

Overall Score:

74 - Moderate

Legal Framework Score:

84 - Strong

Actual Implementation Score:

63 - Weak

Category 1. Non-Governmental Organizations, Public Information and Media

1.1. ⁷⁸Anti-Corruption Non-Governmental Organizations

1. Are anti-corruption/good governance NGOs legally protected?

67

01a. In law, citizens have a right to form NGOs focused on anti-corruption or good governance.

Yes

No

Comments:

Nongovernmental organizations may be civic associations, non-profit groups, foundations, or any other organized non-state organization.

References:

Law nr. 8788 dated 7. 5. 2001 "For nongovernmental organizations" Article nr. 17/ c

Yes: A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence. Non-governmental organizations (NGOs) are defined here as any organized group that is separate from the state working on issues of governance, transparency, and/or anti-corruption.

No: A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

01b. In law, anti-corruption/good governance NGOs are free to accept funding from any foreign or domestic sources.

Yes | No

References:

Article 39 of the Law, Nr. 8788, date 7. 5. 2001: "For nongovernmental organizations"

Yes: A YES score is earned if anti-corruption/good governance NGOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

No: A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for NGOs focused on anti-corruption or good governance.

01c. In law, anti-corruption/good governance NGOs are required to disclose their sources of funding.

Yes | No

References:

There is no specific provision about this issue.

Yes: A YES score is earned if anti-corruption/good governance NGOs are required to publicly disclose their sources of funding.

No: A NO score is earned if no such public disclosure requirement exists.

2. Are anti-corruption/good governance NGOs able to operate freely?

83

02a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance NGOs.

100 | 75 | 50 | 25 | 0

References:

Interview with Artan Hoxha, NGO expert, president of the Institute of Temporary Studies. The interview took place at his office on November 4, 2010.

70% Chapter III Democratic decision-making governance- Civil society index analytical country report for Albania, UNDP, 2010.

100: NGOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

75:

50: NGOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the NGO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Other than pro-government groups, NGOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

02b. In practice, anti-corruption/good governance NGOs actively engage in the political and policymaking process.

100 | 75 | **50** | 25 | 0

Comments:

Anti-corruption nongovernmental organizations are, in general, active. They are also able and willing to articulate opinions on political matters. However, their reports are not very carefully considered by the decision makers. As a result, they remain irrelevant in regard to political decisions and the policymaking process in general.

References:

Interview with Artan Hoxha, NGO expert, president of the Institute of Temporary Studies. The interview took place at his office on November 4, 2010

60% Chapter III "Analysis of the Civil Society in Albania, Civic Engagement," Extent of political engagement — Civil society index analytical country report for Albania, UNDP, 2010

100: Non-governmental organizations focused on anti-corruption or good governance are an essential component of the political process. NGOs provide widely valued insights and have political power. Those NGOs play a leading role in shaping public opinion on political matters.

75:

50: Anti-corruption/good governance NGOs are active, but may not be relevant to political decisions or the policymaking process. Those NGOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

25:

0: Anti-corruption/good governance NGOs are effectively prohibited from engaging in the political process. Those NGOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

02c. In practice, no anti-corruption/good governance NGOs have been shut down by the government for their work on corruption-related issues during the study period.

Yes | No

References:

Interview with Artan Hoxha, NGO expert, president of the Institute of Temporary Studies. The interview took place at his office on November 4, 2010.

Yes: A YES score is earned if there were no NGOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period. YES is a positive score.

No: A NO score is earned if any NGO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the NGO's work may not be explicit, however the burden of proof here is low. If it seems likely that the NGO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are anti-corruption/good governance NGO activists safe when working on corruption issues?

100

03a. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been imprisoned.

Yes | No

Comments:

There has not been any decision from the courts on this case. No one has ever been arrested, nor has anyone been imprisoned.

References:

Interview with Artan Hoxha, NGO expert, president of the Institute of Temporary Studies. The interview took place at his office on November 4, 2010

Yes: A YES score is earned if there were no NGO activists imprisoned because of their work covering corruption. YES is a positive score.

No: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the person was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. "Imprisoned" is defined here as detention by the government lasting more than 24 hours.

03b. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been physically harmed.

Yes | No

Comments:

There is no data from the police state.

Official website of the Ministry of Interior: <http://www.moi.gov.al>

References:

Individual research done by myself

Yes: A YES score is earned if there were no documented cases of NGO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work. YES is a positive score.

No: A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

03c. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been killed.

Yes | No

Comments:

Activists have not been harmed.

References:

Interview with Artan Hoxha, NGO expert, president of the Institute of Temporary Studies. The interview took place at his office on November 4, 2010

Yes: A YES score is earned if there were no documented cases of NGO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

No: A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

4. Can citizens organize into trade unions?

04a. In law, citizens have a right to organize into trade unions.

Yes | No

References:

Article nr. 1 of the Law nr. .9367, date April 4, 2005: “For the Trade Unions in Albania”

Yes: A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

No: A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

04b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

Comments:

Trade unions exist, but their role is very limited due to weak organization and powerless leadership. Very often, they remain at the margins of policy debates despite their presence in the official bodies that deal with labor issues.

Sometimes trade unions become the object of political abuse. Barriers to the organization of trade unions exist. Trade unions in the textile and shoe industry, which employ almost 100,000 people, have faced intimidation at work and retaliatory firings.

References:

Interview with Artan Hoxha, NGO expert, president of the Institute of Temporary Studies. The interview took place at his office on November 4, 2010

Chapter IV, “Strengths of Civil Society in Albania” — Civil society index analytical country report for Albania, UNDP, 2010

100: Trade unions are common and are an important part of the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

75:

50: Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

25:

0: Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

1.2. Media's Ability to Report on Corruption

5. Are media and free speech protected?

100

05a. In law, freedom of the media is guaranteed.

Yes

No

References:

Article nr. 22 of the Constitution of the Republic of Albania

Article nr. 4, Law nr. 8410, Sept. 30, 1998: "For Electronic Media In The Republic Of Albania"

Yes: A YES score is earned if freedom of the press is guaranteed in law, including to all political parties, religions, and ideologies.

No: A NO score is earned if any specific publication relating to government affairs is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

05b. In law, freedom of speech is guaranteed.

Yes

No

References:

Article no. 19 of the Universal Declaration for Human Rights

Yes: A YES score is earned if freedom of individual speech is guaranteed in law, including to all political parties, religions, and ideologies.

No: A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

6. Are citizens able to form print media entities?

75

06a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

Comments:

There is no need for a license to establish a print media outlet.

References:

Interview with Artan Hoxha, NGO expert, president of the Institute of Temporary Studies. The interview took place at his office on November 4, 2010

100: Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of print media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

06b. In law, where a print media license is necessary, there is an appeals mechanism if a license is denied or revoked.

Yes | **No**

References:

Desk research: It is not provided in the Law nr. 8410, Sept. 30, 1998: "For Electronic Media In The Republic Of Albania."

Yes: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied print media license, including through the courts. A YES score is also earned if no print license is necessary.

No: A NO score is earned if there is no appeal process for print media licenses.

06c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

No license is needed to form a print media entity.

References:

Interview with Artan Hoxha, NGO expert, president of the Institute of Temporary Studies. The interview took place at his office on November 4, 2010.

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

06d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

No license is needed to form a print media entity.

References:

Interview with Artan Hoxha, NGO expert, president of the Institute of Temporary Studies. The interview took place at his office on November 4, 2010

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

7. Are citizens able to form broadcast (radio and TV) media entities?

63

07a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | **50** | 25 | 0

Comments:

The National Council of Radio and Television responds in 90 days after the opening of a tender for a new frequency.

References:

Individual research done by myself

Official website of the National Council of Radio and Television, <http://www.kkrt.gov.al/>

100: Broadcast media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of broadcast media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

25:

0: Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

07b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeals mechanism if a license is denied or revoked.

Yes | No

References:

Provision nr. 5 of the Article nr. 7 of the Law nr. 8410, Sept. 30, 1998: "For Electronic Media In The Republic Of Albania"

Yes: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied broadcast media license, including through the courts. A YES score is also earned if no broadcast license is necessary.

No: A NO score is earned if there is no appeal process for broadcast media licenses.

07c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

A response to an application is required 90 days after the tender is open. However, this does not apply to an application sent to The National Council of Radio and Television. In that case, it may be delayed up to six months.

References:

Gentiana Biku, employee at The National Council of Radio and Television. The interview took place at my office on Oct. 15, 2010.

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

07d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The following are fees for granting and renewing private radio and television licenses:

radio broadcasting: 15,000 Albanian leks (US\$149)

television broadcasting: 20,000 Albanian leks (US\$198)

References:

Official website of The National Council of Radio and Television, <http://www.kkrt.gov.al/en>

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

8. Can citizens freely use the Internet?

100

08a. In practice, the government does not prevent citizens from accessing content published on-line.

100 | 75 | 50 | 25 | 0

References:

Interview with Artan Hoxha, NGO expert, president of the Institute of Temporary Studies. The interview took place at his office on November 4, 2010.

100: The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

75:

50: Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

08b. In practice, the government does not censor citizens creating content on-line.

100 | 75 | 50 | 25 | 0

Comments:

People may write whatever they want in different kind of forums on many internet websites; for example, www.balkanweb.com; www.shekulli.com.al; www.top-channel.tc.

References:

Individual research done by me, Ani Plaku.

100: The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

75:

50: In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

25:

0: The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

9. Are the media able to report on corruption?

50

09a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

Yes

No

References:

Article nr. 38 of the "Law for Electronic Media In The Republic Of Albania"

Yes: A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

No: A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

09b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100

75

50

25

0

Comments:

Editorial quality is hampered by interference from politicians, economic lobbies, and media owners who have political or economic interests.

Journalists and media outlets, due to their political alignment, minimize to the point of self-censorship various aspects of the news or highlight what is in harmony with their political or business allegiances. Criminal sanctions exist for defamation and libel, which also contributes to self-censorship by journalists.

The absence of a culture of self-regulation and the unprotected employment status of most journalists also harm journalistic editorial standards and ethics.

In general media ownership/distribution groups affect the decision to restrict reporting of corruption-related issues.

References:

Republic Of Albania, Parliamentary Elections, June, 28, 2009, Osce/Odihr Election Observation Mission, Final Report, Warsaw, Sept. 14, 2009

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

75:

50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

09c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | **50** | 25 | 0

Comments:

It depends on a particular media ownership's affiliation to political parties. Those media outlets that are closer to the opposition party allow publication of stories on corruption cases.

References:

Freedom House, Albania report 2009, <http://www.freedomhouse.org/template.cfm?page=363&year=2009&country=7551>

100: The government never prevents publication of controversial corruption-related materials.

75:

50: The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. This score is appropriate if in countries where illiteracy is high, the government may allow a free print press but censor broadcast media.

25:

0: The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

10. Are the media credible sources of information?

20

10a. In law, print media companies are required to publicly disclose their ownership.

Yes | **No**

References:

Desk research: There is no requirement provided for in the Law nr. 8410, Sept. 30, 1998: "For Electronic Media In The Republic Of Albania."

Yes: A YES score is earned if print media companies are required by law to publicly disclose all owners of the company.

No: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being publicly disclosed.

10b. In law, broadcast (radio and TV) media companies are required to publicly disclose their ownership.

Yes | **No**

References:

Provision nr. 3, Article nr. 20 of the Law nr. 8410, Sept. 30, 1998: "For Electronic Media In The Republic Of Albania."

Yes: A YES score is earned if broadcast media companies are required by law to publicly disclose all owners of the company.

No: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being publicly disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | 50 | **25** | 0

Comments:

The climate in which the media operates remains an issue of concern as it impedes the development of editorial independence and creates conditions for biased reporting and self-censorship by journalists.

Despite attempts to establish a formal journalistic code and establish professional standards, editors and journalists are perceived as “selling” favorable or unfavorable coverage in exchange for specific benefits.

References:

Freedom House report, Albania 2010, <http://www.freedomhouse.org/template.cfm?page=22&year=2010&country=7766>

European Commission, Analytical Report, Brussels, Nov. 9, 2010

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

75:

50: Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

25:

0: Editors and journalists are widely known to “sell” favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | 50 | 25 | 0

Comments:

The OSCE/ODIHR’s Election Observation Mission (EOM) media monitoring during the official campaign period (May 28 to June 26) shows that there is more balance in the quantitative coverage of the two main parties than before the official campaign period.

Public TVSH devoted 45 percent of its time in news and current affairs programs to the DP and 25 percent of its coverage to the SP.

Vizion Plus devoted 37 percent of its coverage to the DP and 28 percent to and the SP, and so on.

TV Klan dedicated 56 percent of its airtime to the DP and 30 percent to the SP.

In addition to the bias shown by the monitored broadcasters in both quantitative and qualitative terms, a significant lack of editorial independence was noted. Journalists employed by all broadcasters who were monitored informed the OSCE/ODIHR EOM that campaign coverage is largely reduced to broadcasting footage and commentary produced and provided by political parties themselves.

References:

Republic Of Albania, Parliamentary Elections, June 28, 2009, OSCE/ODIHR Election Observation Mission, Final Report, Warsaw Sept. 14, 2009

100: All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

75:

50: Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

25:

0: The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

100 | 75 | **50** | 25 | 0

Comments:

Special responsibility to ensure pluralism rests with public service broadcasting. Publicly funded broadcasters should provide a complete and impartial picture of the entire political spectrum in their coverage of elections, since they are obliged to offer a diverse, pluralistic and wide range of views.

References:

Republic Of Albania, Parliamentary Elections, June, 28, 2009, Osce/Odihr Election Observation Mission, Final Report, Warsaw, Sept. 14, 2009

<http://www.osce.org/odihr/elections/albania/item/38598>

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

11. Are journalists safe when investigating corruption?

100

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

Yes | No

Comments:

There has been no court decision on this issue. No journalist investigating corruption has ever been imprisoned. This has not been mentioned in the OSCE/ODIHR final report on Albania.

References:

Interview with Artan Hoxha, NGO expert, president of the Institute of Temporary Studies. The interview took place at his office on November 4, 2010.

Yes: A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period. A YES score is positive.

No: A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist's work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. "Imprisoned" is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

Yes

No

Comments:

There has been no court decision on this issue. No journalist investigating corruption has ever been imprisoned. This has not been mentioned in the OSCE/ODIHR final report on Albania.

References:

Interview with Artan Hoxha, NGO expert, president of the Institute of Temporary Studies. The interview took place at his office on November 4, 2010.

Yes: A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues. A YES score is positive.

No: A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

Yes

No

Comments:

No case of a journalist being killed has been reported by any of the international organizations working in Albania. No case has ever been reported on TV or in the printed media.

References:

Interview with Artan Hoxha, NGO expert, president of the Institute of Temporary Studies. The interview took place at his office on November 4, 2010.

Yes: A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period. A YES score is positive.

No: A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

73 1.3. Public Requests for Government Information

12. Do citizens have a legal right to request information?

100

12a. In law, citizens have a right to request government information and basic government records.

Yes | No

References:

Article nr. 23 of the Constitution of the Republic of Albania

Yes: A YES score is earned if there is a formal right to request government documents, including constitutional guarantees. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request.

No: A NO score is earned if there is no such right.

12b. In law, citizens have a right of appeal if a request for a basic government record is denied.

Yes | No

References:

Article nr. 15 of the “Law for the Right of Information for Official Documents”

Yes: A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

No: A NO score is earned if there is no such formal process.

12c. In law, there is an established institutional mechanism through which citizens can request government records.

Yes | No

References:

Article nr. 3 of the “Law for the Right of Information for Official Documents”

Yes: A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

No: A NO score is earned if there is no such formal mechanism or institution.

13. Is the right to information requests effective?

63

13a. In practice, citizens receive responses to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Business registration is available online: www.qkr.gov.al

E-procurement: <https://www.app.gov.al>

Extracts from the court decisions are online in the court’s official websites.

Civil register is available online on a database.

Statistical information from the National Institute of Statistics might take more than two months if you do not have connections within the institution.

References:

69.5%, Chapter III, Internal Governance — Civil society index analytical country report for Albania, UNDP, 2010

Individual research done by me, Ani Plaku.

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

75:

50: Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

13b. In practice, citizens can use the information request mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Information available online may be obtained for free.

References:

Individual research done by me, Ani Plaku.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

13c. In practice, responses to information requests are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

Delays might happen for information that is officially requested by mail, and that is not available online (mainly statistical information from public institutions).

References:

Individual research done by me, Ani Plaku.

100: Responses to information requests typically address the requestor's questions in full and are not redacted or edited to remove sensitive information.

75:

50: Information requests are sometimes met with sufficient responses, but responses to information requests may be vague or overly general when sensitive information is sought.

25:

0: The government rarely or never replies to information requests with meaningful responses. If and when responses are issued, they are so overly general or heavily redacted as to render them useless.

13d. In practice, citizens can resolve appeals to information requests within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

Effectiveness depends on what kind of information is requested. In practice, if you have connections within the institution, you can get information in time.

