



### Project Report

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## Democracy Monitoring Report

# Albania

## Preface

This report provides a ground-level synopsis of democratic conditions in Albania. It draws on FRIDE's series of country reports that provide independent analysis of different aspects of democracy development.<sup>1</sup> The report is based on more than 40 'semi-structured' interviews and a substantial number of consultations with international officials, journalists, civil activists, political analysts, members of the judicial system, party representatives, parliamentarians and government officials, conducted in early 2010.<sup>2</sup> It also uses various governance indexes and benchmarks as a point of reference in assessing the state of democracy in Albania.<sup>3</sup>

This study does not attempt to provide a comprehensive analysis of the practice of democracy in Albania, but rather it aims to shed light on some of the most critical issues. The analysis aims at facilitating public debate and furthering societal dialogue on the situation of democratic progress in Albania. The main findings and recommendations summarise the views expressed by the numerous local stakeholders who kindly granted us their time for an interview. The purpose of the report, as others in FRIDE's series of monitoring reports, is to report on the different voices and opinions that exist within the country. We hold no political agenda, but seek to convey the concerns of our interviewees on both sides of the political divide.

## Executive summary

Albania's latest general elections were held on 28 June 2009. These elections were presented as a watershed moment for Albania's European bid, but the politicisation of the vote count led the opposition to contest the results and to boycott the Parliament for six months. While the resolution of this standstill is a clear priority for Albania in order to move forward with the much-needed reform process, this paper contends that the fight between the government and the opposition is merely the manifestation of much deeper problems undermining the development of democracy in Albania. Most locals and international stakeholders concurred that there is no democratic backsliding in Albania. They

<sup>1</sup> See, for example, the country reports from Project on Freedom of Association in the Middle East and North Africa, available at [www.fride.org](http://www.fride.org).

<sup>2</sup> The identity of the different local and international stakeholders interviewed for this report has been kept anonymous, following FRIDE's standard procedure for this kind of report.

<sup>3</sup> Governance indicators are used to reflect on general trends and to make broad comparisons across time and countries. The World Bank uses a wide range of sources, including Freedom House, Gallup International Association, Reporters Without Borders and The Economist Intelligence Unit. It is important to take measurements with some reservation, as the use of sources varies across countries and over time (See Daniel Kaufmann, Aart Kraay and Massimo Mastruzzi, 'Governance Matters VIII: Aggregate and Individual Governance Indicators 1996–2008', World Bank Policy Research Working Paper 4978 (2009)). The aggregation of the different indicators and sources is done through an unobserved components model. Some of the sources are based on surveys and polls while others are based on polls of experts (ibid.).

feared, however, that the country was heading towards stagnation. Progress was acknowledged in some specific areas, such as the fight against petty corruption and the consolidation of free speech, but concern was raised over the situation of the rule of law, the judiciary, management of elections, media independence and the control over high-level corruption.

### **The rule of law**

Albania's respect for the rule of law is lagging behind other countries in the region according to the World Bank Governance Indicators. While local and international sources suggest that legal standards have improved significantly over the years, especially on paper; there is concern over the ability of legislation to create a system based on the principles of order and predictability and on the protection of its citizens from the arbitrary use of power. Major criticisms have centred not only on the implementation of laws – a common problem besetting the wider region of the Western Balkans – but also on the substance and content of certain legislation. Ineffective and inappropriate implementation has also undermined the rule of law in Albania. Indeed, as indicated by local stakeholders and international officials, laws in Albania are often not observed or are applied selectively. Interviews have indicated that poor translation of European legislation or partial adoption of international models have also created problems in the implementation phase; affecting the congruence and continuity of the legal system as a whole. The net result has been the promotion of a culture of no implementation in the country.

### **The judiciary and the division of powers**

The independence of the Albanian judicial system is also under stress. According to the ratings provided by Freedom House's Nations in Transit 2009, little progress has been made since the early 2000s. Most interviewees agreed that the situation of the judiciary remains problematic and they point to five key issues serving to undermine judicial independence. The first of these relates to a lack of clear standards for independence, which allows for discretionary government interference: particular concern was raised regarding the two parallel inspection services represented by the Minister of Justice and the High Council of Justice. The second is the politicisation of certain investigations undertaken by the Prosecutor General's office. The third issue is widespread corruption within the judiciary, which has not only prevented it from acting as a watchdog in corruption matters, but has also provided the government with a justification for maintaining pervasive interference. The lack of resources, including insufficient capacity to enforce court decisions, is another oft-cited problem. Finally, a lack of vision and government officials' distrust of the judiciary is also mentioned as a difficulty.

### **Election standards and the two-party system**

Since 1992, none of the elections held in Albania has been considered free and fair by the OSCE, nor have they been compliant with internationally recognised standards. Albania's 2008 score in the Freedom House ratings of the electoral process was disturbingly low, and Albania ranks as the worst performer in the region by a wide margin. The June 2009 elections did represent a step forward and the OSCE claimed that 'tangible progress' had been made. Notwithstanding this step, developments prior to and immediately following the elections raised concerns within international circles, particularly in reference to irregularities surrounding the management of the June 2009 elections, including several fatal incidents and a host of violations related to the politicisation of vote counting and tabulation. The embittered political climate resulting from the elections led to the opposition's boycott of the parliament and its subsequent request to open the ballot boxes in the interest of transparency. Ultimately, the boycott has not only undermined the already weakened democratic institutions, but has also engulfed the country in controversy by aggravating the ground-level perception that elections in Albania are really just a power struggle between two competing individuals. Local and international actors concurred that this situation has served to polarise society at all levels, making it harder for reformers to emerge and taking the focus away from core issues and policy debate. Furthermore, various surveys illustrate that society has grown disillusioned with the political process. It is also relevant that channels for citizen engagement and participation remain underdeveloped, as expressed by various civil activists.

## Media independence

The independence of the media is another difficult area. Albania currently ranks 88 out of 173 countries in the 2009 Reporters without Borders 'Freedom of the Press Index'. This rating represents a significant downgrade from 2003, when Albania ranked 34 and was the best performer in the Western Balkans. While the deterioration of the independence of the media is a wider phenomenon in the Balkans, Albania has remained the worst performer since 2006. There are two specific issues that have made media independence particularly problematic. The first is the weak legal and institutional framework; including the creation of new regulatory institutions that are heavily politicised, limiting their capacity to promote a climate conducive to media independence. The most salient issue facing the media in Albania, however, stems from pervasive and continuing economic and political interference. The media market in Albania is both highly fragmented and largely saturated. This has created a climate in which, in order to remain viable, many media outlets are reliant upon sources of funding that promote particular economic or political agendas. Furthermore, the entanglements between business, politics and the media have resulted in a polarised and often biased media that reflects the political divide and fails to provide independent reporting. Media obstruction of a more overt nature has also become increasingly pervasive as indicated by both international and local actors. The inevitable result of intimidation and abuse has been journalistic self-censorship.

## Corruption

Corruption and organised crime in Albania represent the 'single biggest threat to the functioning of democratic institutions and the rule of law in Albania', according to the Council of Europe. The World Bank Governance Indicators reflect increasing scores for Albania in terms of its ability to control corruption since 2003, but Albania remains the most corrupt country in the Western Balkans. There has been progress in petty corruption however, although both the Council of Europe and the European Commission have expressed their concern over the lack of determination to fully implement the laws and institutions that have been recently approved; a problem closely related to the failing of the rule of law. Coordination between the judiciary and the government requires additional attention. Inadequate resources also remain an issue. High-level corruption poses greater challenges; as several infamous cases of corruption have either been delayed or suspended on dubious grounds. The failure to move forward with these cases has not only significantly damaged the perception of corruption in Albania but has also promoted a culture of impunity. These developments help to explain why, despite tangible improvements in addressing petty corruption, the perception is that corruption is increasing, according to Albania's Corruption Perception Index. Personal experience of corruption does appear to have decreased since 2005 however; although 57 per cent of the populace still reports having been directly subject to corruption (the highest in the region by a significant margin).

## Future prospects

The Albanian system continues to be highly informal. It functions thanks to a heavily centralised power structure, which often operates outside the institutionalised channels provided for effective democracy. This situation is typical of countries labelled as hybrid regimes, but the singularity of the Albanian model lies in the strong polarisation of politics and society and the recurrent alternation in power of two large parties with similar power structures. The immediate challenges for Albania thus include: (1) furthering the strengthening of democratic institutions, especially the judiciary and the management of elections; (2) promoting respect of the rule of law and the fight against corruption; and (3) dismantling the unlawful interconnections between business, media and politics.

## Introduction

Two decades after the transition from communism, democracy in Albania remains fragile. Freedom House labels Albania 'partly free', the Economist Intelligence Unit considers it a 'hybrid' regime and international organisations have expressed concern about the progress of Albania's reform process in recent times.<sup>4</sup> The European Commission's 2009 'Albania Progress Report', for example, presented a mixed record in the areas of democracy and the rule of law, particularly in reference to the nature of political dialogue; the judicial system; the fight against corruption; and the independence of the media.<sup>5</sup>

Recently there has been salient progress, and the June elections were viewed by the EU as a watershed moment in reference to Albania's European bid. While citing a failure to 'fully realise Albania's potential to adhere to the highest standards for democratic elections,' the Organization for Security and Cooperation in Europe (OSCE) suggested that 'tangible progress' had been made.<sup>6</sup> Despite these advances, developments prior to and immediately following the elections have continued to cast doubt within international circles about Albania's ability to meet internationally recognised democratic standards. Furthermore, the politicisation of the vote count led the opposition to contest the results and to boycott the parliament. Discussions between the government and the opposition aiming to find a solution to the stalemate began at the end of February 2010 with international support; and the opposition returned to the parliament in March on the condition that a parliamentary inquiry committee on the June elections was formed.<sup>7</sup> While the resolution of this standstill is a clear priority for Albania in order to move forward with the much-needed reform process; this paper contends that the fight between the government and the opposition is merely the manifestation of much deeper problems undermining the development of democracy in Albania. Indeed, this report's findings suggest that while Albania has made significant progress since the collapse of the communist state in 1991 (especially in reference to consolidating democratic freedoms and rights, establishing key democratic institutions and consolidating a market economy), important deficits remain in terms of: (1) the rule of law; (2) the division of powers (i.e. judicial independence); (3) elections; (4) media independence and (5) control over corruption.<sup>8</sup>

## The rule of law

This report considers the rule of law from two distinct perspectives. The first is related to a system in which rules and regulations have the ability to restrain the actions of not only the citizens, but also of the government; creating both order and predictability.<sup>9</sup> The second perspective is related to the division of power or to the existence of institutional constraints that protect the citizens from the arbitrary and abusive use of power (i.e. judicial independence). One of the major concerns with respect to the state of democracy in Albania is related to these two dimensions of the rule of law. Although the World Bank's governance indicators show progress

<sup>4</sup> See Freedom House's 'Freedom in the World 2010' Survey (<http://www.freedomhouse.org/template.cfm?page=505>) and the Economist Intelligence Unit's 'Index of Democracy 2008' (<http://graphics.eiu.com/PDF/Democracy%20Index%202008.pdf>). Albania and Bosnia and Herzegovina are the only countries in the Western Balkans to be considered hybrid regimes. The Economist Intelligence Unit's index ranks Albania 81 out of 167 countries.

