurement Assessment 2012.

Various articles appeared in the media regarding the procurement of military equipment, but it is very difficult to judge on the basis of the information provided because the MoD adamently claimed that the procedures were in accordance with the regulations in force. No independent institution ever investigated those procurements.

5.3.2 Asset Disposal

Asset disposal of State owned properties is regulated by the 2001 Law "On state immovable properties", as amended, which determines what is considered to be a state immovable property and the responsibilities for the administration of such properties. The Law also regulates the asset disposal procedure. On the basis of this Law and other legislation, the Council of Ministers adopted decisions[41] relevant to the evaluation of immovable properties, procedures to decide if a property shall be privatised or not, auction procedures etc.

Because of the defence concept of the communist period, the MoD used to have many immovable properties. According to that conception, Albania adopted a "territorial defence strategy" whereby many military defences were built throughout the country in parallel with the increase in the number of the army personnel and the potential use of reservists. In the 1990s this strategy was superseded by new notions. The army undertook a progressive retreat to selected stations and quarters. As a consequence, many military objects were left un-protected and decaying, prompting the government to sell vacant military assets.

The MoD elaborated a Dislodgment Plan of the Armed Forces. This Plan determines new sites to locate the armed forces and lists the objects that will remain under MoD administration. According to the Defence Directive for 2013 (page 8) "… all properties not included in the Dislodgment Plan should be transferred to other responsible institutions to ensure the compensation of old owners, transfer to other public institutions or transfer to the Ministry of Economy for privatisation, based on legislation in force". A fiche was to be completed for every property before the end of 2013. Currently all properties not included in the Dislodgement Plan are included in the special database elaborated by MoD.

The MoD was the owner of arms and munitions. For many years now the MoD has been regularly selling or destroying obsolete arms and munitions. All unusable weapons have been destroyed in the end of 2014.

The disposal of arms and munitions is a sensitive issue following the explosion at the ammunition disassembling facility of Gerdec, in the vicinity of Tirana airport in March 2008.

[41] Decision of CoM no. 428 of 9 June 2010 "On disposal procedures and evaluation criteria for state properties to be transferred or privatised"; Dec. CoM no. 1719 of 17 December 2008 "On approval of public auction rules", etc.

The MOD has developed the "2015 Action Plan for destruction of ammunitions". It is planned that all unusable ammunition will be demolished by the end of this year. All destruction processes took place in military factories or in open facilities. After 2016 Albanian demolition facilities will be made available to other countries.

The Unit of Properties Management together with the Unit of the Inventory and Transfer of Immovable Properties under the Directorate of Properties and Materials Management in the MoD are in charge of asset disposal. This directorate is responsible for the inventory and transfer of immovable properties and for the management of the immovable property inventory lists under the administration of the MoD.

The Unit on Properties Management inventories unexploited properties to be transferred or privatised based on the Dislodgment Plan of the Armed Forces. The minister approves the disposal proposal. The Unit is responsible for assessing the properties, in cooperation with the Ministry of Economy. The assessment is carried out by an assessment commission of at least three members appointed by the head of the institution, one of whom shall be a licensed assessor. Commission members are subjected to the Law on Conflicts of Interest. In more complex property assessments, the selling institution may request the cooperation and support of the Ministry of Economic Development, Trade and Entrepreneurship. Before the final decision for privatisation is taken, this ministry and the MoD verify that the property is not under any pre-emptive right in favour of former owners and that other State institutions do not need the property in question. If there are no such conditions, the full dossier is forwarded to the Department for Administration and Disposal of Assets at the Ministry of Finance, which takes over the management of the public auction. All revenues from asset disposals go to the state budget and are administered by the Ministry of Finance. The revenues are registered on the basis of precise accounting rules and procedures. The MoD has not published reports on assets disposals.

A commercial company MEICO, which deals with all purchases and selling of arms and munitions, also operates under the MoD. The procedures followed by MEICO operations are not public. The asset disposal plans are not published either and shall be known only by the Armed Forces.

The 2006 Procurement Law and the 2013 Law on Concessions, along with some legal amendments, contributed to aligning the legislation with the EU acquis. Despite some minor concerns, the procurement system is now considered generally in line with the acquis. Procurements in the defence area, however, are not aligned with the EU regulations and practice, with too many exceptions and too many non-competitive, single source procurements.

Military asset disposal mechanisms are difficult to evaluate, as they are mostly tagged as classified information. Procedures for asset disposal can be glimpsed through the Defence Directive and the Dislodgement Plan of the Armed Forces, which are the sole public documents.

5.4 Human Resource Management

According to the 1998 Constitution (article 107) employees in public administration are to be selected through competitive examinations. This guarantees tenure and mandates that the regulation of public employment is provided by statutory law. Article 81 demands an organic law to regulate the status of civil servants. This constitutional requirement has made it difficult to amend the Civil Service Law, with both positive and negative consequences – negative because it has been almost impossible to adapt the law to changing circumstances, and positive because it has conferred legal stability on the system.

Special laws regulating institutions outside the scope of the civil service need to reflect these constitutional principles. In institutions under the civil service scope, the civil service legislation translates these principles into law. In all public institutions, recruitment into public employment shall be carried out exclusively through competitive examination of the candidates in an open, merit-based procedure. The new Civil Service Law (CSL) improves the merit system principle in the management of public employment. This principle is clearly stated in the new CSL and reflected in the detailed procedures established in the by-laws.
However, the recruitment procedure in the armed forces is different depending on the category of the staff involved. The professional soldiers are recruited following a physical and theoretical examination. The under-officials and the officials are recruited before they start the military education cycle (respectively military qualification course and military academy, or military qualification course after university degree). After successfully sitting the recruitment examination, new recruits sign a contract with the armed forces which can be renewed after the expiry date.

The new Law 152/2013 "On the Civil Servant" was passed by the assembly on 30 May 2013. It embraces core values in line with the fundamental values and principles regarding the civil service adopted in the EU countries: professionalism and respect of the merit principle, political impartiality, accountability, integrity, stability and continuity of the civil service.[42] The secondary legislation accompanying the new Civil Service Law was completed in March 2014. The former CSL was approved in 1999, and entered into force in January 2000.[43] Both the new and the former CSL laws were drafted with the support of SIGMA, the World Bank and the EU.

