



SIGMA

Support for Improvement in Governance and Management

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ALBANIA

PUBLIC INTEGRITY SYSTEM

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1. Summary

1.1 Main Developments

No serious attempt has been made recently in Albania to reduce political corruption. The new 2008 Electoral Code could have been used to bring about more transparency in political party and electoral campaign financing, but it has too many loopholes to be effective. Judicial reform has featured high on the government agenda, but the 2008 legislation has added to the ascendancy of the government over the judiciary and the prosecutor. The recently passed Lustration Law (currently suspended pending a ruling by the Constitutional Court -- see Sigma's 2009 assessment report on the Public Service in Albania) increases the risk because it allows a special commission to fire judges and prosecutors who served during the former communist regime without due process in courts and without the need to prove that the officials were guilty of any crime. The EU Council (2009) urged the Government of Albania to safeguard - also in the process of lustration - the independence of constitutional institutions, in particular the Constitutional Court, and of judges and prosecutors.

A 2008-2013 Anti-Corruption Strategy was developed, which has positive potential, but it is a non-prioritised collection of legislative and institutional measures that will be difficult to realise.

Main Characteristics (strengths and weaknesses)

1. Integrity in Parliament and Government

The regulation of parliamentary immunity meets European standards and principles, but its application is selective. The regulation of conflict of interest, including asset declarations, and of incompatibilities of politicians, which covers parliamentarians and members of the government, is defective and contains loopholes, which make it difficult to enforce. In practice, there is no constraint on conflict of interest for members of parliament and members of the government. A tendency has been observed to weaken the capacity of parliament to control the government by undermining the instruments that are constitutionally available to parliament, such as questions and inquiry committees.

2. Financing of Politics

The 2008 Electoral Code has brought about some improvements in the regulations on the financing of political parties and electoral campaigns, but the Code has ambiguities and will be difficult to enforce. The auditing of electoral accounts — assigned to a politically appointed Electoral Commission — is weakly designed, and the audit is to be confined to the information provided by political parties.

3. Integrity in the Justice System

The judiciary is perceived as being corrupt and the prosecutor as weak. There is a need for judicial reform, but the laws adopted in 2008 have tended to subordinate the judiciary and the prosecutor to the executive. The professionalism, independence and accountability mechanisms within the judiciary and prosecution services need to be strengthened.

4. Anti-Corruption Strategies and Institutions

The creation in 2007 of a special task force on economic crime and corruption, under the authority of the prosecutor, is starting to bear some results, although this is endangered by recent moves to weaken the prosecutor relative to the government (see above). The establishment of the High Inspectorate for Declaration and Audit of Assets (HIDAA) and of the Department for Internal Administrative Control and Anti-Corruption (DIACA) represents a positive step, if these institutions can be made to be more effective. Other anti-corruption bodies and inspectorates remain relatively weak. In order to have an impact, the government's Anti-Corruption Strategy needs to be more realistic, set fewer targets and improve prioritisation.

Recommendations for Reform

- Set a clear dividing line between state institutions and political parties by respecting the independence of the judiciary and strengthening the Assembly's capacity to control the executive;
- Improve the regulation of conflict of interest and incompatibilities for politicians, and strengthen the implementation and enforcement of these regulations;
- Improve the regulation and practices with regard to political financing;
- Increase the protection of prosecutors and judges from political pressure and reduce their subordination to the executive;
- Strengthen the accountability mechanisms concerning judges and prosecutors by improving the human resources management arrangements;
- Review the Anti-Corruption Strategy to make it more realistic and implementable.

Introduction

This report is an analysis of some key elements of the public integrity framework of Albania, where corruption is almost always described as widespread, systemic and in any case is reputed to be a serious problem. However, Albania is one of the countries where most effort has been deployed, spurred by investigative journalism, the civil society¹ and the international community, to construct an integrity framework virtually from scratch, even if the public governance institutional framework is weak and unreliable, partly because of defective institutional design of accountability of public management instruments, but mostly because the professionalism in the public sphere remains uneven and generally low and politicisation is rife. The government tends very much to overemphasise plans and strategies as if they were actual achievements while corruption is still an untamed problem.

To delineate the “integrity framework”, we have drawn on concepts provided by OECD², Council of Europe³ and the European Commission⁴. The public sector elements of the framework comprise the constitutional arrangements, judiciary (including prosecution), parliament, political parties and party financing, political accountability and responsibility, as well as the administrative elements -- particularly the public service and general administrative legal frameworks, external audit (including mechanisms to combat fraud), public procurement, public expenditure management systems, public internal financial control, policy-making and regulatory processes. These elements apply to all levels of the state, including municipalities and state enterprises.

In this report, we assess how far institutional arrangements underpin, or undermine, integrity in parliament, the government (in its European continental meaning, i.e. the Council of Ministers as a constitutional body) and the judiciary. We also look at how political arrangements, especially financing of political parties and electoral campaigns, affect the integrity system. We then turn to national policies and institutions aimed at fighting corruption. Finally, we list the incorporation in Albania of the main international instruments for harmonising anti-corruption policies and legislation.

In other reports, we have assessed elements having an impact on the integrity framework in public administration. The separation is not clear-cut because of overlaps in certain aspects – for example, rules concerning asset declaration may address civil servants, judges and/or politicians in the same legal instrument. The public administration elements that we have assessed were selected by the European Commission. SIGMA has produced assessments on: a) Public Service and the Administrative Legal Framework, b) External Audit, c) Public Expenditure Management, d) Public Procurement, e) Public Internal Financial Control, and f) Policy-making and Co-ordination. This report should be read together with these other assessment reports.

¹ NGOs have worked on anti-corruption campaigns and strategies, such as the Albanian Coalition Against Corruption (ACAC), Citizen Advocacy Office (CAO) and “Mjaft!” (Enough!).

² e.g. from OECD: *Public Sector Integrity: A Framework for Assessment* (2005); *Managing Conflict of Interest in the Public Service: OECD Guidelines and Country Experiences* (2003); *Trust in Government: Ethics Measures in OECD Countries* (2000); *Ethics in the Public Service: Current Issues and Practice* (1996)

³ *Twenty Guiding Principles for the Fight against Corruption*, Resolution (97)24 of the Committee of Ministers of the Council of Europe of 6 November 1997

⁴ The Ten Principles for Improving the Fight against Corruption in Acceding, Candidate and Other Third Countries, which are contained in the Annex to the Communication of 28 May 2003 of the European Commission to the Council of the European Union and European Parliament and the European Economic and Social Committee on a Comprehensive EU Policy against Corruption

Integrity in Parliament

Inviolability and Immunity of Members of Parliament

“The right of Parliaments to lift the immunity of their members is an unquestioned part of the European parliamentary tradition. The main purpose of the rules on parliamentary immunity is the protection of the Parliament itself, and in particular its proper functioning.”⁵

According to the Constitution, MPs enjoy inviolability, except in case of *flagrante delicto* and immunity. They cannot be held criminally liable for statements made and votes cast in parliament (article 73-1), except for libel or slander offences. The inviolability of MPs features the impossibility to detain or subject them to criminal proceedings during their parliamentary mandate. There is neither jurisprudence nor experience so far in parliamentary proceedings to clarify if MPs are subject to criminal liability for any statements made in or outside parliament but, according to the general purpose of the immunity institution, it is to be concluded that MPs cannot be subject to criminal liability for their expressed opinions, regardless of the place where they are expressed, or for their activities in carrying out their functions as MPs.

Immunity is often used abusively. The Constitution uses the term prior “authorisation” of the parliament for “criminal proceedings” as well as for detention or arrest. The legislation refers to the authorisation as a requirement prior to the formal indictment, which is when the prosecution really starts, according to the Criminal Procedure Law. This would exclude the phase of police investigation, which takes place prior to the formal arraignment. However, the practice is that the immunity is abusively invoked, even preventing the police from investigating the criminal behaviour of parliamentarians.

In the case of flagrancy, i.e. when an MP is caught in the act of committing a serious crime (serious crimes are those carrying more than five years’ imprisonment), the parliament’s Speaker should be notified immediately by the Prosecutor General. The latter should lodge the request, accompanied by all detailed documentation regarding the case. Parliament may subsequently cancel the arrest or detention, even in flagrancy cases (article 73-3). This arrangement gives the impression of a political class endowed with impunity.

The request to lift the immunity of an MP must be made by the Prosecutor General, and it must be justified and contain sufficient information about the perpetrated criminal offence. The Constitutional Court, however, has provided that in certain cases the court can directly ask parliament to lift an MP’s immunity, without the intermediate act of the Prosecutor General⁶. Nevertheless, as a general rule parliamentary immunity cannot be lifted, nor the relevant procedure initiated, without a formal request from the Prosecutor General. It is not possible to initiate a vote to that effect in accordance with article 73 of the Constitution. The Prosecutor General therefore has an almost exclusive power to decide whether or not to initiate criminal proceedings against MPs and therefore to authorise the lifting of immunity procedure.

The lifting of immunity may also be requested for any criminal offence that may have been committed prior to an MP’s taking up office⁷. A request to lift an MP’s immunity for a serious crime cannot be used to lift immunity from criminal prosecution for another offence. This implies that any request to lift immunity should explicitly delineate the offence for which the request is made.

A parliamentary warrant by majority vote is required to lift immunity. According to article 118 of the Parliamentary Rules of Procedure, any request to issue a warrant for lifting the immunity of an MP must be notified by the Speaker at the first sitting and submitted for consideration to the Committee for Procedures, Mandates and Immunity and then for approval by the parliament’s plenary. According

⁵ Venice Commission, 66th Plenary Session of 17-18 March 2006, Opinion No. 361/2005 CDL-AD (2006)005; available at [http://www.venice.coe.int/docs/2006/CDL-AD\(2006\)005-e.pdf](http://www.venice.coe.int/docs/2006/CDL-AD(2006)005-e.pdf)

⁶ In cases of articles 59 and 284-5 of the Criminal Procedures Code; see Decision no. 39 of the Constitutional Court of 23 June 2000.

⁷ There have been cases of criminal proceedings against a candidate being suspended after he won his MP mandate.

to article 73 of the Constitution, any warrant for lifting MP immunity must pass with an ordinary majority of the MPs present at the time of the vote. The vote on any request to lift immunity is secret. Prior to the parliamentary vote, the concerned MP is heard, upon his/her request, by the Committee for Procedures, Mandates and Immunity and subsequently by parliament in plenary session. The vote to lift immunity has to be entered as an out-of-order point on the agenda of the second successive plenary session that occurs subsequent to the delivery of the opinion on the case by the Committee for Procedures, Mandates and Immunity.

Parliament should decide on the request made after hearing the concerned MP (he/she has the right to answer any question that other MPs may raise during this session). No discussion is allowed on the opinion prepared by the Committee for Procedures, Mandates and Immunity on the case, as in any other parliamentary business (article 118-4, Parliamentary Rules of Procedure). Although there is no deadline for the preparation of such an opinion, the same article states that if there is no action by parliament on a specific request for lifting immunity within three months⁸, the request is considered to be refused. This leads to the conclusion that there is neither an overall deadline for parliamentary procedures on the lifting of immunity nor special deadlines for each of the phases of these proceedings. This arrangement may lead to irresponsible behaviour by the majority of parliament in certain cases through inactivity aimed at protecting a particular MP from criminal prosecution.

If the warrant for lifting immunity is refused, the criminal prosecution authorities cannot continue the procedural and investigative actions to enforce criminal liability. Such a refusal, however, is limited to the term of the MP's mandate. Upon expiration of his/her MP tenure, the prosecution or investigation procedure may resume.