<sup>5</sup> European Commission, 'Albania 2009 Progress Report', Commission Staff Working Paper SEC (2009) 1337. Brussels, 14 October 2009.

<sup>6</sup> The Organization for Security and Cooperation in Europe (OSCE). 'Republic of Albania. Parliamentary Elections. Election Observation Mission.' Final Report, Warsaw, 14 September 2009.

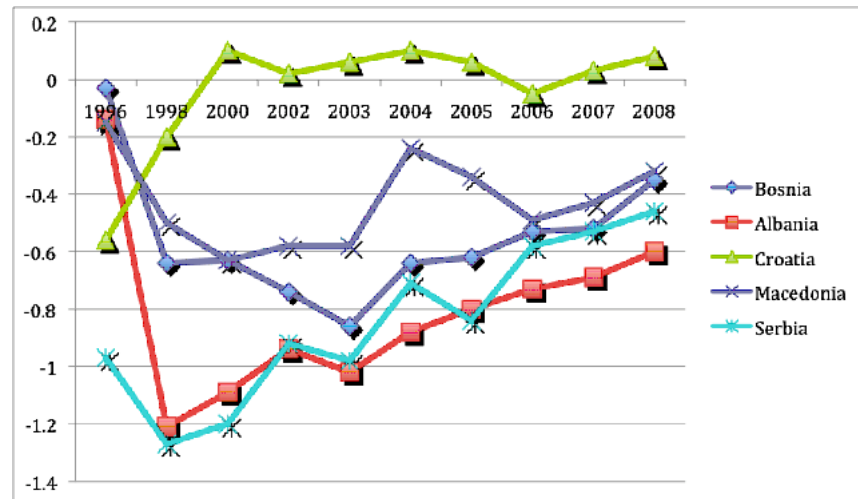
<sup>7</sup> As this report was going to press, the opposition would only attend parliamentary sessions concerning the transparency of elections.

<sup>8</sup> These dimensions coincide to some extent with the political criteria defined by the EU for Albania's progress towards EU accession. In particular, the 2008 EU partnership identifies the following short-term priorities: (1) to promote constructive dialogue between political parties on the implementation of reforms; (2) to increase the independence of the judiciary; (3) to implement the 2007–2013 anti-corruption strategy; and (4) to improve the democratic standards of the elections (see Council of the European Union, 'Council Decision of 18 February 2008 on the Principles, Priorities, and Conditions Contained in the European Partnership with Albania and Repealing Decision 2006/54/EC' (2008/210/EC), *Official Journal of the European Union* L 80/1, 19 March 2008). The other key short-term priorities include strengthening state capacity for the SAA implementation; strengthening the independence of the public administration; and achieving tangible results in the fight against organised crime. Media issues are included within short-term priorities (i.e. ensuring transparency of media ownership; fully implementing media independence; enacting new legislation on freedom of expression and electronic media; etc.).

<sup>9</sup> According to Lon Fuller, laws must: exist (and be public) and be obeyed by all, including the government (which implies that laws need to be enforced); be prospective in nature; avoid contradictions with one another and be clearly stated in order to avoid unfair enforcement; be reasonable and stay constant (although they should be able to adjust in accordance with times). See Lon L. Fuller, *The Morality of Law* (New Haven: Yale University Press, 1969). These conditions need to be fulfilled in order for the rule of law to be in place.

in this area, Albania's score remains rather low (see figure 1). Furthermore, the European Commission's 2009 Progress Report underscored that Albania had made 'little progress on key reform areas, such as the judiciary';<sup>10</sup> and regretted the fact that the 'Parliament only partially exercised its oversight over the executive.'<sup>11</sup> Specifically, the European Commission (EC) raised concern over the tendency of the executive 'to exert control over independent institutions, in particular the judiciary.'<sup>12</sup>

**Figure 1. Rule of law<sup>13</sup> in selected Balkan countries, 1996–2008**



\* Note that the data for the period 1996–2002 is provided on a biannual basis.

Source: The World Bank, World Governance Indicators (data compiled by author).

**Table 1: Rule of law in Albania, 1996–2008**

Year	Percentile Rank (0-100)	Governance Score (-2.5 to +2.5)	Standard Error
2008	32.5	-0.6	0.14
2007	28.1	-0.69	0.15
2006	26.7	-0.73	0.15
2005	24.3	-0.8	0.16
2004	20	-0.88	0.16
2003	15.7	-1.02	0.17
2002	19.5	-0.94	0.18
2000	13.8	-1.09	0.18
1998	9.5	-1.21	0.21
1996	53.3	-0.14	0.26

Source: The World Bank, World Governance Indicators.

<sup>10</sup> European Commission, *Albania 2009 Progress Report*, Commission Staff Working Paper SEC (2009) 1337. Brussels, 14 October 2009, p. 7.

<sup>11</sup> Ibid, p. 8.

<sup>12</sup> Ibid.

<sup>13</sup> This indicator captures the perceptions about the quality of contract enforcement, the police, and the courts, as well as the likelihood of crime and violence (see Daniel Kaufman, Aart Kraay and Massimo Mastruzzi, 'Governance Matters VIII: Aggregate and Individual Governance Indicators 1996–2008', World Bank Policy Research Working Paper 4978 (2009)).

Note that this indicator does not consider the division of powers and the existence of institutional constraints that protect citizens from the arbitrary use of power.

With respect to laws and regulations, the interviews conducted presented a mixed picture. While most locals and international analysts suggested that legal standards, especially on paper, had improved significantly in the past few years, they raised doubts about their ability to effectively create a system grounded in respect for the rule of law. The most oft-cited problems revolved around the substance, procedures and implementation of the law. In terms of its substance, many interviewees expressed concern over the passing of legislation that offers public authorities the opportunity to either undermine the division of powers or to abuse their competences. One of the key examples mentioned was the Lustration Law, approved in early 2009, whereby a 5-member authority was given extraordinary powers to investigate and fire any member of the government or the judiciary without due process. The international community, local observers and members of the opposition heavily criticised this law, arguing that it would provide an opportunity for political reprisal and undermine the impartiality of independent judges. The Lustration Law was ultimately suspended by the Constitutional Court and is currently under review (which suggests that this institution has managed to remain independent); although many believe that it served its purpose by sending a clear message to the judiciary.<sup>14</sup>

Another oft-cited example of questionable legislation was the recently approved anti-mafia law; whereby authorities are empowered through a civil procedure to confiscate private property based on reasonable suspicion that the person being investigated is involved in unlawful activities. Given that the confiscation of goods is based on a civil procedure, the responsibility to bring evidence falls upon the person whose property is seized, which, according to a member of the business community, represents a big burden for business.<sup>15</sup> Furthermore, an international consultant asserted that the authority given to public officials to confiscate private property is extremely controversial, especially in a country with little experience in terms of rule of law. As she stated, 'This is something you can carry out when you have enough guarantees that these instruments are not going to be abused. You need a country that has a lot of experience in the fight against corruption and in the appropriate use of the traditional instruments to fight corruption.<sup>16</sup> It requires perfect coordination between all law enforcement agencies with competence in the fight against corruption and organised crime and the ability to complete financial investigations to detect illegal property. This is not the case of Albania'. A member of the business community declared that 'the problem with this law is the potential for abuse. Certain groups could be targeted. Given the history of politicisation of the administration, this is a concern and a risk'.

It was also argued that ineffective and inappropriate implementation has undermined the rule of law in Albania. The issue of language was mentioned repeatedly as a significant barrier. As an international official stated, 'I don't think there is an intention to do poor work on the approximation of the *acquis*. I think it is just incompetence. The law is translated poorly into Albanian and therefore makes no sense. That happens very frequently'.<sup>17</sup> Various local consultants mirrored this sentiment, arguing that the system works when legislation is well drafted, appropriately applied and there is outside pressure: 'of course, there are always some issues, but in general [it] is good. You can see this in the implementation of the electronic tax declaration, which was pushed by the US Millennium Challenge Corporation. This is a system that is working quite well'.<sup>18</sup>

The transfer or adoption of foreign laws from Europe and other western countries has created additional technical problems, affecting the congruence and continuity of the overall legal system. As an international

<sup>14</sup> This law was approved at a time when several cases of high-level corruption implicating members of the government were under investigation. An international official stated that, 'the law was so blatantly unconstitutional in so many ways, that I'm not sure about what was intended other than putting the judges under even more pressure. It was like telling the judges, "look, we can do things to you if we want to"'.  
<sup>15</sup> In criminal procedures, the prosecutor is the one responsible for bringing evidence on the illicit origin of the property that is confiscated.

<sup>16</sup> The new draft law on the State Intelligence Service (SIS) has also raised concern among local and international analysts; particularly in reference to both the SIS and the director's duties and the status of its senior officials.

<sup>17</sup> This official explained that, 'Albanian translators are not qualified; there are no lawyer linguists. They are only trained in foreign languages but not in law: that's a big problem'.

<sup>18</sup> Personal interview with a local consultant, Tirana, January 2010.

consultant argued, 'we are all working on the same issues, but each country recommends different things. The result is absolute incoherence and lack of coordination and this is used by the Albanian authorities to do whatever they want'. Another international consultant suggested, 'We need to forget about national interests and draft laws that make sense in the Albanian context, because otherwise the laws will be manipulated or implemented in a way that turns the law into a bizarre, unrecognisable version of the original European model'. It is also important to note the salient differences between Albania and Western European countries in terms of resources and enforcement facility. As a civil activist in Tirana stated, 'We may copy laws from France, but the budget for the implementation is radically different. As a result, we have the most advanced laws but we have no capacity or money to implement them properly'. The inherent problem with this scenario is that, 'You create a culture of no implementation', as one local consultant observed.

In other circumstances, European or international models were said to have been only partially adopted; missing critical components for the system to function as a whole, or creating additional loopholes that may have a rather negative impact upon the overall implementation of the law. As a result, as one local consultant observed, 'Albanians very often tell you that their laws are fine but that it's the implementation [that is] the problem. I don't think that's quite correct. I think that the intention of the law is generally all right but the law often has some technical problems that make the implementation difficult'.

Another problem with respect to the rule of law relates to the lack of proper due process in the adoption of legislation and in the application of the law. As argued by an international consultant, 'laws need to be drafted and approved carefully, not in a hurry. You need to consult all of the stakeholders, including interest groups, institutions and international experts. But what generally happens here is that they will prepare a draft and give it to an international consultant, because they know they need to get our opinion, but they will give you only a few days and we need to translate it. There's very little time'.

Members of different interest groups also criticised the lack of due process in terms of the way in which consultations work with local stakeholders. A member of the business community complained that, 'the minister of the Economy is not very good at 'getting' our views and there is a misunderstanding of our environment; of the process. I don't think the intention is to produce something bad; it's just a process that is not well managed [...] there is dialogue occasionally but the approach is still very authoritarian'. In a similar vein, a member of the Albanian National Association of Judges suggested, 'Justice is not perceived in the right way. They don't like to have our opinion and this is a bad situation. For example, the law of the organisation of the justice power was approved in 2008. We were very critical of how the law was approved, without the opinion of the judges. We need to be included because we function according to that law. We only ask to be consulted and to discuss the laws that affect us'. Some parts of this law were ultimately declared unconstitutional by the Constitutional Court.