The most problematic institutions in regard to receiving information are the Restitution and Compensation Agency and the Immovable Properties Registration Office.

I conducted individual research as social-economic expert in the framework of "Diagnosis of Extra-legality in Albania." Assessed the procedures of a number of state agencies, such as Immovable Property Registration Office (IPRO), the Restitution and Compensation Agency, National Institutions of Statistics and the National Archive.

I coordinated the gathering of information by each of these agencies and calculated the time and the cost of the procedures by asking the people who requested the information.

I performed an analysis of the Living Standards Measurement Conditions (2005), which was conducted by World Bank and INSTAT, where 3,680 households in Albania were interviewed about their standards of Living during 2005-2008.

References:

Individual research done by me, Ani Plaku.

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

13e. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | **50** | 25 | 0

Comments:

Whether the requests are effective depends on the institution, because citizens sometimes have to pay bribes to get information.

I conducted individual research as social-economic expert in the framework of "Diagnosis of Extra-legality in Albania." Assessed the procedures of a number of state agencies, such as Immovable Property Registration Office (IPRO), the Restitution and Compensation Agency, National Institutions of Statistics and the National Archive.

I coordinated the gathering of information by each of these agencies and calculated the time and the cost of the procedures by asking the people who requested the information.

I performed an analysis of the Living Standards Measurement Conditions (2005), which was conducted by World Bank and INSTAT, where 3,680 households in Albania were interviewed about their standards of Living during 2005-2008.

References:

Individual research done by me, Ani Plaku.

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

13f. In practice, the government gives reasons for denying an information request.

100 | 75 | **50** | 25 | 0

Comments:

It depends on the institution, but usually the citizens receive an explanation based on the law.

References:

Individual research done by me, Ani Plaku.

I conducted individual research as social-economic expert in the framework of "Diagnosis of Extra-legality in Albania." Assessed the procedures of a number of state agencies, such as Immovable Property Registration Office (IPRO), the Restitution and Compensation Agency, National Institutions of Statistics and the National Archive.

I coordinated the gathering of information by each of these agencies and calculated the time and the cost of the procedures by asking the people who requested the information.

I performed an analysis of the Living Standards Measurement Conditions (2005), which was conducted by World Bank and INSTAT, where 3,680 households in Albania were interviewed about their standards of Living during 2005-2008.

100: The government always discloses to the requestor the specific, formal reasons for denying information requests.

75:

50: The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The government does not regularly give reasons for denying an information request to the requestor.

Category 2. Elections

2.1. ⁶⁹Voting and Party Formation

14. Is there a legal framework guaranteeing the right to vote?

100

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

Yes

No

Comments:

According to Article 45/1, every citizen who has reached the age of 18, even on the date of the elections, has the right to vote and to be elected.

Article 45/4 says that a vote is personal, equal, free and secret.

(Albanian Constitution, adopted on Oct. 21, 1998; approved by referendum on Nov. 22, 1998. amended by Law No. 9657, dated Jan. 13, 2007; and Law No. 9904, dated April 21, 2008).

References:

Article 45/1 and Article 45/4 of the Albanian Constitution

Yes: A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

No: A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

Yes

No

Comments:

The Assembly is elected to serve for four years. The mandate of the Assembly begins at its first meeting after the election and ends on the same day of the same month of the fourth year from the date of first meeting.

References:

Article 65/1 of the Albanian Constitution

Yes: A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

No: A NO score is earned if no such framework exists.

15. Can all citizens exercise their right to vote?

75

15a. In practice, all adult citizens can vote.

100

75

50

25

0

Comments:

Voter identification was an important improvement that had been made since the last elections. However, voters had to present only a valid passport or an ID card to vote. There were about 730,000 eligible voters without a valid passport. The majority did apply for an ID, but around 257,000 citizens without a passport did not apply.

References:

Republic Of Albania, Parliamentary Elections, June, 28, 2009, OSCE/ODIHR Election Observation Mission, Final Report, Warsaw, Sept. 14, 2009

100: Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

75:

50: Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

25:

0: Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

15b. In practice, ballots are secret or equivalently protected.

100 | 75 | **50** | 25 | 0

Comments:

The vote count was assessed as bad or very bad in 22 of the 66 Ballot Counting Centers (BCCs). Election Observation Mission (EOM) observers noted procedural shortcomings that seemed to be partly due to insufficient training and guidance.

The new electronic monitoring system, by which each ballot was placed under a video camera and shown to observers on large screens several meters away from the counting tables, appears to have only partly reached the aim of enhancing confidence in, and the transparency of, the process; it was often not possible to see which party a ballot had been marked for and which pile it was placed on.

References:

Republic Of Albania, Parliamentary Elections, June, 28, 2009, OSCE/ODIHR Election Observation Mission, Final Report, Warsaw, Sept. 14, 2009

100: Ballots are secret, or there is a functional equivalent protection, in all cases.

75:

50: Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

25:

0: Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

15c. In practice, elections are held according to a regular schedule.

100 | 75 | 50 | 25 | 0

Comments:

Articles 8,9 and 10 of the Electoral Code are applied correctly.

References:

Interview with Artan Hoxha, NGO expert, president of the Institute of Temporary Studies. The interview took place at his office on November 4, 2010.

100: Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

75:

50: Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

25:

0: Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

16. Are citizens able to participate equally in the political process?

100

16a. In law, all citizens have a right to form political parties.

Yes

No

Comments:

Exception: Article 9/2 of the Albanian Constitution: Political parties and other organizations, the programs and activity of which are based on totalitarian methods, which incite and support racial, religious, regional or ethnic hatred, which use violence to take power or influence state policies, as well as those with a secret character, are prohibited pursuant to the law.

References:

Article 9/1 of the Albanian Constitution: Political Parties are created freely. Their organization shall conform with democratic principles.

Article 46/1 of the Albanian Constitution: Everyone has the right to organize collectively for any lawful purpose

Yes: A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

No: A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

16b. In law, all citizens have a right to run for political office.

Yes

No

Comments:

Article 3/3: Every Albanian citizen who has reached the age of 18, including on election day, without distinction according to race, ethnicity, gender, language, political conviction, religious belief, physical ability or economic condition, has the right to vote and to be elected in accordance with the rules provided in this Code.

Article 45 of the Albanian Constitution:

1. Every citizen who has reached the age of 18, even on the date of the elections, has the right to vote and to be elected.
2. Citizens who have been declared mentally incompetent by a final court decision do not have the right to elect.
3. Convicts that are serving a sentence that deprives them of freedom have only the right to vote.
4. The vote is personal, equal, free and secret.

EXCEPTIONS:

1. Without resigning from duty, the following may not run as candidates nor be elected deputies:
 - a. — judges, prosecutors;
 - b. — military servicemen on active duty;
 - c. — staff of the police and of National Security;
 - d. — diplomatic representatives;
 - e. — chairmen of municipalities and communes as well as prefects in the places where they carry out their duties;
 - f. — chairmen and members of the electoral commissions;
 - g. — the President of the Republic and the high officials of the state Administration contemplated by law.
2. A mandate gained in violation of paragraph 1 of this article is invalid.

References:

Article 3/3 of the Electoral Code of the Republic of Albania

Article 45 of the Albanian Constitution

Article 69 of the Albanian Constitution

Yes: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if individuals with a history of violence, terrorism, or criminality are banned from running for office.

No: A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

16c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

References:

Interview with Artan Hoxha, NGO expert, president of the Institute of Temporary Studies. The interview took place at his office on November 4, 2010.

100: While there is no guarantee of electoral success, political parties can form freely without opposition.

75:

50: Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

25:

0: Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

16d. In practice, all citizens can run for political office.

100 | 75 | 50 | 25 | 0

Comments:

For the submission of a candidate by the voters, an initiating committee is established. This committee is composed of no fewer than nine voters from the respective electoral zone, who are charged with organizing the work of gathering the supporting signatures for the candidate in accordance with this Code.

No later than 60 days before the election date, the initiating committee is to register with the CEC by submitting the names of the committee's members.

The committee can register a candidate for deputy only if it has gathered support from a number of voters that corresponds to no less than 1 percent of the voter list of that electoral zone, according to the procedures provided in this Code.

References:

Republic Of Albania, Parliamentary Elections, June, 28, 2009, OSCE/ODIHR Election Observation Mission, Final Report, Warsaw, Sept. 14, 2009

100: While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

75:

50: Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office. A system of party lists may discourage or prevent independent candidates from running for office.

25:

0: Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

16e. In practice, an opposition party is represented in the legislature.

100 | 75 | 50 | 25 | 0

Comments:

64 out of the 140 ministers of parliament are from the opposition party.

www.cec.org.al

References:

Interview with Artan Hoxha, NGO expert, president of the Institute of Temporary Studies. The interview took place at his office on November 4, 2010.

100: The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

75:

50: The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

25:

0: The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

2.2. Election Integrity

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

100

17a. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

Yes | No

Comments:

Both government and nongovernmental organizations, both inside and outside the country, monitor elections, but they cannot do anything about irregularities except to report on them.

References:

Article 153, Albanian Constitution: The Central Election Commission is a permanent organ that prepares, supervises, directs, and verifies all aspects that have to do with elections and referenda and declares their results.

Yes: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to ensure the integrity of the election process.

No: A NO score is earned if no domestic agency or set of domestic agencies/entities exists that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

18. Is the election monitoring agency effective?

70

18a. In law, the agency or set of agencies/entities is protected from political interference.

Yes | No

Comments:

Electoral commissions provided for in this Code fulfill their functions in conformity with the law and in an impartial and transparent manner.

References:

Article 3/6, The Electoral Code of the Republic of Albania, Approved by Law no. 10 019, dated Dec. 29, 2008

Yes: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

No: A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

1. The Assembly of Albania elects the Central Election Commission (CEC) members in accordance with the following procedure:

a) Two members are proposed by the party that has the largest number of seats among the parties of the parliamentary majority and two members by the party of the parliamentary opposition that has the largest number of seats in the Assembly of Albania.

During the post-election appeals process, political divisions within the CEC were even more apparent than in the pre-election period.

References:

Republic Of Albania, Parliamentary Elections, June, 28, 2009, OSCE/ODIHR Election Observation Mission, Final Report, Warsaw, Sept. 14, 2009

100: Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Despite severe time constraints, the Central Election Commission (CEC) prepared and administered the elections professionally. The staff of the various CEC departments performed their duties in an overall impartial and professional manner.

References:

Republic Of Albania, Parliamentary Elections, June, 28, 2009, OSCE/ODIHR Election Observation Mission, Final Report, Warsaw, Sept. 14, 2009

100: The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

75:

50: The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | 50 | 25 | 0

Comments:

In efforts to increase transparency, the Central Election Commission (CEC) regularly updated its website, arranged live transmission of CEC sessions on the Internet, introduced new software for transmitting the results of the vote count from Ballot Counting Centers (BCCs) to the CEC and for announcing preliminary results, and arranged video monitoring and recording of the vote count at the BCCs.

References:

Republic Of Albania, Parliamentary Elections, June, 28, 2009, OSCE/ODIHR Election Observation Mission, Final Report, Warsaw, Sept. 14, 2009

100: Reports are released to the public on a predictable schedule, without exceptions.

75:

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25:

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The Central Election Commission's (CEC) authority over and control of CEAZs was limited. This became evident on election day, and in particular during the vote count. Arguing that overseeing the voting process and conducting the vote count was a responsibility of the CEAZs, the CEC did not use its full authority to address problems which arose during the vote count, although it did send inspectors to Ballot Counting Centers where the count was particularly problematic.

References:

Republic Of Albania, Parliamentary Elections, June, 28, 2009, OSCE/ODIHR Election Observation Mission, Final Report, Warsaw, Sept. 14, 2009

100: When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

75:

50: The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

19. Are elections systems transparent and effective?

92

19a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | 50 | 25 | 0

Comments:

The June 28 2009 parliamentary elections marked tangible progress with regard to the voter registration.

Pg.9: Preliminary Voter Lists (PVLs) were publicly displayed at voting centers and were available on the MoI and CEC websites for individual checks.

Pg.10: However, On election day, Election Observation Mission observers reported that some voters were turned away because their name was not on the voter list in 26 percent of voting centers that EOMs visited.

References:

Republic Of Albania, Parliamentary Elections, June, 28, 2009, OSCE/ODIHR Election Observation Mission, Final Report, Warsaw, Sept. 14, 2009

100: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

75:

50: There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and "ghost" voting by non-existent voters is common.

19b. In law, election results can be contested through the judicial system.

Yes

No

Comments:

Article 145:

The right to submit an appeal to court:

1. Electoral subjects have the right to submit appeals against Central Election Commission (CEC) decisions to the Electoral College of the Court of Appeals in Tirana. Decisions that affect their legal interests are made within the time limit established in article 152 of this Code. Individuals or political parties whose request to be registered as an electoral subject have been rejected also have the right to appeal, according to this article.
2. Electoral subjects have the right to file an appeal with the Electoral College when the CEC fails to make a decision by the legal deadline. In this case, the Electoral College does not judge the merits of the case and, when it accepts the request, compels the CEC to make a decision. This rule does not apply to CEC decisions to reject a request for appeal, in relation to decisions taken in compliance with paragraphs (a), (b), (c) and paragraph (ç) of article 24 of this Code.
3. Subjects mentioned in article 6 of this Code who have been refused a request for accreditation as observers also have a right to appeal according to this article. In case accreditation of observers has been delegated to CEAZs, then the right to appeal according to this point begins with an administrative appeal in accordance with article 124 of this Code.

References:

Article 145 of the Electoral Code of the Republic of Albania

Yes: A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

No: A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

19c. In practice, election results can be effectively appealed through the judicial system.

100

75

50

25

0

Comments:

Pg. 3: Appeals during the pre-election period were adjudicated by the Central Election Commission (CEC) and the Electoral College in a fair and professional manner, providing effective remedies.

Pg.4: The hearings at the Electoral College were conducted in a professional manner, and decision-making appeared rather expedited.

Pg.28: The hearings at the Electoral College were conducted in a professional manner, ensuring an adversarial process and giving parties equal opportunities to present their claims and arguments. The process of decision-making, however, appeared rather expedited, as the College delivered its decisions on the day of the hearings.

References:

Republic Of Albania, Parliamentary Elections, June, 28, 2009, OSCE/ODIHR Election Observation Mission, Final Report, Warsaw, Sept. 14, 2009

100: The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

75:

50: The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

25:

0: The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

19d. In practice, the military and security forces remain neutral during elections.

100 | 75 | 50 | 25 | 0

References:

Republic Of Albania, Parliamentary Elections, June, 28, 2009, OSCE/ODIHR Election Observation Mission, Final Report, Warsaw, Sept. 14, 2009

100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in politics and overly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

19e. In law, domestic and international election observers are allowed to monitor elections.

Yes | No

References:

Article 6/2, The Electoral Code of the Republic of Albania: "Albanian and foreign non-governmental organizations, as well as

international organizations specialized or engaged in the area of good governance and democratization, representatives of foreign countries and of the media have the right to send observers to the elections.”

Yes: A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

No: A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

19f. In practice, election observers are able to effectively monitor elections.

100 | 75 | 50 | 25 | 0

Comments:

Election observers, both international and domestic, have free access to polling stations and counting sites and are free to communicate with voters outside of voting centers. No problems were reported during the day of the elections, or during the following days.

References:

Republic Of Albania, Parliamentary Elections, June, 28, 2009, OSCE/ODIHR Election Observation Mission, Final Report, Warsaw, Sept. 14, 2009.

100: Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers’ activities.

75:

50: Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

25:

0: Election observers’ movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

87

2.3. Political Financing Transparency

20. Are there regulations governing the financing of political parties?

67

20a. In law, there are limits on individual donations to political parties.

Yes

No

References:

Article 89/2, The Electoral Code of the Republic of Albania: "The amount that each physical or legal person can give to an electoral subject cannot be greater than ALL 1 million (US\$9,9100 or the equivalent value in objects or services. "

Yes: A YES score is earned if there are any limits in size on individual contributions to political parties. A YES score is also earned if individual contributions are prohibited.

No: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20b. In law, there are limits on corporate donations to political parties.

Yes

No

Comments:

According to article 21, paragraph 1 of the Law no. 8580, dated Feb. 17, 2000, on Political Parties : The financial assistance or material support from government and private entities, public or foreign, as well as local public bodies or with participation of state capital is prohibited.

References:

Article 89/3, The Electoral Code of the Republic of Albania: It is prohibited for a legal person or any of its shareholders to donate funds if one of the following conditions applies:

- a) it has received public funds, public contracts or concessions during the last 2 years that have a value above ALL 10 million (US\$99,100);
- b) it exercises activity in the media field;
- c) it has been a partner with public funds in different projects;
- ç) it has monetary obligations towards the state budget or any public institution.

This obligation is not applicable if the shareholder owns these shares as a result of a public offer.

Yes: A YES score is earned if there are any limits in size on corporate contributions to political parties. A YES score is earned if corporate contributions are prohibited.

