



Organization for Security and Co-operation in Europe

SEMINAR REPORT

OSCE REGIONAL SEMINAR FOR PARLIAMENTARY STAFFERS

ON

PARLIAMENTARY OVERSIGHT AND INDEPENDENT INSTITUTIONS

**Held at the
Assembly of the Republic of Albania
Tirana, Albania**

20-21 December 2010

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1. Overview

The OSCE Regional Seminar on “Parliamentary Oversight and Independent Institutions”, held in Tirana, Albania, from 20-21 December 2010, provided an opportunity for staff from parliaments and independent institutions from South Eastern Europe (Albania, Bosnia and Herzegovina, Kosovo¹, the former Yugoslav Republic of Macedonia, and Serbia) to discuss experiences of, and the challenges in, relationships between parliaments and independent institutions. The focus was on two key relationships between parliament and independent institutions: firstly, how parliaments can and should carry out oversight of these institutions’ work, and, secondly, how parliaments can strengthen their own oversight of the executive by developing appropriate co-operation with independent institutions with oversight powers (in particular those with a constitutional/human rights remit, or those with authority for financial and auditing control).

Participants were reminded that independent institutions, as bodies that exist independently of the legislature and/or the executive, with a regulatory or oversight mandate, are a relatively recent innovation in many democratic parliamentary systems, presenting some challenges to classic models of the balance of powers and checks-and-balances systems in place. The event was designed to focus attention on the need to find the right balance between a number of international standards and OSCE commitments in the human dimension relating to democratic governance and the rule of law in shaping the relationship between parliaments and independent institutions.

Thus, participants’ deliberations touched upon the relationship’s implications for the separation of powers, political pluralism, parliamentary oversight and scrutiny powers. In the course of the Seminar, participants heard broader analyses and presentations which helped to set the scene for their discussions, and were able – through active discussion of their own experiences – to find useful best practices and points of common agreement. Participants agreed that parliaments and independent institutions need to work closely together to develop oversight and accountability in governance. Participants reviewed various systems and best practices from South-Eastern Europe and developed recommendations that focus on the value of independent institutions’ reports to parliaments, how to ensure independence and quality in the appointment process for heads of independent bodies, as well as financial autonomy for these bodies.

The Seminar was organized by the OSCE Presence in Albania’s Parliamentary Support Project, with the co-operation and assistance of the OSCE Mission to Bosnia and Herzegovina, OSCE Mission in Kosovo, OSCE Mission to Montenegro, OSCE Mission to Serbia, OSCE Mission to Skopje, and the OSCE Office for Democratic Institutions and Human Rights (ODIHR) in Warsaw, Poland. The above-named Field Operations organized and supported the participation of relevant parliamentary staff from the parliaments and institutions which they assist. The OSCE ODIHR co-moderated the Seminar, contributed presentations and expert participation, and drafted the final report in consultation with the OSCE Presence in Albania. The OSCE acknowledges the support provided by the Assembly of Albania, in particular Ms. Sonila Kadareja and the Assembly’s Monitoring Department on Independent Constitutional Institutions and Independent Institutions.

The opinions and information contained in this document do not necessarily reflect the policy and position of ODIHR or of the OSCE.

¹ All references in this document to Kosovo and to its institutions and leaders refer to the Provisional Institutions of Self-Government under UN Security Council Resolution 1244 of 1999.

2. Agenda



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FINAL AGENDA
REGIONAL SEMINAR FOR PARLIAMENTARY STAFFERS
ON PARLIAMENTARY OVERSIGHT AND INDEPENDENT INSTITUTIONS

Dates 20-21 December 2010

Venue: Assembly of Albania, Conference Room, 4th floor
Bulevardi Deshmoret e Kombit, Tirana

Sunday 19 December

Arrival of participants in the afternoon

Monday 20 December

9.30 Arrival to the premises of the Assembly of Albania

Moderator: Tatjana Trendafilova (Independent Consultant)