The HRM of military staff is regulated by two main laws: 1) The law "On military career in the armed forces" and 2) The law "On the status of the military in the armed forces". These two laws along with several by-laws shape

[42] OECD (1999), "European principles for public administration", *SIGMA Papers*, No. 27, OECD, Paris.
[43] Law n. 8945 of 11.11.1999 "On the status of civil servant."

the legal HRM framework of personnel with military grade. The laws were adopted with the aim of regulating the status of the military personnel and reflecting the innovations introduced in Albania after the '90s and the preparations of the armed forces towards the path of NATO integration.

The civil service legislation is applicable to civil servants at the MoD. According to the 2015 budget law the staff in the MoD including military staff is 9.001-strong. The MoD currently employs 142 staffers, 91 of whom are civil servants, 14 are political staff and 37 are support staff or military.[44] The political and support staff are governed by the Labour Code, unless otherwise stated in special law. The legislation does not make any special distinction for particular positions and all positions are equally treated. The institution and managers are obliged to follow the same rules and procedures regardless of the position involved, although some positions might be vulnerable from an integrity point of view.

The implementation of a professional and de-politicised civil service still remains an objective to be attained. The civil service suffers from politicisation and excessive influence of political parties. Tenure in the position is not fully guaranteed in practice, despite the warranties in the legal framework.

A step forward has been made with the approval of the new law on civil service. This law was approved by the government in 2012, but it was passed by the parliament only in May 2013, one month before the dissolution of the assembly because of the elections that took place in June 2013. The international community, especially the EU, played an important role in the approval of this law, as had happened in 1999 with the previous law.

Following the elections of 2013 and the subsequent government changeover, an extensive reorganisation affected the structures of the 16 ministries. Some 13% of staff in the central government institutions were dismissed. In parallel, staff numbers were increased in key ministries such as the Ministry of European Integration. The restructuring of the public sector raised heated debate on the legality of the process that was followed the number of personnel downgraded, dismissed and put on waiting lists, and on the actual results of cutting expenditure. As the EU reported in October this year in the progress report, Albania needs to increase its efforts to ensure that the high staff turnover does not compromise capacity or business continuity.

The new law was supposed to enter into force on 1 October 2013. At that date, however, the by-laws of the new CSL had not been prepared and government changeover slowed down the operational functioning of the administration, including the drafting of secondary legislation. At the same time, the transitional provisions of the new CSL required the Council of Ministers (CoM) to adopt all pieces of secondary legislation to make the law operational. Because of these two factors, the new government decided to change article 72

[44] Data from Department of Public Administration.

of the new CSL by postponing the Law's effective date of entry into force to 1 April 2014 in order to prevent any legal vacuum related to its implementation.

However, in February 2014, the Constitutional Court ruled that this amendment violated constitutional provisions and repealed it as unconstitutional. Meanwhile, a number of public employees and civil servants had been dismissed and others appointed under the provisions of the previous legislation. The Constitutional Court decision came into force upon its publication in the Official Journal on 26 February 2014, with no retroactive effect.

Because of this decision the recruitment of civil servants was frozen from March to July 2014 to ensure proper implementation of the new legislation. It was also estimated[45] that there were 137 appeals by employees in central institutions with 85% of them still pending, while the percentage pending in subordinate institutions and agencies is also high at 75% of 1 758 appeals. Two-thirds of all concluded cases at first instance were won by the employees. New recruitment finally began in September 2014.

In September 2014 the Department of Public Administration (DoPA) published 113 executive-level civil service positions. 5 300 online applications were submitted. Evaluations of candidates in the first phase of the competition resulted in the selection of 1 900 candidates. In the second phase the number of candidates shrank to 40. DoPA republished the remaining executive-level civil service positions.

It is too early to assess the implementation of the new law, but the first recruitments under the new scheme provide good hope for developing a professional and merit-based civil service. The institutions cannot influence the recruitment and the best candidates are appointed. The main changes the new Civil Service Law introduces are as follows:

- The scope of the civil service is extended to all institutions under the executive.
- New recruitment procedures for the civil service are specified. A pool recruitment process will be used for entry-level civil servants. At the beginning of the year all civil service institutions should identify their needs for executive-level civil servants and DoPA will organise collective recruitments for specific professions. Appointments to vacant positions will be based on the "first-ranked, first-served" principle. Pool or collective recruitment should reduce undue influence from institutions during testing, and replace the former practice of selecting one of the first three candidates. This should also significantly improve institutional planning capacities.
- A career-based civil service is created. The new law creates a career system for low-mid-management civil servants. Entry into the civil service will be based on competition but promotion will be based on an internal procedure in which positions will be first offered only to current civil servants. The

[45] EU Progress Report, October 2014.

former position-based system is replaced by a career system (with an entirely new approach to the recruitment process), introducing important safeguards to facilitate the respect, in practice, of the merit principle. It establishes a clear distinction between civil servants, cabinet officials and administrative employees. It creates a Top Management Corps whose selection is based on open competition and reasserts the principle of political impartiality.

- A new cadre of high-level civil servants will include all major management positions in institutions. In principle, only current civil servants have the right to become part of this group, but the government can in exceptional cases open it up to external candidates. Entry will be through a competition organised by the Albanian School of Public Administration (ASPA). All winners must go through an in-depth training programme. Mobility within the group is high and members can be appointed quickly to all positions belonging to the group.
- Flexible procedures for internal mobility are established. This is expected to help motivate civil servants while also responding quickly to the need to fill vacancies.

The new civil service legislation has established a clear civil service scope which includes "positions exercising public authority" or directly involved in policy-making at central and local self-government levels. The law makes a definition of the horizontal and vertical scope of the civil service, so marking also a clear division line with political positions in each ministry. Regarding the vertical scope of the civil service the law defines the position of "secretary general" as the highest civil service position in the ministries and in other independent institutions. The lower civil service level is for the "specialist" position, a position involving exercise of public authority. Ministers, deputy ministers and political advisors are excluded from the scope of the civil service. The positions involving supporting functions are exempted as well (including the assistants in the cabinets and other ancillary positions). As regards the horizontal scope of the civil service, the CSL enumerates the institutions included: positions in ministries, independent institutions and local government institutions.

The new CSL creates a more homogeneous legal regime for civil servants. The scope of the civil service encompasses officials working for the central state administration institutions, subordinate institutions, independent institutions and local self-government units. The newly defined scope also establishes a clear separation between political and professional civil service positions.

In 2012, according to the statistics provided by the Civil Service Commission (CSC), there were 7 068 budgetary work posts in the CS, of which 1 700 (24%) were in the central administration (Prime Minister's Office and line ministries), 1 830 (26%) in the administration of independent institutions (constitutional institutions and those established by law), and 3 538 (50%) in LGUs (urban municipalities and regional councils). The extension of the scope of the CS will raise the number of civil servants to 25 000 (i.e. 3.6 times more). Given the problems already encountered in relation to the capacity of the existing HRM

units which are more critical at the local government level, this extension will pose a serious challenge in implementing the new legal framework. The HRM function will need to be strengthened in all institutions.