No: A NO score is earned if there are no limits on corporate contributions to political parties. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20c. In law, there are limits on total political party expenditures.

Yes | No

Comments:

The total expense made by a political party, including their candidates, for an electoral campaign must not exceed 10 times the highest amount that an electoral subject has received from public funds, according to article 87 of this Code.

Every expense for the electoral campaign is to be documented and is to be made while respecting the fiscal legislation in force.

References:

Article 90/3, The Electoral Code of the Republic of Albania

Yes: A YES score is earned if there are any limits in size on political party expenditures during the course of an election.

No: A NO score is earned if there are no limits on political party expenditures during an election. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20d. In law, there are requirements for the disclosure of donations to political parties.

Yes | No

References:

Per desk research, these regulations are not provided for in The Electoral Code of the Republic of Albania, approved by Law no. 10 019, dated Dec. 29, 2008

Yes: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties.

No: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

20e. In law, there are requirements for the independent auditing of the finances and expenditures of political parties when financial irregularities are uncovered.

Yes | No

References:

Article 91/1 The Electoral Code of the Republic of Albania: Auditing of electoral campaign funds and expenses: Not later than 45 days after the announcement of the final result of elections for each electoral subject, the CEC appoints by lot one or more

certified accounting experts, selected in accordance with article 92 of this Code, to perform an audit of the funds obtained and those spent for the electoral campaign.

Yes: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party finances and expenditures when irregularities are uncovered. The auditing is performed by an impartial third-party.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties' finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for parties to self-audit.

20f. In law, there is an agency or entity that monitors the financing of political parties.

Yes | **No**

References:

Per desk research, regulations are not provided in the Electoral Code of the Republic of Albania, Approved by Law no. 10 019, dated Dec. 29, 2008.

Nor are they provided for in the Law No. 8580, dated on Feb. 17, 2000, On the Political Parties.

Yes: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of political parties. A YES score is earned even if the agency/entity is ineffective in practice.

No: A NO score is earned if there is no such agency or entity. A NO score is also earned if this monitoring is solely carried out by the media and non-governmental organizations.

21. Are there regulations governing the financing of individual political candidates?

60

21a. In law, there are limits on individual donations to political candidates.

Yes | No

Comments:

The amount that each physical or legal person can give to an electoral subject cannot be greater than 1 million lek (US\$9,910) or the equivalent value in objects or services.

References:

Article 89/2, The Electoral Code of the Republic of Albania

Yes: A YES score is earned if there are any limits in size on individual contributions to political candidates. A YES score is also earned if individual contributions are prohibited.

No: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21b. In law, there are limits on corporate donations to individual political candidates.

Yes | No

References:

Article 89/3, The Electoral Code of the Republic of Albania:

It is prohibited for a legal person or any of its shareholders to donate funds if one of the following conditions applies:

- a) it has received public funds, public contracts or concessions during the last 2 years that have a value above ALL 10 million (US\$99,100);
- b) it exercises activity in the media field;
- c) it has been a partner with public funds in different projects;
- d) it has monetary obligations towards the state budget or any public institution.

This obligation is not applicable if the shareholder owns these shares as a result of a public offer.

Yes: A YES score is earned if there are any limits in size on corporate contributions to individual political candidates. A YES score is earned if corporate contributions are prohibited.

No: A NO score is earned if there are no limits on corporate contributions to individual political candidates. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21c. In law, there are requirements for the disclosure of donations to individual political candidates.

Yes | No

References:

Per desk research, regulations are not provided in the Electoral Code of the Republic of Albania, approved by Law no. 10 019, dated Dec. 29, 2008.

Nor are they provided in the Law No. 8580, dated on Feb. 17, 2000, On the Political Parties.

Yes: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to individual political candidates.

No: A NO score is earned if there are no requirements mandating the disclosure of contributions to individual political candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

21d. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates when irregularities are uncovered.

Yes | No

Comments:

Auditing of electoral campaign funds and expenses: Not later than 45 days after the announcement of the final result of elections for each electoral subject, the Central Election Commission appoints by lot one or more certified accounting experts, selected in accordance with article 92 of this Code, to perform an audit of the funds obtained and those spent for the electoral campaign.

References:

Article 91/1 The Electoral Code of the Republic of Albania

Yes: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. The auditing is performed by an impartial third-party.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for candidates to self-audit.

21e. In law, there is an agency or entity that monitors the financing of individual political candidates' campaigns.

Yes | No

References:

Per desk research, regulations are not provided in The Electoral Code of the Republic of Albania, approved by Law no. 10 019, dated Dec. 29, 2008

Nor are they provided in the Law No. 8580, dated on Feb. 17, 2000, On the Political Parties.

Yes: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of individual political candidates' campaigns. A YES score is earned even if the agency/entity is ineffective in practice.

No: A NO score is earned if there is no such agency or entity. A NO score is also earned if this monitoring is solely carried out by the media and non-governmental organizations.

22. Are the regulations governing the political financing of parties effective?

21

22a. In practice, the limits on individual donations to political parties are effective in regulating an individual's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

The Electoral Code tasks the Central Election Commission (Articles 89–92) with the oversight of rules for campaign financing through public and non-public funds. Electoral subjects are required to register funds received, including establishing special bank accounts for donations greater than 100,000 leks (US\$991).

References:

Republic Of Albania, Parliamentary Elections, June, 28, 2009, OSCE/ODIHR Election Observation Mission, Final Report, Warsaw, Sept. 14, 2009

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which individuals can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22b. In practice, the limits on corporate donations to political parties are effective in regulating a company's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

The most common loophole is that for donation below US\$ 1,000, it is not obligatory to disclose the identity of the donor. So many donations can be divided into smaller parts, which can easily happen, especially since Albania remains a cash-based economy that is largely informal.

References:

Republic Of Albania, Parliamentary Elections, June, 28, 2009, OSCE/ODIHR Election Observation Mission, Final Report, Warsaw, Sept. 14, 2009

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which companies can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to political parties are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

100 | 75 | 50 | **25** | 0

Comments:

In theory, the total expenditures made by a political party, including their candidates, for an electoral campaign must not exceed 10 times the highest amount that an electoral subject has received from public funds, according to article 87 of this Code. Every expense for the electoral campaign is to be documented and is to be made while respecting the fiscal legislation in force.

References:

Republic Of Albania, Parliamentary Elections, June, 28, 2009, OSCE/ODIHR Election Observation Mission, Final Report, Warsaw, Sept. 14, 2009

100: Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

75:

50: Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

22d. In practice, when necessary, an agency or entity monitoring the financing of political parties independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

Pg. 15: While Article 91 of the Code stipulates that the Central Election Commission (CEC) can itself carry out verifications of the financial reports of electoral subjects, it does not include criteria for performing such checks. The CEC is responsible for paying the appointed auditors but has limited funds at its disposal for this purpose.

The Electoral Code (Articles 89–92) now tasks the CEC with the oversight of rules for campaign financing through public and non-public funds. Electoral subjects are required to register funds received, including establishing special bank accounts for donations greater than 100,000 lek (US\$991).

Not later than 45 days after the announcement of the final election results, the CEC appoints accounting experts to carry out audits of funds obtained and spent for the campaign. While these provisions are a welcome improvement, the transparency of the process would be enhanced if there were provisions for declarations of income and expenditure during the campaign itself.

References:

Republic Of Albania, Parliamentary Elections, June, 28, 2009, OSCE/ODIHR Election Observation Mission, Final Report, Warsaw, Sept. 14, 2009

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties, or cooperates well with other agencies that do. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, has limited effectiveness when investigating, or is reluctant to cooperate with other agencies in politically sensitive cases. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, is uncooperative with other agencies, or the agency or entity is partisan in its application of this power.

22e. In practice, when necessary, an agency or entity monitoring the financing of political parties imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The responsible authority to monitor the financing of political parties is the Central Election Commission (CEC), which does not effectively penalize offenders. Political parties fail to submit their financial reports within the deadline set by the law. This makes it more difficult for the operation of the CEC.

So far, the CEC has not produced any judgments nor enforced decisions against offenders.

References:

Republic Of Albania, Parliamentary Elections, June, 28, 2009, OSCE/ODIHR Election Observation Mission, Final Report, Warsaw, Sept. 14, 2009

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or cooperates well with other agencies that impose penalties.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power and may refuse cooperation with other agencies.

22f. In practice, contributions to political parties are audited.

100 | 75 | 50 | 25 | 0

Comments:

Political parties basically do not disclose contribution for their election campaigns. Their finances are not publicly disclosed, even though audits might take place.

References:

Republic Of Albania, Parliamentary Elections, June, 28, 2009, OSCE/ODIHR Election Observation Mission, Final Report, Warsaw, Sept. 14, 2009

100: Political party finances are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities. Auditing includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

23. Are the regulations governing the political financing of individual candidates effective?

23a. In practice, the limits on individual donations to political candidates are effective in regulating an individual's ability to financially support a particular candidate.

100 | 75 | 50 | 25 | 0

Comments:

Existing limits are in place, but they are easily bypassed as the majority of individual contributions that are made outside of the formal system.

In addition, loopholes exist that allow individuals to indirectly support particular political candidates beyond those formal limitations. Such loopholes include in-kind support that is not explicitly regulated and the partition of financial support so that the donations are below the legal limits and thereby avoid the identity declaration requirement.

References:

Republic Of Albania, Parliamentary Elections, June, 28, 2009, OSCE/ODIHR Election Observation Mission, Final Report, Warsaw, Sept. 14, 2009

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political candidate. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a particular candidate. However, exceptions and loopholes exist through which individuals can indirectly support particular political candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a particular political candidate are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23b. In practice, the limits on corporate donations to individual candidates are effective in regulating a company's ability to financially support a candidate.

100 | 75 | 50 | 25 | 0

Comments:

Regarding corporate contributions, the situation is slightly better than for individuals. This is mainly due to a company's necessity to reflect its spending in its accounting books.

Still, existing limits in place are easily bypassed because of the use of existing loopholes, such as unregulated loans to candidates and in-kind support. No violations have been reported whatsoever and as a result no enforcement has taken place.

References:

Republic Of Albania, Parliamentary Elections, June, 28, 2009, OSCE/ODIHR Election Observation Mission, Final Report, Warsaw, Sept. 14, 2009

100: Existing limits represent the full extent to which a company can directly or indirectly financially support an individual candidate. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support an individual candidate. However, exceptions and loopholes exist through which companies can indirectly support individual candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to individual candidates are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23c. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns independently initiates investigations.

100 | 75 | 50 | 25 | 0

References:

Republic Of Albania, Parliamentary Elections, June, 28, 2009, OSCE/ODIHR Election Observation Mission, Final Report, Warsaw, Sept. 14, 2009

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates' campaigns, or cooperates well with other agencies that do. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power. It may be reluctant to cooperate with other investigatory agencies.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power. It does not cooperate well with other investigatory agencies.

23d. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

References:

Republic Of Albania, Parliamentary Elections, June, 28, 2009, OSCE/ODIHR Election Observation Mission, Final Report, Warsaw, Sept. 14, 2009

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or in cooperating with other agencies that do.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power or may refuse to cooperate with other agencies.

23e. In practice, the finances of individual candidates' campaigns are audited.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the number of individuals running for an office is very limited, especially in the general elections. Basically, there is no interest in auditing their campaigns since their political power is very limited and the law is not clear about this issue.

References:

Central Elections Commissions, www.cec.org.al

100: The finances of individual candidates' campaigns are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities.

75:

50: The finances of individual candidates' campaigns are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions.

25:

0: The finances of individual candidates' campaigns are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

24. Can citizens access records related to the financing of political parties?

24a. In practice, political parties disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Political parties disclose their source of funding only after an election campaign, as stated by the Electoral Code. More than a year passes before publication of this information. The general perception is that politically sensitive information is not published and not all sources are disclosed.

References:

Republic Of Albania, Parliamentary Elections, June, 28, 2009, OSCE/ODIHR Election Observation Mission, Final Report, Warsaw, Sept. 14, 2009

100: Political parties disclose their sources of funding and expenditures at least every quarter.

75:

50: Political parties disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Political parties never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

24b. In practice, citizens can access the financial records of political parties within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Records of electoral campaign financing are available online on the Central Election Commission website once they are filed by the political parties at least 45 days after the end of the elections. However, the information is limited and does not include the all financial sources.

References:

Republic Of Albania, Parliamentary Elections, June, 28, 2009, OSCE/ODIHR Election Observation Mission, Final Report, Warsaw, Sept. 14, 2009

Central Elections Commission, www.cec.org.al

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

24c. In practice, citizens can access the financial records of political parties at a reasonable cost.

100 | 75 | **50** | 25 | 0

Comments:

The access to records, when they are available, does not impose a major financial burden on interested parties. However, even though records are online, a visit to a specific office, such as a regional or national office, might be required.

References:

Republic Of Albania, Parliamentary Elections, June, 28, 2009, OSCE/ODIHR Election Observation Mission, Final Report, Warsaw, Sept. 14, 2009

Central Election Commission

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

24d. In practice, the publicly available records of political parties' finances are of high quality.

100 | 75 | 50 | **25** | 0

Comments:

Publicly available records of political parties' finances, when available, are incomplete and lack important details to help understand a party's sources of income and its expenditures. For instance, the main opposition party's financial report for the general election campaign is just 10 pages long.

References:

Republic Of Albania, Parliamentary Elections, June, 28, 2009, OSCE/ODIHR Election Observation Mission, Final Report, Warsaw, Sept. 14, 2009

100: Publicly available records of political parties' finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political parties' finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political parties' finances, when available, are so incomplete or overly general as to render them useless in understanding a party's sources of income and its expenditures.

25. Can citizens access records related to the financing of individual candidates' campaigns?

0

25a. In practice, individual political candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The law is quite unclear regarding individual candidates' responsibility to disclose their sources of funding or expenditures, even during an election campaign. Also, because of these candidates' very low profile, no one has published any financial report so far.

References:

Republic Of Albania, Parliamentary Elections, June, 28, 2009, OSCE/ODIHR Election Observation Mission, Final Report, Warsaw, Sept. 14, 2009

Electoral Code, <http://www.cec.org.al/2004/eng/legjislacion/kodizgjedhor/Electoral%20Code.pdf>

100: Individual candidates disclose their sources of funding and expenditures at least every quarter.

75:

50: Individual candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Individual candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

25b. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

These records are simply not available.

References:

Republic Of Albania, Parliamentary Elections, June, 28, 2009, OSCE/ODIHR Election Observation Mission, Final Report, Warsaw, Sept. 14, 2009

Central Elections Commission

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

25c. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Retrieving records of individuals' campaign financing reports is impossible because there are no records.

References:

Republic Of Albania, Parliamentary Elections, June, 28, 2009, OSCE/ODIHR Election Observation Mission, Final Report, Warsaw, Sept. 14, 2009

Central Elections Commission

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

25d. In practice, the publicly available records of political candidates' campaign finances are of high quality.

100 | 75 | 50 | 25 | 0

References:

Republic Of Albania, Parliamentary Elections, June, 28, 2009, OSCE/ODIHR Election Observation Mission, Final Report, Warsaw, Sept. 14, 2009

100: Publicly available records of political candidates' campaign finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political candidates' campaign finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political candidates' campaign finances, when available, are so incomplete or overly general as to render them useless in understanding a candidate's sources of income and expenditures.

Category 3. Government Conflicts of Interest Safeguards & Checks and Balances

3.1. ~~77~~ Conflicts of Interest Safeguards & Checks and Balances: Executive Branch

26. In law, can citizens sue the government for infringement of their civil rights?

100

26a. In law, can citizens sue the government for infringement of their civil rights?

Yes | No

References:

Article 42/2 and Article 44 of the Constitution of the Republic of Albania

Yes: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

No: A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

27. Can the chief executive be held accountable for his/her actions?

88

27a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

Comments:

The chief executive and, more rarely, his cabinet ministers explain their policies and engage with the media and public opinion to explain the rationale behind certain policy issues. This event might take place in the executive's office, or during a meeting with the media and the parliament. However, this is done only occasionally and not through a formalized process.

References:

Interview with Artan Hoxha, NGO expert, president of the Institute of Temporary Studies. The interview took place at his office on November 4, 2010.

100: The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

75:

50: The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

25:

0: The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

27b. In law, the judiciary can review the actions of the executive.

Yes

No

References:

Article nr. 18 of the Law nr. 8485, dated May 12, 1999, The Code of Administrative Procedures of the Republic of Albania

Yes: A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

No: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

27c. In practice, when necessary, the judiciary reviews the actions of the executive.

100

75

50

25

0

Comments:

There have been several cases when the Constitutional Court has abolished laws that were not consistent with the Constitution.

References:

Interview with Artan Hoxha, NGO expert, president of the Institute of Temporary Studies. The interview took place at his office on November 4, 2010.

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power. It does not need to rely upon the executive to initiate a constitutional or legal review.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

27d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

Comments:

Usually, the chief executive uses Decision of Council of Ministers (DCM) to go through a more formal legislative process for the implementation a new policy. Then, the line ministries use directives per each DCM/secondary legislation.