The approval of the constitutional changes in 2008, whereby a new election format for the presidency was enacted, also suggested a failure to enroll the relevant stakeholders; and most interviewees agreed that the changes were introduced too rapidly. According to former President Alfred Moisiu, 'The amendments should have been made after long discussions. One third of the constitution was changed overnight, simply by considering particular interests rather than a thoughtful consideration of the lessons learned about how the constitution had worked in the past and how it had been applied'. Similarly, another former President, Rexhep Meidani, argued that, 'The reform of the constitution involved two of the most important pillars of the constitution; namely the general prosecutor and the president, but these changes were discussed for only a few days behind closed doors. It was not a normal process'. Even a member of the SP who was actively engaged in the discussions on constitutional reform recognised the procedural inadequacies: 'The problem with the process of constitutional reform is that instead of using the institutional channels, either the parliament or the party, they met together and agreed to this. I can agree with this criticism. There can be disagreements over the substance, and the substance can be good or bad, but I agree that the process was not followed'.

The enactment of the new electoral code, whereby important changes were introduced to the election process – including a new proportional system, new electoral thresholds, and a new composition for the election commission – followed a similar pattern of informal processes. These changes were not debated within the Parliament’s Commission on Electoral Reform and international officials, such as the Head of the OSCE Presence in Albania, regretted the lack of sufficient time to discuss the matter with civil society and those with a stake in the reform. Some smaller parties went so far as to initiate hunger strikes as a means of protest and demanded that the electoral code be approved by a referendum.<sup>19</sup> The electoral commission rejected this proposal in June 2009.

In addition to the lack of due process in passing important legislation, laws in Albania are sometimes not observed, or are applied selectively. This development clearly has significant implications with respect to upholding of the rule of law. For example, media financing lacks any semblance of transparency despite legislation requiring full disclosure. Many have argued that the laws in this arena have simply been ignored by media companies and owners. Another example of this trend is the law on civil service, which dictates that appointments in the public administration must be merit-based. As indicated by a local activist, ‘The law on civil service envisions certain procedures to remove somebody but these provisions are not followed. Sometimes they change the name of a unit, and then they dismiss the staff. Even on these occasions, the court has often said that the dismissal was not lawful but they don’t care. There is no law enforcement. What can you do?’

Shifting standards and a lack of legal clarity were also mentioned as disruptive problems, especially in the areas of property and tax law. As a member of the business community argued, ‘Everybody in the political scene has a different understanding of this problem and they change the law in every administration [...] People become skeptical of the legal framework. It creates uncertainty. If you change the law, the issue is always in [flux] and institutions become uncertain, which is bad for business.’ The worst case scenario, he suggested, is a lack of clarity coupled with the arbitrary application of the law. ‘There are periodical reviews and they can revoke your title to property if the procedure was not well managed. You end up paying money all the time. This, again, creates legal uncertainty and is terrible for business.’

## The judiciary and the division of powers

Progress has been made in the area of judicial independence; however this remains an important area of concern. The February 2008 legislation addressing the organisation of the judiciary and a National Pact on Justice from March of 2008 received bilateral support. Another significant advance was noted in reference to the School of Magistrates. Yet despite these advances, further improvements are urgently required; and both the Council of Europe and the European Commission remain concerned over the current state of the judiciary. As a report from the Council of Europe indicated in 2006, ‘A weak, badly remunerated and partly corrupted judiciary has been one of the Council of Europe’s major rule of law concerns in Albania’.<sup>20</sup> The American Bar Association (ABA) also expressed apprehension regarding judicial corruption; independence; accountability; transparency and efficiency.<sup>21</sup>

<sup>19</sup> Locals’ criticisms centred on the favourable terms laid out for the two largest parties in Albania, the DP and the PS. There are two particular issues that smaller parties have contended. The first is related to the electoral thresholds. Article 162 of the electoral code stipulates that parties need to reach a threshold of 3 per cent (or 5 per cent in the case of coalitions) in order to be able to enter the parliament. Given that mandates are allocated according to the D’Hondt formula (which favours large parties) and that the allocated number of mandates in each district is based on the distribution of the population (the smaller the population in a given electoral district, the fewer the mandates), in practice, the electoral code requires small parties to reach a 25 per cent threshold in regions with a scarce population in order to be able to gain a deputy. The second issue is related to the composition of the electoral commissions. The new 2008 electoral code has reduced the number of their members to seven in both the electoral and voting commissions, including five representatives from the larger parties (counting the head of the commission who is nominated by the government and voted in by parliament), and two from the smaller runner-up parties. In practice, locals have argued, the seats reserved for smaller parties go to the larger parties’ coalition partners, excluding smaller parties (such as the SMI) from these institutions.

<sup>20</sup> Council of Europe, ‘Honoring of Obligations and Commitments by Albania’. Preliminary draft report. Strasbourg: Parliamentary Assembly, 9 June 2009.

<sup>21</sup> American Bar Association, ‘Judicial Reform Index for Albania’ (Rule of Law Initiative). Washington DC, December 2008.



The findings of this research suggest that there are five salient issues undermining judicial independence in Albania. The first of these issues relates to a lack of clear legal standards for independence, which in turn provides room for discretionary government interference. More specifically, the 2008 constitutional reform and other legislation passed in 2008 introduced changes which have been considered problematic for the judiciary. As a case in point, the General Prosecutor's unlimited mandate was changed to a 5-year term, with the possibility of re-appointment. The Venice Commission indicated that this legislation represented 'a regrettable step back, making this institution less independent'.<sup>22</sup>

Some international officials and judicial experts were less concerned over the term limitations of the General Prosecutor (given that many countries share a similar time specific mandate for the prosecutor) and focused their attention instead on the two parallel inspection services represented by the Minister of Justice (MoJ) and the High Council of Justice (HCJ).<sup>23</sup> According to this dual system, the MoJ not only retains the power to investigate complaints against judges, but is also empowered to recommend the initiation of disciplinary proceedings against prosecutors.<sup>24</sup> This dual authority is viewed by many judges as a potential platform for abuse and direct interference in the independence of the judiciary (the system, in fact, exerts a great deal of pressure on them).<sup>25</sup> While the MoJ considers this an essential tool in establishing judiciary accountability, the ABA has noted that recent judicial disciplinary actions have validated concerns about the system being abused for political reasons in order to undermine judicial independence.<sup>26</sup> As a case in point, The High Court overturned a decision by the HCJ – which is still largely influenced by the government – whereby three judges involved in a high-level corruption case were removed based on their ruling. It should be noted that at the time of going to press, the case was still open on appeal. As suggested by the ABA, the HCJ actions were widely criticised as blatant interference and 'fuelled judges' fears that they are under undue scrutiny with regard to how they rule on the merits of a case'.<sup>27</sup> One judge argued, 'They insist on centralising power. I know it happens with other countries but not at this level. The checks and balances are broken and [it] is unconstitutional'.

Concerns were also raised regarding the constitutional changes introduced to the format of the presidential elections, which were modified from a qualified to a simple majority in the fifth round of voting.<sup>28</sup> Indeed, given that the 1998 Constitution provides the Office of the Presidency ample power in the nomination of key

<sup>22</sup> Venice Commission, *Opinion on the Amendments to the Constitution of the Republic of Albania* (adopted on 21 April 2008). Opinion 491/2008. Strasbourg, 15 December 2008. P. 22.

<sup>23</sup> See Council of Europe, 'Honoring of Obligations and Commitments in Albania', Strasbourg: Council of Europe Parliamentary Assembly, 20 December 2006. A European judicial expert argued that limiting the prosecutor's mandate to five years is not such a bad idea and is common practice in many countries. Furthermore, 'even if there is no mandate, the government can dismiss the prosecutor, as was the case on two occasions. The key issue is to guarantee the independence of the prosecutor by making sure that his or her appointment is not political, but the problem is that there is no political maturity to guarantee such independence'.

<sup>24</sup> An international expert on judicial matters interviewed in Tirana in January 2010 argued that even though this system is similar in Germany and Austria, the standards of the rule of law and the independence of the judiciary are different from Albania's. 'If you give this power to the Minister of Justice in Albania, he might use it for political purposes or to put pressure on the judiciary. In Germany nobody is going to use this for political purposes, but here it would not be uncommon. After all, there is a total distrust of the government towards the judiciary'.

<sup>25</sup> The explanation provided by an international official of different ways in which pressures over the judiciary may operate is illustrative: 'One of the things that certainly happens [...] is that when there are disciplinary cases against judges, fair cases sometimes [...] the Ministry of Justice tends to keep them in a drawer somewhere and they pull them out only when they need them [...] so they sit around for a while. And the judges might not even know that there is a case, because it has not been initiated yet. And suddenly the Minister of Justice comes with this case and says "we did an inspection in 2007 and look what we found". Well, why did it take you three years to bring the case to the HCJ? That's a way to put pressure on them'.

<sup>26</sup> American Bar Association, *op. cit.*

<sup>27</sup> *Ibid.* An international official also expressed concern that the system is based on the discretion of the Minister of Justice. Given that 'the MoJ keeps the power to initiate disciplinary action, he can either protect people or put pressure on others by initiating legal procedures against them'.

<sup>28</sup> This change has been argued to be detrimental for reaching multi-party consensus on the election of the president (See Freedom House, *Freedom in the World 2009: Albania*, 16 July 2009. Available at <http://www.unhcr.org/refworld/docid/4a6452d7a.html>). An international official argued that in other countries such as Germany, the Constitutional Court is also appointed by the Parliament but that there is an agreement by the parties to do it in such a way that only the most qualified person is elected. Along similar lines, a socialist party official argued that the system is now based on political will. 'If you don't have political will, then it will not work and the president will be partisan. But even before the system did not work. The government managed to elect a party president with the vote of six SP deputies in 2007'.

members of various institutions and agencies (including the judiciary), it is feared that the new election format will negatively impact the independence of these institutions.<sup>29</sup> A member of the Constitutional Court argued that the balance of power, especially between the executive and the judiciary, has been challenged: 'Before, there was a need for a qualified majority to elect the president, which meant consensus. Now 71 deputies – a simple majority – can elect the president. This will have a direct impact on the judiciary'. In a similar vein, concern was expressed over the upcoming election of six new members of the Constitutional Court scheduled for spring 2010. The general consensus was that the Constitutional Court has remained one of the few institutions that has managed to maintain its integrity and remain independent. There is a significant risk that the new Constitutional Court will become increasingly politicised following this election: 'The Constitutional Court plays an important role in the protection of the rights of the citizens. But if candidates are partisan, then we will have an imbalance. Six judges can change the jurisprudence of the whole Constitutional Court'.