In the MoD portfolio there is uniformed staff in almost all structures. There is no clear rule when a position in the MoD apparatus can be a civil service or military position. This decision is left to the management of MoD and set in the job description of the position. In the armed forces there are no political positions. The staff in the armed forces is either military or civilian, but in this case the governing legislation is the Labour Code.

The civil service has experienced two major commotions since the 1999 CSL was adopted. The first one was in 2005 and the second in 2013. After the 2005 elections and the subsequent government changeover, staff were removed or dismissed in significant numbers. The turnover was calculated to around 35% of the civil servants.[46] A large number of civil servants were registered in the waiting list. Numerous complaints were filed during 2006 with the Civil Service Commission which in almost 68% of the cases[47] decided in favour of the reinstatement of the civil servants to their previous positions. The changes occurred mostly at the management level.[48] In the aftermath of the 2013 elections, consistent restructuring of staff occurred and, as numerous complaints show, many reshuffling decisions were not upheld by the courts.

The Albanian civil service is a mixed system with career patterns. The new CSL places great emphasis on career development, as only existing civil servants can be appointed to higher positions. In practical terms the system is open at the bottom and more closed at the top management level. Promotion procedures are similar to recruitment, although much more simplified and faster. The vacancy is published under a special section in DoPA's website and existing civil servants can apply. A special commission is created in the respective institution managing the procedure.

Career advancement in the armed forces is more structured since by definition in the armed forces a closed career system is applied. The law "On military career in armed forces" details the procedures for career advancement and raise in the grades in all the services (infantry, naval and air forces). All military staff should fulfil four main conditions for career advancement from one grade to the next: a) Complete the required time in the current grade; b) successfully pass the education and qualification requirements in military or civilian schools (the law describes the education and qualification level required for each grade); c) performance appraisal results; good physical and health conditions.

[46] SIGMA Assessment 2006
[47] Civil Service Commission Annual Report 2006, p. 12.
[48] The Civil Service Commission is an independent institution with the function of resolving complaints by civil servants. It has a quasi-judicial nature and reports to the Parliament every year.

The CSL mandates an independent civil service. Art 5 of the new law lays down the principles of the civil service, among others "…*independence, integrity and political neutrality*…" Despite the legal framework, the civil service in Albania is heavily influenced by politics. The legal framework for the armed forces disposes for de-politicisation. Article 3 of the law on Status of the Military in Armed Forces sets out that "…*the military service is based on…political neutrality…*" In addition, art 19 of the same law prohibits any member of the armed forces from being a member of a political party or participating in its activities.

Although the 1999 law introduced the principle of merit and professionalism into the civil service, recruitment remained politicised and public trust in the fairness of procedures was very low.[49] The new procedures are seen as a remedy for this issue. Feedback received from participants in examination procedures in autumn 2014 show a reversed, more positive trend in perceptions.[50] However DoPA is continuously working to improve the procedures and the testing system, and support will be required in this area in the coming years.

The problems in the recruitment system were mainly caused by the pre-selection of the candidates even before the recruitment process has started. Political pressure generated an alternative way to recruit officials to vacant positions – the temporary contracts. This arrangement was not foreseen in the civil service legislation and was illegal. However it was used from the adoption of the Civil Service Law in 1999. In many cases the institutions employed a candidate with a temporary contract and after that organised a recruitment procedure to formalise and legalise the employment relationship.

While there are no reliable data on the exact number of temporary contracts, anecdotal evidence suggests they constitute a significant share of civil service employment**.** DoPA reports only some of these contracts, because often institutions do not report them. In 2004, an initiative was launched to supervise this phenomenon, and by the end of that year DoPA had succeeded in reducing the number of temporary contracts to 2.2% of total positions. However, the practice resumed in 2005, and temporary contracts reached about 11% by the end of 2006 and 7% by the end of 2007. The real figure was probably much higher, as a number of institutions did not request DoPA approval or continued with such contracts even when DoPA had rejected the proposal. A survey done by the NGO Akses (2009)[51] found that 15% of the group of civil servants interviewed were recruited on temporary contracts.

More recent data suggest that the problem is more worrying for some institutions than for others. One of these institutions is the MoD. A monitoring visit by the Civil Service Commission in 2011 found that out of 116 civil

[49] SIGMA Civil Service Assessment 2012.
[50] Based on interviews with winners of IT positions on 7 October 2014, DoPA premises.
[51] This report was part of an investigation into the influence of the election on the stability of the civil service.

service positions, 55 – almost 47% – were occupied by personnel on temporary contracts[52]. Even more worrying, in every case where there was a formal recruitment procedure, the winner was the person already employed on a temporary contract, rendering the whole recruitment procedure a pointless formality and contravening the principles of merit and equality of chances for all the candidates. In January 2013, almost 16% of MoD civil service positions were still occupied by staff with temporary contracts (DoPA data). What should have been an exceptional, pragmatic way of meeting urgent staffing needs had become the main recruitment method, circumventing the competitive procedure established by law.

Temporary contracts dominated in 2010–2011, when according to DoPA they were used for about 25% of civil service positions. Since then, after careful monitoring but also increased commitment from political leaders and EU pressure, this figure has not been lowered. The practice undermines recruitment procedures and diminishes the credibility of the competition process. Differences between the top-scored candidate and the remaining candidates were sometimes as wide as 40 percent (DoPA data), which suggests that competitors' chances are purposely limited compared with the preferred candidate. The new Civil Service Law is expected to put an end to this procedure; and DoPA seems committed to closely monitoring the situation.

There is a correlation between the use of temporary contracts and the number of candidates for each civil service vacancy. After the number of temporary contracts fell in 2004, DoPA registered 10.2 candidates per announced position. In 2006, only 6.1 candidates applied for each position, the lowest in years, and in 2011 the number increased only slightly to 7.5. In 2013, DoPA saw a boom in applications and in the last two months of 2013 there was an average of 15 candidates per vacancy. These data suggest that when recruitments are run professionally and the choice of candidates is not predetermined, the public trusts the process and there are chances to recruit the most qualified candidate.

The civil service legislation provides for open-ended appointment for civil servants in all civil service positions. The temporary or fixed appointment is not regulated by the law, but it is not excluded as a possibility if the institution can ascertain a fixed duration of the appointment. However, this situation was never verified in practice in the past. Dismissing civil servants proved to be a problematic issue for the development of a professional civil service. Tenure in service was supposed to be the main characteristic for a civil servant, but the practical implementation of this principle was somehow problematic.