After immunity has been lifted, the criminal prosecution authorities can take all necessary measures to investigate, raise charges, and lodge an indictment in court. With the arrest and/or criminal prosecution initiation warrant, an MP does not lose his/her MP status, but is only stripped of his/her immunity. If, however, an enforcement measure (for instance, detention on remand of custody or arrest) has been applied with respect to an MP, he/she cannot participate in plenary sessions and in the work of committees.

Persons enjoying immunity are tried by the High Court (Supreme Court). The Constitution does not specify what the implications are of the outcomes of criminal prosecution, but a final decision that finds the MP guilty can produce a pre-term termination of the MP's mandate and prerogatives. The very existence of the circumstances indicated above should lead to the MP's removal. If the outcome of the criminal proceedings is not a guilty sentence, the verdict is for negligent, non-intentional offence, the punishment is not imprisonment or the punishment has been postponed, the MP does not have his/her mandate terminated.

Since 1993, requests to lift immunity have been lodged for more than 16 MPs, 12 of whom had their immunity lifted. Two lost their mandate as a result of the subsequent effective imprisonment verdict⁹. Parliament turned down the lifting of immunity in four cases. During the current parliamentary term, immunity has been lifted for three MPs¹⁰; two of them were members of the cabinet at the time and one is still holding the position.

Criminal proceedings against MPs are carried out according to the general procedure set out in the Code of Criminal Procedure. Although MPs are prosecuted and tried for offences under the general procedure, prosecutors from the Prosecutor General's Office handle charges following reports of

⁸ Art. 118-6 of the Parliamentary Rules of Procedure; under this article the same procedures apply for lifting the immunity of members of the Cabinet/ministers since by virtue of article 103-3 they benefit from the same immunity as that of MPs.

⁹ Fatos Nano, head of the opposition in 1993, and Arben Lika, an MP of the majority in 1995; both were afterwards pronounced innocent by the courts, respectively in 1999 and 1997.

¹⁰ Former Minister of Defence Fatmir Mediu, due to prosecution after the Gërdec's blast in 2008; Lulzim Basha, former Minister of Public Works, Transport and Telecommunications, current minister of Foreign Affairs, under prosecution for corruption with public funds; and Nikollaq Nerënxi, under prosecution for tax evasion in his business activity prior to his MP term. All three cases are still *sub judice*.

corruption of MPs and ministers. As indicated above, according to the Constitution (article 103-3), ministers benefit from the same immunity as MPs.

The lifting of immunity of MPs has always been an issue of political challenge and rhetoric within majority and opposition parties. Most MPs interviewed claimed that they themselves were victims of political bias and that the Prosecutor was “politically commanded”. From a legal viewpoint, the Prosecutor General’s Office meets no obstacle when seeking or making investigations of ministers, officials or MPs who have abused their office or committed corrupt acts. In many cases, however, the ineptness of the arraignments can be explained by the political pressure exerted on prosecutors.

In May 2002 more than 40 MPs of the then parliamentary majority lodged a common declaration signed by each of them to the Committee for Procedures, Mandates and Immunity, in which they stated their collective relinquishing of their immunity subsequent to accusations of corruption that had appeared in parliamentary debates. They stated that they had signed this declaration in order to “give the chance to justice (i.e. prosecutors) to investigate on matters of corruption upon accusations” made by the then parliamentary opposition. The initiative had no legal meaning, nor any consequence, since it could neither produce any parliamentary warrant, as foreseen in the Constitution, nor cause any lifting of individual immunity. The Venice Commission advised again in 2006 against this collective lifting of immunity¹¹, while considering immunity as a right of parliament as such, not of its individual members.

At the beginning of the current parliamentary term, the majority caucus initiated a movement for the “reduction of parliamentary immunities”, as part of the government’s anti-corruption policy. The idea of a law on this issue was debated, and a draft decision of parliament was put on the parliamentary agenda. This draft decision on the limitation of parliamentary immunity was directed, according to its initiators, towards criminal offences related to corruption and “abuse of duty”. The draft intended to produce again an abstract collective lifting of immunity for all members of parliament, thereby removing the immunity protection for all MPs, with the contention that this removal could be conducive to, *inter alia*, a more efficient prosecution of political corruption.

In fact, there were no requests for the lifting of immunity pending at the time. Nevertheless, the parliamentary majority and the government displayed this issue as their main symbolic move against corruption and as one of the main goals of the anti-corruption policy, despite its more than likely unconstitutionality¹², as indicated by the Venice Commission. The opposition claimed that not only could this draft not resolve the problem, it would serve as a means in the hands of the government to arbitrarily affect the position of opposition MPs, since at the same time the majority was undertaking political and procedural measures to remove the incumbent Prosecutor General. After many debates, the draft decision was sent again for legal expertise to the Venice Commission, which provided the opinion that it had already pointed out on the constitutional and legal problems of the draft decision¹³. No further steps were taken subsequent to the Venice Commission’s opinion on the above-mentioned draft decision, and the issue was forgotten. The political discourse is unending about narrowing parliamentary immunity for corruption offences, but politicians customarily react with extreme wrath when someone in their ranks is submitted to questioning on his/her immunity. Democratic manners and the importance of inter-institutional checks and balances do not seem to be well understood by the political class.

In recent years, corruption in politics and in the public administration has been the centre of attention. During the process leading to the signing of the Stabilisation and Association Agreement with the EU, the current government profusely brandished the anti-corruption flag in order to gain some political capital, at the expense of its opponents. The same tactics were used by the opposition parties. In any case, the anti-corruption gesturing of the political class has been neither effective nor serious.

¹¹ Venice Commission, 66th Plenary Session of 17-18 March 2006, Opinion No. 361/2005 CDL-AD (2006)005; available at [http://www.venice.coe.int/docs/2006/CDL-AD\(2006\)005-e.pdf](http://www.venice.coe.int/docs/2006/CDL-AD(2006)005-e.pdf)

¹² Venice Commission, 66th Plenary Session of 17-18 March 2006, Opinion No. 361/2005 CDL-AD (2006)005; available at [http://www.venice.coe.int/docs/2006/CDL-AD\(2006\)005-e.pdf](http://www.venice.coe.int/docs/2006/CDL-AD(2006)005-e.pdf)

¹³ See: http://www.europarl.europa.eu/meetdocs/2004_2009/documents/fd/dsee20061010_07/dsee20061010_07en.pdf

Obviously, if narrowing the almost unlimited political immunity is to be sought in earnest because immunity is often used as a shield against prosecution by corrupt politicians, a deep reform of the relevant regulations and political attitudes is needed as well as drawing a clear dividing line between state institutions and political parties and establishing adequate checks and balances, the whole accompanied by strengthening of the professionalism and de-politicisation of the prosecution, the judiciary and the public administration.

The British Ambassador to Albania, summarising to some extent the opinion of the international community, said in a speech at the University of Shkodra on 12 February 2009 that “the public needs to see that no official or politician, however high his or her level, can escape punishment if he or she is guilty of corruption...A key concept underlying the rule of law is the principle that all are equal before the law. Immunity from prosecution can undermine this principle. There is therefore a strong argument for restricting immunity to as few positions and circumstances as possible... In Albania, the number of officials covered by wide-ranging immunity from criminal investigation and prosecution is startlingly high. The case for removing immunity is perhaps even more compelling in a country which has a serious corruption problem. Immunity should be granted only where strictly appropriate, and where it is in the public interest.”¹⁴ The EURALIUS (EU) and OPDAT (USA Justice Department) missions in Albania also recommended on 30 October 2008 a constitutional revision as a basis for a broader legal revision geared to narrowing the immunity of parliamentarians¹⁵.

Remuneration of Parliamentarians

The basic monthly salary of an MP is 1235 EUR, equivalent to approximately 4.5 the average monthly salary or 9.4 times the minimal monthly salary of a state employee, i.e. 152,500 ALL¹⁶. The Parliamentary Speaker receives a remuneration that is 40% higher than that of an MP (i.e. 1808 EUR or 222,500 ALL), while the remuneration of the deputy chairmen of parliament is 30% higher¹⁷ than that of the rank and file MP (1484 EUR or 182,500 ALL).

MPs are entitled to perquisites and certain privileges, in addition to their basic remuneration, as provided in the Law of 18 November 1999 on the Status of MPs. For example, an MP enjoys the right to remuneration for taking part in committees or for acting as chairman of a committee or leader of a parliamentary group. MP participation in parliamentary committee meetings or in other parliamentary structures is remunerated with a fixed amount on top of the basic salary (2000 ALL or 16 EUR for a meeting, with a limitation of 10 meetings per month). In essence, this activity is ordinary parliamentary activity and its remuneration should perhaps be comprised within the ordinary basic salary.

Per diem and transportation fees are determined by an Assembly decision. MPs not dwelling in the city of Tirana are paid per diem for the time they spend taking part in Assembly meetings, in parliamentary committee meetings and, for up to two days per month, in the meetings of their parliamentary group, but in no case do they receive more than 12 days of per diem in a month.

MPs are paid per diem when they are obliged to carry out their duties outside Tirana, but this is restricted to a maximum of six days in a month. The per diem of the Speaker, deputy speakers and MPs is equivalent to 4% of their monthly salary. MPs are exempt from paying customs duties for the importation of goods related to their parliamentary activity, including vehicles and other means. They can use this exemption only once per parliamentary mandate. MPs are entitled to an official telephone number and an uninterrupted telephone service, paid from the Assembly budget.

MPs are entitled to transitory payment and a supplementary pension according to Law no. 7703 of 11 May 1993 on Social Insurance in the Republic of Albania, as amended and supplemented by Law no.

¹⁴ <http://ukinalbania.fco.gov.uk/en/newsroom/?view=Speech&id=13638684>

¹⁵ http://www.euralius.org.al/recommendations/eng/Microsoft%20Word%20-%20Immunity_Memo_eng.pdf

¹⁶ <http://www.instat.gov.al/graphics/doc/tabelat/Treguesit%20Sociale/Pagat/PAG%202008/t2.xls>

¹⁷ Law no. 9584 of 17 July 2006 on Remunerations, Perquisites and Structures of Independent Constitutional Institutions and others Created by Law includes all state officials, including the President of the Republic.

8097 of 21 March 1996 on Supplementary State Pensions of Persons Carrying out Constitutional Functions and the State Staff, as amended. For diseases manifested during their mandate and when doctors have prescribed special treatment, MPs can be sent abroad for more specialised medical care. The funds for this purpose are provided by the Ministry of Health. MPs have priority for issues related to housing or for obtaining a long-term loan from the relevant state bodies¹⁸.

Incompatibility of Parliamentarians

The Constitution¹⁹ provides the basic legal framework related to conflict of interest of MPs. It also provides an explicit definition of incompatibility of MPs. The incompatibility of the MP mandate with other functions is an institution of parliamentary law aimed at preserving MPs' independence and preventing conflicts of interest. Apart from the provisions of articles 70-2 and 70-3 of the Constitution, the other cases of incompatibility of MPs are also common to members of the Council of Ministers, as laid down in article 103 of the Constitution²⁰, which reads: "The Minister can exert no other state activity, nor can he be a leader or member of profitable company bodies."

In accordance with Albanian company law, steering bodies are established *ipso jure* depending on the ownership of capital shares. There is a lack of harmonisation between company law and constitutional law. Because of this gap, or the lack of political will to fill it, the ownership of capital shares as a cause of incompatibility is customarily not demanded in practice. The case-law of the Constitutional Court regarding the incompatibility of the MP mandate only states that "the MP function is not compatible with the function of the municipality mayor"²¹. From what has been described above regarding the constitutional and ordinary legal frameworks, it may be deduced that MPs should not simultaneously perform state tasks apart from the task of member of the Council of Ministers (state tasks mean public functions funded by the state budget that are covered by public law). MPs cannot be mayors or commune heads, carry out any profit-making activity deriving from property of the state or local government, or gain property from them.