The second problem challenging judicial independence is the politicisation of certain investigations undertaken by the prosecutor's office.<sup>30</sup> A study on the Albanian judiciary asserted that 'Recent highly-politicised cases have raised the question [...] of the degree to which the Prosecutor's office is susceptible to intense political pressure'.<sup>31</sup> The November 2007 dismissal of the General Prosecutor Theodhori Sollaku – who was seeking to lift the parliamentary immunity of Foreign Minister Lulzim Basha and the former Minister of Transportation and Public Works – represents an important illustration of the pressure being exerted on this institution. The Constitutional Court eventually declared that the Parliament had no competence to control the activities of the General Prosecutor; but failed to make its position clear with respect to the constitutionality of the inquiry committee.<sup>32</sup> According to Rexhep Meidani, the inquiry committee did not follow established protocols. 'The [...] investigation that was opened against the prosecutor in 2007 lasted for just a few days. In our law, you need a month for discussion; it's a process. And in practice it's usually more than one month. Here, the dismissal of the prosecutor took only three days. And the president signed it one month after. It was not a normal process'. It is important to note that Theodhori Sollaku was appointed General Prosecutor in 2002, during the Socialist administration. He replaced Arben Rakipi, who was also dismissed during the Socialist administration through a procedure that was eventually declared unconstitutional by the Constitutional Court.

Corruption and the perception of corruption represent the third major issue facing the judiciary. Nearly 50 per cent of the judges interviewed for a study by the ABA stated that corruption in the court system remains 'a serious problem', although 'actual instances of judges being prosecuted for corruption are very rare'.<sup>33</sup> Widespread corruption of the judiciary has not only prevented this institution from acting as a watchdog in corruption matters, but has also provided the government with a justification for maintaining pervasive interference. A government official admitted that there were serious concerns about the judicial situation: 'The judiciary has been improving but it remains problematic behind the shield of independence. How is it possible that the Prosecutor is not accountable to anyone? We have tried to intervene to make it better but there have been strong reactions among local and external actors'.<sup>34</sup>

<sup>29</sup> Party members who led the constitutional reform process argued that the changes introduced to the election of the president were done in consideration of the stability of the system. Previously, new elections had to be called in case of no cross-party agreement on the appointment of a president. According to some members, the revisions to the constitution have introduced an element of stability.

<sup>30</sup> See section five for further discussion.

<sup>31</sup> Frank Lewidge, 'Gap Analysis of Assistance to the Albanian Justice System', Libra Advisory Group, November 2009.

<sup>32</sup> Council of Europe, 'Joint Opinion on the Electoral Code of the Republic of Albania', Opinion 513/2009. Strasbourg/Warsaw, 13 March 2009.

<sup>33</sup> See ABA, op. cit p. 2. The European Commission 2009 report noted that, 'Trial monitors in Albania, for instance, have documented numerous instances of judges accepting money and other consumer items from accused persons in return for a diminished sentence or favorable court decision' (United Nations Office on Drugs and Crime, 'Crime and its Impact on the Balkans and Affected Countries', March 2008, p. 32. Available at [http://www.unodc.org/documents/data-and-analysis/Balkan\\_study.pdf](http://www.unodc.org/documents/data-and-analysis/Balkan_study.pdf)).

<sup>34</sup> Personal interview with a government official, Tirana, January 2010.

A lack of resources, including insufficient capacity to enforce court decisions, is the fourth oft-cited problem. A member of the HCJ suggested that finances and infrastructure represent significant barriers to progress. Low salaries coupled with inadequate infrastructure make judges more susceptible to bribery: 'They have few court rooms and some of [the judges] do not have them. The situation is so precarious that sometimes the judges need to have the hearings in their own chambers, increasing the perception of corruption. We know that we can't achieve total independence without reducing the perception of corruption because the MoJ will then interfere with the excuse of fighting corruption'.<sup>35</sup> A judge member of the Albanian National Association of Judges complained that she frequently had to use her office for court hearings. She observed that, 'It is very hard to work in these conditions. You are exposed'.<sup>36</sup>

Finally, the judiciary has suffered from a lack of vision and distrust of government officials. The EU claimed that, 'A clear reform strategy and vision for the judiciary is still missing'.<sup>37</sup> International officials, opposition leaders and civil activists also raised concern that the reform of the judiciary is 'being done in a hasty and uncoordinated way'.<sup>38</sup> As suggested by Western diplomats and judicial experts, Albania needs a coherent, overarching reform process and a legal system in which the entire judiciary is regulated; as opposed to the current ad hoc approach. Distrust of the judiciary was also cited as a contributing factor serving to undermine judicial independence. A member of the HCJ argued, 'We have problems with the budget because this institution is not welcomed by the government. They don't like to give money to institutions that are not supporting the government directly'. Similarly, a member of the Albanian National Association of judges indicated that, stemming from a trust deficit, 'we are fighting all the time. It's OK to fight for standards but not to fight to go backwards. I don't like to be in this position. We need to be partners. I don't want to be critical all the time'.

## Elections and the two-party system

The holding of free and fair elections is an essential tenet of a successful democracy.<sup>39</sup> Since 1992 however, not one of the elections held in Albania has been considered by the OSCE to be compliant with internationally recognised standards. Furthermore, almost all major elections have been contested by the losing party. Albania's 2007 and 2008 scores in the Freedom House ratings of the electoral process were disturbingly low (see figure 2) and its elections record has remained poor; below neighboring countries' standards. Some of the critical problems associated with the electoral process in Albania have been the mishandling of voter lists and registrations; non-transparent party financing; flawed media coverage; mismanagement of the elections by the Central Election Commission (CEC); and abuses of the electoral procedures and rules.<sup>40</sup>

<sup>35</sup> Personal interview with an official of the HCJ, Tirana, January 2010.

<sup>36</sup> Personal interview with a judge member of the Albanian National Association of Judges, Tirana, January 2010.

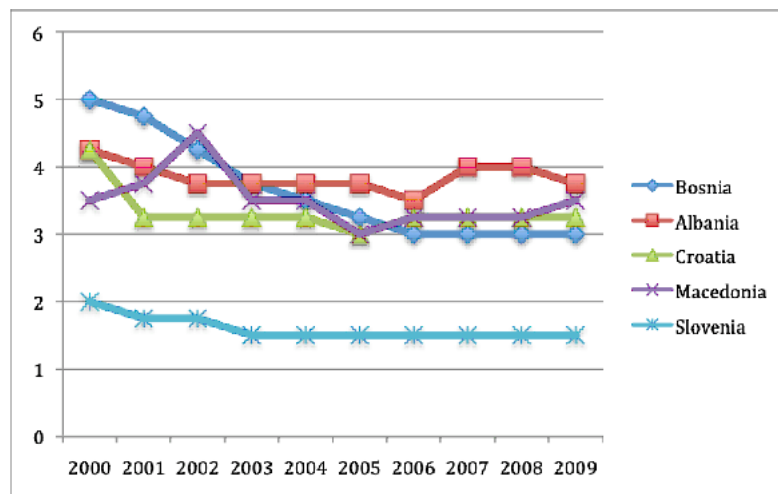
<sup>37</sup> Council of Europe, 'Honoring of Obligations and Commitments by Albania', 2009 op. cit, p. 123.

<sup>38</sup> Ibid, p. 122.

<sup>39</sup> Robert Dahl defined democracy as the system that promotes 'the continuing responsiveness of the government to the preferences of its citizens'. According to him, government responsiveness can only be established when certain freedoms and guarantees are in place; including the freedom of expression, the freedom of organisation, alternative sources of information and the necessary 'institutions for making government policies depend on votes and other expressions of preference' (Robert A. Dahl, *Polyarchy: Participation and Opposition* (New Haven: Yale University Press, 1971), p. 2).

<sup>40</sup> In the past, parties have used the mixed electoral system in place to inflate results. This issue was addressed in the last constitutional reform in 2008 and the electoral code. The new electoral system is fully proportional and is based on closed lists.

**Figure 2. Ratings of the electoral process in the Balkans, 2000–2009**



Source: Data compiled by the author from Freedom House, *Nations in Transit 2009*.<sup>41</sup> 1 is the highest level and 7 the lowest.

### *The June elections*

The June 2009 elections did represent a step forward (see figure 2),<sup>42</sup> according to the OSCE and the EU. The OSCE claimed that ‘tangible progress’ had been made<sup>43</sup> ‘with regard to the voter registration and identification process [...] and the legal framework, adopted in a consensual manner by the two main parties’.<sup>44</sup> Notwithstanding this ‘step’, developments prior to and immediately following the elections raised concerns within international circles, particularly over irregularities associated with the management of the elections in June 2009. There were serious allegations concerning inappropriate conduct over the course of the campaign, including several fatal incidents and a host of violations related to the politicisation of vote counting and tabulation.<sup>45</sup> NATO suggested that although the latest elections represented a step forward, on

<sup>41</sup> The electoral process indicator examines elections; electoral processes; the development of multiparty systems; and popular participation in the political process (see Freedom House, *Nations in Transit 2009*, ‘Methodology’. Available at <http://www.freedomhouse.hu/images/nit2009/methodology.pdf>). The scores are provided by Freedom House in consultation with a panel of academic advisors. These figures should not be considered as absolute indicators, but as descriptive of a general trend.

<sup>42</sup> In these elections, the centre-right Democratic Party of Albania (DP) led by Sali Berisha won the elections on a coalition with minor parties, the Alliance of Change, on a virtual draw. DPA won only half of the seats of the 140-member parliamentary assembly and is governing in coalition with Berisha’s long-time adversary Ilir Meta, of the Socialist Movement for Integration (SMI). SMI won 4 seats. The Socialist Party of Albania (SP), led by Tirana Mayor Edi Rama, remains in the opposition with 45 per cent of public support (totalling 66 seats).

<sup>43</sup> OSCE September 2009, op. cit.

<sup>44</sup> OSCE ‘Statement of Preliminary Findings and Conclusions’, Tirana, 29 June 2009, p. 1; and European Commission 2009, op. cit. As noted above, Albania passed two important pieces of election-related legislation in 2008. The first one was included in the April package of constitutional amendments; whereby the single-member districts were replaced by a regional proportional system with closed lists. The second set of legislation was the electoral code, approved at the very end of 2008 by the two largest parties, building upon the constitutional changes introduced in April. As noted in section 1, the Electoral Code was harshly criticised by smaller parties but internationals have argued that it allows for a simpler political system in Albania. Greater international criticism has been expressed over the lack of transparency in the way the legislation was approved (European Commission 2009, op. cit.) and in reference to particular issues related to the electoral code such as media access and party financing during the elections; the strengthening of the party leaders’ role in the selections of party’s lists; ambiguous requirements to promote women’s participation; and the ability of parties to remove members of lower election commissions that ‘may hinder the professional and non-partisan performance of the election administration’ (Council of Europe, ‘Joint Opinion on the Electoral Code of the Republic of Albania’, op. cit. p. 9). The Venice Commission has reminded the authorities that the Code will have to be changed and brought in line with OSCE and CoE standards.