9.30 - 9.45 Welcoming Remarks

Mr. Marbind Myftiu, Secretary General, Assembly of Albania
Mr. Frank Dalton, Head of Rule of Law and Human Rights Department,
OSCE Presence in Albania

9.45 – 09.55 Introduction from the Monitoring Department on Independent Constitutional Institutions and Independent Institutions Established by Law – Support to the oversight work of parliamentary committees (Albanian experience) –
Ms. Sonila Kadareja, Adviser

9.55 – 11.10 Parliamentary Oversight System –
Presentations from other participants, each parliament 10 minutes maximum.
Questions/Discussions

11.10 – 11.30 Coffee break

11.30 - 12.00 The place and role of independent bodies in the system of division of powers - challenges for Parliamentary democracy and role of civil servants.
Tatjana Trendafilova, Independent Consultant
Questions/Discussion

12.00 – 12.30 Parliamentary Oversight of Independent Institutions: The French Experience.
Mr. Rubén Díaz-Plaja, Democratic Governance Officer

*Democratic Governance and Participation in Public Affairs Unit
Office for Democratic Institutions and Human Rights (ODIHR) of the OSCE
replacing Mr. Philippe Jabaud, Expert from the French National Assembly*

- 12:30 -14:15 Relationship between parliament and Independent Institutions:
Ombudsperson, High Inspectorate of Declaration and Audit of Assets,
Electric Power Regulatory Body
*Presentations by representatives of independent institutions and
participants.*
Questions/Discussion
- 14.15 – 15.15 Lunch Break
- 15:15 – 16:30 Parliamentary Oversight and Independent Institutions: Standards, Best
Practices, and Knowledge Resources
*Mr. Rubén Díaz-Plaja, Democratic Governance Officer
Democratic Governance and Participation in Public Affairs Unit
Office for Democratic Institutions and Human Rights (ODIHR) of the OSCE*
- 19:30 Cocktail dinner hosted by the OSCE PiA PSP for the staff of the Albanian
Parliament and participants to this regional seminar.
(Meduza bar-restaurant)

Tuesday 21 December

Moderator: Rubén Díaz-Plaja (OSCE-ODIHR)

- 09.30 – 10:00 Reflection and free discussions on previous day
- 10:00 – 11.00 Parliamentary tools and mechanisms through which Parliaments exercise
their control function
*Guest Speakers: Ms. Petra Blass-Rafajlovski, Former Vice –President of the
German Bundestag
Mr. Eduart Halimi, MP, member of Legal Issues, Public Administration and
Human Rights Committee, Assembly of Albania*
Questions/Discussion
- 11.00 -11.30 Coffee break
- 11.30 – 12.30 Conclusions and ideas to further steps on exchanging of experience between
parliaments of the region and other EU national parliaments on the
parliamentary oversight roles
- 12:30 - Site-visit to the Albanian High Inspectorate of Declaration and Audit of
Assets

3. Summary of Proceedings

Mr. Marland Myftiu, Secretary-General of the Assembly of Albania, Mr. Nikolin Kujxhia, Director of the Monitoring Department in the Assembly of Albania, and Mr. Frank Dalton, Head of the Rule of Law and Human Rights Department of the OSCE Presence in Albania, welcomed participants to the Seminar on behalf of the absent Head of Democratization Department. Mr. Dalton stressed that support for the strengthening of parliaments' role was essential to the OSCE's work on democratic governance, since it was a prerequisite for a viable democracy with a vibrant civil society. In performing their oversight role, Mr. Dalton noted, parliaments needed to work together with independent oversight institutions.