The appointment or admission in the armed forces is also open-ended. Admission in the armed forces is synonymous with a long and continuous career in the organisation. Temporary appointment is not considered by the legislation.

[52] CSC Monitoring Report for the MoD, 2011, pg. 8, available at: www.kshc.gov.al

Despite the new civil service legislation, the termination of service of civil servants, particularly in the wake of a government changeover, has been controversial. According to a recent report of the DoPA, 91 civil servants (6% of all civil servants in the central administration) were dismissed within six months of the new government taking office (September 2013 - February 2014). In addition to that, 272 civil servants (17% of all civil servants in the central administration) were put on a waiting list. Although these civil servants have priority for filling new CS positions if their professional profile fits the requirements, of 136 new appointments since September 2013, only 30 civil servants (2%) had been selected from the waiting list.

The new CS legislation prescribes that in case of closure or restructuring of an institution when the position held by a civil servant ceases to exist, the incumbent is transferred to another position of the same category in the civil service. In this regard as a result of the government changes, the new ministers were asked to review the structure of their ministries and to reduce the staff by 30%. The government wanted to introduce strategic management practices, which reinforces the need for a merit-based CS.

The law provides for appeal procedures on HRM, but their effectiveness and fairness have been questioned by oversight institutions. After the recent removals in the public administration, about 384 cases (including civil servants and public employees) were examined by the courts. There are no clear statistics on court decisions, although many cases were lost by the administration at the first instance court.

All civil servants and other public employees, including the armed forces, are entitled to a pension at retirement age. The pension is determined by a package of laws and secondary legislation.

In the case of injury or death whilst in military service, the officer or his family are compensated by the state. The law "On military status" regulates the cases and levels of compensations. If an officer or soldier dies, his family benefits from a pension equal to his last monthly remuneration. The state pays a full scholarship for the children of military personnel deceased in service. If a military officer is released from service due to an injury and has lost his full capacity to work, he receives a pension equal to his last monthly salary. If he can still work, he is compensated in line with a specific decision of the Council of Ministers.

The civil service salary in the MoD is the same as the salary structure for all civil servants at central institutions. The salary structure is set in the Civil Service Law. Following the salary reform of 2003-2004, all salary levels at central government institutions including bonuses or allowances for different reasons are set by the Council of Ministers. The heads of institutions are not allowed to set salary levels or bonuses and allowances. This provision might seem to limit the managerial responsibility and leverage of the heads of the institutions, but it was imposed as a measure to counterbalance the abuse of discretionary power observed before 2003. In that period heads of institutions

distributed bonuses and allowances without clear criteria, creating inequalities among civil servants and officials doing the same job, but being paid differently. In some cases the supplements were as high as 100% of the basic salary.[53]

The new salary system in place is very transparent and leaves no place for discretionary decisions by the institutions in determining individual salaries. The only variable part of the salary is the seniority supplement that varies depending on the person's length of service. This salary system has been applied for all civil service positions and for the local government, education system and healthcare system. Currently all state institutions use salary system principles similar to the ones set in the civil service legislation. The civil service legislation and the law on ethics do not limit the level of secondary employment' salary or fee. In practice a public official can receive a fee that is higher than his official salary for a secondary employment.

A salary structure based on grades is applied in the armed forces, the police and the diplomatic service (specific provisions are in place for each category). In these cases the employee is paid according to his grade regardless of the position he holds in the organisational structure. The salary structure for military personnel is set in the law "On the military status". The salary levels and supplements for each category are set in a special decision of the Council of Ministers.[54] All supplements are set at a fixed amount and automatically apply on the appointment of the incumbent in the positions benefiting from the supplement. All salary levels and supplements are published and everyone who is interested can find the exact salary of a particular position.

Performance appraisal in the civil service was introduced in 2002, after a pilot test of the system at the end of 2001. The appraisal is performed on the basis of pre-established objectives by the direct superior of the civil servant and countersigned by the head of the superior. The appraisal is carried out in two phases: filling the appraisal form and the interview with the civil servant. The provisional appraisal is communicated to the civil servant during the interview and discussions take place between the evaluator and the civil servant about the final mark, achievements, weak points, skills to be improved, technical equipment and resources needed for achievement of the objectives, etc. Although the performance appraisal scheme looks good on paper, in practice, it is carried out with a high degree of subjectivism and does not achieve the expected results. Reliable data on appraisals exists only for ministries. In local governments and other small institutions within the scope of the law, the scheme has not been applied. Another negative factor of the performance appraisal is the insufficiency and uncertainty of funds granted by the government for this purpose.

[53] SIGMA assessment of the civil service, 2006, p. 16.
[54] CoM Decision no. 839 of 2003 "On salaries for military personnel in the armed forces". This decision was amended several times.

In the armed forces, performance appraisal influences the promotion of officers and other military staff. However, little information is available regarding the practical implementation of the performance appraisal scheme in the armed forces.

In recent years, whistle-blowing has been supported by public institutions. On many ministerial websites and other institutions, telephone hotlines and email addresses are available where officials or other persons can denounce corrupt practices. On the MoD website, three telephone numbers (hotlines) and two email addresses are displayed. A law "On Co-operation of the Public in the Fight against Corruption" was passed to encourage whistle blowing, i.e. the denouncement of public employees or civil servants for corrupt behaviour. There are worries that the law could be misused, as it provides the possibility of granting a monetary reward if the information given is true and the public servant is convicted. However, to date no examples of implementation of the law or of cases uncovered due to the incentives provided by the law have been reported by the government, which seems to indicate that the law is not applied in practice. The government is currently preparing a new law "On whistle-blowing".

The new CSL creates a more homogeneous legal regime for civil servants and improves the merit system in the management of public employment. This principle is clearly stated in the new CSL and reflected in the detailed procedures established in by-laws. However, a professional and de-politicized civil service still remains an objective to be attained. The new salary system in place is transparent and leaves no place for discretionary decisions of the institutions in determining individual salaries, but legislation does not limit secondary employment, which may bear negative consequences. The staff in the armed forces is either military, or civilian, but in this case the governing legislation is the Labour Code, which results in a situation worse in the MoD than in civilian institutions where the Civil Service legislation is applied.