With regard to private activity, it is prohibited for MPs to establish a profit-making company or to be an owner of such a company. Article 103-2 of the Constitution does not make a distinction between the various bodies of a company or between the executive and decision-making bodies (assembly, steering council, etc.). This distinction should be reflected in the company corporate statute by separating the company ownership from the company's managing or steering bodies. There is no differentiation either concerning the kinds of profit-making activities that are forbidden. Any business activities producing revenues derived from state property are prohibited. Regarding claims for violation of article 103-2 of the Constitution, by a motion of the Assembly Speaker or of one-tenth of the Assembly members, the Assembly may decide to lodge the case with the Constitutional Court, which will then decide on the incompatibility.

Conflict of Interest and Asset Declaration

There is no special regulation on conflict of interest of parliamentarians. Only article 28 of Law no. 9367 of 7 April 2005 on the Prevention of Conflict of Interests in the Exercise of Public Functions, which also applies to all officials and civil servants, states that an MP cannot be a leader or member of the steering bodies of profit-making organisations, run private revenue-producing activities (whether they be commercial or shareholding), exercise free-lance professions or be employed full-time in the private sector, or possess any share in commercial companies holding a dominant position in the market.

¹⁸ Articles 13, 14, 17, 19 and 20 of Law on the Status of MPs of 18 November 1999.

¹⁹ Article 70 of the Constitution provides that "the MP can exert no other state assignment, apart from that of member of the Council of Ministers. Other cases of incompatibility are established by law. The MPs can carry out no profit-making activity deriving from the state property or the local government, nor can they gain state properties or local government properties".

²⁰ Art. 3-3 of Law on the Status of MPs of 18 November 1999.

²¹ Decision no. 37 of the Constitutional Court of 23 June 2000.

The central monitoring authority for this law is the High Inspectorate on Declaration and Audit of Assets (HIDAA), but the law indicates that the responsible authority for adopting measures on prevention and resolution of conflicts of interest is the head of the public institution where the official serves. In the case of MPs, parliament has no competence regarding the enforcement of this law given the legal nature of the MPs' relationship with the state, whereby an MP is neither an employee nor a civil servant and is not hierarchically subordinate to the Assembly's administrative services. This circumstance, along with the fact that the head of the HIDAA, referred to as the General Inspector, is appointed by and is accountable to the Parliamentary Assembly, which makes the efficient enforcement of article 28 of the law almost impossible.

The Parliamentary Rules of Procedures do not contain any provisions on conflict of interest. There are neither specific internal rules nor institutional structures within parliament dealing with conflicts of interest of parliamentarians during the exercise of their duties and functions. Nothing prevents a parliamentarian from promoting or voting a law, either in committee or in plenum on a matter in which he/she has a direct or indirect interest, financial or otherwise.

There is little awareness among MPs of the notion of conflict of interest affecting them. Customarily, MPs are appointed to legislative committees where they can procure for their direct or indirect interests by freely proposing self-serving draft-laws or amendments, while no regulation exists to limit this practice. Never has a draft law or amendment been rejected on the grounds of conflict of interest. Likewise, never has an MP's vote been declared null and void because the incumbent was immersed in a conflict of interest situation, since article 40 of the law is not really applicable to votes cast in parliament. The procedure of case-by-case declaration of conflicts of interest according to article 7 of the law is not applicable to parliamentarians either, as they do not have a hierarchical superior in the Assembly and the General Inspector of the HIDAA has no competencies in this respect.

Another law applying to parliamentarians is Law no. 9049 of 10 April 2003, as amended in 2005 and 2006, on the Declaration and Audit of Assets, Financial Obligations of Elected Persons and Certain Public Officials, which was partially repealed by article 50 of the above-mentioned Law no. 9367 of 7 April 2005. MPs (article 3) are obliged to file a yearly declaration of their income and interests. These declarations are submitted to the High Inspectorate on Declaration and Control of Properties (now the General Inspector mentioned above). Failure to file a declaration, however, can be sanctioned with a fine by the Inspectorate. Again, the effectiveness of this mechanism is questionable.

Pursuant to the law, annual control is exercised by means of the principle of probability: every year at least 4% of the total number of general declarations is checked. The selection of declarations to be checked is made by lot, in the presence of representatives of the trade unions, the media, civil society, parliamentary groups and other individuals. The selection of an official's declaration in a given year does not exclude the official's declaration from the lot in the subsequent year (article 21 of Law no. 9367).

The obligation of full control to verify the authenticity and accuracy of data contained in MP declarations is every four years, according to article 17-2 of the Law no. 9367, which sets the obligation for full control as follows:

- a) every two years for the Prime Minister, the Deputy Prime Minister, the ministers, the deputy ministers, the members of the regulatory body or of the competition protection, including the Governor of the Bank of Albania, the Deputy Governor and the members of its Supervisory Council, as well as for the President of the Republic, judges of the Constitutional Court, judges of the High Court, the Chair of the High State Control, the Prosecutor General, the Ombudsman, the CEC member, members of the High Council of Justice and the General Inspector of the High Inspectorate on Declaration of Properties;
- b) every three years for municipality or commune heads with over 10,000 inhabitants and for the heads of regional councils; officials of the "high leading level", as stipulated in articles 31 and 32 of the law; civil servants of a high level, according to the definition of article 11 of the Law no. 8549 of 11 November 1999 on the Status of Civil Servants; high-ranking officials of the state police and the

armed forces, as per the system of degrees and tasks implementable for public institutions; high-ranking officials equal to civil servants in the regulatory entities and in all other public institutions; high-ranking officials of the tax and customs administration; prefects; appeal judges, appeal prosecutors and those assigned to the General Prosecution Office;

c) every four years for MPs, title-holders in state institutions, central and local government institutions, and members of collegial bodies of these institutions;

d) Article 17-7 of Law no. 9367 sets the obligation for a full control any time judged necessary by the General Inspector, when he has data from lawful sources that put in question the authenticity and the accuracy of the data contained in the official disclosure and when there is non-compliance derived from the numerical and logical control showing that the resources do not cover or justify the wealth or property of the declaring party.

The regulation of the scope, deadlines, procedure, and sanctions regarding the declaration of assets and income is homogeneous for the various categories of obligated persons under the law. This homogeneity means that MPs are subject to the same obligations as other obligated persons. Therefore, the following analysis of this legal regulation also refers to the other categories of high-ranking decision-makers and public officials.

The obligation to declare affects those natural persons in offices at the top level of the executive, judiciary and legislature. The law has a broad scope. The obliged persons declare their income and belongings, but also the income and assets of their spouses and dependent children and parents. According to the declaration form prepared by the HIDAA on Declaration and Control of Properties, the information is due from the moment of taking up office up until the moment of leaving office, concerning the assets and income received or obtained while in office. The declaration includes income and assets obtained both within the country and abroad. The obligated persons must declare real estate, vehicles, cash amounts, shares, personal income and other revenue, patents or licenses that generate income, receivables and debt amounts and any perquisites and gifts exceeding the value of 5000 USD in one calendar year.

The obligation to declare is recurrent. The declaration of personal assets and income, including those of the official's family, must be filed each year by 31 March. It is not necessary to fill every line of a declaration if there has been no change in the asset status of the declaring person since the preceding year. In the event of an increase of assets to be declared within different terms, or if such assets were acquired while in office, the officials are obliged to indicate in their declarations the legal grounds and source of the funds with which they have acquired such assets.

The obligated persons must file a declaration within one month of taking up office. There is not a very efficient control of assets gained before taking office, however, due to the significant informal economy in the country, as well as to the incapability of the respective authorised control institutions to verify the declarations regarding assets gained outside the country. According to the HIDAA, Cyprus seems to be the foreign country the most preferred by Albanian public officials for hiding their assets. The specific obligation of MPs to continue declaring during the two years following termination of their term of office is in practice inefficient and void. Declarations are filed with the respective low inspectorates and with the HIDAA. In the case of MPs, the low inspectorate is composed of members of the parliamentary administration appointed by the Secretary General. The General Inspector of the HIDAA is elected by parliament, upon the proposal of the President of the Republic, from among two alternative candidates. The General Inspector's tenure is five years.

The registers containing the declarations based on the laws of 2003 and 2005 are open to the public, in accordance with the Law on Access to Public Documents, the implementation of which is defective in many respects, however, including its over-dependence on the good will of the relevant public authority to allow access. In practice, nevertheless, the authorities empowered to receive information are the highest officials of the institutions to which the obligated officials belong, and the mass media may access those records unencumbered.

The enforcement of this legal framework is based on the declaration of the obligated official sanctioned by the application of article 257-a) of the Penal Code in certain cases of non-compliance as

well as administrative sanctions in some other cases. This article of the Penal Code sanctions with up to six months' imprisonment those officials who refuse to declare. The HIDAA proposed an amendment to this article on 27 November 2008 to incriminate also the relatives of the official who refuses to declare; no subsequent action has been taken, probably fortunately, because this would mean criminalising those who are not the authors or accomplices of a crime. The amendment could criminally sanction the family as a whole, which is not admissible in a democracy.

The above-mentioned laws of 2003 and 2005 have been amended several times and one has amended the other. Furthermore, they replaced a previous Law on Asset Declarations that had been passed in 1995 (Law no. 7903 of 8 March 1995). The frequent amendment and repeal of legislation make the real implementation of a coherent policy on conflict of interest confusing and uncertain, not only regarding parliamentarians, but for all public officials as a whole. However, as for MPs, the conclusion is that the regulations on conflict of interest are incomplete, their implementation is difficult and their enforceability practically impossible. In practical terms it could be said that there is no constraining legislation on conflict of interest for members of parliament.

Conclusions

The regulation of parliamentary immunity is up to standard, but its actual application is very restrictive. Politicians like to talk endlessly about narrowing parliamentary immunity for corruption offences, but they are usually reluctant to lift immunity. A serious reform would require setting a clear dividing line between state institutions and political parties, along with strengthening the professionalism and de-politicisation of the prosecution, the judiciary and the public administration and adopting a more impartial approach to the issue of lifting immunity.

Incompatibilities for parliamentarians and government members contain many loopholes. As incompatibility is a constitutional regulation, the Constitutional Court decides in the last resort on the incompatibility legal regime.

The Parliamentary Rules of Procedures do not contain any provisions on conflict of interest. There are neither specific internal rules nor institutional structures within parliament dealing with the conflicts of interest of parliamentarians.

The legal regulations on conflict of interest contained in the laws of 2003 and 2005 are incomplete, their implementation is difficult, and their enforceability practically impossible. In practical terms it could be said that there is no constraining legislation on conflict of interest for members of parliament.

An improved regulation on conflict of interest, better adjusted to the specificities of the parliamentary function, is needed. An all-encompassing general regulation on conflict of interest is not suitable for civil servants, public employees and politicians. Parliamentarians and government members have specific corruption risks that should be dealt with in legislation so as to ensure enforcement.

Political Party and Electoral Campaign Financing

Political Party Financial Resources

The property and finances of political parties are regulated in Law no. 8580 of 17 February 2000 on Political Parties, as amended in 2006. A party's assets can originate from its own sources of revenue and from state budget funds. Financing of political parties and electoral campaigns has been a "black hole" in the integrity of the political system for the last 18 years. The legal framework has been fragmented and has remained unconsolidated over the years, while the institutional arrangements to ensure lawfulness and accountability have been weak.