Following the opening remarks, Seminar participants presented the situation in each of their parliamentary systems, focusing in particular on notable or special features, as well as giving an introduction to the various independent institutions with which their parliaments had a relationship. Ms. Sonila Kadareja, an adviser in the Assembly of Albania's Monitoring Department on Independent Constitutional Institutions and Independent Institutions Established by Law, presented the work of this Department, designed to deal as a focal point for the Assembly of Albania's relationship with independent bodies and institutions, and to strengthen the Assembly's oversight capacity vis-à-vis independent institutions. Ms. Kadareja noted that the Department supports the Assembly's oversight and control functions over independent bodies by, *inter alia*, preparing evaluations and analyses of independent institutions' periodical reports; keeping track of institution heads' mandates and appointment procedures; analyzing budgets and organizational structure of institutions; monitoring implementation of the legal frameworks governing the work of these institutions as well as the implementation of recommendations made by the Assembly to independent institutions.

Mr. Nenad Pandurević, committee secretary in the Parliamentary Assembly of Bosnia and Herzegovina, explained the challenges of ensuring effective oversight given the particularities of the Bosnia and Herzegovina State Parliament, which has a relatively small membership and is bicameral (the only such parliament in the region). The reduced number of MPs means that MPs, comparatively speaking, accumulate more responsibilities than their counterparts in other countries. Despite the existence of these particularities, a system of oversight did exist, he explained, albeit with room for improvement. Mr. Ismet Krasniqi, Secretary General of the Assembly of Kosovo, offered an overview of the institutional tools and mechanisms with which the Assembly of Kosovo oversees more than 25 different independent bodies. Mr. Genci Muharemi, Deputy Secretary General of the Assembly of the former Yugoslav Republic of Macedonia, focused his presentation on the work of the Assembly's 'Department of Internal Audit', and elaborated on the role of the 21 standing committees in the Assembly's monitoring and oversight work. Mr. Mladen Mladenović, Deputy Secretary General of the Assembly of the Republic of Serbia, underlined in particular the tools that the newly adopted Law on the Assembly as well as revised Rules of Procedure introduced for oversight purposes. One of these is the possibility to convene a special plenary session of the Assembly with the participation of the head of an independent institution. It was noted, however, that there was still no consensus on what would happen in case independent institutions do not comply with parliament's recommendations.

Following the presentations, participants discussed a number of issues arising out of the case studies. One issue concerned the possible consequences of parliament's rejection of a report by an independent institution. Participants noted that such rejections were quite rare; in some cases, such as Albania's, they can only take place on procedural grounds, and not on the basis of the substance of reports. Some participants noted that rejections on substantive grounds should or could entail the resignation of the institution's head, but warned of the danger of politicizing the work of these institutions through such a practice, as well as undermining these institutions' independent and non-partisan nature. In the course of discussion, the issue of how and when heads of institutions should be dismissed came up – it was felt that there was a clear danger of politicizing the work of institutions, and that dismissal should be used sparingly, in accordance with explicit criteria (for instance, in the case of a criminal conviction, corruption or conflicts of interest) and on the basis of a clearly articulated justification. Most participants noted that rather than reject reports, parliaments can and often do express their disagreement with the recommendations of an institution through the adoption of resolutions in response to the reports of these institutions.

Ms. Tatjana Trendafilova, an independent consultant and ex-Director of the Civil Service Agency in the former Yugoslav Republic of Macedonia, offered an overview of the general situation of independent institutions vis-à-vis parliaments in South East Europe and trends and challenges in their relationship. She underlined the importance – identified by the World Bank Institute in a 2006 publication² – of differentiating between “effective oversight” and “oversight potential”, i.e. the degree to which formal powers of oversight were actually used by parliaments. In this regard, parliaments in South Eastern Europe still fall short on conducting effective oversight. Referencing recent assessment reports developed by SIGMA³, she argued that the predominance of the executive branch over the legislature was a trend common throughout the region, with negative consequences for the separation of powers and functioning of checks and balances. Consequently, she listed a number of problems frequently faced by the independent institutions, such as the politicization of appointment and dismissal processes, the lack of financial independence and the allocation of insufficient budgetary resources and premises, as well as understaffing. Furthermore, parliaments often failed to appoint a lead committee for the review of independent institutions' reports, and parliaments often fail to fully utilize and follow up on reports from such institutions. At the same time, some reports often fail to deliver a high standard of analytical depth in their reporting, which hampers their usefulness for parliaments to use them in their own policy and lawmaking work.