From to 2005 only four acts were presented by the chief executive.

References:

Reports, acts, DCM and directives of the Council of Ministers

<http://www.keshilliministrave.al/?fq=preprog/arkiva/vkm>

100: The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

25:

0: The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

28. Is the executive leadership subject to criminal proceedings?

100

28a. In law, the heads of state and government can be prosecuted for crimes they commit.

Yes | No

References:

Article 73/3 of the Constitution of the Republic of Albania

Yes: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

No: A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

28b. In law, ministerial-level officials can be prosecuted for crimes they commit.

Yes | No

References:

Article nr. 103/3 and Article nr. 73 of the Constitution of the Republic of Albania

Yes: A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

No: A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

29. Are there regulations governing conflicts of interest by the executive branch?

84

29a. In law, the heads of state and government are required to file a regular asset disclosure form.

Yes | No

References:

Article nr. 4 of the Law nr. 9049, dated April 10, 2003, For the Declaration and Audit Of Assets, Financial Liabilities of the Elected Public Officials

Yes: A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

No: A NO score is earned if either the head of state or government is not required to disclose assets.

29b. In law, ministerial-level officials are required to file a regular asset disclosure form.

Yes | No

References:

Article nr. 3 of the Law nr. 9049, dated April 10, 2003, For the Declaration and Audit Of Assets, Financial Liabilities of the Elected Public Officials

Yes: A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

No: A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

29c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

Yes

No

Comments:

It is prohibited for an official to seek or to accept, directly or indirectly, gifts, favors, promises or preferential treatment, given because of his position, from an individual, natural person or private juridical person, when this may cause the emergence of a conflict of interest of any kind.

References:

Article 10 of the Law nr. 9131, dated Sept. 8, 2003, For the Ethic Rules in Public Administration

Article 23/1 of the Law nr. 9367 dated April 4, 2005, On the Prevention of Conflicts of Interest in the Exercise of Public Functions, amended with law nr. 9475, dated Feb. 9, 2006 (published in the Official Journal no. 19, dated March 9); and with Law nr. 9529, dated May 11, 2006 (published in the Official Journal, no. 56, dated June 8, 2006)

Yes: A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

No: A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

29d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

Yes

No

References:

The Law for the State Supreme Audit

Yes: A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

29e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

Yes | No

References:

Article nr. 5 of the Law for the Prevention of the Conflict of Interests in the Exercise Of Public Functions

Yes: A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

No: A NO score is earned if no such restrictions exist.

29f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | 50 | 25 | 0

Comments:

The regulations that restrict post-government private sector employment for heads of state/government and ministers are rarely used. This is because there have been very few cases (maybe two) where those officials took jobs in the private sector after leaving government so they could directly lobby or seek to influence their former government colleagues.

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009; currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no cases or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate "cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if heads of state and government or minister are allowed to hold private sector jobs while in office.

29g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

Comments:

The regulations that govern gifts and hospitality to members of the executive branch are specified in the code of ethics, but exceptions exist. Some ministers have been rumored to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed. Also, the public perception of the government on this issue is not positive.

References:

Corruption in Albania, Summary of Findings, Perception and Experience, Survey 2009, Prepared by IDRA, Albania

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

29h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

References:

The State Supreme Audit Institution reports 2010, www.klsh.org.al/

100: Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Executive branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

30. Can citizens access the asset disclosure records of the heads of state and government?

81

30a. In law, citizens can access the asset disclosure records of the heads of state and government.

Yes | No

References:

Article nr. 5 of the Law nr. 9503, date June 30, 1999, For the Right to Information from the Official Documents

Yes: A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

No: A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

30b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

www.hidaa.gov.al

References:

Interview with Artan Hoxha, NGO expert, president of the Institute of Temporary Studies. The interview took place at his office on November 4, 2010.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some additional delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

30c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

www.hidaa.gov.al

References:

Interview with Artan Hoxha, NGO expert, president of the Institute of Temporary Studies. The interview took place at his office on November 4, 2010.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

30d. In practice, the asset disclosure records of the heads of state and government are of high quality.

100 | 75 | 50 | 25 | 0

References:

The High Inspectorate of the Declaration and Audit of Assets annual report, www.hidaa.gov.al

100: The asset disclosure records of the heads of state and government are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the heads of state and government contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the heads of state and government are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

25

31a. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100 | 75 | 50 | 25 | 0

Comments:

The ruling party is, in principal, separate from the state, as the civil service should be distinct from the party bureaucracy. However, several exceptions to this standard occur, as civil servants are often required to attend political rallies. Further, government vehicles and other funds are used for party purposes, especially during electoral campaigns.

References:

Interview with Artan Hoxha, NGO expert, president of the Institute of Temporary Studies. The interview took place at his office on November 4, 2010.

European Commission, Commission staff working document, Analytical Report, November 2010

OSCE/ODHIR Election Observation Mission Report, September 2009

100: Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

75:

50: The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be the use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

25:

0: The government bureaucracy is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

3.2. Conflicts of Interest Safeguards & Checks and Balances: Legislative Branch

32. Can members of the legislature be held accountable for their actions?

32a. In law, the judiciary can review laws passed by the legislature.

Yes | **No**

References:

Per desk research, this is not provided for in the Albanian Constitution

Yes: A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

No: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

32b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | **50** | 25 | 0

Comments:

The General Prosecutor's Office completed its investigation on the explosion in 2008 at the ammunition depot in Gërdec. Twenty-nine indictments, including that of the then-Minister of Defense, were forwarded to the High Court.

The trial was postponed several times on procedural grounds. The High Court decided in September to suspend the case against former Defense Minister Mediu based on his immunity as a Member of Parliament.

To ensure credibility in the fight against corruption, a fair and transparent process to condemn all responsible persons, regardless of their position, is needed. Little progress can be reported regarding the shortcomings in health and safety standards, which were part of the Gërdec investigation.

References:

Albania 2009, Progress Report, Brussels, Oct. 14, 2009, Commission of the European Communities, http://ec.europa.eu/enlargement/pdf/key_documents/2009/al_rapport_2009_en.pdf

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

32c. In law, are members of the national legislature subject to criminal proceedings?

Yes | **No**

Comments:

A deputy may not be criminally prosecuted without the authorization of the Assembly. Authorization is also required when he is to be arrested.

References:

Article 73/2 of the Albanian Constitution

Yes: A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

No: A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings. A NO score is also earned if the legislative branch itself controls whether investigative or prosecutorial immunity can be lifted on members of the legislature.

33. Are there regulations governing conflicts of interest by members of the national legislature?

68

33a. In law, members of the national legislature are required to file an asset disclosure form.

Yes | No

Comments:

According to this article, deputies are among the subjects who have the obligation to make a declaration on their assets.

References:

Article 3/1/a of the Law nr. 9049, dated April 10, 2003 (published in the Official Journal nr. 31 dated May 15, 2003) On the Declaration and Audit of Assets, Financial Obligations of Elected Persons and Certain Public Officials; amended with law nr. 9367 dated April 7, 2005 (published in the Official Journal nr. 31, dated May 11, 2005), with law nr. 9475, dated Feb. 9, 2006 (published in the Official Journal nr. 19, dated March 9 2006) and with law nr. 9529, dated May 11, 2006 (published in the Official Journal nr. 56 dated June 8, 2006)

Yes: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

No: A NO score is earned if any member of the legislature is not required to disclose assets.

33b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

Yes | **No**

References:

No such mechanism exists.

Yes: A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

No: A NO score is earned if no such restrictions exist.

33c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

Yes | No

Comments:

The article is specific not only to the members of the national legislature, but includes all officials:

It is prohibited for an official to seek or to accept, directly or indirectly, gifts, favors, promises or preferential treatment, given because of his position, from an individual, natural person or private juridical person, when this may cause the emergence of a conflict of interest of any kind.

References:

Article 23/1 of the Law Nr. 9367, dated April 7, 2005 (published in the Official Journal nr. 31 dated 11 May 2005), On the Prevention of Conflicts of Interest in the Exercise of Public Functions; amended with law nr. 9475, dated Feb. 9, 2006 (published in the Official Journal nr. 19, dated March 9, 2006) and with Law nr. 9529, dated May 11, 2006 (published in the Official Journal nr. 56, dated June 8, 2006)

Yes: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

No: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

33d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

Yes

No

Comments:

The organ responsible for the audit of declarations of assets is the Inspector General.

The High Inspectorate who has these competencies directly audits the asset declarations of those in the list of persons covered by it.

References:

Article 11, 16 and 17 of the Law nr. 9049, dated April 10, 2003 (published in the Official Journal nr. 31, dated May 15 May 2003) On the Declaration and Audit of Assets, Financial Obligations of Elected Persons and Certain Public Officials; amended with law nr. 9367 dated April 7, 2005 (published in the Official Journal nr. 31, dated May 11, 2005), with law nr. 9475, dated Feb. 9, 2006 (published in the Official Journal nr. 19, dated March 9, 2006), and with law nr. 9529, dated May 11 May 2006 (published in the Official Journal nr. 56, dated June 8, 2006)

Yes: A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

33e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100

75

50

25

0

Comments:

Regulations are in place, but they are rarely enforced. However, there are a few cases of legislators who took jobs in the private sector after leaving government where they directly lobbied or sought to influence their former government colleagues.

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009; currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana.

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no cases or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate "cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if legislators are allowed to hold private sector positions while in office.

33f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | **50** | 25 | 0

References:

The State Supreme Audit Institution Annual report

www.klsh.org.al/

100: The regulations governing gifts and hospitality to national legislators are regularly enforced. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

33g. In practice, national legislative branch asset disclosures are audited.

100 | **75** | 50 | 25 | 0

References:

www.hidaa.gov.al

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

34. Can citizens access the asset disclosure records of members of the national legislature?

94

34a. In law, citizens can access the asset disclosure records of members of the national legislature.

Yes

No

Comments:

The data obtained from the making of a declaration, according to this law, are available to the public, in conformity with Law nr. 8503 dated June 30, 1999, On the Right to Get Information about Official Documents.

References:

Article 34 of Law nr. 9049, dated April 10, 2003 (published in the Official Journal nr. 31 dated May 15, 2003) On the Declaration and Audit of Assets, Financial Obligations of Elected Persons and Certain Public Officials; amended with law nr. 9367 dated April 7, 2005 (published in the Official Journal nr. 31, dated May 11, 2005), with law nr. 9475, dated Feb. 9, 2006 (published in the Official Journal nr. 19, dated March 9 2006) and with law nr. 9529, dated May 11, 2006 (published in the Official Journal nr. 56 dated June 8, 2006)

Yes: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, non-governmental groups or journalists).

No: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

34b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100

75

50

25

0

References:

www.hidaa.gov.al

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

34c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

www.hidaa.gov.al

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

34d. In practice, the asset disclosure records of members of the national legislature are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

Records are not on-line. However, records of asset disclosure for members of parliament are in general complete and detailed. Cases when important details have not been reported can be real especially in a country like Albania with a large informal sector. However, the authority responsible for the inspection of the asset declarations HIDAA has not yet proven any of these suspicions.

References:

www.hidaa.gov.al

100: The asset disclosure records of members of the national legislature are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the members of the national legislature contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the members of the national legislature are overly general, lack any meaningful detail, and do not provide clear accounting of the individuals' sources of income, investments, and other financial assets.

35. Can citizens access legislative processes and documents?

83

35a. In law, citizens can access records of legislative processes and documents.

Yes

No

References:

Articles no. 35, 43 and 58-60, Regulation of the Albanian Parliament.

Yes: A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

No: A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there are exemptions to the general right that are not clearly defined by formal rules.

35b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100

75

50

25

0

Comments:

Most of the records of legislative processes are available on-line even though the access to the website might sporadically be unsuccessful. However, when not on-line it takes between one to two weeks to obtain the information and additional delays can be experienced.

References:

www.hidaa.gov.al

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

35c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

www.keshilliministrave.al

www.parlament.al

www.qpz.gov.al

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

65

3.3. Conflicts of Interest Safeguards & Checks and Balances: Judicial Branch

36. Are judges appointed fairly?

83

36a. In law, there is a transparent procedure for selecting national-level judges.

Yes | No

Comments:

In a meeting of the High Council of Justice, every member of the council is given a list of all candidates who meet the legal requirements for competition, their data, qualities and abilities, as well as the results of the individual tests.

The decision to propose the nomination of a judge to the President of the Republic is taken by a majority of the votes of the members present and is announced publicly.

References:

Articles 29 and 30 of the Law nr. 8811, dated May 17, 2001; amended by Law nr. 9448, dated Dec. 5, 2005, On Some Amendments and Supplements to Law No. 8811, dated 17.05.2001, On the Organization and Functioning of the High Council of Justice

Yes: A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

No: A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

36b. In practice, professional criteria are followed in selecting national-level judges.

100 | 75 | **50** | 25 | 0

Comments:

The School of Magistrates increased the number of continuing education training programs for judges and prosecutors. However, adequate financial resources are needed to broaden the scope of specialized training programs to ensure sustainability.

References:

Albania 2009, Progress Report, Brussels, Oct. 14, 2009, Commission of the European Communities, http://ec.europa.eu/enlargement/pdf/key_documents/2009/al_rapport_2009_en.pdf

100: National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

75:

50: Most national-level judges selected meet these qualifications, with some exceptions.

25:

0: National-level judges are often unqualified due to lack of training or experience.

36c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

Yes | No

References:

Article 147 of the Albanian Constitution

Yes: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency or entity independent from the body appointing the judges.

No: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by the same body that appoints the judges (such as the Prime Minister approving judicial nominees put forward by the Minister of Justice, both of whom are part of the executive).

37. Can members of the judiciary be held accountable for their actions?

83

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

Yes

No

Comments:

Judicial decisions must be reasoned.

References:

Article 142/1 of the Albanian Constitution

Yes: A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

No: A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

37b. In practice, members of the national-level judiciary give reasons for their decisions.

100

75

50

25

0

References:

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

100: Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

75:

50: Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

25:

0: Judges commonly issue decisions without formal explanations.

37c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

Yes

No

Comments:

The High Council of Justice decides on the transfer of the judges, as well as their disciplinary responsibility, pursuant to law.

References:

Article 147/4 of the Albanian Constitution

Yes: A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary. A YES score can still be earned if the judicial disciplinary agency (or mechanism) is internal to the judiciary.

No: A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

37d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

Yes

No

Comments:

The structure of the High Council of Justice guarantees their independent supervision of the judiciary system, despite the fact that this independent supervision should be guaranteed. Even in their everyday activities, the High Council of Justice should stay aloof from the influences and conflicts of law or by-laws with institutions that represent the executive power.

References:

Article 147 of the Albanian Constitution

Yes: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is protected from political interference by the executive and legislative branches.

No: A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an executive ministry or legislative committee.

37e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

Judicial inspections continue to be mixed competencies between the High Council of Justice (HCJ) and the Ministry of Justice. The competencies of the inspectorates of the HCJ and those of the Ministry of Justice remain to be clarified.

Inspections by both inspectorates and disciplinary proceedings against judges often do not meet European standards and weaken the independence of the judiciary.

The adoption of the Law on the HCJ will be key in this respect.

References:

Albania 2009, Progress Report, Brussels, Oct. 14, 2009, Commission of the European Communities, http://ec.europa.eu/enlargement/pdf/key_documents/2009/al_rapport_2009_en.pdf

100: The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

75:

50: The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

25:

0: The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies' investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

37f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The High Council of Justice gives only administrative fines.

References:

www.kld.al

100: When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

38. Are there regulations governing conflicts of interest for the national-level judiciary?

64

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

Yes | No

Comments:

Prosecutors, judges and enforcement officers (bailiffs) at all levels have the obligation to make a declaration in the High Inspectorate of the Declaration and Audit of Assets.

References:

Article 3/d of the the Law nr. 9049, dated April 10, 2003 (published in the Official Journal nr. 31, dated May 15, 2003) On the Declaration and Audit of Assets, Financial Obligations of Elected Persons and Certain Public Officials; amended with law nr. 9367 dated April 7, 2005 (published in the Official Journal nr. 31, dated May 11, 2005), with law nr. 9475, dated Feb. 9, 2006 (published in the Official Journal nr. 19, dated March 9, 2006), and with law nr. 9529, dated May 11, 2006 (published in the Official Journal nr. 56, dated June 8, 2006)

Yes: A YES score is earned if all members of the national-level judiciary are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

No: A NO score is earned if any member of the national-level judiciary is not required to publicly disclose assets.