Constant international demand, especially from the OSCE and the Council of Europe (Venice Commission), was conducive to reforming the electoral system in 2008. As a consequence, the electoral system was changed in the Constitution in April 2008, which paved the way to adopting a

new Electoral Code, which was passed on 29 December 2008 (Law no. 10019). Articles 89-92 and 173 of this law regulates somewhat better political campaign financing, although significant loopholes remain. Prior to the passage of this law, election financing was in some measure regulated by Law no. 9087 of 2003, which did not contain sanctions for irregular financing. Light sanctions were added through an amendment to that law in 2005. An assessment of the new legislation by GRECO and the Venice Commission is expected to be released in June 2009.

Under the conditions that existed prior to the 2008 reforms, the effects of which will only be seen in the 28 June 2009 election, political parties were mainly funded by businessmen, who almost always remained anonymous for the general public. For many years corruption and opaqueness have been habitual practice in the financing of political parties and campaigns. The institutions in charge of enforcing the legislation have been controlled by political parties and have noticeably failed. Political parties have traditionally shown little interest in strengthening the capacities of the institutions in charge of auditing the accounts and enforcing legislation. As Transparency International Albania remarked, “the political parties in the country keep constantly hiding themselves from declaring their private resources. Informality, lack of transparency, weak legal framework and lack of capacities and control mechanisms of party funding, which mainly comes from businesses and private subjects, has created a suitable ground for a high-level political corruption”²².

Sources of Revenue

For the 2005 parliamentary elections the Central Electoral Commission (CEC) allocated 60 million lek (approximately 480,000 EUR) from public funds to finance political party campaigns. In addition to public funds, electoral subjects may receive private donations of up to a maximum of 1 million ALL (8,000 EUR) per donation. Some candidates claimed that they were self-financing their campaigns. Almost all parties accused each other publicly of potential conflicts of interest and of the misuse of administrative resources by candidates. In almost half of the election zones, observers received allegations that administrative resources had been used for campaign purposes or that public employees had been campaigning for candidates²³.

Law no. 8580 of 17 February 2000 on Political Parties introduced for the first time a system for subsidising political parties. Political parties are required, at the moment of their registration, to submit a financial statement with their founding documents and to reveal their sources of revenue. The state awards an “initial capital” (100,000 ALL) to political parties at the time of their registration. In addition, political parties are subsidised by the state, which provides them with a headquarters office as well as local offices. Political parties may still own other property (articles 11 and 16 of the Law on Political Parties).

The law establishes the sources of revenue of political parties: membership fees, state financial aid in the amount provided for in the law, as well as any other property received in a lawful manner (article 17). The amount of state funding is determined in the annual state budget. The distribution of state funding to political parties is proportional to the party’s number of seats in parliament.

A positive regulation in the legal framework regarding the financial sources of political parties is the general prohibition for parties to conduct commercial activities not directly related to the party’s core functions. During the 1990s some parties used legal gaps to run semi-hidden, large commercial activities and enterprises. However, in this regard the law is ambiguous. Effectively, article 20 of the law states that the “establishment of legal commercial and non-commercial persons for profit by political parties or through third parties is prohibited”. However, the same article states that political parties can use their property and assets for economic and social activities, such as publications, printing, services or rentals, in accordance with the provisions of the legislation in force.

²² Transparency International Albania address at the Electoral Reform Committee during examination of the Electoral Code.

²³ See <http://www.osce.org/documents/odihr>

Regarding donations to political parties (different from electoral campaign donations regulated in the newly adopted Electoral Code), the Law on Political Parties forbids donations from foreign governments, public institutions or private entities, as well as from local public institutions or companies in which the state is a shareholder. The legal text (article 21) is confusing, as it allows gifts and assistance from partisan international associations or entities and foreign political foundations and organisations. Donations from legal or natural persons are allowed only if they are “naturally” Albanians, despite the respective official citizenship.

The 2008 Electoral Code (articles 86 and ff.) provides more detailed rules on funding campaigns, financial reporting and reimbursement of expenditures. The amount of public funds allocated to each electoral subject is decided by the Central Electoral Commission (CEC). Half (50%) of the amount is divided among the political parties registered as electoral subjects having at least a mandate in the current Assembly. This sum is proportionally divided based on the number of seats obtained in the elections for the current Assembly. The remaining half (50%) is divided among the political parties registered as election subjects that in the previous elections had obtained at least two seats in the Assembly. If one of these parties does not win a single seat in the current elections, it is to reimburse the amount received. Any party that does not reimburse the pertinent funds loses the right to any other funding from public funds for a period of not less than five years; it is also not registered as an election subject in the upcoming elections, on its own or in coalition with others (article 87, Electoral Code).

Spending the funds of public institutions is forbidden in electoral campaigns (article 88, Electoral Code). Despite this regulation, however, a massive advertising of the achievements of the current government is being carried out using public funds and resources in the course of the pre-election campaign now in progress. An action launched by an NGO to counter this media campaign, intended to denounce the government’s improper use of public funds for electoral purposes, has resulted in an immediate strict measure by the Broadcast Regulatory Authority (NCRT) on TV operators broadcasting the NGO spot, thereby providing a dramatic example of the double-standard law enforcement standards favouring the government²⁴.

Ceilings in Campaign Expenditures

There was no ceiling for electoral campaign expenditures prior to the Electoral Code of December 2008. According to the new law (article 90-3), the overall expenditure of a political party for an electoral campaign cannot exceed 10 times the largest sum that a party has received from public funds. It is not clear if this figure is to be calculated on the basis of election data from the previous parliamentary elections or on the basis of funds that are to be allocated for the June 2009 elections²⁵. There is no sanction affecting the election outcome for those who have exceeded the legal expenditure ceiling.

Financial Reporting and Auditing of Political Party Finances

The Law on Political Parties entrusts to the High State Audit the financial control of political party financing. This control is circumscribed to the party budgets fed from public funds, as the Constitutional Court ruled that the High State Audit had no legal competence to audit the funds received from private donors or obtained through other means. The law authorises the High State Control to audit the finances of political parties before and after electoral campaigns, which presumes that the parties should keep the relevant financial documentation for this purpose. The usually perfunctory revision of accounts carried out in practice has nothing to do with genuine financial control.

²⁴ The case of the fine imposed by NCRT on *News 24 TV* and measures taken against *Vizion +TV*, two television broadcasters.

²⁵ The amount of money allocated in the budget for political parties in 2009 is 200.000.000 ALL, for the general and local elections 600.000.000 ALL and for the CEC 695.800.000 ALL. These figures do not refer to the maximum sums for party funding in the parliamentary elections of 28 June 2009.

The 2008 Electoral Code sets clearer rules and obligations for political parties (or electoral subjects, as stated in the law) to report on expenditures incurred during electoral campaigns. Political parties or coalitions are obliged to declare to the CEC Special Register (article 90) all donations from private donors as well as to provide the data identifying the donor. This provision, which departs from previous regulations that ensured the anonymity of donors and private funders of electoral campaigns, is positive. Donations above 100,000 ALL (756 EUR) have to be made through a special bank account of the party opened for that purpose, the details of which are to be published on the CEC website. In addition, the CEC publishes, through suitable means, the names of persons donating sums above 100,000 ALL, as well as the exact amount of the donation.

According to article 91 of the 2008 Electoral Code, within the 45 days subsequent to the proclamation of the final election outcome, the CEC – an election overseer made up of politically appointed individuals -- has to choose by lot the accountants licensed by the Institute of Licensed Accounting Experts (ILAE) to audit the funds obtained and spent during the electoral campaign of each electoral subject taking part in the elections²⁶. The auditing report does not contain personal data of donors giving less than 100,000 ALL, thus unjustifiably failing to ensure transparency with regard to this kind of funds (article 91-1), which may represent a significant amount of funds, even higher than those larger donations above 100,000 ALL. International experience has shown that small donations may be used to camouflage a donor's identity and hide illicit sources of revenue for political parties. The CEC has to publish the audit reports within 30 days of the date on which the report was submitted or of the date of finalisation of verifications.

The accounting experts defined by the law are private entities licensed to carry out a professional activity within a specific professional legal framework, which may or may not include internationally recognised accounting standards and ethical rules. It is doubtful that private accountancy firms or freelance accountants will be able enough to stand up to political pressure in a relatively small social universe, like the Albanian one, dominated by politics. An alternative solution could have been to entrust this auditing responsibility to a public independent and specialised institution in this field. The soundness of hiring private accountants to audit political party accounts by casting lots may indeed be questioned, given the political appointment of CEC members.

A real shortcoming of this legislation is that, according to article 91-3, the CEC is entitled to carry out verifications and audit only on the data displayed in the report that the political party is obliged to submit. Inquiries on information not displayed in those reports (e.g. media reports) cannot be carried out by the CEC and its appointed expert accountants. The margin of manoeuvre of the CEC is straitjacketed by the information that the parties may provide. In addition, donations to foundations or other political party-related entities are not to be disclosed to the CEC, which represents an important loophole through which most illicit funding may be channelled.

Finally, there is a gap regarding law enforcement because the Electoral Code does not establish rigorous and enforceable sanctions for those breaching the rules on electoral campaign funding, which represents an additional vulnerability of the system. Article 172 establishing administrative fines between 100,000 ALL and 500,000 ALL (756 EUR to 3,780 EUR) if the violation of the law produced no effect on the election results and imprisonment of six months to two years if it did. Proving an impact of the infringement of campaign financing rules on election results may be difficult indeed and it may be even more difficult to identify the person responsible for the offence. An extremely rare application of the criminal sanction is therefore to be expected, and by the same token any administrative sanctions.

Conclusion

The 2008 Electoral Code has brought about some improvements in the regulations on the financing of political parties, but it has many loopholes and will have almost insurmountable enforceability difficulties. The auditing of electoral accounts is unconvincingly designed and

²⁶ This provision is supplemented by Instruction no. 8 of 25 March 2009 of the CEC on the criteria and procedures to select and appoint licensed accounting experts for the auditing of campaign funds.

limited to the information provided by the political parties. Therefore, corruption linked to the financing of political parties is likely to remain unbridled.

Role of Parliament in Combating **Corruption in Government**

Parliamentary Instruments to Control the Government

The current Rules of Procedures of the Assembly, adopted by political consensus on 16 December 2004, established satisfactory standards for the organisation of parliamentary activity by setting clearer provisions compared to previous rules. This consensual climate deteriorated in the current parliamentary term when the Rules were amended twice through non-consensual, rapid procedures (Decisions no. 15 of 27 December 2005 and no. 193 of 7 July 2008). The 2008 constitutional amendments have given more strength to the executive at the expense of parliament.

This shift may be seen in the recent amendments to the legal framework of the annual state budget (Law no. 9969 of 24 July 2008), which have awarded more discretion to the government in the use of public funds (for instance, to use 50% of the revenues from the privatisation of public enterprises for investments, without specifying the sum and without consultations), thereby avoiding parliamentary control – via the High State Audit – over these funds²⁷. A detailed regulation of the parliamentary instruments to control the government is provided in the Rules of Procedure of the Assembly.

Parliamentary Questions and Interpellations

Parliamentarians may request information from the government through parliamentary committees and questions and answers. Standing parliamentary committees exercise control during the process of draft law examination and approval proposed by the Council of Ministers. At the session of discussion of the standing committees, the draft law is analysed from constitutional, legal, political, economic and social aspects and it is also analysed in terms of its compliance with the political mandate approved by parliament for the governing term. Concurrently, this process serves to obtain information on the implementation of legislation, the need for legal intervention, problems encountered, etc. Standing parliamentary committees request from ministries and other central institutions clarifications and additional information on law enforcement and on the policies implemented by the relevant institution. Also, the committees can demand direct clarifications and explanations from a minister, who is invited to take part in the committee meetings. Information to parliament can also be provided concerning government initiatives on specific issues.