In follow up discussions, some participants responded to Ms. Trendafilova's presentation by noting that the emphasis of their parliaments in recent years had been on building up the relevant legislative frameworks for institutional development as well as Euro-Atlantic integration processes – and less on oversight. Participants also stressed the importance of using financial independence to secure the political independence of institutions. One good practice identified was the use of a publicly advertised job vacancy for the recruitment of heads of

² “Parliamentary Oversight for Government Accountability”, Riccardo Polizzo, Rick Staphenurst and David Olson (eds.) (Washington, DC: World Bank Institute, 2006), available at <http://siteresources.worldbank.org/WBI/Resources/ParliamentaryOversightforGovernmentAccountability.pdf> (last accessed on 5 January 2011).

³ SIGMA (Support for Improvement in Governance and Management) is a joint initiative of the OECD and the European Union, principally financed by the EU. The 2010 assessment reports on the countries participating in the Seminar are available at <http://www.sigmaweb.org>.

certain independent institutions, with an open recruitment procedure based on the vacancy; parliamentary committees can then play a role in the selection process based on this vacancy notice. Such procedures can help to improve the quality of the pool of applicants. Nonetheless, such procedures cannot replace the importance of guaranteeing and representing political pluralism in the selection process.

A presentation developed by Mr. Philippe Jabaud, of the French National Assembly Secretariat, offered a case study of the current institutional debates in France surrounding the appropriate role of independent institutions in relation to Parliament.⁴ An October 2010 report by the National Assembly's Monitoring and Assessment Commission had noted that independent "watchdog" and regulatory/executive institutions were a relative novelty in the French constitutional system, but that despite this their number had grown considerably – 42 institutions had been set up since 1978. The Commission's report had recommended a number of means to improve parliamentary oversight, including a rationalization of institutions (merging some, and clarifying mandates, in order to avoid overlaps) as well as developing better common definitions of the powers and responsibilities of such institutions. In order to improve scrutiny, the report recommended scrutiny of the institutions through the National Court of Auditors⁵. The parliament itself would also have to set down better indicators to measure institutions' performance.

The Seminar heard presentations outlining case studies of a number of independent institutions from the region, including the People's Advocate of Albania, the Ombudsperson in Kosovo, as well as the Independent Oversight Board of Civil Service of Kosovo, the Civil Service Commission of Albania, the High Inspectorate for Declaration and Audit of Assets of Albania, and the Electric Power Regulatory Body of Albania. The presentations touched briefly on the background, role and powers of these institutions and looked in particular at their relationship to the legislatures – through reporting and budget obligations in particular. Participants in particular noted with interest the efforts of the Kosovo Ombudsperson Institution to increase the representation of Kosovo's communities and their interests in the Ombudsperson structure.

In reaction to the presentation about the Kosovo Ombudsperson – which had discussed some capacity shortfalls of the institution - the participants from Bosnia and Herzegovina noted that it had taken some time and effort to establish Ombudspersons in their country, in particular in relation to financing. Participants also discussed what role Ombudsperson offices may have in the legislative process. Participants from Albania noted that in their country the Ombudsperson may suggest amendments to draft laws of relevance to his/her mandate; these recommendations must be addressed by Parliament, otherwise the Ombudsperson may take the issue to the Constitutional Court. In Serbia, participants noted, a similar right exists – the Ombudsperson can be involved in lawmaking processes based on his/her monitoring of cases - but there are apparently some doubts regarding the scope of legislation on which the Ombudsperson can comment. Such powers, it was felt, required an effective, regular working relationship between certain parliamentary committees and the Ombudsperson – in Serbia, the

⁴ Mr. Philippe Jabaud had to cancel his participation for reasons beyond his control. Mr. Ruben Díaz-Plaja of the OSCE-ODIHR gave his presentation on his behalf.