38b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

Yes | No

Comments:

The article applies not only to the members of the national level judiciary, but includes all officials:

It is prohibited for an official to seek or to accept, directly or indirectly, gifts, favors, promises or preferential treatment, given because of his position, from an individual, natural person or private juridical person, when this may cause the emergence of a conflict of interest of any kind

References:

Article 23/1 of the Law nr. 9367, dated April 7, 2005 (published in the Official Journal nr. 31 dated 11 May 2005), On the Prevention of Conflicts of Interest in the Exercise of Public Functions; amended with law nr. 9475, dated Feb. 9, 2006 (published in the Official Journal nr. 19, dated March 9, 2006) and with Law nr. 9529, dated May 11, 2006 (published in the Official Journal nr. 56, dated June 8, 2006)

Yes: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

No: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the national-level judiciary. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

38c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

Yes | No

Comments:

The organ responsible for the audit of the making of a declaration of assets is the Inspector General. The High Inspectorate has these competencies directly audits the making of declarations by those in the list of persons covered by it.

References:

Article 11, 16 and 17 of the Law nr. 9049, dated April 10, 2003 (published in the Official Journal nr. 31, dated May 15, 2003) On the Declaration and Audit of Assets, Financial Obligations of Elected Persons and Certain Public Officials; amended with law nr. 9367 dated April 7, 2005 (published in the Official Journal nr. 31, dated May 11, 2005), with law nr. 9475, dated Feb. 9, 2006 (published in the Official Journal nr. 19, dated March 9, 2006), and with law nr. 9529, dated May 11, 2006 (published in the Official Journal nr. 56, dated June 8, 2006)

Yes: A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary asset disclosures. The auditing is performed by an impartial third-party.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

38d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

Yes | No

References:

Per desk research, it is not provided for in the Law No.9877, dated on Feb. 18, 2008, On the Organization of Judicial Power; nor is it provided in the Law nr. 9000, dated Jan. 30, 2003 On the Organization and Functioning of the Council of Ministers.

Yes: A YES score is earned if there are regulations restricting national-level judges' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence

their former government colleagues.

No: A NO score is earned if no such restrictions exist.

38e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | 50 | 25 | 0

Comments:

Regulations are rarely enforced, but still there are a few cases of judges taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues. Cooling-off periods are never enforced.

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009; currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana.

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no cases or few cases of judges taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate “cooling off” period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain cases, judges are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if judges are allowed to hold private sector jobs while serving on the bench.

38f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

Comments:

The regulations governing gifts and hospitality to members of the national-level judiciary are generally ignored. The public perception is that judges accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

References:

The State Supreme Audit Institution annual report

www.kld.al

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced. Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

38g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

References:

www.hidaa.gov.al

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

39. Can citizens access the asset disclosure records of members of the national-level judiciary?

63

39a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

Yes | No

Comments:

The data obtained from the making of a declaration according to this law are available to the public, in conformity with Law nr. 8503, dated June 30, 1999, On the Right to Get Information About official Documents.

References:

Article 34 of the Law nr. 9049, dated April 10, 2003 (published in the Official Journal nr. 31, dated May 15, 2003) On the Declaration and Audit of Assets, Financial Obligations of Elected Persons and Certain Public Officials; amended with law nr. 9367 dated April 7, 2005 (published in the Official Journal nr. 31, dated May 11, 2005), with law nr. 9475, dated Feb. 9, 2006 (published in the Official Journal nr. 19, dated March 9, 2006), and with law nr. 9529, dated May 11, 2006 (published in the Official Journal nr. 56, dated June 8, 2006)

Yes: A YES score is earned if members of the national-level judiciary file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

No: A NO score is earned if there is no asset disclosure for members of the national-level judiciary. A NO score is earned if the form is filed, but not available to the public.

39b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | **50** | 25 | 0

References:

www.hidaa.gov.al

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

39c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | **50** | 25 | 0

Comments:

Records are not on-line and since the snail mail in Albania is not an efficient way of delivering information it requires a visit to the agency headquarters in the capital city to retrieve the information.

References:
www.hidaa.gov.al

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

39d. In practice, the asset disclosure records of the national-level judiciary are of high quality.

100 | 75 | **50** | 25 | 0

Comments:

The asset disclosure records of the national-level judiciary contain some useful information, but they may be lacking important details because a significant level of informality may assist judiciary members in hiding specific assets.

References:

Interview with Artan Hoxha, NGO expert, president of the Institute of Temporary Studies. The interview took place at his office on November 4, 2010.

European Commission, Analytical Report, Brussels, Nov. 9, 2010,
http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/al_rapport_2010_en.pdf

100: The asset disclosure records of the national-level judiciary are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the national-level judiciary contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the national-level judiciary are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

3.4. Budget Process Oversight & Transparency

40. Can the legislature provide input to the national budget?

83

40a. In law, the legislature can amend the budget.

Yes

No

Comments:

During the financial year, the Assembly may make changes in the budget. The changes in the budget are made based on defined procedures for drafting and approving it.

References:

Article 160 of the Albanian Constitution

Article 82/2 of the Albanian Constitution

Yes: A YES score is earned if the legislature has the power to add or remove items to the national government budget.

No: A NO score is earned if the legislature can only approve but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

40b. In practice, significant public expenditures require legislative approval.

100

75

50

25

0

References:

Interview with Artan Hoxha, NGO expert, president of the Institute of Temporary Studies. The interview took place at his office on November 4, 2010.

100: All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

75:

50: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive's personal budget, or other expenses.

25:

0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

40c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | 25 | 0

Comments:

Currently, there is a Parliamentary Commission of Economy

References:

Interview with Artan Hoxha, NGO expert, president of the Institute of Temporary Studies. The interview took place at his office on November 4, 2010.

100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

75:

50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

25:

0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

41. Can citizens access the national budgetary process?

83

41a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | 25 | 0

References:

Interview with Artan Hoxha, NGO expert, president of the Institute of Temporary Studies. The interview took place at his office on November 4, 2010.

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

41b. In practice, citizens provide input at budget hearings.

100 | 75 | **50** | 25 | 0

Comments:

Nongovernmental organizations may participate in the parliamentary commission debates, but they may only make proposals.

References:

Interview with Artan Hoxha, NGO expert, president of the Institute of Temporary Studies. The interview took place at his office on November 4, 2010.

100: Citizens, usually acting through NGOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens or NGOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or NGOs have no formal access to provide input to the budget debate.

41c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | 25 | 0

References:

Interview with Artan Hoxha, NGO expert, president of the Institute of Temporary Studies. The interview took place at his office on November 4, 2010.

100: Citizens, journalists and NGOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and NGOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

25:

0: Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

42. In law, is there a separate legislative committee which provides oversight of public funds?

100

42a. In law, is there a separate legislative committee which provides oversight of public funds?

Yes

No

References:

Law nr. 9720, dated April 23, 2007, For the Interior Audit in the Public Sector

Yes: A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

No: A NO score is earned if no such body exists within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

43. Is the legislative committee overseeing the expenditure of public funds effective?

92

43a. In practice, department heads regularly submit reports to this committee.

100

75

50

25

0

Comments:

Yes, when a bill is under the process of becoming a law, they report all of the information to the parliamentary commission.

References:

Interview with Artan Hoxha, NGO expert, president of the Institute of Temporary Studies. The interview took place at his office on November 4, 2010.

100: Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

75:

50: Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

25:

0: There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

43b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | 50 | 25 | 0

Comments:

The expenditure of public funds is overseen by the Economy and Finance Committee, 13 of whose members are in the majority party, while 10 are in the opposition party.

References:

Reports of Albanian Parliament, <http://www.parlament.al/>

100: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee’s work to roughly the same extent as any other member of the committee.

75:

50: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members’ ability to shape the committee’s activities.

25:

0: The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

43c. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | 25 | 0

Comments:

The parliamentary commission can conduct investigations of irregularities.

References:

Interview with Artan Hoxha, NGO expert, president of the Institute of Temporary Studies. The interview took place at his office on November 4, 2010.

100: When irregularities are discovered, the committee is aggressive in investigating the government.

75:

50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

Category 4. Public Administration and Professionalism

4.1. ⁷⁴Civil Service: Conflicts of Interest Safeguards and Political Independence

44. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

50

44a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

Yes

No

Comments:

Article 3, Principles of the civil service: The civil service is formed and operates on the basis of the principles of professionalism, independence and integrity, political neutrality, transparency, service to the public, career continuity, accountability and correctness in the application of binding legislation.

References:

Article 3 of the Law No. 8549, dated Nov. 11, 1999, On the Status of the Civil Servant

Yes: A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

No: A NO score is earned if there are no formal rules establishing an independent civil service.

44b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

Yes | **No**

References:

The law against nepotism came into force four years ago but it was immediately abrogated as anti-constitutional.

Yes: A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

No: A NO score is earned if no such regulations exist.

44c. In law, there is an independent redress mechanism for the civil service.

Yes | No

Comments:

Article 5/1: The Civil Service Commission is an independent institution charged with supervisory responsibility over the management of the civil service at all the institutions falling within the scope of this law. It is the administrative resort for appeals in matters related to the civil servant.

References:

"Article 5/1 of the Law No. 8549, dated Nov. 11, 1999, On the Status of the Civil Servant

Yes: A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. The mechanism should be independent of their supervisors but can still be located within the government agency or entity (such as a special commission or board). Civil servants are able to appeal the mechanism's decisions to the judiciary.

No: A NO score is earned if no such mechanism exists, or if the only recourse civil servants have is directly through the courts.

44d. In law, civil servants convicted of corruption are prohibited from future government employment.

Yes | **No**

References:

Per desk research, it is not provided in the Law no. 8095, dated on March 21, 1996, On the Civil Service in the Republic of Albania; amended with Law no. 8549, dated Nov. 11, 1999.

Yes: A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

No: A NO score is earned if no such rules exist or if the ban is not a lifetime ban.

45. Is the law governing the administration and civil service effective?

64

45a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Politically motivated turnover of public employees has continued, although to a lesser extent. The share of vacancies filled by temporarily contracted employees remains high, at 20percent of all vacancies. This practice undermines the implementation of the Civil Service Law and creates an opening for politicization of the administration. Recruitment in the civil service continues to take place through non-transparent procedures.

References:

Interview with Artan Hoxha, NGO expert, president of the Institute of Temporary Studies. The interview took place at his office on November 4, 2010.

Albania 2009, Progress Report, Brussels, Oct. 14, 2009, Commission of the European Communities, SEC(2009) 1337

100: Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

75:

50: Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

25:

0: Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

45b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

Proper implementation of the legal framework remains a concern as does the lack of transparency and accountability in appointments and the politicization of the public administration.

Most of the stages of open competitions are transparent. However, the final stage and the recruitment decision is left exclusively to the discretion of the line manager concerned.

There has, in general, been a high turnover of civil servants in recent years due to politicization of recruitment practices. The existing position-based career system has made it possible to make civil servants redundant as a result of restructuring of ministries by incoming new ministers. These practices undermine the procedures and principles under the civil service law for merit-based appointments and lower the overall capacity of public administration.

References:

Albania 2009, Progress Report, Brussels, Oct. 14, 2009, Commission of the European Communities, SEC(2009) 1337

100: Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

45c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | 50 | 25 | 0

Comments:

The Code also regulates some procedures for dealing with conflicts of interest. Submitting conflict of interest declarations is a requirement strictly enforced by the Department of Public Administration (DoPA), but the correctness of such declarations is not checked.

Albania has a law on declaration and audit of assets for civil servants and a law for the prevention of conflict of interest while exercising public office. Albania needs to vigorously implement the anti-corruption strategy and action plans as well as relevant legislation.

A number of key institutions and agencies have been established for the fight against corruption. The Department for Internal Administrative Control and Anti-Corruption performs internal controls on administration and is the administrative body in charge of coordinating the anti-corruption strategy. The High Inspectorate for Declaration and Audit of Assets is in charge of receiving and verifying the declaration of assets of public officials and the compliance of their positions with the law on conflict of interest.

References:

Albania 2009, Progress Report, Brussels, Oct. 14, 2009, Commission of the European Communities, SEC(2009) 1337

100: Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

75:

50: Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

25:

0: Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

45d. In practice, civil servants have clear job descriptions.

100 | 75 | 50 | 25 | 0

References:

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

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable representation of positions in terms of a person's authority, responsibility and base pay.

75:

50: Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

25:

0: Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

45e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

References:

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

100: Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

75:

50: Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

25:

0: Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

45f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | 50 | 25 | 0

References:

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

100: The government publishes such a list on a regular basis.

75:

50: The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

25:

0: The government rarely or never publishes such a list, or when it does it is wholly incomplete.

45g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | 25 | 0

Comments:

In general, the independent civil service redress mechanism can initiate investigations but is often subject to pressure from the bodies that manage civil servants on a day-to-day basis and on politically sensitive issues.

References:

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

European Commission, Analytical Report, Brussels, Nov. 9, 2010

100: The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

75:

50: The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

25:

0: The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

45h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

References:

Interview with Artan Hoxha, NGO expert, president of the Institute of Temporary Studies. The interview took place at his office on November 4, 2010.

www.klsh.org.al/

100: In the past year, no civil servants have been paid late.

75:

50: In the past year, some civil servants have been paid late.

25:

0: In the past year, civil servants have frequently been denied due pay.

45i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

References:

Albania 2009, Progress Report, Brussels, Oct. 14, 2009, Commission of the European Communities, SEC(2009) 1337

100: A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective. Some bans are only temporary.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

46. Are there regulations addressing conflicts of interest for civil servants?

47

46a. In law, senior members of the civil service are required to file an asset disclosure form.

Yes

No

Comments:

There is a High Inspectorate of the Declaration and Audit of Assets that provides a general requirement for certain categories of public officers to disclose their assets. However, it is not specifically provided for in the Law on Civil Service.

References:

Per desk research, it is not provided in the Law no. 8095, dated on March 21, 1996, On the Civil Service in the Republic of Albania; amended with Law no. 8549, dated Nov. 11, 1999.

Yes: A YES score is earned if senior members of the civil service are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

No: A NO score is earned if any senior member of the civil service is not required to disclose assets.

46b. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

Yes

No

Comments:

On his election or appointment, and on an on-going basis, an official has the duty to prevent and to resolve himself, as soon as possible and in the most beneficial manner possible, every situation of a conflict of his interests.

References:

Article 6/1 of the Law nr. 9367, dated April 7, 2005, On the Prevention of Conflicts of Interest in the Exercise of Public Functions.

Yes: A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

No: A NO score exists if no such requirements exist in regulation or law.

46c. In law, there are restrictions for civil servants entering the private sector after leaving the government.

Yes

No

Comments:

As the private sector is open to all, a civil servant may enter the private sector after he leaves government service.

References:

Per desk research, it is not provided in the Law no. 8095, dated on March 21, 1996, On the Civil Service in the Republic of Albania; amended with Law no. 8549, dated Nov. 11, 1999.

Yes: A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

No: A NO score is earned if no such restrictions exist.

46d. In law, there are regulations governing gifts and hospitality offered to civil servants.

Yes

No

References:

Article 23/1 of the Law nr. 9367, dated April 7, 2005, On the Prevention of Conflicts of Interest in the Exercise of Public Functions

Article 11 of the Law no. 9131, dated Sept. 8, 2003, The Rules of Ethics In the Public Administration.

Yes: A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

No: A NO score is earned if there are no such guidelines or regulations.

46e. In law, there are requirements for the independent auditing of the asset disclosure forms of senior members of the civil service.

Yes

No

Comments:

The High Inspectorate of the Declaration and Audit of Assets administers the declaration of assets, financial obligations and the audit of declarations, according to the specifications made in this law. The High Inspectorate directly audits the making of declarations by those in the list of persons covered by the law.

References:

"Article 17-18 of the Law nr. 9049, dated April 10, 2003, On the Declaration and Audit of Assets, Financial Obligations of Elected Persons and Certain Public Officials

Yes: A YES score is earned if there is a legal or regulatory requirement for independent auditing of civil service asset disclosures. The auditing is performed by an impartial third-party.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of civil service asset disclosures or if such requirements exist but allow for self-auditing.

46f. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100

75

50

25

0

Comments:

Regulations are almost never enforced, as civil servants have no real restrictions on their post-government careers in the private sector. Especially in certain sectors like telecommunication and finance, civil servants are known to regularly take jobs that entail directly lobbying or seeking to influence their former government colleagues.

References:

Interview with Artan Hoxha, NGO expert, president of the Institute of Temporary Studies. The interview took place at his office on November 4, 2010.

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no cases or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate "cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

46g. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

There is a Code of Ethics which is binding on civil servants. However, part of the Code of Ethics is eschewed as not legally enforceable because some concepts are contradictory. The general perception is that civil servants easily accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

References:

Albania 2009, Progress Report, Brussels, Oct. 14, 2009, Commission of the European Communities, SEC(2009) 1337

European Commission, Analytical Report , Brussels, Nov. 9, 2010

100: The regulations governing gifts and hospitality to civil servants are regularly enforced. Civil servants never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

46h. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | 25 | 0

Comments:

The Code of Ethics also regulates some procedures for dealing with conflicts of interest. The requirements that civil servants recuse themselves from policy decisions are, on the whole, followed but exceptions exist. In certain sectors, such as license issuing, civil servants are known to routinely participate in policy decisions that might affect their personal interests.