<sup>45</sup> As a case in point, a local DP party leader was killed in Northern Albania when his car was blown up near Shkodra. A deputy from the opposition was also gunned down in Southern Albania. Despite these incidents, internationals have claimed that the campaign was largely peaceful, although OSCE noted that ‘The election campaign took place in a highly polarised political environment and, as in previous elections, was characterised by a large number of allegations made against the governing parties about electoral violations’, some of which were confirmed (OSCE June 2009 op. cit, p. 2).

the whole Albania failed to reach the standards that are required of a NATO member. Both the OSCE and the EU also expressed concerns about some procedural issues related to the elections and the politicisation of the vote count. As the OSCE noted in its June report, the improvements achieved in voter registration and the legal framework were 'overshadowed by the politicisation of technical aspects of the process by political parties and violations observed during the election campaign which undermined public confidence in the election process'. It should be noted that the EU also expressed concern over the politicisation of the vote count, and noted that this issue still needs to be addressed.<sup>46</sup>

Numerous irregularities – found in the management of elections by both parties – were included in the OSCE's June report,<sup>47</sup> but the most controversial issues related to vote counting. The electoral code authorises the local electoral commission to declare a ballot box 'irregular' if the box has been tampered with, and to exclude the ballot box in question from the Aggregate Table of Results.<sup>48</sup> Given the significant influence of the parties in the composition of the commissions, the counting and voting procedures could be, and were easily politicised by both parties during the 2009 electoral process. As indicated by the OSCE, when preliminary electoral results suggested a close outcome, political parties started to interfere in the counting, and the process slowed down; especially in regions where a favourable allocation of mandates appeared possible.<sup>49</sup> This controversy was most evident in Fier, where uncounted votes were believed to have determined the outcome in a closely contested race between the PDA coalition and the SPA coalition. Ultimately, a request by SP representatives to include the results from two voting centres, which had been counted but not added to the final Aggregate Table of Results, was rejected by the majority of the CEC.<sup>50</sup> This decision was appealed in the Electoral College, but was finally rejected by judges who were admittedly under significant political pressure. Furthermore, as this report was going to press, new concerns emerged as a result of the opening of ballot boxes in Ruzhdie (in the Fier district), which showed extensive fraud. At the time of writing there were differing claims about what really occurred.

As a result of these irregularities, the 2009 elections have remained marred in controversy and have demonstrated Albania's inability to conduct transparent elections. Former president Moisiu argued that the elections failed on two major accounts. Firstly, they failed to constrain the influence of political parties in the management of the elections. In his opinion, 'The political forces kept their power in the electoral committees; against the constitutional mandate. As a result, the commissions did not care about abiding by the law but about the parties' agenda'. Secondly, the elections failed to provide the standards against which Albania should be measured, 'despite the fact the OSCE recognised that a third of the counting centres had been mismanaged, they claimed that these were the best elections. This is something of a contradiction. It just goes to show that there have been clashes of opinion within the international community and this is worrisome. This is bad for Albania'. In a similar vein, one international official argued that even though the international community generally claimed that these were comparatively the best elections; the standards for these elections remained unaffected, 'if only because they changed the electoral code to avoid any kind of irregularity and they still did it [...] That's why I'm saying that the irregularities have been more blatant than in the past. In 2005 they dismissed all the claims but there was no legal basis. They changed the electoral code in order to make it more difficult to dismiss the claims and the result is the same'. Building upon that theme, a different international official suggested that 'ultimately, even though you have elections, I am not sure how much the vote actually has to do with the outcome, and even if the vote has to do with the outcome, which [it] probably does to some extent, to what degree is the vote based on a fair election campaign?'

<sup>46</sup> European Commission 2009, op. cit.

<sup>47</sup> OSCE reported allegations of pressure in most regions (OSCE June 2009 op. cit, p. 7; for further irregularities see OSCE June 2009 op. cit. and OSCE, 'Post-Election Interim Report, 29 June–7 July 2009', OSCE Office for Democratic Institutions and Human Rights, July 2009).

<sup>48</sup> There is no provision in the Electoral Code to stop the count of a ballot box once the counting team has started vote counting (see Article 116.6). In practice, however, Article 116.6 was interpreted as giving the local electoral commissions the authority to stop the count of a ballot box or not to include it in the Aggregate Table of Results (OSCE September 2009, op. cit.).

<sup>49</sup> OSCE September 2009, op. cit.

<sup>50</sup> OSCE July 2009, op. cit. The refusal of the CEC to accept the request of two CEC members is, according to many, questionable from a legal standpoint. Article 136.3 of the new electoral code states that 'Upon the request of two of its members, the CEC is obliged to receive the evidence requested by the two members who have submitted the request. The request may be submitted in writing or verbally during the public session of the examination of the appeal'. Article 136.4 also states, 'The CEC may not refuse a request for evidence made in accordance with point 3 of this article' (see the Electoral Code of the Republic of Albania, approved by Law no. 10019, dated 29.12.2008 (translated by the OSCE presence in Albania, 2008)).

### *The two-party system*

The controversy over vote counting has had damaging effects on the whole system. The embittered political climate that the management of the election created led to the opposition's boycott of the parliament and its subsequent request to open the ballot boxes in the interest of transparency. Ultimately, the boycott has not only undermined the already weakened democratic institutions in Albania, but has engulfed the country in controversy by aggravating the ground-level perception that the elections in Albania were really just a power struggle between competing individuals.<sup>51</sup> As a local activist argued, 'It's about two individuals in the end, and it's about a zero-sum game. There is dialogue sometimes, when dialogue is in the best interest of these two leaders, but it's mostly about confrontation and zero-sum games'. A member of the business community observed, 'I don't understand the legal and institutional approach. It's rather an ongoing political clash. We have two big individuals with strong personalities, and in the end we have to deal with these individuals and with their personal fights. It takes the attention away from the real issues'. Local and international actors concurred that this situation has served to polarise society at all levels, making it harder for reformers to emerge onto the political landscape, and taking the focus away from core issues and policy debate.<sup>52</sup> This scenario has resulted in a political climate emphasising – and rewarding – the demonization of the opposition, instead of the needs of the constituency. The practical reality is that nearly all aspects of political, social and economic life in Albania revolve around the personalities of two individuals, whose positions have recently been strengthened by the new electoral system promoting the emergence of both a strong government and a strong opposition.

The demonstrated lack of respect for democratic standards in the elections by both parties has sent the wrong message to Albania's populace. As a local activist claimed, 'There is this idea that it does not matter anyway; that all is going to be the same afterwards. In other words, people don't see the elections as an opportunity to change things'. Various surveys illustrate that society has grown disillusioned with the political process. Voter participation in the 2001 general elections was approximately 60 per cent (as reported by the Central Election Commission), whereas voter turnout in the 2005 and 2009 general elections diminished to around 50 per cent. A national survey conducted by NDI in 2007 provided a rationale for this reduction in participation by showing that more than 80 per cent of the population thought that ordinary people had no say in what the government does.<sup>53</sup> In the same survey, 60 per cent believed that elected officials did not care about the population and almost 90 per cent thought that their political leaders were more concerned about personal financial gains than community needs.<sup>54</sup> The notable redeeming feature of these results was that around 60 per cent still believed that voting offers them a voice in the way the government functions; suggesting that democratic principles are still relatively entrenched. Clearly, however, the disfranchisement of the population remains a major area of concern.

It is also relevant that channels for citizen engagement and participation have remained underdeveloped. Civil society in Albania is still weak and lacks the capacity to act effectively as a government watchdog. This scenario has been compounded by the immature fiscal and regulatory framework and the fine line dividing civil and political activism in the country – many NGO leaders have run for the elections or have been co-opted by the parties to run. Steps have been taken in the past two years to address these issues – including the 2008 approval of the national strategy for 2007–2013 and the establishment of the Civil Society

<sup>51</sup> Both the party in government and the party in opposition have been in power for many years. SP leader Edi Rama has been Mayor of Tirana since 2000 and most urban centres are in the hands of the SP. As a local analyst stated, 'We have two powerful parties in power accusing each other. It's a bizarre situation'.

<sup>52</sup> This is aggravated by the lack of internal party democracy. Most interviewees pointed to this problem as one of the key deficits of Albanian democracy. A European diplomat argued, 'The real structures of power in Albania are the political parties, and not even they [truly wield power]. Because parties are weak and highly dependent on their leaders, it's ultimately the party leader and the businesses that supported him that are the real structures of power in the country'.

<sup>53</sup> The survey is based on a representative sample of 1200 respondents, interviewed face to face in June 2007. The margin of error is +/- 3.0 per cent.

<sup>54</sup> Seventy seven per cent believed that their own deputy cares more about money and power than their needs (National Democratic Institute (NDI), 'Albania National Survey', July 2007).

Foundation – but further efforts are required. As the EC noted in its 2009 progress report, ‘greater efforts are needed to foster the non-profit sector and for consulting civil society organisations on legal and administrative reforms’.<sup>55</sup> While the government has increased their level of involvement and consultation with civil society organisations in specific areas in recent years, there are still no formal mechanisms in place.<sup>56</sup>

### Media independence

The media situation in Albania also raises serious concerns; its independence is under considerable stress and is constantly being challenged. Albania currently ranks 88 out of 173 countries in the 2009 Reporters without Borders ‘Freedom of the Press Index’. This rating represents a significant downgrade from 2003, when Albania ranked 34 and was the best performer in the Western Balkan region (see table 2).<sup>57</sup> While the deterioration of media independence is a wider phenomenon in the Balkans, Albania has remained the worst performer since 2006 (see table 2). As a case in point, more than a hundred local journalists joined in a public appeal on December 5 in which they expressed concern for the ‘increasing negative climate for freedom of the press in our country’ and ‘the public calls of the representatives of the ruling majority party in favour of the violence against the media’.<sup>58</sup> Two specific issues have made the media independence situation particularly problematic; namely the somewhat weak legal and institutional framework and the mounting economic and political pressure that has been and continues to be exerted upon the media market.

**Table 2. Freedom of the press in the Western Balkans, 2003–2009 (ranking)**

	2003	2004	2005	2006	2007	2008	2009
<b>Albania</b>	34	50	62	80	87	79	88
<b>Bosnia</b>	37	21	33	19	34	36	39
<b>Croatia</b>	69	54	56	53	41	45	78 <sup>59</sup>
<b>Macedonia</b>	51	49	43	45	36	42	34
<b>Montenegro</b>	n/a	n/a	n/a	n/a	58	53	77
<b>Serbia</b>	n/a	n/a	n/a	n/a	67	64	62
<b>Serbia and Montenegro</b>	85	77	65	45	n/a	n/a	n/a
<b>Kosovo</b>	--	--	100	70	60	58	75

Source: Compiled by the author using data from Reporters without Borders ‘Freedom of the Press Index’, available at <http://www.rsf.org/en-classement1003-2009.html>. Worst performers are highlighted.

<sup>55</sup> European Commission 2009, op. cit, p. 14.

<sup>56</sup> Ibid.

<sup>57</sup> The Reporters without Borders ‘Freedom of the Press Index’ looks at press freedom violations from 1 September each year to the same date the following year. The results are based on a questionnaire consisting of 40 criteria related to freedom of the press, including violations affecting journalists; censorship; harassment; impunity; financial pressure; status of investigative reporting; and the legal framework for the media. The questionnaire is sent to 15 freedom of expression groups and a network of 130 correspondents, journalists, researchers, jurists and human rights activists. See Reporters Without Borders, ‘How the index was compiled’, ‘Worldwide Press Freedom Index 2009,’ Paris, 2009. Available at [http://www.rsf.org/IMG/pdf/note\\_methodo\\_en.pdf](http://www.rsf.org/IMG/pdf/note_methodo_en.pdf).

<sup>58</sup> See ‘Call of Albanian Journalists’, <http://www.gazetatema.net/?id=6705>.

<sup>59</sup> Croatia’s 2009 ranking represents a significant downgrade, as a result of the killing of the owner of a prominent weekly, *Nacional*, and one of his colleagues in October 2008.