⁵ The National Court of Auditors, in France and similar systems, is a semi-judicial body which "monitors the legality of public accounts and checks the correct use of public funds". See 'The Court of Auditors' on http://www.assemblee-nationale.fr/english/synthetic_files/file_8.asp (last accessed on 18 January 2011).

Assembly Secretariat had taken the initiative and set up informal meetings between the Ombudsperson and the Chair of the Legal Committee.

A presentation by OSCE/ODIHR Democratic Governance Officer Ruben Díaz-Plaja looked at how the relationship between independent institutions and parliament was reflected in international standards and best practice. Mr. Díaz-Plaja noted that independent agencies and institutions were a relatively new development in democratic systems, growing out of a greater awareness of human and civil rights, as well as the increasingly technical and complex nature of modern government and policy. Nevertheless, the importance of such institutions to modern understandings of democracy is directly and indirectly addressed in a number of normative documents relating to democratic institutions, including the OSCE human dimension commitments, as well as documents developed by the Inter-Parliamentary Union, the Commonwealth Parliamentary Assembly as well as the Parliamentary Assembly of the Francophonie. Mr. Díaz-Plaja also referred to the case of the recommendations developed by the UK House of Commons Public Administration Select Committee in 2007 on how to strengthen independent institutions as well as parliament's oversight over them, cited by the World Bank Institute.⁶ Mr. Díaz-Plaja summarized the discussion by asking the participants to consider: "Who guards the guardians?" and "Who guards the guardians' guardians?"

Subsequent discussion focused on a number of issues. The role of the media in the relationship between parliament and independent institutions was considered; participants agreed that the media could serve both to amplify the concerns identified by independent institutions, and as valuable allies in the oversight of the executive. In this regard, participants stressed once again the importance of independent institutions producing useful, easily understandable and analytical information and reports, which could also be used by the media. But others warned that even the best report would only have a limited impact without appropriate follow-up procedures. Better tracking – by parliament – of the key recommendations made by independent institutions could really assist in such follow-up, and the example of the work of the Albanian Assembly's Monitoring Department was seen as particularly useful in this regard. Nonetheless, some noted that a good support service in the Secretariat was only part of the solution – ultimately MPs have the political responsibility to carry out oversight tasks.

During the second day of the Seminar, participants focused on identifying and agreeing recommendations and best practices for inclusion in the Conclusions. Participants also had a chance to hear two presentations. The first, from Mr. Eduart Halimi, member of the Albanian Assembly, offered a perspective from an elected parliamentarian's point of view. Mr. Halimi described some of the mechanisms that he and his fellow MPs use according to provisions of the Constitution and the Rules of Procedure of the Albanian Assembly for oversight over independent institutions. He recommended that one MP be appointed as "rapporteur" or "focal point" for one institution, being responsible for oversight of, and relations with, that particular institution on behalf of his or her committee. Mr. Halimi described how the Monitoring Department had contributed to developing a closer working relationship between independent institutions and the Assembly, particularly during independent institutions' annual reporting

⁶ These recommendations were cited in Staddon, A 'Holding the Executive to Account? The Accountability Functions of the UK Parliament' (Washington, DC, World Bank Institute, 2008), available at <http://siteresources.worldbank.org/PSGLP/Resources/HoldingtheExecuTheAccountabilityFunctionoftheUKParliament.pdf> (last accessed on 5 January 2011).

procedures. The Department's analytical services, he noted, allowed Assembly members to assess the reports presented by the independent institutions, based on which the Assembly members can then draft a resolution in response, for deliberation in the plenary session of the Assembly. Mr. Halimi also noted the Albanian parliament's appointment mechanism for heads of institutions, based on a system of "hearings" inspired in part by the United States Congress.