References:

Albania 2009, Progress Report, Brussels, Oct. 14, 2009, Commission of the European Communities, SEC(2009) 1337

European Commission, Analytical Report, Brussels, Nov. 9, 2010

100: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

75:

50: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

25:

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

46i. In practice, civil service asset disclosures are audited.

100 | 75 | **50** | 25 | 0

Comments:

Civil service asset disclosures are regularly audited using generally accepted auditing practices. In addition, random auditing of a sample of the disclosure statements is done every year. Also, auditing occurs when financial irregularities are suspected and/or reported by the media. However, due to significant informality, there is a perception that not all the assets are truly disclosed and that their accurate detection is difficult.

References:

www.hidaa.gov.al/

European Commission, Analytical Report, Brussels, Nov. 9, 2010

100: Civil service asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Civil service asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Civil service asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

47. Can citizens access the asset disclosure records of senior civil servants?

56

47a. In law, citizens can access the asset disclosure records of senior civil servants.

Yes | No

Comments:

The data obtained from the making of a declaration according to this law are available to the public, in conformity with Law nr.

References:

Article 34 of the Law nr. 9049, dated April 10, 2003, On the Declaration and Audit of Assets, Financial Obligations of Elected Persons and Certain Public Officials

Yes: A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

No: A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

47b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

In practice records are not on-line and it can take around two weeks to obtain the information. Obviously, extra delays may be experienced.

References:

www.hidaa.gov.al/

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

47c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Albania has a law on declaration and audit of assets for civil servants and a law for the prevention of conflict of interest while exercising public office. Albania needs to vigorously implement the anti-corruption strategy and action plans, as well as relevant legislation.

References:

Albania 2009, Progress Report, Brussels, Oct. 14, 2009, Commission of the European Communities, SEC(2009) 1337

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records' costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

47d. In practice, the asset disclosure records of senior civil servants are of high quality.

100 | 75 | **50** | 25 | 0

Comments:

While progress has been made in establishing a meta-data system, useful information may be lacking because it has not been properly disclosed.

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009; currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana.

European Commission, Analytical Report, Brussels, Nov. 9, 2010, http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/al_rapport_2010_en.pdf

100: The asset disclosure records of senior civil servants are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of senior civil servants contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of senior civil servants are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

4.2. Whistle-blowing Protections

48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

69

48a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

Yes

No

Comments:

The law provides protection for whistleblowers; it is not limited to civil servants but to all persons reporting on corruption.

References:

Article 33 of the Law no. 9492, dated March 13, 2006, For Ratification of the United Nations Convention against Corruption.

Yes: A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

No: A NO score is earned if there are no legal protections for public-sector whistleblowers.

48b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100

75

50

25

0

Comments:

Public sector whistleblowers are now and then able to come forward without negative consequences; but in other cases, they are punished for disclosing, mainly through unofficial means.

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009; currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana.

100: Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

48c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

Yes | No

Comments:

It provides protection for whistleblowers. It is not limited only to public sector employees but to all persons reporting on corruption.

References:

Article 33 of the Law no. 9492, dated March 13, 2006, For Ratification of the United Nations Convention against Corruption.

Yes: A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

No: A NO score is earned if there are no legal protections for private-sector whistleblowers.

48d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

Comments:

Since the culture that encourages disclosure and accountability is still not widely supported, private sector whistleblowers are in most of the cases punished for disclosing, either through official or unofficial means.

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009; currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana.

100: Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

100

49a. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

Yes

No

Comments:

The official website of the Council of Ministers, Albania, provides information on how to denounce corruption: <http://www.keshilliministrave.al/index.php?fq=brenda&r=&gj=gj1&kid=43>

References:

Article 36 of the Law no. 9492, dated March 13, 2006, For Ratification of the United Nations Convention against Corruption.

Yes: A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

No: A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

75

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100

75

50

25

0

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009; currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana.

100: The agency/entity has staff sufficient to fulfill its basic mandate.

75:

50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

25:

0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

50b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

In general, agencies enjoy a predictable source of funding that is fairly consistent from year to year.

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009; currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana.

European Commission, Analytical Report, Brussels, Nov. 9, 2010,
http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/al_rapport_2010_en.pdf

100: The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

50c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

In general, agencies act on complaints quickly and investigations of abuses are carefully considered. Simple issues are resolved within a month.

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009; currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana.

100: The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

50d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | **50** | 25 | 0

Comments:

The agency can start the investigation, but in specific cases has a limited effectiveness which is reflected into slow action and poor cooperation with other investigative agencies.

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009; currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana.

European Commission, Analytical Report, Brussels, Nov. 9, 2010, http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/al_rapport_2010_en.pdf

100: When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

4.3. Government Procurement: Transparency, Fairness, and Conflicts of Interest Safeguards

51. Is the public procurement process effective?

83

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

Yes

No

References:

the Law no. 9643 on Public Procurement, dated Nov. 20, 2006; amended by Law no. 9800, dated Sept. 10, 2007, Law no. 9855, dated Dec. 26, 2007, and Law no. 10170, dated Oct. 22, 2009

Yes: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials.

No: A NO score is earned if no such rules exist.

51b. In law, there is mandatory professional training for public procurement officials.

Yes

No

Comments:

At the beginning of each year, based on the data or requests of the contracting authorities, the Public Procurement Agency (PPA) shall plan the training needs for the officials involved in public procurement activities. The PPA alone, or in cooperation with other training and professional qualification institutions with expertise in the best EU practices in the field of public procurement, implements programs and necessary trainings.

References:

CHAPTER XI, 1/b/c, Decision of the Council of Ministers Nr 1, dated on Jan. 10, 2007, On Approval of Public Procurement Rules

Yes: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process. A YES score is earned if such training is mandated for portions of the broader civil service, to include procurement officials.

No: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

51c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | **50** | 25 | 0

Comments:

Submitting conflict of interest declarations is a requirement that is strictly enforced , but the correctness of such declarations is not checked.

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009); currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana.

European Commission, Analytical Report, Brussels, Nov. 9, 2010,

http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/al_rapport_2010_en.pdf

100: Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

25:

0: Conflict-of-interest regulations do not exist, or are consistently ineffective.

51d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

Yes | **No**

References:

According to Law nr. 9049, dated April 10, 2003, For the Declaration and Audit Of Assets, Financial Liabilities of the Elected Public Officials, there is a High Inspectorate of the Declaration and Audit of Assets that provides a general requirement for certain categories of public officers to disclose their assets, but it is not specifically provided with a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

Yes: A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

No: A NO score is earned if no such mandate exists.

51e. In law, major procurements require competitive bidding.

Yes | No

References:

the Law no. 9643 on Public Procurement, dated Nov. 20, 2006, amended by the following laws; law no. 9800, dated September 2007; law no. 9855 dated December 2007; law no. 10170, dated October 2009; and law no.10309, dated July 22, 2010.

Decision No. 1 of the Council of Ministers, dated January 2007, on the Regulations on Public Procurement amended through different following decisions of the COM, the most recent being no. 398, dated May 26, 2010.

Yes: A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

No: A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

51f. In law, strict formal requirements limit the extent of sole sourcing.

Yes | No

References:

Law On Public Procurement No 9643, dated November 2006, amended by the following laws: law no. 9800, dated September 2007; law no. 9855 dated December 2007; law no. 10170, dated October 2009; and law no.10 309, dated July 22, 2010.

Decision No. 1 of the Council of Ministers, dated January 2007, On the Regulations on Public Procurement amended through different following decisions of the COM, the most recent being no. 398, dating May 26, 2010.

Yes: A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

No: A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

51g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

Yes | No

Comments:

CHAPTER VII, ADMINISTRATIVE REVIEW PROCEDURES: "Any person having or having had an interest in obtaining a public contract and who has been or risks being harmed by a decision that infringes the PPL, may challenge such decision."

References:

Article 63 of the Law no. 9643 on Public Procurement, dated Nov. 20, 2006; amended by Law no. 9800, dated Sept. 10, 2007, Law no. 9855, dated Dec. 26, 2007, and Law no. 10170, dated Oct. 22, 2009

Yes: A YES score is earned if there is a formal appeal process for unsuccessful bidders.

No: A NO score is earned if no such process exists.

51h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

Yes

No

Comments:

Article 64/3 Complaint before the Courts

References:

Article 64/3 of the Law no. 9643 on Public Procurement, dated Nov. 20, 2006; amended by Law no. 9800, dated Sept. 10, 2007, Law no. 9855, dated Dec. 26, 2007, and Law no. 10170, dated Oct. 22, 2009

Yes: A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

No: A NO score is earned if no such process exists.

51i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

Yes

No

Comments:

Article 13/3 The Public Procurement Agency (PPA): The PPA can exclude an economic operator from participation in awarding procedures — without prejudice of criminal proceedings, which may have started — for a period of 1 to 3 years in the cases of:

(a) serious misrepresentation and submission of documents containing false information for purposes of qualification, according to Article 45 and 46 PPL; or

(b) corruption within the meaning of Article 26 PPL; or

(c) conviction for any of the crimes listed in Article 45, para 1 PPL;

(d) non fulfillment of contractual obligations for public contracts during the last 3 years.

References:

Article 13/3 of the Law no. 9643 on Public Procurement, dated Nov. 20, 2006; amended by Law no. 9800, dated Sept. 10, 2007, Law no. 9855, dated Dec. 26, 2007, and Law no. 10170, dated Oct. 22, 2009

Yes: A YES score is earned if there are formal procurement blacklists, designed to prevent convicted companies from doing business with the government.

No: A NO score is earned if no such process exists.

51j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

In general, prohibitions for companies guilty of major violations of procurement regulations are effective.

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009; currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana.

European Commission, Analytical Report, Brussels, Nov. 9, 2010,
http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/al_rapport_2010_en.pdf

100: A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

52. Can citizens access the public procurement process?

79

52a. In law, citizens can access public procurement regulations.

Yes | No

Comments:

<https://www.app.gov.al/ep/Regulations.aspx>: Official Website of the Public Procurement Agency

References:

Decision of the Council of Ministers No. 1, dated on Jan. 10, 2007, On Approval of Public Procurement Rules

Yes: A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

No: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

52b. In law, the government is required to publicly announce the results of procurement decisions.

Yes

No

Comments:

The government through the Contractual Authority announces publicly the results of procurement decisions:
<https://www.app.gov.al/en>

References:

Article 21 of the Law no. 9643 on Public Procurement, dated Nov. 20, 2006; amended by Law no. 9800, dated Sept. 10, 2007, Law no. 9855, dated Dec. 26, 2007, and Law no. 10170, dated Oct. 22, 2009

Yes: A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

No: A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

52c. In practice, citizens can access public procurement regulations within a reasonable time period.

100

75

50

25

0

Comments:

Records are uniformly available and traceable online.

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009; currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana. European Commission, Analytical Report, Brussels, Nov. 9, 2010.

European Commission, Analytical Report, Brussels, Nov. 9, 2010,

http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/al_rapport_2010_en.pdf

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

52d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | **50** | 25 | 0

Comments:

Even though records are free to all citizens and obtained at little cost, retrieving them may require a visit to a specific office.

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009; currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana. European Commission, Analytical Report, Brussels, Nov. 9, 2010.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

52e. In practice, major public procurements are effectively advertised.

100 | **75** | 50 | 25 | 0

Comments:

A formal process is in place, but the advertising process may not be effective in specific cases. However, major procurements are advertised using different sources, including international financial newspapers. For instance, the tender for the construction of parts of the Durres-Kukes road project was published in the Financial Times.

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009;

currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana. European Commission, Analytical Report, Brussels, Nov. 9, 2010.

100: There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

52f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | **50** | 25 | 0

Comments:

Even though records of public procurements are available, there are exceptions to this practice, such as specific cases where information might not be available.

The most common place to find procurement bids is at the Agency of the Public Procurement (www.app.gov.al), which publishes a specific periodical bulletin.

Other sources include newspapers and also contacting authorities' websites.

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009; currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana. European Commission, Analytical Report, Brussels, Nov. 9, 2010.

100: Records of public procurement results are publicly available through a formal process.

75:

50: Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

25:

0: This information is not available to the public through an official process.

4.4. Privatization of Public Administrative Functions: Transparency, Fairness, and Conflicts of Interest Safeguards

53. Is the privatization process effective?

83

53a. In law, all businesses are eligible to compete for privatized state assets.

Yes

No

Comments:

In the case of large scale privatizations of strategic sectors, the government approves specific laws that regulate the entire process.

References:

Constitution of the Republic, article 100 and Law no. 8306, dated March 1998, On Strategic Privatizations and Law no. 9967 On the Privatization of State-owned assets, dated July 2008

Yes: A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

No: A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

53b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

Yes

No

References:

Law nr. 9367, dated April 7, 2005 (published in the Official Journal nr. 31 dated May 11, 2005), On the Prevention of Conflicts of Interest in the Exercise of Public Functions; amended with law nr. 9475, dated Feb. 9, 2006 (published in the Official Journal nr. 19, dated March 9, 2006) and with Law nr. 9529, dated May 11, 2006 (published in the Official Journal nr. 56, dated June 8, 2006)

Yes: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

No: A NO score is earned if there are no such formal regulations.

53c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | **50** | 25 | 0

Comments:

Regulations exist, but they are not aggressively enforced.

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009; currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana.

European Commission, Analytical Report, Brussels, Nov. 9, 2010, http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/al_rapport_2010_en.pdf

100: Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

54. Can citizens access the terms and conditions of privatization bids?

75

54a. In law, citizens can access privatization regulations.

Yes | No

Comments:

Privatization rules are, by law, open to the public, but allegations of unfair competition during the bidding process exist.

References:

The law 8306, dated March 1998, serves as a basic foundation for the other privatizations that have taken place since then. There are specific laws for every strategic privatization; for instance, law no. 9889, dated March 2008, regulates the privatization formula of the Electricity Distribution Operator.

Yes: A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

No: A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

54b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

In general, there is a transparent advertising process for privatizations of different scales. There are cases of insufficient time to respond to advertisements but these seem to be isolated.

There are concerns about lack of transparency for some concessionary agreements, especially in the case of unsolicited proposals.

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009; currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana.

100: There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

54c. In law, the government is required to publicly announce the results of privatization decisions.

Yes | No

Comments:

The agencies that are responsible for the privatization of a specific public asset in the case of small scale privatizations and the Ministry of Economy for all the other privatizations are by law responsible for disclosing the result of the privatization process.

References:

In the framework of Law nr. 8503, dated June 30, 1999, On the Right to Get Information About Official Documents.

Yes: A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

No: A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

54d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

Rules governing the competitive privatization process not always are traceable online. It might take more than a couple of days to obtain information, especially if it is politically sensitive.

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009; currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana.

100: Records (defined here as the rules governing the competitive privatization process) are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

54e. In practice, citizens can access privatization regulations at a reasonable cost.

100 | 75 | **50** | 25 | 0

Comments:

Records impose a financial burden since retrieving them may require a visit to a specific office, such as a regional or national capital.

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009; currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana.

100: Records (defined here as the rules governing the competitive privatization process) are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

Category 5. Government Oversight and Controls

5.1. National Ombudsman

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

55a. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

Yes

No

References:

Paragraph no. 1, Article no. 60, of the Constitution of the Republic of Albania

Yes: A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

No: A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

56. Is the national ombudsman effective?

64

56a. In law, the ombudsman is protected from political interference.

Yes | No

References:

Per desk research, it is provided for in Paragraph no. 2, Article no. 60, of the Constitution of the Republic of Albania.

Article no. 10 of the Law no. 8454, dated Feb. 4, 1999, On the Ombudsman

Yes: A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

No: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

56b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The agency is usually independent. Still, due to the sensitive cases it follows and the opinion it has expressed in relation to some of them, it has not avoided indirect political intervention or public criticism from members of parliament.

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009; currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana.

European Commission, Analytical Report, Brussels, Nov. 9, 2010,

http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/al_rapport_2010_en.pdf

100: This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

56c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

The law clearly defines the office term for the ombudsman. Since it was first established in 2000, no attempt for impeachment has taken place, despite the unofficial pressure on specific cases that has been observed.

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009; currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana.

European Commission, Analytical Report, Brussels, Nov. 9, 2010,

http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/al_rapport_2010_en.pdf

100: The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

56d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The office is not yet fully operational as the election of the new Ombudsman has been pending since February 2010. On top of that, due to lack of funds, the office does not have the necessary expertise to suitably fulfill its mandate. This is a specific problem for the ombudsman office.

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009; currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana.

European Commission, Analytical Report, Brussels, Nov. 9, 2010,

http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/al_rapport_2010_en.pdf

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

56e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

In general, appointments to the agency are made based on professional qualifications and free of conflicts of interests, despite some alleged political affiliation.

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009; currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana.

European Commission, Analytical Report, Brussels, Nov. 9, 2010,
http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/al_rapport_2010_en.pdf

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

56f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The agency (or agencies) has a regular source of funding that is based on the state budget. However, due to the current financial crisis, the agency, along with other independent agencies, has experienced budget reductions. Political considerations very likely have not played a role in the cuts.