Parliamentary committees also exercise control over the government by means of questions on the legal obligations of the executive to issue by-laws in due time and on the implementation of laws approved by parliament, according to article 118-2 of the Constitution. The parliamentary agenda usually contains requests for information on the implementation of institutional and legal obligations derived from agreements reached between the Government of the Republic of Albania and other countries and from international instruments ratified by the Assembly.

Article 90 of the Assembly Rules of Procedure provides for the right to questioning and answering. Questions can be addressed to the Chair of the Council of Ministers or to a particular minister. Questions are asked to obtain information on one or more facts. Within three weeks of their submission, the questions are placed on the agenda of the regular weekly session devoted to questions and answers. Subsequent to the minister's reply, the questioning parliamentarian is entitled to reply, but not for longer than two minutes. The MP can ask to answer the question in a committee meeting and can also ask to provide the answer in written form. In the latter case the questioned body should provide an answer within 20 days. When the question is on issues emerging from an ongoing debate, the answer is to be provided immediately or at the earliest possible session.

²⁷ A critique of this approach, based on IMF and World Bank recommendations, can be seen in the "Third report of the Project 'Monitoring of State Budget 2008'", prepared by independent experts and financed by the Open Society Foundation for Albania, which was released on 24 October 2008.

Article 96 of the Rules of Procedure stipulates the right to interpellation, which can be made by each MP, group of MPs or party caucus. Interpellation is a written request for explanations on the motives, aims and stances of the government or of members of the Council of Ministers on important political issues under their responsibility. Within two weeks of their submission, interpellations are placed on the weekly agenda of interpellations. The interpellation's author is entitled to explain the request for no longer than seven minutes, and subsequent to the declaration of the addressee of the interpellation, the author can express in no more than 15 minutes the reasons why he/she is satisfied or dissatisfied with the answer provided. Through questions and interpellations the parliament can exercise control over the executive. In 2005, 44 requests for questions and interpellations were lodged and 36 were discussed. In 2006, 65 requests were lodged and 35 were discussed. In 2007, 60 requests were lodged and only 31 were discussed.

Apart from cases in which MPs have withdrawn their requests or have not been present during the session at which an interpellation was planned, in many other cases their requests have not been taken into consideration due to excuses based on interpretation of the rules. There are numerous complaints by the opposition that the current majority and the government evade constitutional control and misuse their parliamentary numerical advantage to turn down initiatives of the opposition. It is a fact that there is an increasing trend to reject questions on procedural grounds. The Speaker of Parliament has been subject to a vote of no-confidence from opposition groups claiming that the parliamentary majority had provided unfair backing to the government by breaching the Rules of Procedure.

Control via Parliamentary Inquiry (ad hoc committees of inquiry)

Parliamentary ad hoc inquiry committees are instruments of parliament for controlling the executive and for obtaining information on important issues of public interest. The parliamentary inquiry committees have a basis in article 77 of the Constitution, which states that the Assembly is obligated, upon the request of one fourth of all its members, to set up an inquiry committee to examine a particular issue of importance. Their conclusions are not mandatory for the courts but can be forwarded to the prosecution office, which acts in accordance with the legally prescribed procedure.

Law no. 8891 of 22 May 2002 on the Organisation and Functioning of Parliamentary Inquiry Committees envisages two procedures for the establishment of parliamentary inquiry. First, if this is required by one fourth of all of the MPs (35 MPs), parliament is obligated to establish such a committee. Second, parliament may establish an inquiry committee when so required by at least five MPs or by a standing committee (article 5). The determination of the importance of an issue is open, as it can be decided by one fourth of the MPs.

Article 3 of Law no. 8891 also provides cases where establishing an inquiry committee is mandatory. For example, that article states that an inquiry committee is established to investigate officials having immunity who are implicated in a case under investigation. Officials with immunity are determined by the Constitution. In the course of a parliamentary inquiry suspicions may arise with regard to officials with immunity implicated in the case under investigation. In that event, the committee can neither propose a criminal accusation nor exert the functions of the courts, because only the prosecutor general can initiate the legal procedure for lifting immunity (see above).

The law (article 9) establishes the composition of inquiry committees. A committee is composed of MPs from the ruling party (or parties) and from the opposition in a proportion that is as close as possible to equality, i.e. the difference should not be more than one member. This rule departs from the general representation principle. The request to obtain evidence from each committee member is accepted by the committee without voting. This rule prevents abusive voting of the majority. The final decision of an inquiry committee is always published with the opinion of the minority attached (article 4). This rule recognises the right of the minority to have a dissenting opinion from that of the majority and to announce it publicly.

The following inquiry committees were established in the 2005-2009 parliamentary term: on enforcement of the legislation for preparing and developing an election process on 3 July 2005 (set up on 20 October 2005); on dismissal from office of the public administration staff (set up on 4 May

2006); on the monopoly position of cellular telephones and on preparing recommendations for eliminating this situation (set up on 4 May 2006), on verification of properties, nepotism and conflicts of interests of the high officials of the constitutional and public institutions (set up on 18 September 2006); on the enforcement of the concessions law, giving concessions of various objects in the state properties, conditions of delivery of these contracts for the period from 2001 onwards and procedures on launching proceedings for building the heat power station of Vlora (set up on 8 October 2007); on the investigation of bidding procedures for the Durrës-Morinë road (set up on 8 October 2007); on inquiring the state budget expenditures at the disposal of ministries, main dependent institutions and public utilities through public procurement for 2001 and onwards (set up on 8 October 2007); on the subject and procedures of the privatisation control of Albtelekom for the period from 2001 onwards (set up on 8 October 2007), and on illegal interception of telephone calls (set up on 11 October 2007). In addition, there were two inquiry committees for dismissal of the Prosecutor General, the first set up on 2 May 2006 and the second on 25 October 2007, which resulted in dismissal since the first attempt had been suspended by a ruling of the Constitutional Court. Finally, on the eve of the parliamentary elections, the parliamentary majority established an inquiry committee on the misuse of construction permits issued by the municipality of Tirana, accusing the mayor of Tirana, who at the same time was the opposition leader. The opposition entirely ignored the committee, considering it illegal and against constitutional and legal provisions.

Conclusions

A tendency has been observed, during the parliamentary term that is about to finish, to weaken the capacity of parliament to control the government by undermining, through a foregone rule interpretation, the instruments constitutionally available to parliament, such as questions and inquiry committees. The government and the parliamentary majority have tended to elude parliamentary control over the government.

On the other hand, most conclusions of inquiry committees contain facts and information on particular violations of the legal framework, conflicts of interest and unethical behaviour. These conclusions are not used, however, to orient improvements of the relevant legislative and institutional frameworks, let alone to divert the issue to the Prosecutor General to initiate the relevant procedures. Even when there are valuable inquiry conclusions, no follow-up is made. It seems that parliament fails to respond adequately, thus enhancing public perception that corruption thrives in government and in the ranks of parliament.

Integrity in Government

During the term about to expire, parliament voted some important laws with high anti-corruption potential, all of which had been introduced by the government, but it did not support other drafts of equal importance that had originated in civil society or with individual MPs or groups of MPs, not only of the opposition, such as drafts on the decriminalisation of libel and defamation or amendments to the Law on Access to Public Documents. These initiatives were blocked unreasonably, sometimes by bending parliamentary rules.

Penal and Legal Accountability

Legislation that is relevant to anti-corruption has improved in recent years. The Criminal Code penalises both active and passive bribery, misuse of office and undue influence of public officials²⁸. It has been amended several times in recent years to strengthen the framework dealing with anti-corruption and organised crime²⁹. The 2004 amendments to the Criminal Procedure Code included enhanced regulation in relation to the financing of the criminalisation of active and passive

²⁸ Articles 244, 245, 245/1, 259 and 260 of the Criminal Code.

²⁹ For example, Law no. 9086 of 19 June 2003 and Law no. 9275 of 19 June 2004.

corruption, conflict of interest, political party financing, rules of ethics in public administration, and the use of special investigation means.

The Law on Prevention and Combating Organised Crime, adopted in September 2004, provides the legal basis for combating economic crimes performed by organised criminal groups. The Albanian legal framework substantially improved when parliament adopted in 2002 the Law on Declaration and Control of Properties and Finances of Elected Individuals and some Public Officials and in 2005 the Law on Prevention of Conflict of Interest. Despite their loopholes (see above), both pieces of legislation provide comprehensive regulations. However, the enforcement of these laws is problematic because of the various loopholes. The High Inspectorate for Declaration and Auditing of Assets, which reports to parliament, was established with a mandate to oversee the implementation of these two laws.

Remuneration of Members of the Government

The salary of the Prime Minister is equal to the salary of the Speaker of Parliament (222,500 ALL), which is 40% higher than the regular salary of an MP. Ministers' salaries are approximately 170,000 ALL. The salary of the Vice Prime-Minister is equal to the salary of the Deputy Speaker of Parliament. The salaries of members of the Cabinet had been subject to a proportionally increasing income tax, but a recent taxation reform has benefitted these high-ranking officials more than lower-ranking public officials, as it introduced a 20% flat income tax.

Incompatibility, Conflict of Interest and Asset Declarations of Government Members

The Constitution (article 103) sets forth an incompatibility regime for members of the Council of Ministers. They cannot exercise any other state activity, and they cannot be leaders or members of profit-making companies. In essence, the incompatibility regime of government members is similar to that of MPs, although their status is more strongly defined (in the Constitution while that of MPs is defined in ordinary law). In any case, the same legal framework regulates their status concerning conflict of interest and declaration of assets³⁰ (see above the regime described for parliamentarians). However, the authority of the High Inspectorate on Declaration of Assets, especially in the case of members of the Cabinet, seems to be weaker. The public has been occasionally puzzled by the strange asset declarations of some members of the Council of Ministers, but there no administrative measure on such cases has ever been heard of.

Immunity of Government Members

Under the Constitution (article 103-3), members of the Council of Ministers are granted the same immunity as MPs. They are subject to criminal investigation and prosecution on the same basis and following the same procedures as MPs. They are prosecuted by a special division within the Prosecution Office, which is the same division that deals with MPs and magistrates, and they are judged by the Supreme Court (High Court).

Conclusion

The same conclusions drawn for parliamentarians are also applicable to government members concerning conflict of interest, incompatibilities and immunities, as the legal regime is largely the same for all of them.

³⁰ Law no. 9367 of 7 April 2005 on Prevention of Conflict of Interest in the Exercise of Public Assignments, and Law no. 9584 of 17 July 2006 on Remunerations, Perquisites and Structures of Independent Constitutional Institutions and other Created by Law.

Integrity in the Justice System

The public perceives the judiciary as being corrupt, although actual evidence against corrupt judges is scarce or inconsistent. The judiciary is also perceived as being subject to political pressure, and public trust in the judicial system is very little. Political and business interference in judicial decision-making processes represents a significant problem, despite the fact that the Constitution (articles 7 and 145) proclaims the separation of powers and the independence of sitting judges in delivering justice, as they are subject only to the law. Many judges, however, feel excessively vulnerable to political demands, while government officials regularly claim that they only observe the judges' behaviour as closely as possible in order to prevent and combat corruption. The common contention also seems to be that there is a considerable level of social tolerance in the country regarding judges socialising outside the court with litigant parties, prosecutors and others, a behaviour that elsewhere would raise questions about the impartiality of judges.