### *The legal and institutional framework*

Interviewees expressed concern over Albania's underdeveloped regulatory framework, which served to further aggravate an already difficult situation for the media. Laws mandated by the EU are still pending, and the failure to amend old regulations has imposed restrictions on media independence.<sup>60</sup> Legislation addressing electronic broadcasting and open access to information, for example, has not yet been adopted and the existing legislation focused on public and private radio and television does not comply with international standards.<sup>61</sup> Furthermore, amendments to the criminal and civil codes designed to decriminalise libel and defamation are still being written. While no defamation cases against journalists have been filed in the past two years,<sup>62</sup> the OSCE believes that criminal sanctions for libel and defamation contribute to self-censorship among journalists.<sup>63</sup> One media activist asserted, 'So far, the legal framework has been built on a piecemeal approach and there are contradictions that need to be fixed. We need a new electronic law to keep up with new developments. We also need a new defamation law; as the old one is very harsh and was drafted in 1995'.<sup>64</sup>

In addition to the underdeveloped legal framework, newly created regulatory institutions have been heavily politicised, limiting their capacity to promote a climate conducive to media independence. In May 2006, Parliament approved amendments to the Law on Public and Private Radio and Television, addressing the composition and functioning of the National Council of Radio and Television (NCRT) and the Steering Council of the Public Radio and Television (SCART).<sup>65</sup> The new legislation was criticised however, in light of the government's failure to consult more extensively with media representatives and international experts.<sup>66</sup> Furthermore, the European Commission noted in 2009 that the NCRT promotes a strong relationship between government and media, and the OSCE reported negatively on the increasing political interference in Albanian Radio Television. As the OSCE stated, 'After the 2005 elections, the winning coalition led by the DP changed the Steering Council, management, and some of Albanian Television's (TVSH) staff. More than 80 TVSH employees lost their jobs'.<sup>67</sup>

On balance, however, most local and international experts concurred that the legal framework does not represent a foundational barrier to media independence in Albania. According to Fatos Lubonja, a renowned journalist and analyst in Albania, 'the legal framework is more or less OK, but who cares? The legal framework in this country is like the smoking law. This law prohibits smoking in bars, but what happens? People don't care and they continue to smoke. The non-smokers are the ones staying outside. This is the same with the media. He who follows the law is out of business'. A local media activist agreed that the problems of the media in Albania are not directly attributable to an insufficient legal framework. 'It may look more or less perfect. The problem is that there are no standards and no implementation'.<sup>68</sup>

<sup>60</sup> As the European Commission noted in its 2009 report, 'More efforts are needed to improve the overall climate for the media, to finalise the digitalisation strategy and to adopt key legislation on broadcasting, decriminalisation of defamation, public information and transparency of media ownership' (European Commission 2009 op. cit, p. 14).

<sup>61</sup> European Commission 2009, op. cit.

<sup>62</sup> See Council of Europe 2009a, op. cit.

<sup>63</sup> OSCE September 2009, op. cit. As the OSCE notes, the Criminal code includes criminal sanctions for simple insult, simple libel, and insult and libel of public officials and the president of the republic (OSCE September 2009, op. cit.).

<sup>64</sup> A new defamation law was drafted a few years ago, but it has not yet been approved. Prime Minister Berisha issued an order preventing officials from going to court on defamation cases. A media activist in Tirana observed that, 'As political will it was good, but as an order which has now been in force for five years, it's problematic because you are precluding people from going to court. We have no defamation cases. We need a law. The draft is good'.

<sup>65</sup> SCART is responsible for licensing and regulation.

<sup>66</sup> Council of Europe 2006, op. cit.

<sup>67</sup> OSCE September 2009, op. cit, p. 16.

<sup>68</sup> Personal interview with media activist. Tirana, January 2010.



### *Political and economic interference*

According to numerous sources, the most salient issue facing the media in Albania stems from pervasive and continuing economic and political interference. The media market in Albania is both highly fragmented and largely saturated. This has created a climate in which, in order to remain viable, many media outlets are reliant upon sources of funding that are promoting particular economic or political agendas. There are currently more than 25 national daily publications, with fewer than 100,000 copies in circulation.<sup>69</sup> In addition, Albania has more than 100 private television and radio stations in a country of barely 3.5 million people, with a limited advertising market of around EUR 21 million.<sup>70</sup> As the OSCE reports, 'media outlets do not receive sufficient income from sustainable financial sources and depend largely on subsidies from businesses [...] the most important broadcast and print media are considered to be aligned with either one of the two main political parties'. The media's financial constraints and ownership issues continue to haunt the market, affecting the level of editorial independence and the quality of investigative reporting. As the OSCE states, 'The structure of the advertising market is such that a few advertisers, such as public authorities or big companies, can influence editorial policies'.<sup>71</sup>

The entanglements between business, politics and the media remain the greatest challenge in media independence.<sup>72</sup> A local analyst suggested that ultimately media protects and promotes the business of the owners vis-à-vis the government: 'Media is not profitable, but is seen as indirectly profitable'. A media activist explained, 'Media only becomes profitable as a tool to get construction permits and other favours from the government. In other words, in their calculations, the balance is positive overall'. Given the importance of the construction industry to Albania's economy, this sector in particular has been known to manipulate the media in the interest of promoting agendas, avoiding political minefields, and obtaining necessary permits. As Fatos Lubonja argued, 'It's a vicious circle. It's business capturing politics [...] and media remains squeezed in between'. Even a government official recognised that, 'there is a symbiosis of political interest and owners' interest. Owners use media as an instrument to influence public opinion and the party [...] so there are two interconnected actors: one is a formal political actor and the other one is an informal political actor'. Despite the widely recognised problems associated with media financing, little has been done by either international or local institutions to address this concern.

The net result has been a polarised and often biased media that reflects the political divide and fails to provide independent reporting. A local journalist declared that, 'There are two main groups; one is linked to the SP and the other one to the DP. At the beginning they tried to respect the law and they had boards with at least three different owners, as required by the law, but now the financing of these media is not very transparent'. Not only has the media grown accustomed to economic interference, but politicians have become used to media manipulation. One local activist commented that 'Politicians are the ones producing the stories, writing them themselves [...] Media does not influence the agenda of politicians but the other way

<sup>69</sup> Freedom House 2008, op. cit.

<sup>70</sup> OSCE September 2009, op. cit. Most local actors argued that while the media market had become more pluralistic – which, for them, represented a great improvement – media independence had however been undercut. A media activist commented that, 'thanks to business we have a very pluralistic media, but we have not reached a situation in which business are interested in the quality of what is produced in the media, or in allowing journalists to have a voice. Instead they dictate the editorial policy. It is led by the owner'.

<sup>71</sup> Ibid, p. 15. A civil activist stated that the government is investing ever greater sums in advertising (for tourism, environment, etc.), making the media more dependent on state money.

<sup>72</sup> This is referred to by local and international analysts and officials as the triangle of business, media and politics. A local media activist observed that the media was more clearly dependent on politics in the 1990s. 'Now, it is more dependent on business [...] we had a period of very polarised media in the 1990s, when the regime was most autocratic, and then we had a period of media renaissance with media standards improving and new independent media emerging in the whole region'. But now the situation has returned to square one: 'We head back to the bankers, not the bankers of ideology as before but the bankers of self interest and clientelism'.

around.<sup>73</sup> The unstable nature of journalism as a profession in Albania poses additional problems. A local journalist assessed the precarious state of journalism thus: 'Journalists are not registered; they are pretty much functioning in a black market. That's why they are so vulnerable'. Another journalist asserted that, 'The profession is in crisis and journalists just try to survive. Besides, they see how journalism does not lead to recognition and there is no impact on society, because if there is any criticism political parties will say that the government or the opposition is controlling the media'.

Media obstruction of a more overt nature has become increasingly pervasive.<sup>74</sup> Both international and local actors have suggested that the government has amplified pressure on media outlets and that it is becoming more aggressive with respect to journalistic interference. In November 2009, for example, Mero Baze, an editor for Tema, was physically attacked and rendered unconscious by businessman Rezart Taci and his bodyguards.<sup>75</sup> This attack followed an investigation into Taci's efforts to avoid a tax obligation by manipulating his political contacts. The inevitable result of intimidation and abuse has been journalistic self-censorship in Albania. A member of the business community indicated that, 'The rhetoric of the freedom of speech is there. Freedom of speech is guaranteed. But it doesn't work in reality because people are using media for political and economic purposes and the government pressures media. That pressure is actually quite effective and limits the possibility of free speech'.

Journalists have also complained that even if media outlets refuse to bow to direct intimidation tactics, the government has the ability to impose additional taxes and/or intensify political pressure. As a case in point, the newspaper Tema conducted various investigations into government corruption in 2008. The newspaper was subsequently evicted from its offices by police in January, despite a court order specifically outlawing the eviction. Prime Minister Berisha rejected allegations of his involvement and then accused Tema of being a puppet of opposition leader Edi Rama.<sup>76</sup> In a similar vein, Top Media, the largest journalistic enterprise in Albania, was fined EUR 13 million in 2007. While it is unclear whether the fine was actually collected, local independent news sources have indicated that the critical reporting of Top Channel, the flagship TV station of Top Media, has been significantly toned down.<sup>77</sup> Other media outlets have also been fined. The NCRT, for example, fined the News 24 TV channel for broadcasting a satirical piece on Berisha. These acts of political interference and economic pressure have been cause for concern; especially in light of Berisha's record of media intimidation during his presidential mandate in the 1990s.<sup>78</sup>

## Corruption in Albania

The CoE alleges that corruption and organised crime in Albania represent 'the single biggest threat to the functioning of democratic institutions and the rule of law in Albania'.<sup>79</sup> Significant progress has, however, been made in recent years. The World Bank Governance Indicators, for example, reflect increasing scores for Albania in terms of its ability to control corruption since 2003 (see figure 3 and table 3); although Albania remains the worst performer in the region.

<sup>73</sup> Personal interview with local activist, Tirana, January 2010.

<sup>74</sup> As *Balkan Insight* recently reported, 'Apart from the general political orientation of the newspaper, which is a given, a long list of ministers, bureaucrats and business groups are listed as untouchables or as figures that may only be handled with kid gloves' (Besar Likmeta, 'Albania's Few Dissenting Voices Still Face Beatings,' *Balkan Insight*, 4 November 2009).

<sup>75</sup> Rezart Taci is the owner of the oil company that was privatised a year ago. He supports Berisha's government.

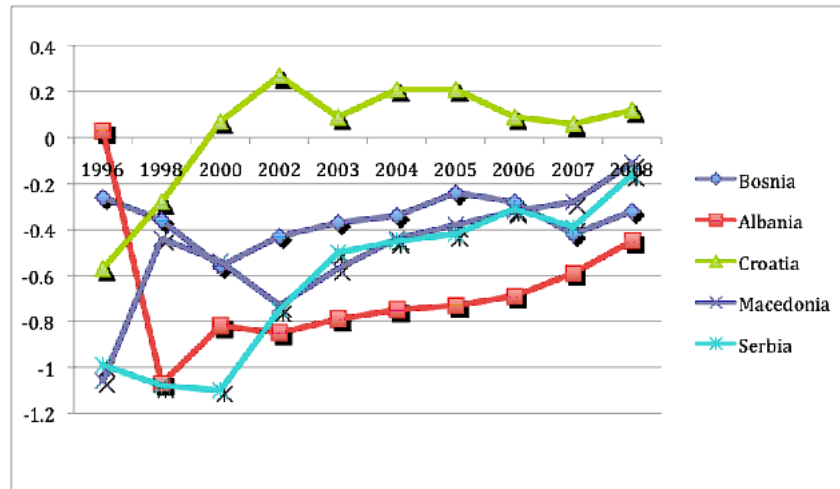
<sup>76</sup> Besar Likmeta, 'Albania: Old Dogs, Old Tricks', *Transitions Online*, 2 October 2009.