6 Anticorruption Policies and Anticorruption Bodies

6.1 Anticorruption Policies

In October 2008 the government approved the Cross-Cutting Strategy for Prevention, Fight on Corruption and Transparent Government 2008–2013.[55] (the Anticorruption Strategy). This was an umbrella strategy encapsulating all the objectives and activities planned the institutions under the executive to fight corruption. The drafting and approval of the strategy was part of a larger process promoted by successive Albanian governments – elaboration of the National Strategy for Development and Integration (NSDI). The NSDI was meant to be the main document describing the strategic approach of the government towards the development of the country and the integration in the Euro-Atlantic structures. In the framework of NSDI, 21 sector strategies and 17 crosscutting strategies were approved in 2008. At present the government is working on the preparation of the new NSDI and sector and crosscutting strategies for the period 2015–2020.

The anticorruption strategy was accompanied by an action plan. The first action plan covered up to 2010. At the end of 2010 a report on implementation was published. In June 2011 the Inter-ministerial working group approved a new action plan 2011–2013. The strategy describes particular objectives to be attained by every institution. In some critical sectors (health, judiciary etc.) the strategy states separate objectives. The defence sector is not considered a critical area by the strategy. However, in the action plan, the MoD identified objectives and activities to implement the main objectives and purpose of the anticorruption strategy.

The strategy had no chapter on the nature, causes, levels and trends of corruption, and an assessment of previous anti-corruption efforts. There were no measurements or other statistical data in the strategy to serve as a baseline or benchmark for success indicators. This lack of tangible and measurable data gave a generalist and theoretical pattern to the entire strategy. The coordination mechanism and the issue of cross-cutting activities were not mentioned. In the action plan it was very difficult to find the relationships between the main objectives of the strategy and the activities of the various institutions. The action plan was elaborated chapter by chapter by each institution, but the integration of activities did not take place. The role of the inter-ministerial commission was very vague. The Department of Internal Administrative Control and Anti-corruption Civil Service Commission (DIACA) had no capacities or power to intervene and actively react.

[55] Available at: http://dsdc.gov.al/dsdc/pub/crosscutting_strategy_for_prevention_fight_on_corruption_and_transparent_final

The action plan had many shortcomings. A well-coordinated anti-corruption policy must cover all the areas of public policy which are of importance in the prevention of or fight against corruption. The coordination mechanism did not satisfy this requirement in at least two ways:

- The mechanism was directly subordinate to the Council of Ministers and therefore included only representatives of line ministries, the Council of Ministers and their subordinate institutions. The annual action plans were also structured. Consequently, a number of important institutions were missing, e.g. the High State Audit, the High Inspectorate for the Declaration and Audit of Assets (HIDAA), the Competition Authority, the People's Advocate, and local government units. The absence of the Public Procurement Commission was also notable, despite the fact that the Commission was subordinate to the Council of Ministers. Paradoxically, the fact that the mechanism was based on hierarchical lines of authority limited its coverage.
- The Action Plan contained no sections addressing in an integrated fashion issues that did not fall clearly within the remit of a particular line ministry, or under the remit of more than one ministry. Key examples of this were licensing, public procurement and immovable property registration, or conflicts of interest.

However, the most glaring gap in the coordination framework was the absence of a mechanism for real monitoring and verification of the implementation of action plans by the institutions responsible for doing so. This means more than receiving and compiling the information on implementation provided by the ministries themselves, and should also have included when relevant the requesting of information to verify that the information provided by ministries was correct and that measures taken were not just formal (for example the passage of an order or instruction) but involved actions to implement them, etc.56

The fight against corruption was more political rhetoric than a reality. Political corruption is prevalent in many areas and continues to be a particularly serious problem. Politicians involved in some high profile cases did not face a proper judicial process due to immunity, or procedural issues.

The only official report which was published regarding the implementation of the ACS and the action plan was the above-mentioned 2010 implementation report. According to this report 70% of the objectives and measures were implemented. The MoD appeared to have implemented almost 84% of objectives and measures. However, it was very difficult to assess the accuracy of the information. Independent sources provided different figures.[57] At present the government is working on preparing the new NSDI and sector and cross-cutting strategies for the period 2015–2020.

[56] CoE-PACA Technical paper "The mechanism for coordination and monitoring of the implementation of the Albanian ACS", January 2011.
[57] Available at: http://www.soros.al/2010/article.php?id=407

The current government has pledged its political will to fight corruption with determination. It considers corruption as one major factor which has undermined the opportunity to achieve sustainable political, economic and social development in Albania and created a wide gap vis-à-vis the countries of the European Union. The government programme 2013–2017 has a chapter dedicated to the fight corruption. This chapter is focused on three main lines: prevention, awareness, punishment.

Given that a credible fight against corruption constitutes one of the five priorities imposed on Albania by the EU, concrete institutional actions aiming at better coordination of anti-corruption policies were expected to be put in place. In order to coordinate anti-corruption efforts and policies among all the stakeholders both at central and local level, the Minister of State on Local Issues was appointed as the National Coordinator against Corruption (NCAC) on 22 November 2013 by Decision No. 1012 of the Council of Ministers. Several improvements were introduced into the legal framework by the current government.

The anti-corruption legal framework was amended in March 2014; amendments to the Criminal Procedure Code transferred the jurisdiction of cases involving active and passive corruption by judges, prosecutors, justice officials, high-level state officials and locally elected representatives to the Serious Crimes Prosecution Office and the Serious Crimes Court. The Anti-Mafia Law was amended in March, extending the seizure or confiscation of illicit assets, deriving from corruption offences of all crimes that fall under the new competences of the Serious Crimes Court. The Law on the State Police was amended in September, to provide for the creation of a National Bureau of Investigation, tasked with investigating corruption-related offences.

The new draft strategy on anticorruption 2015–2017 foresees a specific monitoring mechanism that will be run by the Secretariat of the NCAC. The secretariat will monitor the results of measures foreseen in the action plan on a quarterly basis, based on the network of contact points already established in line ministries, independent institutions and the local government. In addition to the abovementioned, a Consultative Forum on Anti-corruption Policies will be established. This forum will be composed of anti-corruption coordinators (deputy ministers of line ministries involved), contact points at independent institutions, a selected number of contact points at local level, as well as representatives of NGOs and business community. The Consultative Forum will serve as a policymaker and monitoring body of the anticorruption policies at the national level.