Whatever the case may be, it is apparent that increasing transparency in court decisions and strengthening the system of internal controls in the judiciary would be most desirable because the level of transparency of court decisions and procedures is still too low. Access to court decisions is unsuitable and only a few first-instance courts actually publish their decisions or display a website or other similar facilities. However, some improvements have been made recently, partly due to the activities funded mainly by international donors. EURALIUS has advocated the installation of a countrywide IT system in the courts so that judges can be traced in their work and cases can be stored transparently in an electronic filing system that allows the control of court personnel and their actions in court proceedings³¹. As a consequence, the distribution of cases has been computerised and every court has been mandated to create a web page providing statistics, with the aim of increasing transparency. Some investments have been made to improve the court infrastructure. Salaries of court administration staff were doubled in March 2009. Judicial reform has nevertheless made little progress, while a relentless tightening of governmental control over judicial and prosecutorial institutions is noticeable.

Human Resources Management in the Judiciary

The High Council of Justice (HCJ) is a public authority with constitutional standing (article 147), which is responsible for the appointment, transfer, discipline, dismissal and training of judges of first-instance and appeals courts. The Council is also responsible for the general control of the judiciary, including the professional and integrity evaluation of judges. The Constitution does not consider the HCJ as independent and only grants to the HCJ a human resources management role, and not an explicit role to preserve judicial independence. Article 147 is the only constitutional provision dealing with the HCJ. The Council's competences are further developed by Law no. 8811 of 17 May 2001, as amended in 2005, on the Organisation and Functioning of the HCJ. The Council consists of 15 members, nine of whom are selected by the National Judicial Conference and three by parliament, with three ex officio members, namely the President of the Republic, the Minister of Justice and the President of the Supreme Court.

The National Judicial Conference (NJC), referred to in article 147 of the Constitution, was further developed by Organic Law no. 9399 of 12 May 2005, which defined (article 5) the Conference as the representative organ of judges at all levels and entrusted it with the specific duties of protecting the independence of judicial power as proclaimed in article 145-1 of the Constitution. In fact, the NJC was attributed real powers to manage the judiciary and protect its independence. The NJC integrates a number of Regional Judicial Conferences (RJC), established within the jurisdiction of the appeals courts. Law no. 9399 was declared unconstitutional and abrogated by the Constitutional Court in late

³¹ EURALIUS, "Recommendation on How to Increase Transparency of a Court System by Using Information Technology", available at http://www.euralius.org.al/recommendations/eng/Microsoft_Word%20%20Recommendation_on_how_to_increase_transparency_of_a%20court.pdf

2008, mainly because it established an indirect representation of judges, which was considered to be incompatible with the Constitution.

Law no. 9877 of 18 February 2008 on the Organisation of Judicial Power sets criteria for the recruitment and performance appraisal of judges (article 11 and ff.) and establishes the main disciplinary faults and sanctions that can be imposed on a judge. According to the law, the HCJ appoints a special committee to carry out the recruitment of judges. The committee makes a recruitment proposal to the HCJ based on the legal criteria stipulated by the law, although some of these criteria are understood in an unsystematic way. The law establishes that 90% of the selected candidates are to be lawyers who have graduated from the School of Magistrates, while the rest can be selected from among former judges or lawyers with years of experience. The HCJ decides by simple majority vote on the individual to be proposed to the President of Republic for the office of judge, so that he may make the appointment. It might seem that the President's role is only ceremonial, but in practice the President has complete discretion. According to article 12-5 of Law no. 9877, within 30 days the President issues a decree for the appointment as judge of a candidate proposed by the HCJ. After this time period has elapsed, without an explicit appointment by the President, the proposal is considered as rejected. Therefore, through the simple expediency of letting the time elapse, an appointment may be nullified at the discretion of the President of the Republic.

The School of Magistrates was created by Law no. 8136 of 1996 and amended by Law no. 9414 of 20 May 2005. The main role of the School at the outset was to deliver six-month training for the formation of new judges. The post-2008 generations of judges will undergo a two-year induction course, as required by Law no. 9877. The School provides initial and continuous training for candidates as judges and prosecutors and it graduates 10 judges and 10 prosecutors per year. Only one third of the existing 350 judges have been educated at the School, as the School has up until now not been the sole recruitment track, although it is becoming the mainstream one. The School recruitment track will coexist with the continued recruitment of a possible 10% of new judges from among lawyers and former judges wishing to be reinstated in the judiciary. Coupled with low salaries, this limited training could explain the relatively low professional qualifications affecting most members of the judicial and prosecutorial services. The impact on the quality of the judiciary of the new recruitment arrangements provided by the 2008 law will not be immediate, but may be seen some years from now.

The HCJ decides on promotions and assignments of judges, based on legal criteria and procedures. It has adopted very detailed regulations regarding this issue and keeps a register with a list of judges' scores based on their evaluations; this list is to be used for promotion purposes. Law no. 9877 of 2008 imposes professional performance and ethical evaluation every three years as the sole criteria for promotion to higher courts. The HCJ's inspectors, who have the status of judges who are temporarily seconded full-time to the HCJ, check the professional performance and ethical conduct of judges. However, the performance evaluation system remains unreliable and needs to be better regulated and managed.

The inspection of judges can act on a specific complaint or on its own motion through the inspections that are regularly carried out. There are two inspectorates, one in the HCJ (12 inspectors) and the other in the Ministry of Justice, with overlapping mandates, although the two institutions claim to have reached a workable *de facto* solution. The Ministry of Justice Inspectorate receives complaints about court decisions or judges' misconduct and can apply some disciplinary procedures after a detailed inspection of the case has taken place.

The responsibility for initiating or not initiating a disciplinary procedure against a judge is in the exclusive hands of the Minister of Justice, according to article 34 of Law no. 9877 and article 16-1-c) of Law no. 8811 on the Organisation and Functioning of the HCJ, although the minister cannot vote in the HCJ on disciplinary sanctions proposed by him. Although sometimes the two inspectorates – the one of the HCJ and that of the Ministry of Justice – run into each other, the final word as to whether or not to initiate a disciplinary procedure against a judge is always a decision of the Minister of Justice. Therefore the ascendancy is clearly attributed to the executive to the detriment of the judiciary when it comes to the exercise of disciplinary power over judges, which hinders judicial independence.

However, cases of double standards have occurred in the past because of this overlapping attribution of inspection responsibilities over the judiciary between the inspectors of the HCJ and those of the Ministry of Justice. In practice there appears to be scarce co-operation and considerable methodological dissimilarity between the inspections carried out by the two inspectorates, divergences which sometimes stem from differing political interests. A tendency can be observed of the Inspectorate of the Ministry of Justice to “evaluate” the substance of judicial rulings and decisions, which is a blatant violation of judicial independence. The Constitutional Court in its Decision no. 11 of 27 May 2004 had already stated that “it is necessary to reconfirm that judicial decisions are controlled only by higher courts and that no other organ can evaluate the legality of judicial decisions...”, but this “bad practice” still seems to be followed.

Even if the HCJ decisions on disciplinary cases against judges are published in the form of brief press releases describing the decision alone, they are not transparent. Disciplinary proceedings are by nature administrative, and they should therefore comply with the general rules of administrative procedures as established in the Code of Administrative Procedures of 1999. However, the law itself has very detailed special procedures with regard to the discipline of judges. The HCJ has further adopted even more detailed rules on disciplinary procedures³². Judges benefit from all of the usual procedural guarantees during disciplinary procedures, including the right to have or be represented by a legal counsellor and the right to appeal before the Supreme Court. Judges cannot be transferred except for substantial service needs and with their consent for a short term. Transfer had been defined as one of the possible outcomes of disciplinary proceedings until two years ago, when the Constitutional Court declared this sanction to be incompatible with the Constitution.

Remuneration of Judges

The salary of a newly recruited first-instance judge is 85,000 ALL. After five years of service the salary increases 2% each year. After ten years of service a judge’s salary is 93,500 ALL. The salary of judges in courts of appeal is 20% higher than that of judges in first-instance courts. Judges in the Supreme Court have a salary of 170,000 ALL. The low remuneration of first-instance and appellate judges, coupled with a high level of politicisation and meddling of the executive, is a deterrent for the attraction of good quality individuals to a professional career in the judiciary.

Immunity of Judges

Judges have immunity, according to article 137 of the Constitution. The immunity of judges of the High Court (Supreme Court) may only be lifted by parliament, and this arrangement represents an incursion of the judiciary by the legislature. The immunity of a High Court judge is inviolable except if the judge is arrested in *flagrante delicto*, in which case the Constitutional Court has to authorise within the 24 hours subsequent to his/her arrest that the judge be kept in custody; otherwise the detainee has to be released. For other judges, their immunity may be lifted by the HCJ, which has the same prerogative described above for the Constitutional Court in the case of *flagrante delicto*. Some three cases of lifting judicial immunity have occurred during the past two years.

The Constitution does not grant immunity or inviolability to prosecutors. However, article 36 of Law no. 8737 of 12 February 2001 had granted to prosecutors immunity and inviolability in a similar way as for judges; this law was rightly abolished in 2008.

Incompatibilities and Conflict of Interest

The scope of incompatibilities for judges is wide: they cannot hold any other function in either the public or private sector, use their professional or personal skills in any profitable manner, except teaching, or be part of a political or social association, except for judges’ professional associations.

Judges are included in the same legal framework for the declaration of assets as all other public officials. Therefore the competence for supervision is with both the High Inspectorate for Declaration

³² HCJ Decision no. 137 dated 21 February 2003

of Assets and the High Council of Justice, which makes the situation problematic. Recently a “memorandum of co-operation and good understanding” between the two authorities was agreed, whereby the Inspectorate of the HCJ was declared to be competent to verify the property declarations of judges and to determine whether judges were performing activities that were not allowed.

Accountability

Individual complaints about a judge’s performance can be a basis for initiating disciplinary proceedings. If a complaint is well grounded, a specific inspection may be carried out, at the discretion either of the inspectorate of the Ministry of Justice or that of the HCJ, but neither of these inspectorates is obligated to undertake an investigation. There have been three cases of judges’ dismissal, within the last five years, due to disciplinary proceedings based on corruption and lack of integrity and another dismissal due to criminal prosecution of a judge. Disciplinary proceedings in all cases were initiated by public denouncement of judges’ misconduct.

There is no special legislation regulating state liability for the defective functioning of justice, although, in principle, civil compensation for damages could occur as a result of both civil and criminal cases. Article 57 of the Criminal Code applies in the case of unjust imprisonment.

There is no visible strategy for fighting corruption within the judiciary, although the HCJ has claimed its commitment to combat corruption. On the other hand, instead of proposing a package of measures on how to reform the judiciary, the government decided to remove the Prosecutor General from office and to tighten the control of the ruling party over the Constitutional Court, the High Council of Justice, and the public procurement ombudsman through new appointments to these institutions of persons who are publicly known to be close to the ruling party. While all of these measures were taken, there were huge corruption cases in the high ranks of the government, which meant that government inroads into the judiciary and the prosecutorial service were deemed by the media, civil society and the opposition to be a reaction to protect high-ranking officials of the currently ruling political coalition.

Status of Prosecutors

The office of the Prosecutor General is defined in article 149 of the Constitution. The Prosecutor General is appointed by the President of the Republic following approval by parliament. Prior to the 2007 constitutional amendments, there was no predetermined term for the mandate of the Prosecutor General. Currently the mandate is for five years, with the possibility of re-election by parliament once more for the same length of time. During the mandate the Prosecutor General cannot be replaced except in the following cases: resignation; if it is impossible to perform his/her responsibilities due to physical or mental incapability³³; if he/she has committed a grave infringement or has demonstrated a systematic failure to perform his/her duties; or if he/she impairs the reputation of the office.