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009; currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana.

European Commission, Analytical Report, Brussels, Nov. 9, 2010,
http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/al_rapport_2010_en.pdf

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

56g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

Comments:

In general, the agency makes annual comprehensive reports to the Parliament, as well other reports directly to the public.

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009; currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana.

European Commission, Analytical Report, Brussels, Nov. 9, 2010,

http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/al_rapport_2010_en.pdf

100: The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

56h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The agency will start, or cooperate, in investigations, but it has limited effectiveness when investigating due to underfunding problems.

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009; currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana.

European Commission, Analytical Report, Brussels, Nov. 9, 2010,

http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/al_rapport_2010_en.pdf

100: The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

75:

50: The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

56i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | **50** | 25 | 0

Comments:

The Ombudsman's Office has provided solid and timely recommendations in its areas of competence, cooperating with other agencies and also imposing fines. However, these recommendations are insufficiently put into practice by government institutions.

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009; currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana.

European Commission, Analytical Report, Brussels, Nov. 9, 2010,

http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/al_rapport_2010_en.pdf

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

56j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | **50** | 25 | 0

Comments:

Implementation of recommendations by the Ombudsman and prosecution of perpetrators needs to be enhanced by government institutions.

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009; currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana.

European Commission, Analytical Report, Brussels, Nov. 9, 2010,

http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/al_rapport_2010_en.pdf

100: Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman's reports are often ignored, or given superficial attention. Ombudsman's reports do not lead to policy changes.

56k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

The agency has provided solid and timely recommendations in its areas of competence, considering that a reasonable time period means more than one month in the Albanian context.

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009; currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana.

European Commission, Analytical Report, Brussels, Nov. 9, 2010,

http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/al_rapport_2010_en.pdf

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

57. Can citizens access the reports of the ombudsman?

100

57a. In law, citizens can access reports of the ombudsman(s).

Yes

No

References:

Article no. 28 of the Law no. 8454, dated Feb. 4, 1999, On the Ombudsman, amended with law no. no.8600, April 4, 2000

Provision no. 2, Article no. 3, Law nr. 8503, dated June 30, 1999, On the Right to Get Information About Official Documents.

Yes: A YES score is earned if all ombudsman reports are publicly available.

No: A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

57b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100

75

50

25

0

Comments:

All reports are available online (checked between March 28-30, 2011).

References:

National Ombudsman yearly report from 2000 to 2009,
http://www.avokatipopullit.gov.al/Raporte_Botime.htm

100: Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

57c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

There is no cost to request such information.

Addendum: I have also checked the website several times from March 28 until March 30, 2011. It was always easily accessible and all the reports were available on-line which means that the reports can be obtained at little cost.

References:

National Ombudsman, http://www.avokatipopullit.gov.al/Raporte_Botime.htm

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or NGOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

5.2. Supreme Audit Institution

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58a. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

Yes | No

References:

Article 119 of the Constitution of Albania and the Law nr. 8270, dated Dec. 23, 1997, amended with Law no. 8599, dated June 1, 2000, For the State Supreme Audit

Yes: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

No: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

59. Is the supreme audit institution effective?

75

59a. In law, the supreme audit institution is protected from political interference.

Yes | No

References:

Paragraph no. 2, Article nr.1, of Law nr. 8270, dated Dec. 23, 1997, amended with Law no. 8599, dated June 1, 2000, For the State Supreme Audit

Yes: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

No: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

59b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

The director of the agency serves a defined term and is elected by the Parliament. There has been an unwritten consensus to

leave the job to the opposition. In the past, politics has tried to exert pressure on the agency and, considering the Albanian context, no one is safe if there is a combination of official or unofficial pressure. Still, no impeachment has been yet verified .

References:

European Commission, Analytical Report, Brussels, Nov. 9, 2010,
http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/al_rapport_2010_en.pdf

100: The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the agency can be removed at the will of political leadership.

59c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

European Commission, Analytical Report, Brussels, Nov. 9, 2010,
http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/al_rapport_2010_en.pdf

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

59d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

Appointments to the agency are usually done based on professional qualifications, at least at specific levels. Still, appointment of certain individuals may have implicit party affiliations.

References:

European Commission, Analytical Report, Brussels, Nov. 9, 2010,
http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/al_rapport_2010_en.pdf

100: Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

59e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

This institution receives regularly yearly funds in the state budget.

References:

European Commission, Analytical Report, Brussels, Nov. 9, 2010,
http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/al_rapport_2010_en.pdf

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

59f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009; currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana.

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

100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

59g. In practice, the government acts on the findings of the audit agency.

100 | 75 | **50** | 25 | 0

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009; currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana.

100: Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

59h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | **50** | 25 | 0

Comments:

This institution has the right to start investigations and to initiate a prosecution at the General Prosecution Office.

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009; currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana.

100: The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

75:

50: The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

25:

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

60. Can citizens access reports of the supreme audit institution?

100

60a. In law, citizens can access reports of the audit agency.

Yes

No

References:

Paragraph no. 2, Article nr. 18, Law nr. 8270, dated Dec. 23, 1997, amended with Law no. 8599, dated June 1, 2000, For the State Supreme Audit

Yes: A YES score is earned if all supreme auditor reports are available to the general public.

No: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

60b. In practice, citizens can access audit reports within a reasonable time period.

100

75

50

25

0

Comments:

The information is available online

References:

Reports at High Inspectorate of Declaration and Audit of Assets,
<http://www.hidaa.gov.al/>

100: Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

60c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The information is available online. Citizens may get the information for free.

References:

High Inspectorate of Declaration and Audit of Assets Official Website
www.hidaa.gov.al

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or NGOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

100

61a. In law, is there a national tax collection agency?

Yes | No

References:

Law no. 9975 On the National Taxes, dated July 28, 2008, amended.

http://www.tatime.gov.al/gdt/Tax_legislation_in_Force.aspx

Yes: A YES score is earned if there is a national agency formally mandated to collect taxes.

No: A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

62. Is the tax collection agency effective?

100

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Doing Business 2011,
The International Bank for Reconstruction and Development / The World Bank
1818 H Street NW
Washington, DC 20433
Telephone 202-473-1000
Internet www.worldbank.org

<http://www.doingbusiness.org/~media/fpdkm/doing%20business/documents/profiles/country/db11/alb.pdf>

General Directory of Taxes

http://www.tatime.gov.al/gdt/Tax_legislation_in_Force.aspx

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

62b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Doing Business 2011,
The International Bank for Reconstruction and Development / The World Bank
1818 H Street NW
Washington, DC 20433
Telephone 202-473-1000
Internet www.worldbank.org

<http://www.doingbusiness.org/~media/fpdkm/doing%20business/documents/profiles/country/db11/alb.pdf>

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

63. In practice, are tax laws enforced uniformly and without discrimination?

50

63a. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

Tax laws are generally enforced consistently but exceptions exist. The informal sector in the economy is still quite present and significant, which facilitates tax evasion for certain businesses. There is also the perception that businesses with political connections might enjoy a favorable treatment by the tax agencies, but this has decreased over the years.

References:

Doing business 2011,
The International Bank for Reconstruction and Development / The World Bank
1818 H Street NW
Washington, DC 20433
Telephone 202-473-1000
Internet www.worldbank.org

<http://www.doingbusiness.org/~media/fpdkm/doing%20business/documents/profiles/country/db11/alb.pdf>

100: Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75:

50: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

64. In law, is there a national customs and excise agency?

100

64a. In law, is there a national customs and excise agency?

Yes

No

References:

Customs Code, Law nr. 8449, date Jan. 27, 1999

Law nr. 8976, date Dec. 12, 2002, For the Excise in the Republic of Albania

Yes: A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

No: A NO score is earned if that function is spread over several agencies, or does not exist.

65. Is the customs and excise agency effective?

100

65a. In practice, the customs and excise agency has a professional, full-time staff.

References:

General Directory of Custom, reports and statistics,
<http://www.dogana.gov.al/index.php?mid=7>

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

65b. In practice, the customs and excise agency receives regular funding.

References:

General Directory of Custom, reports and statistics,
<http://www.dogana.gov.al/index.php?mid=7>

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

50

66a. In practice, are customs and excise laws enforced uniformly and without discrimination?

Comments:

In general, customs and excise tax are enforced consistently and tax collection fairness has improved over the course of the years. Still, some exceptions exist as certain groups may occasionally evade customs duties, which is mostly done informally with the assistance of corrupted officials.

References:

Doing Business 2011,
The International Bank for Reconstruction and Development / The World Bank
1818 H Street NW
Washington, DC 20433
Telephone 202-473-1000

Internet www.worldbank.org

<http://www.doingbusiness.org/~media/fpdkm/doing%20business/documents/profiles/country/db11/alb.pdf>

European Commission, Analytical Report, Brussels, Nov. 9, 2010,

http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/al_rapport_2010_en.pdf

100: Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

75:

50: Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

25:

0: Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

5.4. Oversight of State-Owned Enterprises

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67a. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

Yes | No

References:

Article no. 8 of the Law For the transformation of State-owned Enterprises in Commercial Associations

Yes: A YES score is earned if there is an agency, series of agencies, or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. A YES score can be earned if several government agencies or ministries oversee different state-owned enterprises. State-owned companies are defined as companies owned in whole or in part by the government.

No: A NO score is earned if this function does not exist, or if some state-owned companies are free from government oversight.

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

50

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

Yes

No

Comments:

General Directory of Customs and General Directory of Taxes are subordinate parts of the Ministry of Finance.

References:

Provision nr. 5, article nr. 6, article nr. 10, of the Law For State-owned Companies

Yes: A YES score is earned only if the agency, series of agencies, or equivalent mechanism has some formal operational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

No: A NO score is earned if the agency, series of agencies, or equivalent mechanism is a subordinate part of any government ministry or agency.

68b. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100

75

50

25

0

Comments:

The staff of the customs administration received training on rules of origin and on the use of scanning equipment. However, there is no comprehensive training strategy. The GDC operates on the basis of the 2009 annual action plan for training. Efforts are required to enhance transparency of personnel policy and procedures. Customs officials still do not have civil servant status.

References:

Albania 2009 Progress Report, Commission of the European Communities, Brussels, Oct. 14, 2009, SEC(2009) 1337

100: The agency, series of agencies, or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency, series of agencies, or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency, series of agencies, or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

68c. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

References:

National Budget Report, Ministry of Finance, www.minfin.gov.al

100: The agency, series of agencies, or equivalent mechanism has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency, series of agencies, or equivalent mechanism has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

68d. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The Directorate-General for Taxation approved strategic plans on tax inspection and collection with the aim of enhancing the fight against tax evasion and fraud. However, further improvements in the legal framework and strengthening of operational capacity are required to reduce the large size of the informal economy.

References:

Doing Business 2011,
The International Bank for Reconstruction and Development / The World Bank
1818 H Street NW
Washington, DC 20433
Telephone 202-473-1000
Internet www.worldbank.org

<http://www.doingbusiness.org/~media/fpdkm/doing%20business/documents/profiles/country/db11/alb.pdf>

Albania 2009 Progress Report, Commission of the European Communities, Brussels, Oct. 14, 2009, SEC(2009) 1337

100: When irregularities are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency, series of agencies, or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency, series of agencies, or equivalent mechanism may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

68e. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | **50** | 25 | 0

Comments:

The series of agencies in charge of enforcing rules may be slow to act and limited in its effectiveness, since it is reluctant to cooperate with other agencies that enforce penalties. In certain cases, authorities responsible for overseeing state-owned companies may be biased in the application of power, as their composition is created on a politically motivated basis.

References:

Directorate-General for Taxation, reports and statistics

100: When rules violations are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency, series of agencies, or equivalent mechanism enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency, series of agencies, or equivalent mechanism may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency, series of agencies, or equivalent mechanism may be partisan in its application of power.

69. Can citizens access the financial records of state-owned companies?

30

69a. In law, citizens can access the financial records of state-owned companies.

Yes

No

References:

Article 7 and 10 of the Law no. 7582, dated July 13, 1992, For the State-owned Companies

Yes: A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

No: A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

69b. In practice, the financial records of state-owned companies are regularly updated.

100

75

50

25

0

Comments:

No financial data are available regarding the value of the asset.

References:

Reports of Ministry of Finance, www.minfin.gov.al

100: State-owned companies always publicly disclose financial data, which is generally accurate and up to date.

75:

50: State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, file the information behind schedule, or not publicly disclose certain data.

25:

0: Financial data is not publicly available, or is consistently superficial or otherwise of no value.

69c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

References:

Reports and statistics of the State Supreme Audit Institution

100: Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of state-owned companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

25:

0: State-owned companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

69d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

No such kind of publication exists online.

References:

Reports of The State Supreme Audit Institution

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

69e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Retrieving records imposes more than a financial burden to citizens and a visit to a specific office. In certain cases, to retrieve such records is almost impossible as the entire bureaucratic process is very complicated, and there is a lack of transparency and well-defined procedures.

References:

Reports of The State Supreme Audit Institution

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

60

5.5. Business Licensing and Regulation

70. Are business licenses available to all citizens?

100

70a. In law, anyone may apply for a business license.

Yes | No

Comments:

Each applicant fulfilling the criteria for licensing or authorizing shall enjoy the right to carry out the activity in question, or, respectively, the action.

References:

Article 8/4 of the Law no.10081, dated Feb. 23, 2009, On Licenses,

Yes: A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

No: A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required.

70b. In law, a complaint mechanism exists if a business license request is denied.

Yes | No

Comments:

Administrative complaints shall be reviewed by the National Licensing Center's officials, except when circumstances fall under the provisions of paragraph 3 of this article.

Complaints against decisions issued after processing the administrative complaints or complaints for lack of action, shall be filed directly with the competent court for administrative cases, following the legislation in force.

References:

the Law no.10081, dated Feb. 23, 2009, On Licenses, Authorizations and Permits in the Republic of Albania, amended with Law no.10137, dated May 11, 2009

Yes: A YES score is earned if there is a formal process for appealing a rejected license.

No: A NO score is earned if no such mechanism exists.

70c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Doing business 2011,
The International Bank for Reconstruction and Development / The World Bank
1818 H Street NW
Washington, DC 20433
Telephone 202-473-1000
Internet www.worldbank.org

<http://www.doingbusiness.org/~media/fpdkm/doing%20business/documents/profiles/country/db11/alb.pdf>

100: Licenses are not required, or licenses can be obtained within roughly one week.

75:

50: Licensing is required and takes around one month. Some groups may be delayed up to a three months

25:

0: Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

70d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Doing Business 2011,

The International Bank for Reconstruction and Development / The World Bank

1818 H Street NW

Washington, DC 20433

Telephone 202-473-1000

Internet www.worldbank.org

<http://www.doingbusiness.org/~media/fpdkm/doing%20business/documents/profiles/country/db11/alb.pdf>

100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

71. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

100

71a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

Yes | No

References:

Annex 1, field no.2 of the Decision of the Council of Ministers no.538, dated May 26, 2009, On the Licenses, Authorizations and the Permits In The Republic Of Albania; Category II/6

Yes: A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

No: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

Yes

No

References:

Annex 1, field no.3 of the Decision of the Council of Ministers no.538, dated May 26, 2009, On the Licenses, Authorizations and the Permits In The Republic Of Albania; Category III/1 and so on

Yes: A YES score is earned if basic regulatory requirements for meeting public environmental standards are publicly accessible and transparent.

No: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

Yes

No

References:

Annex 1, field no.1 of the Decision of the Council of Ministers no.538, dated May 26, 2009, On the Licenses, Authorizations and the Permits In The Republic Of Albania

Yes: A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

No: A NO score is earned if such requirements are not made public or are otherwise not transparent.

72. Does government effectively enforce basic health, environmental, and safety standards on businesses?

72a. In practice, business inspections by government officials to ensure public health standards are being met and are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

Government agencies in charge of controlling business compliance with public health standards try to remain equitable during their performance, but exceptions exist as there are cases when bribes are paid for favorable treatment. However, the common perception is that many corruption cases remain unnoticed.

References:

Doing Business 2011,
The International Bank for Reconstruction and Development / The World Bank
1818 H Street NW
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Internet www.worldbank.org
<http://www.doingbusiness.org/~media/fpdkm/doing%20business/documents/profiles/country/db11/alb.pdf>

100: Business inspections by the government to ensure that public health standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public health standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

Overall, there have been some positive legislative developments, but implementation and enforcement remain weak. Preparations in the field of environment are advancing slowly but remain at an early stage for a number of sectors.

References:

Albania 2009 Progress Report, Commission of the European Communities, Brussels, Oct. 14, 2009, SEC(2009) 1337

100: Business inspections by the government to ensure that public environmental standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public environmental standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | **50** | 25 | 0

Comments:

Government agencies in charge of controlling business compliance with public safety standards try to remain equitable during their performance, but exceptions exist, as there are cases when bribes are paid for favorable treatment. However, the common perception is that many corruption cases remain unnoticed.