The responsibility for anticorruption coordination used to be part of the Prime Minister’s portfolio with the establishment of a Department of Internal Administrative Control and Anti-corruption (DIACA). Now it has been transformed into a Unit for Administrative Control and Anti-corruption. This unit has many functions and only one person is dedicated to anti-corruption issues. This lack of staff and capacities is directly reflected in the day- to-day

activities related to strategy and implementation, as well as in action plans and progress reports. For some years the former DIACA was supported by an EU-Council of Europe technical assistance project (Project against Corruption in Albania – PACA). The lack of resources in both numbers and capacities influenced negatively the quality of the documents produced and implementation oversight. The Minister in charge of anticorruption expects to have more staff in 2015, but capacities need to be reinforced. Currently many tasks are discharged using technical assistance projects and the resources provided with the projects. In the immediate future the reinforcement and capacity building of the Secretariat remain key priorities to ensure the implementation of the strategy.

As the EU has already expressed in its progress report 2014, Albania has taken further steps and has demonstrated continued political will to prevent and combat corruption. Reporting, policy coordination and monitoring at central level have improved through the appointment of a National Anti-Corruption Coordinator and the establishment of a network of anti-corruption focal points in all line ministries. Legal amendments to address corruption offences by high-level state officials have been adopted, and the focus should now be on their enforcement. The structural reforms that have been introduced illustrate an all-encompassing approach aiming to develop a more robust anti-corruption framework and to include a wide range of institutions.

Within the organisational structure of the MoD there is a special unit dealing with the implementation of the ACS and the action plan. This unit is part of the General Inspection and Anticorruption Directorate and is in charge of the implementation of anticorruption policies but is insufficiently resourced. It deals with several tasks and monitors the enforcement of legislation in the defence area and also the orders and other decisions issued by the Minister of Defence. The MoD had a special chapter in the action plan of the ACS. Most activities consisted of adopting regulations and laws and were reported to have been implemented. Other activities included capacity building and awareness raising. Several training sessions and briefings on conflict of interest or integrity issues were organised with the participation of civil or military staff.

Only one of the inspectors is charged with the task of fighting against corruption and is designated as a focal point for the ministry. On the ministry's web site a banner is placed providing information to interested persons who want to denounce corruption. This can be done anonymously via email or by calling the green numbers operational for the MoD and armed forces.

The Prime Minister set up an inter-institutional working group led by the Minister of State on Local Affairs. The deputy minister of defence is the coordinator for the MoD. In order to implement anti-corruption policies and activities in all sectors of defence, coordinators are designated for the fight against corruption in every directorate of the MoD and the armed forces, and at each military unit. The role of this coordination unit is to implement national policies in the fight against corruption in the defence sector, including drafting and implementing sectorial policies, surveys, analyses, giving options to the

Minister of Defence in the fight against corruption and prevention of conflict of interest in all the MoD's areas of responsibility. The coordination unit analyses whether such proposals are legal, economical and well-justified.

The record of implementation of measures of the previous Action Plan was mixed. From a numerical perspective, the rate of implementation was higher in 2012. Also very important reforms regarding immunities, double incriminations (Criminal Code), and declaration of assets and conflict of interest were adopted. Inter-institutional cooperation and coordination was also strengthened through a series of memoranda. On the other hand, such changes consisted of passing legislative acts/policy papers. A solid track record of investigations, prosecutions and convictions of corruption at all levels is yet to be established. Efforts to harmonise data on investigations, prosecutions and convictions are a good basis for analysis, but do not amount to the establishment of a solid track record in fighting corruption at all levels. In fact, data reveal a weak record. Measures to follow up on the implementation of the Anti-Corruption Strategy and Action-Plan have not been implemented.

A former Minister of Defence was accused of corrupt practices by his political opponents specifically in connection with cases of arms trafficking and privatisations of military properties in coastal areas. The opposition party, now in government, requested a parliamentary hearing with the minister and the creation of a parliamentary investigation commission, but this was rejected by the majority at that time. The MoD claimed all commercial activities were legal and if not made public, it was only because they were state secrets.

The defence area is very sensitive since the major scandal of destroying munitions and the blast causing the deaths of more than 26 persons and the destruction of several houses and properties in Gerdec, 17 km from the capital in March 2008. Here, at a former military compound, a private company was destroying munitions deriving from a concession contract with the army and the MoD. The security measures were non-existent and a simple accident caused huge devastation. The ministry and the government were deeply involved in the affair, but the minister escaped prosecution due to parliamentary immunity. Later, the Court of Appeals reduced the convictions of many of the convicted persons, including the former Chief of Staff of the Army, some generals and high level officials in the MoD. However, public opinion in this case says that the perpetrators of the scandal remained un-sentenced and those who were convicted were only second rank.

Because of the political use of corruption cases, allegations of corruption have traditionally been treated as political quarrels, leading the prosecutor office and the courts to be rather passive. The international community put pressure on the previous government regarding anticorruption, but the efforts made by the government have mostly been a façade and bear no indication of a strong intent to fight corruption.

In the opinion of the Heritage Foundation, a culture of impunity and political interference has made it difficult for the judiciary to deal with high-level and

deeply rooted corruption, and the implementation of deeper institutional reforms to increase judicial independence and eradicate lingering corruption remains critical. The seriousness of judicial corruption has also been reiterated in the reports of the European Commission and of the Commissioner for Human Rights of the Council of Europe.

But it is important to highlight the 2014 EU report on corruption. According to the EU the government has shown political will to act decisively in the prevention and fight against corruption. However, corruption is prevalent in many areas, including the judiciary and law enforcement, and remains a particularly serious problem.

The General Prosecution Office reported an increase of 29% in corruption cases registered in the year 2013, compared to the same period in 2012. The number of corruption cases referred to the prosecution by the State Police increased by 33% in the period from October 2013 to June 2014, compared to the same period in the previous year. In the framework of the Anticorruption Strategy the General Prosecution Office and the Ministry of Justice have taken measures with regard to transparency by activating online addresses for the denunciation of corrupt cases. In July 2014, the general prosecutor launched the pilot phase of a new case management system. More work is needed to increase the efficiency of investigations and make these more proactive, including for financial and high-level corruption investigations, corruption in the judicial system, conflicts of interest and asset declaration.

In 2014 the MoD sent several cases of corrupt practices to the prosecutor office The best known relates to the former Minister of Defence and concerns the abuse of power in procurement procedures. The MoD initiated criminal proceedings for more than 20 former members of the MoD staff. They are accused of criminal offences such as abuse of power, abuse related to the distribution of contributions provided by state, violations of equality of participation in public tenders, and theft through the forging of official documents. However, in the case of the former MoD minister, the prosecutor office decided not to file charges and considered that no criminal offence had taken place. The MoD appealed the decision of the prosecutor.