The Prosecutor General appoints and manages the administrative staff supporting the Prosecution Office, proposes the total number of prosecutors (currently about 390) and their structuring to the President of the Republic on the consent of the Minister of Justice, and proposes to the President of the Republic candidate prosecutors for appointment, promotion or dismissal. The Prosecutor General supervises the application of the legal provisions and provides methodological guidance to subordinate prosecutors³⁴. In fact, the Prosecutor-General has complete and overall authority over the Prosecution Office.

³³ The 2008 amendment to this law makes the Prosecutor-General vulnerable in this respect, since it does not indicate, as is the case with regard to other constitutional officials (such as members of the Constitutional Court and President of the Republic), how long this situation of “incapability” should last in order to legitimise the initiation of such a removal action. Due to the *sui generis* position of the Prosecutor General, he/she can “appear” to be absent from public view or from the view of other public authorities very rarely if he/she so desires, and thus a limit of absence in office should be specified in correlation with this principle so as to prevent arbitrariness in handling this sensitive issue.

³⁴ Article 8 of the Law on Organisation of the Prosecution Office, as amended.

The Prosecutor General is *de jure* accountable to no one. The Prosecutor General is only obliged to compile and submit to parliament annual reports on the functioning of the Prosecution Office and on the situation with regard to criminal activity. Despite this absence of accountability, however, all individuals holding the office of Prosecutor General since 1992 have been dismissed before term, apparently on political grounds. The incumbent Prosecutor General was elected by the ruling majority, after protracted political manoeuvring to remove her predecessor, and has been frequently accused of favouritism in actions against high-ranking officials (including two ministers) of the government.

Since 2001, prosecutors cannot file civil lawsuits on behalf of other persons and have no jurisdiction in non-criminal matters. Previous legislation allowed the prosecutor to file civil lawsuits at any phase of a pending civil proceeding if he/she considered that state or public interests were at stake.

Human Resources Management of Prosecutorial Services

Prosecutors are recruited, appointed, promoted and assigned according to Law no. 8737 of 12 February 2001 on Organisation of the Prosecution Office, as amended in 2008. Candidates for the office of prosecutor are recruited through public announcements of vacancies in the media. The Prosecutor General is assisted in the recruitment, selection, evaluation, promotion and assignment of prosecutors by the Council of Prosecutors, an advisory body composed of six prosecutors representing all levels and one prosecutor from the Ministry of Justice. Despite its advisory status, the Council has been given stronger competencies in all of the above-mentioned issues by the 2008 amendments to the Law on the Organisation of the Prosecution Office.

The performance evaluation of a prosecutor is in principle made by his/her immediate superior, but an administrative structure within the Prosecution Office, the Directorate of Human Resources and Inspection, carries out a performance appraisal of each prosecutor every three years. The outcome of this two-stage appraisal is submitted to the Council of Prosecutors, which can make specific proposals regarding the promotion or discipline of individuals to the Prosecutor General. The Directorate of Human Resources and Inspection keeps a register with all of the details concerning the performance appraisal and evaluation of prosecutors and with a list of scores to be used for promotion purposes. The law states that this "list should be updated frequently", but it does not fix any precise rate of recurrence or deadline for this revision (art. 42-9, as amended). There are no available administrative instructions, records or other internal acts issued by the Prosecution Office providing evidence of HRM practice and standards on recruitment, appointment, promotion and assignment or of disciplinary proceedings against prosecutors, although the media regularly echoes abusive HRM practices within the prosecution services.

Effectiveness of Judges and Prosecutors against Corruption

The capacity of the prosecutorial and criminal investigations, as well as that of the judicial system as a whole, is undermined in professionally persecuting and punishing crime, including corruption and other serious criminal activities, because although pre-trial investigation is in principle a responsibility of the judicial police, in practice it belongs to a section of the police, which is *de facto* under the authority of the government (Ministry of the Interior). The relationships and smooth co-operation between the police, the prosecutor and the judges too often depend on the political expediency of the executive.

Tensions between the Prosecutor General and the Ministry of Justice appeared while the latter was preparing a large set of amendments to the Law on the Organisation of the Prosecution Office, which were adopted by parliament at the end of 2008, despite the objections of the Prosecution Office, supported by the opposition and by international experts. The amendments (article 56) introduced a system of political control of the prosecutor by the Minister of Justice, who is requested to submit to parliament a yearly report on the Prosecution Office. The Prosecutor General, in turn, can lodge in parliament an alternative report to that of the Minister of Justice. This approach is likely to place both institutions in an adversarial position with regard to each other before parliament, which is asked to

adopt a quasi-judicial role. However, no one should realistically assume that parliament could play the role of *arbiter elegantiarum*, in the event that the two reports are in opposition, due to the usual political support that a parliamentary majority has to provide to the government and its ministers. A regular yearly public quarrel between the government and the prosecutor is the best recipe for politicisation of the institution, which should be kept away from the political arena par excellence, the parliament. This arrangement, coupled with the roars of confrontational politics in the media, is conducive to the politicisation of the fight against crime, especially political corruption and organised crime. The politicisation of the prosecution institution will seriously undermine its capacity to persecute and punish criminal scams of any stripe, including those driven by corruption.

Nonetheless, the Prosecution Office has made some steps forward in fighting corruption by establishing specialised structures and raising the level of public officials being prosecuted, which definitely is contributing to strengthening public trust in this institution. Since September 2007 a task force has been operational, under the direction of the Prosecutor General, which includes the police, customs, tax administration, and intelligence services, among others, focusing on economic crime and corruption. Plans exist to create in 2009 additional task forces throughout the territory in the five more populated districts. The task force is sponsored by the US Embassy. Salaries of prosecutors engaged in the task force are 20% higher than those of their colleagues elsewhere. This task force has produced good results in terms of the initiation of more criminal proceedings on economic crimes and corruption. There is a perhaps ill-advised proposal to allocate 10% of the crime-originated illicit proceeds to increase the resources of the Prosecution Office, a move that may prove to be risky for the impartiality and integrity of the prosecutorial services. However, better regulation is still necessary to co-ordinate more efficaciously all of these agencies.

This task force is claimed to be totally different from the Serious Crime Prosecutor, which was created by the 2001 Criminal Procedure Law and established in 2003 along with a Serious Crimes Court, in that the latter is not specifically focused on organised crime and corruption but on serious crimes in general. The task force was not created to implement article 20 of the Council of Europe Criminal Law Convention against Corruption, but could be, according to the Prosecution Office, the embryo of a future specialised anti-corruption prosecution office established along the lines of article 20.

Conclusion

There was a need for judicial reform, but the laws adopted have already shown their weakness. The persistent thrust to subordinate the judiciary and the prosecutor to the political interests of the government should cease. On the contrary, the professionalism, independence and accountability mechanisms within the judiciary and prosecution services should be streamlined.

Anti-Corruption Policies, Legislation and Institutions

Legislative Activity against Corruption

Anti-corruption criminal legislation has improved. The Criminal Code contains several provisions concerning corruption offences and other offences that are closely connected to acts of corruption, including active and passive bribery. Some of the provisions were only amended or changed a year ago in order to comply with the Council of Europe Criminal Law Convention on Corruption. The Criminal Code contains several articles directly related to corruption offences.

The most important articles for our purpose are articles 244 (active corruption of persons carrying out public functions), 245 (active corruption of high state functionaries or locally elected persons), 245-1 (unlawful influence on persons carrying out public functions), 248 (abuse of duty), 258 (breach of equality among participants in public tenders or auctions), 259 (passive corruption of persons carrying out public functions); 260 (passive corruption of high state functionaries or locally elected persons), 319 (active corruption of judges, prosecutors and other justice functionaries), 319-a (passive corruption of judges, prosecutors and other justice functionaries) and 328 (offering rewards or promises in elections). It is positive that these provisions penalise both active and passive corruption

and include a very wide scope of elected and appointed state officials. Even a promise of an improper benefit is sufficient for the criminal offence of corruption to occur. These articles provide severe sentences of imprisonment and fines.

The Code of Ethics for Civil Servants forms part of the Law on Ethics. The code is generally applicable to all public officials. In addition to this law, codes of ethics also exist for public officials of specific bodies, such as police, customs, judiciary, the High State Control (supreme audit institution), and the tax administration. Breaching the Law on Ethics is liable to disciplinary and administrative proceedings.

Access to information held by public authorities at local and central levels is foreseen in the Constitution and regulated by Law no. 8503 of 30 June 1999 on the Right of Access to Official Documents as well as by the Code of Administrative Procedure. The Ombudsman Office monitors the implementation of this law, promotes and ensures the right to information and may issue recommendations to authorities. The implementation of the Law on Access to Information, which could bring about more transparency in public affairs, is problematic because there is no sanction for those who retain or refuse to produce the information requested according to the law. As a result, the enforcement of the law depends only on the good will of the head of the institution concerned.

The Ombudsman regularly receives complaints on the abusive utilisation of schoolchildren by ruling parties to participate in political party rallies during electoral campaigns and other political demonstrations. The Ombudsman urged this practice to cease, but to no avail. Teachers continue to be compelled by the political authorities to bring flag-waving schoolchildren to political rallies and demonstrations, a practice many consider as a detestable abuse of public power. This explains, according to the Ombudsman, the fact that school directors are replaced when the political authorities change.

Administrative legislation was also adopted, especially as from 2007, to simplify business registration and the introduction of the flat tax (20% for income and corporate taxes and 10% for VAT). Despite the alleged success story of the Business Registration Centre (QKR) in speeding up procedures for starting up a business, this has had little effect on public perceptions of corruption in licensing, which remains high and is seen as one of the factors delaying economic development and deterring foreign investment³⁵. Nonetheless, simplified and computerised procedures for creating business are in principle a positive development, of which the effective impact remains to be seen.

A number of recent laws may indirectly contribute to reducing corruption, as they have focused on simplifying administrative procedures for businesses, such as Law no. 9643 of 20 November 2006 on Public Procurement, amended several times; Law no. 9723 of 3 May 2007 on the National Registration Centre for Businesses; Law no. 9508 of 3 April 2006 on Public Collaboration against Corruption; Law no. 9720 of 23 April 2007 on Internal Audit within the Public Sector, as well as numerous amendments to various laws, which have abolished some licenses and simplified remaining procedures to obtain the necessary ones.

Anti-Corruption Strategies

The anti-corruption strategy of the former government had been included in the *National Anti-Corruption Plan*, known as the Matrix, since 2002. The Plan was a voluminous multi-disciplinary instrument including various public bodies and the business sector and took the form of a matrix, comprising a comprehensive set of measures in three areas: law enforcement, prevention measures, and raising public awareness.

The current government anti-corruption strategy, entitled Cross-cutting Strategy for Prevention, Fight against Corruption and Transparent Governance 2007-2013, reformulated in October 2008, includes a long list of legislative measures to be adopted and sets forth specific action plans for 2009 to be carried out by each ministry. The Strategy includes a broad list of specific measures – covering all

³⁵ See IDRA Survey 2008: “Corruption in Albania – Perception and Experience”, at <http://www.idra-al.com/en/index.php>

imaginable issues, with little prioritisation – intended to be taken on the economy, rule of law (law enforcement), public administration and civil service, procurement, audit, health and education, and public awareness. However, the Strategy seems to be too ambitious and perhaps unrealistic, but it should have a positive impact if it is conducive to taking effective, concrete steps. The Strategy launches some anti-corruption measures within the judiciary, but it does not seem ambitious in this particular area given the corruption problems that the government has always claimed to be affecting the judiciary. Deep reforms in the judiciary would require a qualified majority vote in parliament and, therefore, building up consensus with the opposition is a precondition. Surprisingly, and inconsistently, the opposition has not participated in the preparation and discussion of the Strategy. This fact adds little to the creditability of the governmental reform of the judiciary.