References:

Report of Employment Inspectorate.

100: Business inspections by the government to ensure that public safety standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

73. Is there legislation criminalizing corruption?

67

73a. In law, attempted corruption is illegal.

Yes | **No**

References:

Per Desk Research, the Penal Code of the Republic of Albania, adopted with Law no. 7895, dated Jan. 27, 1995 (recently amended with Law no. 8733, dated Jan. 24, 2001) only provides that corruption as illegal, but not unsuccessful attempts to corrupt.

Yes: A YES score is earned if corruption laws include attempted acts.

No: A NO score is earned if this is not illegal.

73b. In law, extortion is illegal.

Yes | **No**

References:

Per desk research, the Penal Code of the Republic of Albania, adopted with Law no. 7895, dated Jan. 27, 1995 (recently amended with Law no. 8733, dated Jan. 24, 2001) does not describe extortion as illegal.

Yes: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

No: A NO score is earned if this is not illegal.

73c. In law, offering a bribe (i.e. active corruption) is illegal.

Yes | No

References:

Article 224 of the the Penal Code of the Republic of Albania, adopted with Law no. 7895, dated Jan. 27, 1995 (recently amended with Law no. 8733, dated Jan. 24, 2001); amended by Law no. 9275 dated Sept.16, 2004; amended by Law no. 9686, dated Feb. 26, 2007.

Yes: A YES score is earned if offering a bribe is illegal.

No: A NO score is earned if this is not illegal.

73d. In law, receiving a bribe (i.e. passive corruption) is illegal.

Yes | No

References:

Article 259 of the Penal Code of the Republic of Albania, adopted with Law no. 7895, dated Jan. 27, 1995 (recently amended with Law no. 8733, dated Jan. 24, 2001); amended by Law no. 9275 dated Sept.16, 2004; amended by Law no. 9686, dated Feb. 26, 2007.

Yes: A YES score is earned if receiving a bribe is illegal.

No: A NO score is earned if this is not illegal.

73e. In law, bribing a foreign official is illegal.

Yes | No

References:

Desk Research: the Penal Code of the Republic of Albania, adopted with Law no. 7895, dated Jan. 27, 1995 (recently amended with Law no. 8733, dated Jan. 24, 2001) makes bribing an official illegal, but it is not specifically only for foreign officials.

There is a bill for this, but still has not become law.

Yes: A YES score is earned if bribing a foreign official is illegal.

No: A NO score is earned if this is not illegal.

73f. In law, using public resources for private gain is illegal.

Yes | No

References:

Article 256 of the Penal Code of the Republic of Albania, adopted with Law no. 7895, dated Jan. 27, 1995 (recently amended with Law no. 8733, dated Jan. 24, 2001); amended by Law no. 9275 dated Sept.16, 2004; amended by Law no. 9686, dated Feb. 26, 2007.

Yes: A YES score is earned if using public resources for private gain is illegal.

No: A NO score is earned if this is not illegal.

73g. In law, using confidential state information for private gain is illegal.

Yes | No

References:

Article 30 of the law nr. 8457, date Feb. 11. 1999, On Classified Information and State Secrets

Yes: A YES score is earned if using confidential state information for private gain is illegal.

No: A NO score is earned if this is not illegal.

73h. In law, money laundering is illegal.

Yes | No

References:

Article 1 of the Law no. 9917, dated May 19, 2008, On the Prevention of Money Laundering and Financing Terrorism

Yes: A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

No: A NO score is earned if this is not illegal.

73i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

Yes

No

References:

Article 2 of the Law nr.. 9284, dated Sept. 30, 2004, On the Prevention of and Striking Against Organized Crime

Yes: A YES score is earned if organized crime is illegal.

No: A NO score is earned if this is not illegal.

6.2. Anti-Corruption Agency or Equivalent Mechanisms

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74a. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

Yes

No

Comments:

The Department of Internal Control and Anti-corruption in the Council of Ministers has been reorganized and functions in line with the Decision No. 94, dated Feb. 15, 2006, of the Council of Ministers On Approval of Regulation About Functions and Procedures of Administrative Inner Control and Anti-Corruption of the Council of Ministers.

This department is the relevant structure for administrative inner control and anti-corruption in the institutions of executive power, such as the ministries, the central institutions, which are subordinated by the prime minister and ministers, the Prefect administration, as well as in the trade associations of state capital.

References:

Provision no.1 of the Decision No. 94, dated Feb. 15, 2006, of the Council of Ministers On Approval of Regulation About Functions and Procedures of Administrative Inner Control and Anti-Corruption of the Council of Ministers

Yes: A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

No: A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

75. Is the anti-corruption agency effective?

67

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

Yes | **No**

References:

It is not literally provided for in the Decision No. 94, dated Feb. 15, 2006, of the Council of Ministers On Approval of Regulation About Functions and Procedures of Administrative Inner Control and Anti-Corruption of the Council of Ministers.

Yes: A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

No: A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

75b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | **50** | 25 | 0

Comments:

The High Inspectorate of the Declaration and Audit of Assets is independent.

The Department of Internal Control and Anti-corruption in the Council of Ministers is not independent from the Council of Ministers.

Task-Force, the special Unit in the General Prosecutor's Office, is independent. It has been established via an agreement through the Ministry of Finance, Ministry of Interior and State Intelligence Service.

The General Directorate for the Prevention of Money Laundering is under the surveillance of Ministry of Finance.

Directory of Crime and Corruption is under the surveillance of Ministry of Interior.

The State Supreme Audit Institution is independent.

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009; currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana.

100: This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

75c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | **50** | 25 | 0

Comments:

The head of High Inspectorate of the Declaration and Audit of Assets has a 5- year mandate. He cannot be removed without relevant justification.

The head of Task Force, the special Unit in the General Prosecutor's Office, has a 5 year mandate, cannot be removed without relevant justification.

The other agencies are part of the executive branch, so their heads may be affected by the current political party decisions.

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009; currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana.

100: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director(s) can be removed at the will of political leadership.

75d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

Independent anti-corruption agencies apply the appointments based on professional criteria, while the agencies that are part of the executive branch may work under political influence.

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009; currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana.

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

75e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009; currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana.

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

75f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009; currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana.

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

75g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

The anti-corruption agencies report to the Parliament at least once per year.

The High Inspectorate for Declaration and Audit of Assets (HIDAA) has continued to publish an annual report that includes revenue declarations from public officials aimed at combating conflict of interest.

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009; currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana.

European Commission, Analytical Report, Brussels, Nov. 9, 2010

Website: http://ec.europa.eu/enlargement/pdf/key_documents/2009/al_rapport_2009_en.pdf

100: The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

75h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

The Task Force Special Unit at the General Prosecutor's Office may order arrests while The High Inspectorate of the Declaration and Audit of Assets may only bring suspects to trial.

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009; currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana.

100: The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

75:

50: The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

25:

0: The agency (or agencies) lacks significant powers which limit its effectiveness.

75i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The Task Force Special Unit at the General Prosecutor's Office may initiate criminal prosecution.

The other anti- corruption agencies can only make administrative inspections.

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009; currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana.

100: When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

75:

50: The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

76. Can citizens access the anti-corruption agency?

50

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The agency acts on complaints rather quickly, depending on the range of the issue and the timing (for instance whether it is close to elections or summer season).

However, certain complaints can be overlooked, while it might take more than a couple of months for other cases including simple one to be resolved.

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009; currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana.

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

76b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

100 | 75 | 50 | 25 | 0

Comments:

In general, whistleblowers are able to come forward without negative consequences, but there are cases when they get punished for their disclosures, mainly through unofficial means.

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009; currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana.

100: Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

75:

50: Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

72

6.3. Judicial Independence, Fairness, and Citizen Access to Justice

77. Is there an appeals mechanism for challenging criminal judgments?

83

77a. In law, there is a general right of appeal.

Yes

No

Comments:

Article 43 of the Albanian Constitution: Everyone has the right to appeal a judicial decision to a higher court, except when the Constitution provides otherwise

Albanian Constitution, adopted on Oct. 21, 1998. Approved by referendum on Nov. 22, 1998. Amended by Law No. 9657, dated Jan. 13.1.2007, and Law No. 9904, dated April 21, 2008

References:

Article 43 of the Albanian Constitution

Yes: A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

No: A NO score is earned if there is no such process.

77b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The Council of Ministers resolves the appeals within a reasonable time period. There are cases when the High Inspectorate of the Declaration and Audit of Assets also responds in a reasonable time period.

There have been two recent cases in the last three months when The High Inspectorate of the Declaration and Audit of Assets has reacted: 1. the case of a member of the parliament. 2. the case of a former minister.

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009; currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana.

100: Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

25:

0: Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

77c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

There are no costs at all for this service.

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009; currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana.

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees are not a barrier to appeals.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees present somewhat of a barrier to pursuing appeal.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments. Attorney fees greatly discourage the use of the appeals process.

78. In practice, do judgments in the criminal system follow written law?

50

78a. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

Comments:

In general, the judicial system follows the protocols of written laws. However, there are exceptions when other issues rather than legal decide the outcome. High-profile cases are rare and where they are prosecuted, they mostly do not lead to convictions. There have been cases where the General Prosecutor's Office completed the investigation but the trial was delayed on procedural grounds and eventually suspended because of the immunity of the defendant.

References:

Albania 2009 Progress Report, Commission of the European Communities, Brussels, Oct. 14, 2009, SEC(2009) 1337

100: Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

75:

50: Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

25:

0: Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

79. In practice, are judicial decisions enforced by the state?

50

79a. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

Comments:

There are some difficulties in enforcing court decisions on civil and economic cases.

References:

Albania 2009 Progress Report, Commission of the European Communities, Brussels, Oct. 14, 2009

100: Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

75:

50: Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

25:

0: Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

80. Is the judiciary able to act independently?

81

80a. In law, the independence of the judiciary is guaranteed.

Yes

No

Comments:

Article 7 of the Albanian Constitution: The system of government in the Republic of Albania is based on the separation and balancing of legislative, executive and judicial powers.

Article 144 of the Albanian Constitution: The courts have a special budget, which they administer themselves. They propose their budget according to law.

References:

Article 7 of the Albanian Constitution

Article 144 of the Albanian Constitution

Yes: A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence includes financial issues (drafting, allocation, and managing the budget of the courts).

No: A NO score is earned if there are no formal rules establishing an independent judiciary.

80b. In practice, national-level judges are protected from political interference.

Comments:

The High Council of Justice (HCJ) proposes the President candidates for nomination for the position of judge in the Courts of the Judiciary Districts and those of Appeal, in accordance with the conditions and procedure for such a selection, as determined by the law- The structure of the HCJ guarantees an independent supervision of the judiciary system

The Constitution provides that HCJ consists of fifteen members: the President of the Republic, the Chairperson of the High Court, the Justice Minister, three members elected by Parliament and nine judges of all levels elected by the National Judicial Conference. The term of office is five years and the chosen members have no right of request for an immediate re-election.

(<http://www.kld.al/>)

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009; currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana.

100: National-level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

75:

50: National-level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National-level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

80c. In law, there is a transparent and objective system for distributing cases to national-level judges.

Yes

No

References:

Article 9 of the Law no.9877, dated Feb. 18, 2008, On the Organization of the Judicial Power in the Republic of Albania

Yes: A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

No: A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

80d. In law, national-level judges are protected from removal without relevant justification.

Yes

No

References:

Article 20 of the Law no.9877, dated Feb. 18, 2008, On the Organization of the Judicial Power in the Republic of Albania

Yes: A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

No: A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

81. Are judges safe when adjudicating corruption cases?

100

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

Yes

No

Comments:

There are no court decisions relating to this issue.

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009); currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana.

Yes: A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period. YES is a positive score.

No: A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

81b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

Yes

No

Comments:

There are no court decisions relating to this issue.

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009; currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana.

Yes: A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period. YES is a positive score.

No: A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

82. Do citizens have equal access to the justice system?

89

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

Comments:

Judicial decisions are not affected by racial or ethnic groups.

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009; currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana.

100: Judicial decisions are not affected by racial or ethnic bias.

75:

50: Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

25:

0: Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

82b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

Women enjoy full and equal status in the eyes of the courts. Corruption, irregularities and harassment may exist in judiciary in Albania irrespective of gender consideration.

References:

Ermira Danaj, gender issues expert. The interview took place on November 3 , 2010 at the European University of Tirana.

100: Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

75:

50: Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

25:

0: Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

82c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

Yes

No

Comments:

During a criminal proceeding, everyone has the right:

d. — to be defended by himself or with the assistance of a legal defender chosen by him; to communicate freely and privately with him, as well as to be assured of free defense when he does not have sufficient means.

References:

Article 31/c of the Albanian Constitution

Yes: A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

No: A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

82d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

Comments:

State-provided legal aid is available, but inadequate. Legal aid is unavailable to some impoverished defendants.

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009; currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana.

100: State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

25:

0: State-provided legal aid is unavailable to most impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

82e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

The annual Average Income is around US\$3,600 per capita. A legal suit costs around US\$300 overall

There are also some non-profit organizations which offer legal aid pro bono, for different social groups, especially for disadvantaged groups and individuals.

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009; currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana.

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorney fees do not represent a major cost to citizens.

75:

50: In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits. Attorney fees are high enough to discourage most citizens from bringing a case.

82f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

The annual Average Income is around US\$3,600 per capita. A legal suit costs around US\$300 overall

There are also some non-profit organizations which offer legal aid pro bono, for different social groups, especially for disadvantaged groups and individuals.

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009; currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana.

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. Attorneys fees do not represent a major cost to small businesses.

75:

50: In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits. Attorney fees are high enough to discourage most small businesses from bringing a case.

82g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

Comments:

The High Court is located in Tirana. There are six courts of appeal and 29 courts of first instance.

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009; currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana.

100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

6.4. Law Enforcement: Conflicts of Interest Safeguards and Professionalism

83. Is the law enforcement agency (i.e. the police) effective?

50

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009; currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana.

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

83b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009; currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana.

100: The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

83c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | **50** | 25 | 0

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009; currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana.

100: The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

84. Can law enforcement officials be held accountable for their actions?

42

84a. In law, there is an independent mechanism for citizens to complain about police action.

Yes | **No**

References:

Desk Research: Law no. 8553, dated Nov. 25, 1999, On the State Police, does not provide any independent mechanism for citizens to complain about police actions in Albania.

Yes: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

No: A NO score is earned if there is no such mechanism

84b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

In general, the agency responds to complaints within a reasonable time limit, but exceptions exist. Certain complaints may be ignored and it might take more than a couple of months to resolve basic issues.

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009; currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana.

100: The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

84c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

Yes | No

Comments:

"This department is the relevant structure for administrative inner control and anti-corruption in the institutions of executive power like the ministries, the central institutions, subordinated by the prime minister and ministers, Prefect administration, as well as in trade associations of state capital.

The Department's mission is to carry out verification of administrative investigation regarding application of legitimacy and/or denouncements to abusive, corrupt and arbitrary practices; to identify the public administration employees, who by action or failure to act have committed violation of the legal and sub-legal acts in force; to prepare recommendations about issues also regarding the type of measures to the authors, as well as to make the public institutions aware of the fight against corruption."

References:

Decision No. 94, dated Feb. 15, 2006, of the Council of Ministers, On Approval of Regulation about Functions and Procedures ff Administrative Inner Control and Anti-Corruption of the Council of Ministers.

Yes: A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

No: A NO score is earned if no such agency/entity exists.

84d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | 25 | 0

Comments:

There have been two recent cases in the last three months when The High Inspectorate of the Declaration and Audit of Assets has reacted: 1. the case of a member of parliament. 2. the case of a former minister.

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009; currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana.

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

84e. In law, law enforcement officials are not immune from criminal proceedings.

Yes

No

Comments:

Prosecutors, judges and members of the parliament are immune from criminal proceedings. There is a recent legislative initiative to adopt a law against immunity of the members of the parliament, but it is suspended due to the lack of political consensus.

References:

Article 73/2 and 137/1 of the Albanian Constitution

Yes: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

No: A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

84f. In practice, law enforcement officials are not immune from criminal proceedings.

100

75

50

25

0

Comments:

Law enforcement officials enjoy a general protection from criminal investigation due a formal immunity. There have been sporadic cases when the prosecutor has asked to revoke the immunity and proceed with the investigations but has done so without success. The immunity of judges can only be lifted on a decision of the High Council of Justice, which substantially reduces the effectiveness of possible investigation.

Politicians have expressed the intention to limit law enforcement officials' immunity but no agreement has been reached yet.

References:

Interview with Fatbardh Kadilli, expert on anti-corruption with USAID; anti-corruption adviser to the Prime Minister (2005-2009; currently Member of Parliament. The interview took place on Nov. 23, 2010, at the Bonaparte Bar, Tirana.

100: Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

75:

50: Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

25:

0: Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.