<sup>77</sup> Ibid.

<sup>78</sup> Berisha was accused of ordering the burning of a newspaper's offices and sending secret service agents to assault journalists in the 1990s, although he denies the charges (ibid).

<sup>79</sup> Council of Europe, 'Honoring of Obligations and Commitments by Albania', Resolution 1377 (Strasbourg: Council of Europe Parliamentary Assembly, 2004), p. 14; and subsequent reports (Council of Europe 2006 and 2009, op. cit).

**Figure 3. Control of corruption in selected Balkan countries, 1996–2008<sup>80</sup>**



Note that the data for the period 1996–2002 is provided on a biannual basis.

Source: Data compiled by author from The World Bank, World Governance Indicators.

**Table 3. Control of corruption in Albania, 1996–2008**

Year	Percentile Rank (0-100)	Governance Score (-2.5 to +2.5)	Standard Error
2008	39.1	-0.45	0.13
2007	35.7	-0.59	0.14
2006	28.6	-0.69	0.13
2005	29.1	-0.73	0.14
2004	26.2	-0.75	0.15
2003	26.2	-0.79	0.16
2002	23.3	-0.85	0.19
2000	23.3	-0.82	0.19
1998	13.1	-1.07	0.2
1996	59.2	0.03	0.48

Source: The World Bank, World Governance Indicators.

<sup>80</sup> This indicator captures the perceptions of 'the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as 'capture' of the state by elites and private interests' (Kaufman, Kraay and Mastruzzi, op. cit.).

In order to understand Albania's progress in the area of corruption, it is salient to distinguish between petty and high-level corruption. Progress in the area of petty corruption has been significant. Both the Council of Europe and the European Commission have commended the current administration's stance on corruption, which includes a 20 per cent reduction in administration and governmental structure, and the establishment of various mechanisms to counteract corruption (including the inter-sectoral Strategy on the Prevention and Combating of Corruption 2008–2013 and the establishment in May 2007 of the Joint Investigative Unit to Fight Economic Crime and Corruption). It is noteworthy that since inception, the Joint Investigative Unit has opened approximately 224 cases and convicted the Deputy Minister of Transportation and the General Secretary of the Ministry of Labour on corruption charges. Other high-profile cases included 'the arrest of a prosecutor for agreeing to bribe a judge for the reduction of a defendant's sentence'.<sup>81</sup>

The passing of legislation to address the recommendations of the Council of Europe Civil Convention against Corruption has also been important.<sup>82</sup> Since 2005, the Parliament has adopted a Law on the Criminal Liability of Legal Persons, and a Law on the Prevention of Conflict of Interests (SP), both of which have yielded positive results, according to local experts. Slander has been decriminalised – an encouraging development in terms of media independence – and further steps have been taken by the government to lift immunity for parliamentarians accused of corruption.<sup>83</sup> Improvements in the area of customs tax administration have also been implemented;<sup>84</sup> partly thanks to international assistance by the Millennium Challenge Corporation. Improved cooperation between the Minister of the Interior, the Minister of Finance and prosecutors has also been critical in bolstering conviction rates. As a local activist argued, 'a lot can be done when all powers cooperate in the fight against corruption. This has been the case in customs and taxation and in the fight against terrorism'. An international judicial expert also agreed that the creation of joint commissions in the fight against corruption and organised crime are encouraging steps: 'There is willingness to make these units work, but they are still lacking a lot of resources, especially in IT. They also need to have more support and be more courageous to deal with certain investigations that are a bit more political'.<sup>85</sup>

The introduction of technology-based solutions was also considered an important development in curbing corruption. As a case in point, many locals commended the creation of 'one-stop shopping' for voter registration (at a cost of only 1 euro).<sup>86</sup> As a local expert on corruption argued, 'the new IT in procurement has facilitated new business. The opportunity for corruption has been decreased and has facilitated the entry of new business in the market. Corruption is not impossible but it's more difficult'. A member of the business community agreed and commended the government's efforts in this area. 'The economy is now more formal than in 2004 and 2005. It is more transparent and that helps when you try to do business legally. It's also now easier to take your case to the tax authority because of the improved transparency and reduced opportunity for corruption. Of course, there are still issues, like private property, which have not been managed well, but there are some positive steps in having clearer registration procedures'.

<sup>81</sup> US Department of State, '2008 Human Rights Report: Albania', *2008 Country Reports on Human Rights Practices*, February 25 2009. 53 out of the 224 have been arrested and prosecuted (see European Commission 2008, op. cit.).

<sup>82</sup> Important legislation was also introduced by the previous socialist government, including an 'anti mafia' package and the law on the Prevention of Conflict of Interests. Anti corruption bodies were also created, including the Anti-Corruption Monitoring Group (ACMG) and the Anti-Corruption Unit (ACU). A Court for serious crime was set up and started to function in 2004. Both the ACMG and the ACU have been replaced under Berisha's administration by the Anti-Corruption Task Force, chaired by the Prime Minister and composed of ministers and heads of governmental agencies related to corruption issues, and the Directorate of Internal Administration Control and Anti-Corruption, a technical body under the leadership of the Deputy Minister. See Council of Europe 2006, op. cit.

<sup>83</sup> David L. Phillips, *Albania: From Fragile State to Viable International Partner* (New York: National Committee on American Foreign Policy, 2008).

<sup>84</sup> Council of Europe, 'Honoring of Obligations and Commitments by Albania', 2009, op. cit.

<sup>85</sup> The Corruption and Economic Crime Task Force at the Tirana District Prosecution was founded in 2007 with external support. It comprises 8 prosecutors appointed by the Prosecutor General; 7 police officers with a legal background appointed by the Prosecutor General; 10 investigative police officers assigned by Minister of Interior; 7 officers appointed by Ministry of Finance, of which 3 judicial police officers from the General Directorate of Taxes; 4 judicial police officers from the General Directorate of Customs and 2 experienced agents from the National Intelligence service. The intention is to extend this model to other areas, covering the territory of Shkodra, Fier, Korca, Durres and Vlora.

<sup>86</sup> According to the World Bank, Albania ranked second among countries undertaking reforms in 2007–2008 to make business easier (The World Bank, *Doing Business: Reforming Through Difficult Times* (Washington DC: Palgrave Macmillan, IFC and the World Bank, 2010)).

Despite the aforementioned progress in addressing petty corruption, both the Council of Europe and the European Commission remain concerned by the overall level of progress. The EC noted in its 2009 progress report that 'corruption is prevalent in many areas and continues to be a particularly serious problem'.<sup>87</sup> One of the fundamental problems pertains to the lack of determination in fully implementing the laws and institutions that have been recently approved; a problem that is closely related to the discussion on the rule of law. Indeed, as a local expert on corruption maintained, 'the big problem is not the law in itself, but the implementation of the law, and the culture of the rule of law that exists in this country'. In this vein, the EC noted with concern that, although new coordination mechanisms are in place, 'realistic implementation mechanisms and timeframes are missing, together with monitorable indicators and adequate resources'.<sup>88</sup> The EC went on to observe that, 'Efforts of the government to tackle corruption are stalling at the strategy stage or are only selectively applied'.<sup>89</sup> A local corruption expert suggested that 'Every mechanism that is created to fight corruption with an anti-corruption target is useful. The problem is that the overall strategy should be like an orchestra and this is what needs to work better. For example, there are various audit mechanisms but there is no clear division of competences. You have, for example, the inter-ministerial audit under the Minister of Finance and then the state audit agency. It is not clear what their roles are'.

Coordination between the judiciary and the government requires additional attention. As indicated by a local activist, 'There is no coordination structure. It's a government strategy, but it's not coordinated or integrated with the judiciary. It's thus limited in scope'. Inadequate resources also remain an issue in terms of backing anti-corruption institutions, although an expert on corruption argued that, 'Of course, resources are important, but to tackle the roots of corruption you need to look at how institutions function. In sum, if you have a lot of resources but institutions do not work, it is a waste of time'. Ultimately, most of the sources consulted concurred that the fight against corruption will not be won in the next four years. 'It's a long-term battle. It takes a lot of time and energy. And it's not something that the Prime Minister or the political parties can do themselves, it's also the judiciary, the administration, etc. This is the lesson we have learned, and that we are not considering'.

The politicisation of the public administration remains another serious concern in the fight against corruption.<sup>90</sup> A local expert on public administration conceded that political ties at the lower levels of the administration have diminished substantially. He noted, however, that the politicisation of the administration at the higher levels remains significant; mirroring a system based on clientelism, particularly outside Tirana where non-public jobs are scarce.<sup>91</sup> The politicisation of the administration is an issue closely linked to the identification of the state with the party in power.<sup>92</sup> As Tafili notes, 'making replacements in state institutions has become a de-facto system; any time a new party comes to power, new experts replace the previous party's experts'.<sup>93</sup> The use of public administration for clientelistic purposes is such, Tafili notes, that sometimes parties will even create new institutions or change the number of ministries 'according to their need to please junior allies'.<sup>94</sup>

<sup>87</sup> European Commission, *Albania 2009 Progress Report*, Commission Staff Working Paper SEC (2009) 1337. Brussels, 14 October 2009. P. 12.

<sup>88</sup> European Commission 2009, op. cit.

<sup>89</sup> Ibid.

<sup>90</sup> Most interviewees agreed that there is a clear institutional deficit in Albania. Of particular concern was the fact that institutions remain strongly politicised, outwitted or neglected. The situation of the administration was mentioned as a clear example, as both parties have tended to use 'non-merit appointments as the primary means of staffing state agencies' (Eno Trimcevi, 'Democracy, Intellectuals and the State: The Case of Albania', unpublished Master thesis, 2005). Other agencies and independent institutions such as the Council of Radio and Television are also heavily politicised or simply neglected.

<sup>91</sup> For further details see Zhani Shapo, Artan Hoxha and Hans Achim Roll, 'Civil Servants Legislation in Albania: An Assessment of the Implementation', draft report, Institute for Contemporary Studies: Tirana, 10 March 2008.

<sup>92</sup> See Najada Tafili, 2007. 'Consolidation of Democracy: Albania', available at <http://politics.as.nyu.edu/docs/IO/7773/NajadaTafili.pdf>; and Trimcevi, op. cit. Some interviewees referred to the phenomenon of state capture in reference to the situation of the public administration.

<sup>93</sup> Tafili, op. cit.

<sup>94</sup> Ibid.

