



## Organization for Security and Co-operation in Europe

### Presence in Albania

#### **OSCE PRESENCE RECOMMENDATIONS ON BILL ON PARLIAMENTARY OVERSIGHT OF INTELLIGENCE AND SECURITY SERVICES**

*Background: Following a request of the Chairman of the National Security Committee of the National Assembly of Albania, the OSCE Presence in Albania provided assistance with the drafting of a bill on parliamentary oversight of the intelligence and security services. This is part of the Presence's Parliamentary Support Project, funded by the Embassy of the Kingdom of the Netherlands.*

*A former expert staff member of the Intelligence and Security Committee of the U.K. parliament, together with OSCE staff have worked to provide recommendations to be submitted to the Chair and the Committee members of all political parties, members of institutions and civil society, before the bill is drafted. The objective is to help produce a first draft to strengthen parliamentary procedure, including through public consultation processes. The draft law regulates the oversight of the parliament over the work of the Intelligence and Security Services. This law is different and separate from the Amendments to the Law on the State Information Service, which have recently been publicly debated.*

*The recommendations are based on the principle that parliamentary oversight of the national intelligence and security services and the government institutions supervising them provides democratic accountability, and are as follows:*

1. The Assembly needs to establish either a standing committee or a subcommittee, the latter being foreseen in existing legislation, to oversee the Intelligence and Security Services and other organisations that collect and use secret intelligence. Previously, a small subcommittee of Assembly Members investigated and oversaw the State Information Service but the process is not currently followed (and has not been for a number of years). Key services that need to be covered by the (sub)committee are the State Information Service and Military Intelligence Service, together with organisations within the Prime Minister's Office, the Prosecutor General and the Ministries of Internal Affairs, Foreign Affairs, Justice and Finance. This list includes, in effect, all the bodies that can request the interception of communications and conduct other actions approved by the Prosecutor General, as well as bodies administering the system and using the intelligence collected in this way.
2. The (sub)committee can conduct special investigations as necessary but should focus on:
  - a. the lawfulness (and proportionality) of the activities, whether or not agreed procedures are followed (investigation of complaints by individuals maybe included), verify that proper democratic control is exercised by the executive and that individual human rights are not unlawfully breached;
  - b. the proper use and accounting of financial resources;
  - c. investigate how the intelligence is collected, used and protected, thus acting as a mechanism to either reassure the wider population or to investigate shortcoming or abuses;

d. making recommendations about the effectiveness, priorities and remit of the services/organisations and the discharge of democratic control by the government over the services/organisations.

3. The (sub)committee must not get involved in judicial processes or oversee the collection of evidence used in prosecutions under the penal code. Nor should the (sub)committee "approve" any operations – that must remain the preserve of the executive – nor should it be able to request information on ongoing operations or personnel information on employees or agents.

4. The (sub)committee need to be able to take written and oral evidence from:

- a. Ministers responsible for the services/organisations so that they can be held accountable for the democratic control of the services/organisations functions and actions;
- b. Prosecutor General for the authorisation of intelligence collection;
- c. Directors/Heads of the services/organisations;
- d. Inspector Generals and other internal oversight bodies, such as the High State Audit Office; and,
- e. Users of the collected intelligence and assessments, including Ministers.

Others should be invited, including civil society and members of the services/organisations, but not compelled to give evidence.

5. The (sub)committee must not compromise State Secrets. Arrangements need to be introduced to protect secrecy so that Ministers and officials can speak openly to the (sub)committee and provide information/evidence. The (sub)committee Members must be nominated by their parliamentary groups and need to agree to security rules by signing a document that expresses their understanding of rules governing confidentiality, including the possibility of criminal sanctions in the case of violation (but need not necessarily be formally "vetted"). All the staff must have official security certificates. Secure facilities also need to be provided to the (sub)committee. Public hearing could be permitted in special circumstances but otherwise all meetings will be in private with no right of entry for other Members of the Assembly or the Council of Ministers.

6. The (sub)committee must report at least annually to the Assembly and therefore to the general public, with their reports debated in plenary session. The final decision on what is published must rest with the (sub)committee, which needs to operate in a responsible manner and not jeopardise operations or international/multinational relationships with other countries or organisations. Reports could be unclassified or have classified material removed prior to public distribution, in which case copies of the full report need to be given to the Speaker of the Assembly, the President, the Prime Minister, relevant Ministers and services/organisations.

7. The (sub)committee should be able to highlight issues with the executive once they have been identified; this may involve informing the President, Prime Minister, Ministers and the relevant services/organisations in a timely manner as well as the Speaker of the Assembly.

8. Ideally the (sub)committee would make all its decisions by consensus but if voting was necessary, that should be regulated. Similarly if a report cannot be agreed upon by consensus then both the majority and the minority must be able to publish their conclusions.

Based on these recommendations, the OSCE Presence in Albania would suggest the following way forward:

9. Steps should be taken to ensure that a draft law is considered by the Council of Ministers so that it can be brought to the Assembly as early as possible, while still respecting a proper consultation process.

10. Stakeholders, including the Government and civil society, will need to be consulted and public hearings and round tables should be held to improve the draft. Government support, in addition to Parliamentary interest, would ensure that the law is passed.

*In addition to what is mentioned under point 5, the Presence noted that there may be a need for amendments to the Criminal Code of the Republic of Albania in order to facilitate the prosecution of those who may violate the confidentiality of information received by the parliamentary (sub)committee. Currently “abuse of duty” (art. 248) and “disclosure of secret acts or information” (art. 295/a) are available for the prosecution of improper disclosure. It is recommended studying whether these are sufficient for handling all matters that may arise in this field.*