In the framework of the draft strategy against corruption and its action plan, the MoD drafted and approved the action plan for the fight against corruption. Implementation of the action plan is monitored by the Directorate of General Inspector and Anticorruption. This document is structured in three parts: prevention, repression and awareness. Several objectives are foreseen for each:

- Prevention: Increasing transparency and minimising the possibilities for corruption in the Albanian Armed Forces (AAF); improvement of access to information for the public and personnel; increase in transparency in planning, detailing, management and control of funds; improvement of the electronic infrastructure of the AAF; improvement of the system and mechanism of dealing with complaints; establishing and using risk analyses;

protecting the integrity of the employees; improvement of statistics by the law-enforcement institutions.
- Punishment: improved cooperation for the identification and punishment by law of the corruption.
- Awareness: raising the awareness and participation of the public in the fight against corruption and the monitoring of progress in the implementation of the measures adopted by the Ministry of Defence.

So far risk assessment is not used at the MoD, but there is a plan to draft guides on anticorruption audits. The following are considered as the most risky areas: management of human resources, education opportunities and procurement.

6.2 Anticorruption Bodies

A specialised body on conflicts of interest and asset disclosure – the High Inspectorate for Declaration and Audit of Assets (HIDAA) – was created in 2003 as an independent legal entity. This institution, established by the Law on the Declaration and Audit of Assets, is the central authority for the implementation the Law on the Declaration and Audit of Assets and the Law on Prevention of Conflict of Interest. HIDAA can propose new legislative regulations although it should do this in cooperation with the government or the parliament. According to the law, HIDAA should review all legislation related to conflict of interest before they are passed by the parliament.

HIDAA is an independent institution reporting only to parliament. The parliament approves its budget and the number of staff that can be recruited. In August 2014 HIDAA staff increased to 57 employees and a budget of approximately ALL 92 million (ca. €650.000) that is almost constant throughout the years. Every year HIDAA submits an activity report to the parliament which debates the report and issues a resolution providing for the evaluation of the activity and recommendations for the next year. Although reporting to the parliament, HIDAA enjoys significant operational independence and its activities cannot be controlled or obstructed by the parliament. The annual reports are published on HIDAA's web site.[58]

HIDAA, under the management of the Inspector General, administers the declaration of assets and financial obligations, and carries out the audit of this declaration according to the specifications made in the laws of declaration and conflict of interests. HIDAA collaborates with audit structures, the prosecutor office and other institutions responsible for the fight against corruption and economic crime. In addition, HIDAA develops policies regarding prevention of conflict of interests; provides technical assistance and advice to other institutions for preventing conflict of interest; monitors, audits and evaluates the implementation of laws; conducts administrative investigations on regular and case-by-case declarations of conflict of interest.

[58] www.hidaa.gov.al.

HIDAA can conduct investigations ex officio, but these investigations have an administrative nature. It can impose administrative fines, but the collection of fines remains a problem. If HIDAA regards the breach as being of a criminal nature, it must transmit the case to the Prosecutor Office for further investigations and for formulation of a criminal charge.

HIDAA enjoys a good degree of independence but cannot be considered to be a strong institution. Relations with other institutions in terms of exchange of information were not the best and the investigations suffered from lack of technical resources and staff. The investigations of HIDAA were mostly confined to low-level officials. In some cases involving high-level politicians they were almost silent and achieved no practical results or actions. With the amendment of the laws in October 2012, the mandate of the officials that were to submit the declarations to HIDAA was extended. The increase in the number of subjects to be monitored and controlled was expected to increase the workload of the institution significantly.[59]

All institutions are obliged to provide data and information to HIDAA in the case of requests for verification or during an administrative proceeding. However, this cooperation did not take place at the highest levels and issues appeared over the years, especially in cases of verification of properties in the Register for Immovable Properties, with ALUIZNI[60] and other state institutions dealing with registration of properties. HIDAA signed a MoU with ALUIZNI and the Department for Vehicle Registration and has now direct access to their electronic databases. They also signed a MoU with the Office of Registration of Immovable Properties to facilitate the control of properties of public officials. However, this MoU has a limited effect in practice because there is no electronic database for immovable properties and all checks are carried out manually. This means that the monitoring of these properties is a fiction rather than a reality.[61]

The Inspector General (the head of the institution) is appointed for a 5-year term by the parliament with a simple majority, upon proposal of the President who has the right to submit two candidates. The law requires the candidate to have university education in the fields of finance or law and 10 years experience in the profession. He cannot be removed from the position, except in the case of illegal actions. The HIDAA inspectors are civil servants and appointed in line with the rules set out in civil service legislation.

HIDAA has 57 employees who undergo continuous training. They participate in study visits to similar institutions. International organisations have supported HIDAA with different kinds of training and advice on procedural issues. The USAID, the Council of Europe, OSCE and the EU have supported the institution by means of technical assistance projects. Part of HIDAA's activity is related to training. The institution developed several manuals and guidelines

[59] CoE-PACA Technical paper July 2012.
[60] The Agency for Legalisation, Urbanisation and Integration of Illegal Constructions.
[61] SIGMA Integrity Assessment 2012.

and provided training to the staff of institutions involved in the declaration of assets and avoidance of conflict of interest. The training was provided in cooperation with the Training Institute for Public Administration, or in the framework of several technical assistance projects.[62]

The declaration of assets and of conflicts of interest is a relatively new practice in Albania. The first declarations of assets were submitted in 2004. In the early years the procedure was different, the number of officials obliged to submit was higher and the responsibility for verifying the declaration was dispersed among all institutions. After the amendments to the law in 2005 and 2006, the number of officials obliged to declare was limited and HIDAA became the only institution responsible for receiving and verifying the declarations of assets.

During all these years HIDAA was unable to consolidate its professionalism and independence. When investigations were opened, all the cases involved low-level officials, although in the same cases different ministers declared enormous properties. Due to legal deficiencies, but also due to low capacities and resources, HIDAA was never able to make thorough investigations and analyse how the wealth of some officials had been created.

A lack of cooperation with some institutions and the impossibility of effectively cross-checking the data resulted in the situation that HIDAA was not able to enforce its mission effectively. During its years of existence HIDAA has always kept a low profile. In a country like Albania with widespread corruption HIDAA should have had a much more active and efficient role. The institution was created following pressure from international organisations and was implanted in the country. Sometimes the provisions of the laws were new and not appropriate for the existing legal system in Albania. For example, the law on conflict of interest created the "blind trust" institution but this institution was not foreseen in the Civil or Commercial Code. Therefore implementation in practice within the existing legal framework, which was incompatible with the new institution, was extremely difficult.