The result of the public administration's politicisation is manifold. Firstly, capacity becomes a problem. The system is not merit based and ultimately, according to a Tirana expert on public administration, 'there is an opportunity cost here: the competition is narrower and there is a reduction of the capacity of the people'. Similarly, an international expert on corruption argued that the capacity of the Albanian state/administration is severely impacted by the fact that the entire civil service turns over following an election. 'This is one of the big risks here, that we spend a lot of energy and resources in training these people and we have no guarantee that they will stay in their positions, which means that the knowledge will be lost'. Secondly, the system promotes uncertainty and a lack of job security, which in turn serve as catalysts for corruption. As a local expert on corruption explained, 'people are not sure about the future so they are eager to make as much money as they can while they can. They are just not sure what is going to happen'. Finally, the system promotes self-censorship. Given that most appointments are given on political grounds, civil servants are reluctant to act without orders directly from the upper tiers of the political hierarchy. The inherent and pervasive fear, according to a member of the Council of Europe, is that 'you can get fired'. For many, the net result is the paralysis of the system and the further weakening of institutions: 'Things do not work without the order of the highest echelons, but that is not how things are supposed to function'.<sup>95</sup>

High-level corruption, which many suggest has become deeply politicised, poses the greatest problem with respect to the perception of corruption within Albania. There is a view that, while corruption was pervasive at all levels in the recent past, it has now become localised and centered on and around a relatively small group of people. A local activist observed that, 'Now we have a monopolised corruption market. That's good because there is less corruption for citizens in services, but for big business it means that they have higher costs in some areas, especially in the construction business'. A civil activist concurred that corruption is now 'more centralised and sophisticated'. Indeed, despite an increase in the number of investigations and the arrest of several public figures, few high-ranking officials have actually been convicted.

Furthermore, several relatively infamous cases of corruption have either been delayed or suspended on dubious grounds. Examples include the trial of Defense Minister Fatmir Mediu in reference to the explosion of a demilitarised warehouse in Gerdec in 2008, which killed 26 people; the trial of former Foreign Affairs Minister Lulzim Basha in relation to a case of corruption in the construction of the highway connecting Albania's coast with Kosovo; and an investigation into the government's alleged involvement in an illegal scheme to export Chinese-made ammunition to Afghanistan as part of a US government contract. Despite the fact that Fatmir Mediu resigned on March 17 2008 and parliamentary immunity was lifted on June 16, his case was temporarily suspended when he was appointed to Berisha's new cabinet in September 2009. As this report went to press, the High Court finally dropped charges against Mediu arguing that there was insufficient evidence to ask the parliament to lift his immunity. Lulzim Basha's trial was dropped entirely due to the prosecutor's failure to proceed within the legal timeline for the investigation. While the prosecutor's actions represented a clear miscalculation, international experts believe that the HCJ's decision to dismiss the case was unnecessary. In particular, as one international expert argued, 'the decision of the HCJ was very subjective. In the judiciary we make a distinction between formal and substantial acts and there is more flexibility with the former. The prosecutor's misstep was clearly a formal, technical mistake, and the HCJ dismissed the case based on just this formal procedure; it was a subjective decision that clearly favoured the government. Of course, the prosecutor should have been careful with these details, and I don't want to excuse them, but the HCJ didn't have to dismiss the case. Now Mr Basha is Minister of the Interior. How can you appoint him as Minister of the Interior when not long ago he was part of an investigation by the prosecutor's office?

<sup>95</sup> Personal interview with a European diplomat in Tirana, January 2010. He also argued that in a consolidated democracy, the executive should make approximately 15–20 per cent of the decisions, with a focus on strategy and overarching objectives. The administration should be making decisions with respect to policy implementation. 'In Albania, unfortunately, this is not the case. The administration is extremely weak and all decisions are made at the political level, by the parties in power'.

The failure to move forward with cases of high-level corruption has significantly damaged the perception of corruption in Albania, and has promoted a culture of impunity. A Tirana activist stated that, 'People believe that as long as you have the right connections, you are fine'. These developments help to explain why, despite tangible improvements in addressing petty corruption, the perception is that corruption is on the rise. While Albania's Corruption Perception Index has improved overall, especially from 2006–2008; Albania dropped ten positions in the 2009 worldwide index as compared to 2008 (see table 6).<sup>96</sup> A corruption survey conducted by the Institute for Development Research and Alternatives in 2009<sup>97</sup> reached similar conclusions. According to the latter survey, approximately 48 per cent of the population thinks that corruption increased in comparison to the previous year and 38 per cent thought it had plateaued at the same levels.<sup>98</sup> Personal experience of corruption does appear to have decreased since 2005 however; although 57 per cent of the populace still report having been directly subjected to corruption. This is the highest statistic in the region by a large margin. The 2007 Global Corruption Barometer showed that 70 per cent of Albanian respondents had paid a bribe to obtain a public service.<sup>99</sup> This is significantly higher than other countries in the Balkans and places Albania on par with countries such as Cambodia.<sup>100</sup> According to this report, Albania remains one of the few countries whose population believes that government efforts to fight corruption are ineffective.

**Table 4. Corruption Perceptions Index<sup>101</sup> in the Western Balkans, 2002–2009**

Year	Albania		Bosnia		Croatia		Macedonia		Serbia	
	Score	Rank	Score	Rank	Score	Rank	Score	Rank	Score	Rank
1999	2.2	84/99	--	--	2.7	74	3.3	63	2.0	90
2000	--	--	--	--	3.7	51	--	--	1.3	89
2001					3.9	47				
2002	2.5	81/102	--	--	3.8	51	--	--	--	--
2003	2.5	92/133	3.3	70	3.7	59	2.3	106	2.3	106
2004	2.5	108/146	3.1	82	3.5	67	2.7	97	2.7	97
2005	2.4	126/159	2.9	88	3.4	70	2.7	103	2.8	97
2006	2.6	111/163	2.9	93	3.4	69	2.7	105	3.0	90
2007	2.9	105/179	3.3	84	4.1	64	3.3	84	3.4	79
2008	3.4	85/180	3.2	92	4.4	62	3.6	72	3.4	85
2009	3.2	95/180	3.0	99	4.1	66	3.8	71	3.5	83

Source: data from Transparency International compiled by author. Available at: [http://www.transparency.org/policy\\_research/surveys\\_indices/cpi/2009](http://www.transparency.org/policy_research/surveys_indices/cpi/2009)

<sup>96</sup> Delays in Fatmir and Basha's trials in 2008 are likely to have affected Albania's score.

<sup>97</sup> The study, funded by USAID, consists of two face-to-face surveys: a general public sample, including 1194 respondents and a public sector employees' sample with 596 respondents (and a survey of 172 judges). The margin of error for the general public is +/- 2.8 per cent and for the public sector sample is +/- 4 per cent, both with a confidence interval of 95 per cent. The interviews were conducted in January and February 2009.

<sup>98</sup> Institute for Development Research and Alternatives, 'Corruption in Albania: Perception and Experience', survey 2009. According to this survey, religious leaders; the President; the media; the military; public school teachers and NGO leaders are still perceived as the least corrupt. Customs officials; tax officials; ministers; parliamentarians and doctors are perceived as the most corrupt with scores ranging from 75–85 per cent on a scale where 0 means very honest and 100 is very corrupt.

<sup>99</sup> The Global Corruption Barometer is a public opinion survey that assesses the general public's perceptions of corruption and experience with bribery. The standard error for the global survey is +/- 4. The Albanian survey was conducted by TNS Index Albania GIA and included 800 and 1000 face-to-face interviews in 2006 and 2007 respectively.

<sup>100</sup> In Kosovo it is 67 per cent; Macedonia 40 per cent; Serbia 21 per cent and Bosnia 5 per cent (Transparency International, 'Report on the Transparency International Global Corruption Barometer 2007', Berlin: Transparency International, 2007).

<sup>101</sup> The CPI measures the perceived levels of public sector corruption in various countries. The composite index is based on different expert and business surveys. The value of 10 corresponds with no perceived corruption. The lowest score is zero and corresponds with highly corrupt. Ranking #1 represents the least corrupt country.

## Conclusions

The record of democracy development in Albania is mixed. While most interviewees concurred that there is no democratic backsliding, they feared that the country was heading towards stagnation. Progress was acknowledged in some specific areas, such as the fight against petty corruption and the consolidation of free speech (particularly in comparison with the 1990s), but concern was raised over the situation of the rule of law, the judiciary, the management of elections, media independence and the control of high-level corruption. Concerns over the rule of law were mostly related to the degree to which laws and regulations created order and predictability in Albania. A concern was also raised in relation to the extent to which institutions' independence protected citizens from the abuse of power. In this vein, judicial independence remains a major issue of concern. Discretionary government interference and widespread corruption practices were viewed as particularly problematic; undermining not only the basis of the rule of law but also the division of powers. The role of other institutions such as the parliament has also remained in question. In this vein, the opposition's boycott of the parliament has shown once again little predisposition on the part of Albanian politicians to use formal institutions to conduct political opposition.

Another critical weakness of democracy in Albania pertains to the lack of access to the decision-making process for key local stakeholders. Parties are highly centralised, non-democratic and reluctant to engage in an inclusive dialogue with the public and civil society at large. As an international official argued, 'The intersection between the citizens and the institution is not flexible; it's a one way conversation. That's part of the centralised decision-making in parties and in the government'. Furthermore, even though some progress was noted in the June 2009 elections, Albania's record as regards the electoral process is disturbingly poor, particularly for a country aspiring to EU accession. Ultimately, the failure of Albanian parties to secure democratic standards in the elections has aggravated the perception among citizens that elections are just a power struggle between competing individuals. Various surveys illustrate that society has grown disillusioned with the political process. A national survey conducted by NDI in 2007 indicated that more than 80 per cent of the population thought that ordinary people had no say in what the government does.

The media fails to fulfil its role as provider of alternative sources of information and an instrument for political accountability, which is particularly distressing in a country where formal checks and balances remain dysfunctional. As Fatos Lubonja argued, the problem is that, 'while the intertwinements between media, business and politics exist in other countries, the big difference is that in these other countries at least you have the division of powers, and some kind of checks of balances that are operational. Civil society in these countries also functions, as well as the judicial system. Here, you don't have that, and that is why the situation is so dramatic'. The politicisation of the media and the interconnection between media, business and politics thus remain particularly worrying, contributing to a climate of intense polarisation and a culture of impunity. It is also disturbing that Albania's Freedom of the Press Index has plummeted more than 50 positions since 2003, when Albania ranked as the best performer in the region. Increasing economic and political interference, an underdeveloped legal framework and recent attacks on journalists have contributed to the worsening of media rankings in Albania.

In conclusion, the Albanian system remains highly informal. It functions thanks to a heavily centralised power structure, which often operates outside the institutionalised channels provided for effective democracy. This situation is typical of countries labelled as hybrid regimes, but the singularity of the Albanian model lies in the strong polarisation of politics and society and the recurrent alternation in power of two large parties that function on the basis of similar power structures (i.e. the interconnection between media, business, and politics). The immediate challenges for Albania thus include: furthering the strengthening of democratic institutions, especially the judiciary and the management of elections; promoting the respect of the rule of law and the fight against corruption; and dismantling the unlawful interconnections between business, media and politics. While the first two challenges are ultimately dependent on the political will of the parties in power and in opposition, the last will require further legal actions in the promotion of media transparency, the control over corruption and the fight against the abuse of power. The international community will need to watch more closely developments in Albania and take further action in relation to the key challenges facing Albania as it moves towards EU membership.



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