The second presentation came from Ms. Petra Bläss-Rafajlovski, a former Deputy Speaker of the German Bundestag, who underlined the prestige attached to the oversight committees dealing with independent institutions in the German Bundestag. In her remarks, Ms. Bläss-Rafajlovski summed up the deliberations by listing and analyzing some of the recommendations mentioned during the Seminar. She underlined, in particular, the importance of reports from independent institutions as inputs for the policy-making process; in the German Bundestag, for instance, recommendations from independent agencies dealing with the labour market and social affairs are often the basis of policy and law making. Ms. Bläss-Rafajlovski noted, however, that consideration of independent institutions can neither be separated from the fight against corruption and minimizing conflicts of interests, nor from the need to ensure non-partisanship and impartiality in independent institutions. These issues, she felt, had not been addressed thoroughly in the Seminar.

The recommendations and conclusions of the Seminar can be found below.

4. Conclusion

The participants in the OSCE Regional Seminar on Parliamentary Oversight and Independent Institutions identified numerous good practices and formulated recommendations⁷ as follows:

1. Good practices regarding the relationship between parliaments and independent institutions

a) Strengthening the control and oversight function of parliaments:

- Establish, either one or more special parliamentary committees to oversee independent institutions or strengthen the role of standing parliamentary committees in considering reports from independent institutions;
- Provide the support of a dedicated unit/department in the parliament secretariat, which can act as an "point of contact" for day-to-day relations with independent institutions and support parliament's follow-up of the recommendations given by parliaments to independent institutions;
- Assign one-two MPs to act as "focal points" or rapporteurs to follow the work of each independent institution;
- Fully utilize tools contained in the parliamentary rules of procedure (e.g. public hearings for implementation review);
- Develop criteria and standards for the evaluation and assessment of performance of independent institutions, to allow parliaments to identify gaps and challenges in their work;

⁷ The good practices and recommendations have no official status and are not based on consensus. The inclusion of a recommendation in this report does not suggest that it reflects the views or policies of the ODIHR or the OSCE.

- Where possible, make good use of regular state audit reports, including performance audits (where such capacity exists), as a way to assess and measure performance of independent institutions;
- b) Taking into account the work and expertise of independent institutions:
- Develop effective tools and structures for analyzing, sharing, and discussing recommendations from independent institutions;
 - Where appropriate, use findings from independent institutions' reports more effectively in carrying out oversight of the executive;
 - Identify ways to establish procedures to ensure the engagement of independent institutions as early as possible in parliament's policy and law-making processes with regard to topics that lie within their mandates;
- c) Reporting on and by independent institutions:
- Consider improving and standardizing the definition of oversight tasks and procedures regarding independent institutions in the constitutions/legislation/parliamentary rules of procedure, including regulation of the consequences of rejection of independent institutions' reports by parliaments;
 - Encourage standardization of report formats, with "essential elements" for each institution's report;
 - Develop follow-up procedures for reports from independent institutions – either through committee or plenary discussion;
 - Improve and strengthen independent institutions' capacities to deliver accurate and analytical reports, with clear and useful recommendations for parliamentarians and other policymakers, and which can strengthen parliament's oversight of the executive;
- d) Appointment/Dismissal of Heads of Independent Institutions
- Ensure a timely, pluralist and transparent recruitment procedure, if possible through a public competition, based on the principle of merit and encouraging gender and ethnic balance;
 - Encourage specifying clear criteria and procedures for dismissal of heads of independent institutions;
- e) Financial Independence of Independent Institutions
- Ensure financial independence by allowing independent institutions to propose their own budgets to Parliament, independently of the executive, and provide for a separate vote in parliaments for their budgets;
 - Allocate sufficient resources to independent institutions, so as to allow them to fully perform their legal competencies and attract sufficient and high quality staff;

2. Follow up by the OSCE

- Strengthen regional networks across the OSCE region of parliamentary staff and parliamentarians on the issue of oversight and independent institutions;
- Consider organizing a follow-up meeting, building on the Tirana Seminar, to further examine and study the issue of parliamentary oversight and independent institutions;
- Consider the development of research and analysis tools, including comparative studies and best practices, on this issue.