Despite these flaws, HIDAA succeeded to the extent that the declaration of assets became part of the administrative practice. Several training courses were organised and guidelines and manuals drafted. With recent improvements in the legislation and increase in the use of technologies to check different properties' registers, HIDAA could increase its efficiency and investigative skills. Better cooperation with the prosecutor office might help.

In September 2013 the HIDAA staff was under considerable strain not only from outside – due to soaring public disenchantment with its work – but also from within, following the appointment in 2012 of a new Inspector General. The staff's discontent was publicly expressed via an open letter published in the media. Under the Decision of the Assembly of the Republic of Albania, dated 20 February 2014, the appointment in 2012 of the Inspector General was considered void and a new Inspector General was elected. The Inspector

[62] HIDAA was supported by USAID and OSCE.

General comes from the ranks of HIDAA since the establishment of the High Inspectorate. The institution remains at high risk of political and other undue influence, and its independence and accountability need to be further improved.

Based on the EC Progress Report for 2014, HIDAA audit capacity needs to be significantly improved and the number of inspectors increased. It would be advisable for HIDAA to do both full audits of assets disclosure and checks based on suspicion of unjustified enrichment. Deterrent sanctions should be applied, including confiscation of unjustified enrichment and criminal or disciplinary sanctions. In a step towards increased transparency, the HIDAA published the asset declarations for senior officials for 2012–2013.

A Unit for Administrative Control and Anti-corruption reports to the Prime Minister. This unit has many functions and only one person dedicated to anti-corruption issues. Currently many tasks are discharged through resources provided by donors' projects. The reinforcement of the Secretariat capacities remain key to ensure the implementation of the anti-corruption strategy.

At the MoD, a unit within the General Inspection is in charge of the implementation of anticorruption policies. This unit is insufficiently resourced.

A specialised body on conflicts of interest and asset disclosure was created in 2003, the High Inspectorate for Declaration and Audit of Assets (HIDAA), as an independent legal entity. This institution, established by the Law on the Declaration and Audit of Assets, is the central authority for the implementation the Law on the Declaration and Audit of Assets and the Law on Prevention of Conflict of Interest. During all these years, the HIDAA was unable to consolidate its professionalism and independence. Scarce cooperation from some institutions and the impossibility to effectively cross-check data led HIDAA to near failure. Despite these flaws, HIDAA succeeded in that the declaration of assets has become part of the administrative practice. The HIDAA managed to publish the asset declarations of senior officials in 2012–20***13. The HIDAA audit capacity needs to be significantly improved and the number of inspectors increased. It would be advisable for the HIDAA to do both full audits of assets disclosure and checks based on suspicion of unjustified enrichment.***

7 Recommendations

The analysis provided in this report shows that the integrity issue is mostly related to the general systems in place and only marginally influenced by the specific rules of the implementation practice in the MoD. Improving the situation in MoD is closely tied with improving the system in general. However, we tried to provide recommendations targeting only MoD and recommendations targeting system improvement and indirectly influencing MoD practice.

Recommendations related to the MoD:

1. The MoD needs to improve HR capacities in general. The number of staff is generally low in key departments and normal discharge of functions becomes difficult. Frequent staff reshuffle influences performance and the MoD should maintain a balance between reorganisation and institutional memory.

2. Human resource management needs improvement as the MoD is facing many court cases involving former employees that have resulted from management decisions. Enforcement of final court decisions is a key point in ensuring legality of management. Observance of recruitment and promotion procedures for military staff should be improved and the merit principle should be implemented.

3. The inspection function needs reinforcement as the current staff cannot cover all areas and the capacity to review important cases is lacking. Instead of dealing with important, strategic issues, the inspection is currently focused on less important issues related to day-to-day management.

4. Anticorruption activities should focus on reforming the integrity system in the MoD and on changing the mentality. The internal audit function should be improved to avoid irregularities.

5. Better cooperation should be established with the parliament and flow of information should be established to allow efficient oversight from the legislature. Cooperation with MPs from both sides should be effective.

6. MoD should implement SAI recommendations regarding procurement and avoid as much as possible the classification “military procurement” for equipment that is not strictly military (e.g. the purchase of military uniforms cannot be considered as military equipment).

Recommendations related to improvement of systems in general:

7. The parliament should implement the reform on oversight of secret service institutions to avoid misuse of power and misuse by the

government, as in the past. Consensus from all political parties should be secured before the implementation of the reform.

8. The government should pursue the implementation of the new civil service legislation and continuously improve the recruitment system. New databases of ready-made questions should be prepared for different areas of testing, and electronic tools should be used to manage the system effectively.

9. The civil service system should be reviewed to allow more "interchanges" with the private sector since the civil service system is currently almost a closed career system. The job evaluation system should be reviewed to allow more flexibility for management positions. Salaries should be revised to increase the compression ratio.

10. Accountability should be increased among civil servants and delegation should be extensively used to lighten the decision-making burden of top managers. Pilot interventions in specific institutions, as specified in the PAR Strategy 2015-2020, should be implemented and extended in more institutions.

11. An indicator monitoring framework for the civil service should be created and information should be periodically published.

12. Approval of the new Anticorruption Strategy should be accompanied by increased capacities at the centre to implement the activities. The Secretariat should be fully equipped and staff trained to effectively manage the action plan and to periodically report on the implementation.

13. Corruption risk assessments should be prepared for different areas of government, including the defence sector. These assessments should trigger management measures to avoid the risks and to increase the understanding of involved institutions on corruption practices and how to prevent them.

14. HIDAA capacities to perform investigations and provide evidence to the prosecutor office should be increased. Following the increase of staff, proper training should be provided to allow implementation of their functions.

15. Implementation of the new law on access to information should be facilitated. The government should follow the adoption of a "transparency plan" by all the institutions and the commissioner should publish periodic reports on implementation practices. Institutions should observe all recommendations issued by the commissioner.

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Abstract:
This report assesses the institutional risks of corruption in the defence area of Albania. It uses a holistic approach to security sector reform. Pro-integrity reforms internal to the defence sector are set in a wider reform perspective including appropriate instruments within civilian policy sectors. The current report mainly focuses on the Albanian Ministry of Defence (MoD), not the armed forces. It treats the ministry as part of and as embedded in its environment and takes into account legal and administrative arrangements cutting across the national system of public governance and impacting on the MoD as on any other ministry.

Key words: Parliamentary control, control of intelligence and security institutions, ombudsman, freedom of access to information, internal and external audit, anti-corruption bodies, anti-corruption policies, human resources management, public procurement, asset disposal, corruption, integrity, good governance, corruption risks.

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