The implementation of the reform programme has produced mixed results to date. As mentioned above, the task force of police-prosecutors against corruption has been successful in arresting high-ranking officials in a number of corruption cases. Other anti-corruption institutions have improved their performance. However, the continued involvement of politicians and senior government officials in corruption cases has already negatively affected the implementation of the Strategy and undermined the commitment of public officials and institutions to implement anti-corruption measures. Some of the main goals –and very symbolic ones-- of this document, considered as a key element for the credibility of the government anti-corruption policy, such as a law for narrowing the immunity of MPs, ministers and other high-ranking officials, have already ended in failure.

Department of Internal Administrative Control and Anti-Corruption (DIACA)

The government has established an inter-ministerial *Anti-Corruption Task Force* headed by the Prime Minister, which has principally replaced the former Government Anti-Corruption Commission and Anti-Corruption Monitoring Group that had been set up under the previous government. The new task force has more policy-making competencies and the mission of co-ordinating the anti-corruption efforts of various government agencies. The Anti-Corruption Task Force, which holds regular monthly meetings, is supported by the Department of Internal Administrative Control and Anti-Corruption (DIACA). Unlike its predecessor, the DIACA has broader executive competencies to investigate complaints or information regarding irregularities committed by public officials. Besides the Prime Minister, the Anti-Corruption Task Force consists of representatives of ministers and heads of key government agencies, including for instance the Director General of the Albanian Energy Corporation, although inexplicably the Prosecution Office is not represented on the task force. The AC Task Force analyses corruption matters in specific areas of the public sector and proposes new strategies, practical measures, and action plans.

The DIACA is also a technical inspectorate for all central executive public institutions. It reports to the Prime Minister and investigates complaints on procedural irregularities and on irregularities in the management of public finances. It acts primarily on the basis of complaints made by the general public through letters, e-mails, phone calls and text messages sent to the Prime Minister's Office. Denunciations may be anonymous, which facilitates the majority of indications coming from public officials, but indications received from the general public are on the increase. However, for some the idea of relying on informants does not have very positive connotations, as it is reminiscent of methods used under the previous political regime.

The Prime Minister's Office collects complaints and other messages received from the public and forwards them to the DIACA, whose inspectors subsequently investigate the complaint. If they find sufficient evidence, the complaint is relayed to the relevant central executive agency for it to take disciplinary action, or it is forwarded to the prosecutor's office, if there is a cause for criminal offence. According to DIACA staff, their recommendations are generally followed by the central executive agencies, but only rarely have led to the initiation of criminal cases by the prosecutor, and no public official has been sentenced so far based on information sent to the DIACA. Most of the cases forwarded to this department concern infringements in public procurement, registry of immovable property, restitution of property, and licenses. Recently the General Director of Restitution

of Immovable Property was removed from office subsequent to an action undertaken by the DIACA and replaced by one of the department's inspectors, which is a not very pretty outcome.

State Police

The State Police is divided into two sections, the judicial police attached to the prosecutor directing criminal investigations and the state police proper, which have a Directorate against Economic and Financial Crime, as established by Law no. 9749 of 4 June 2007 on the State Police. Within that directorate, the group of agents devoted to anti-corruption is 28-strong. The remaining agents (up to 108 policemen) are devoted to investigating money-laundering and other economic crimes. One of the most specialised units is the Anti-Corruption Task Force mentioned above. Some 150 public officials have been arrested since 2005 on charges of corruption and abuse of power, originating mainly in road service (transport licences), customs, tax administration, education, public health and construction permits. The State Police have found abundant evidence of linkages between organised crime and public officials, especially on trafficking of human beings (migrants and women), narcotics, exploitation of children, etc. The police division on organised crime is 265-strong and budgetary resources are deemed to be sufficient as is the legal basis for the intervention of the police.

Supreme Audit Institution

The supreme audit institution in Albania, the High State Control (HSC), has consistently brought to light cases of corruption or abuse of office and mismanagement that deserve administrative or criminal sanctions. During 2008 the HSC sent 32 cases to the prosecutor, affecting 82 public officials and involving a 15 million EUR damage to the state. The HSC audits the public funds transferred to political parties, which are not their main revenues, but it can neither audit the use that the parties make of those funds nor control the funds the parties receive from private donors. The HSC and others have proposed changes in the legislation so that the finances of political parties are controlled by the High Inspectorate of Declarations and Audit of Assets (HIDAA).

High Inspectorate of Declarations and Audit of Assets (HIDAA)

The High Inspectorate of Declarations and Audit of Assets (HIDAA), reporting to parliament, was established in 2003 to control the declaration of assets of decision-making high state officials and elected officials. A detailed description of its operation has been provided above in this report. The Inspectorate is directed by an Inspector General and the staff are 44-strong organised in two main working sections, one devoted to the verification of assets and the other to controlling conflicts of interest. The legal basis for the HIDAA is provided by two pieces of legislation, the 2003 Law on Conflict of Interest as amended in 2005 and the 2005 Law on Declaration of Assets, both of which need improvement as this legislation does not foresee any sanction for the refusal to co-operate with the HIDAA. The High Inspectorate cannot investigate assets that officials may hide abroad, which is a significant handicap to the effectiveness of the institution. Another legal loophole is that officials are obliged to declare gifts above 5000 USD. The HIDAA has proposed to reduce this threshold to 100 USD. Likewise, the High Inspectorate considers itself ready to control political party finances if it were legally entrusted to do so.

Internal Audit Offices

Internal audit offices exist in every governmental institution and agency. The State Audit Commission and internal auditing units within the various state administration institutions are mandated to inspect, assess and report alleged cases of corruption. However, according to recent changes in the legislative set-up (Law no. 9720 of 23 April 2007), internal audit should be less concerned with corruption and focus on broader assessments and advice.

Public Procurement

Public procurement has traditionally been an area that is very vulnerable to corruption. Major corruption criminal cases have concerned procurement, tenders, bribes in the context of important public contracts, etc. Some progress in public procurement has been observed in recent years, at least with regard to the legislative aspect. However, this progress has not brought significant practical improvements, since corruption in public procurement seems still to be high.

Tax and Customs Administrations: Informal Economy

Albania is estimated to be one of the largest informal economies in Europe, and as long as corruption is widespread in tax and customs administrations, this is unlikely to change any time soon. If tax and customs officers are vulnerable and susceptible to corruption, it is easier for informal businesses to remain outside the formal economy. The result is ample tax evasion. Tax and customs administrations are customarily used to building patronage networks to reward political affiliates and cronies. This leads to high turnovers in those services, thereby wasting the training and investment of the state concerning these personnel. According to records of the Civil Service Commission, 99 tax officials were dismissed in 2006 due to disciplinary proceedings, 30 in 2007 and another 120 removed on “restructuring” grounds; 20 tax officials were dismissed in 2008 due to disciplinary proceedings and another 17 removed on “restructuring” grounds in the Tax Directorate General alone.

On 20 May 2008 a new law was passed, Law no. 9920 on Tax Procedures, which includes a completely new chapter on taxpayers’ rights and obligations, including electronic declaration of taxes in order to avoid personal contacts between taxpayers and tax officials. All taxpayers have been able to declare taxes electronically since 31 March 2009. The traditional Financial Police was abolished in 2008 and replaced by an Investigation Department. The Tax Administration is progressively introducing risk analysis in areas that are the most vulnerable to corruption or mismanagement, and it is conducting public awareness-raising campaigns to reduce the black economy. Discussions are taking place on whether to introduce a sort of tax ombudsman.

With regard to the Customs Administration, the capacity and institutional set-up remain severely limited. Facilities are run-down almost all over the country, and customs officers have yet to be given civil servant status. Staff motivation and career development are issues of concern.

Conclusion

The government’s Anti-Corruption Strategy is likely to be only a rhetorical document, as it needs to be more realistic, set fewer targets and improve prioritisation.

The anti-corruption task forces under the aegis of the prosecution should be encouraged and their number increased. Tax and Customs Administrations, as well as other public services such as health and education, need to increase professionalism and improve management in order to prevent corrupt behaviour.

Instruments for International Co-operation against Corruption

- Albania ratified the most important European and international conventions:
- European Convention on Mutual Assistance in Criminal Matters and two Additional Protocols (1999, 2002).
- European Convention on Laundering, Search, Seizure and Confiscation of Crime Proceeds (2000).
- Council of Europe Civil Law Convention on Corruption (2000): the duties and liabilities of this convention are partially incorporated in the internal legislation. However, some amendments are still pending in parliament, including some involving the Civil Code, the Code of Administrative Procedures, and the Status of Civil Servants. As all of these laws

require a qualified voting majority of three-fifth of all members of parliament, passing them demands cross-party consensus, which hardly seems likely in the current political environment.

- The Council of Europe Criminal Law Convention on Corruption (2001) was ratified by parliament with the passing of Law no. 8778 on 26 April 2001. This law has been changed by Law no. 9369 of 14 April 2005, which removed all reservations. The definitions included in this convention have already been adopted as amendments to the Penal Code and the Penal Procedures Code.
- Council of Europe Convention on Cybercrime and its Additional Protocols (2002, 2004).
- United Nations Convention against International Organized Crime and the two Additional Protocols (2002).
- European Convention on the International Validity of Penal Proceedings (2003).
- The Additional Protocol of the Criminal Law Convention on Corruption (2004) was ratified by the Albanian Parliament with Law no. 9245 of 24 June 2004, but it has still not been fully transposed into the national legislation.
- United Nations Convention against Corruption (signed in 2003) was ratified by the Albanian Parliament through Law no. 9492 of 13 March 2006. Most of the provisions of this convention have now been transposed into the national legislation, but a few remain to be incorporated.
- Despite two attempts to initiate the procedure by the Ministry of Justice, Albania has not yet attempted to become part of the 1997 OECD Anti-Bribery Convention.

Recommendations

- In general terms, a serious reform would require setting a clear dividing line between state institutions and political parties, with the aim of strengthening the professionalism and de-politicisation of the prosecution, the judiciary and the public administration, and adopting a more impartial approach to the issue of lifting immunity.
- The current partisan use of the immunities of parliament and of the government should cease and a more objective handling of the issue should be established in order to reduce political corruption.
- The government and the parliamentary majority should accept the fact that one of the roles of parliament in democratic regimes is to control the performance of the government, and they should cease to elude parliamentary control.
- Better regulation of conflict of interest with regard to politicians is needed, as the current legislation contains many loopholes.
- The remuneration and perquisites of parliamentarians should be reviewed, as they grant disproportionate privileges to MPs. These privileges are neither justified nor necessary for the fulfilment of the duties derived from parliamentary status.
- A better regulation and practices in political financing are necessary. The 2008 Electoral Code has brought about some improvements in the regulations on the financing of political parties, but the Code has many loopholes and it is likely to have little effect on increasing transparency in political financing.
- Political pressure on prosecutors and judges should cease and their accountability mechanisms reinforced in order to allow them to meet the responsibilities entrusted to them by the Constitution and to reduce corruption among judges and prosecutors. Human resources

management in these institutions should be freed from the political interference of the executive.

- The Anti-Corruption Strategy should be better prioritised, with a more realistic reform agenda. Reforms of state institutions that are important for the anti-corruption effort should be negotiated with the parliamentary opposition, as many of these reforms require qualified majority voting in parliament.