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Policy Brief

"Security Management Network"

PARLIAMENTARY OVERSIGHT OF THE SECURITY SECTOR THROUGH BUDGETING

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The goal of this paper is to present an overview of the budgeting process related to the activity of the parliament, in regards to the defense and security sector. During its activity in the last years IDM has devoted a lot of efforts in the field of security sector reforms in general, and particularly in different aspects including the activity of the parliament in the budgeting process of the security sector institutions. As such this paper aims to present the current status of the parliamentary oversight of the security sector as well as some relevant recommendations for improving the applicable legal and institutional framework, and to encourage public and professional debate in this framework.

The methodology of the work includes analysis of legal regulations, official documents, previous studies as well as interviews with members of the Albanian Parliament's Committee for National Security, the staff of the Committee for National Security and representatives of the Ombudsman.

This document addresses a wide audience in the public administration who have jurisdiction in the affairs in the defense and security sector, as well as members of the Committee for National Security along with all MPs, and interested international, governmental and non-governmental organizations and the media. We expect this analysis to encourage a more competent and intense public and professional debate on the parliamentary oversight of the security sector concerning the development of democratic values, accountability and transparency.

INTRODUCTION

“Civilian control” means that civil authorities have both adequate authority and the obligation to exercise political control and legal oversight of security forces and their operations, of relevant revenue collection and of public expenditure. They are also obligated not to politicize the security forces and to prevent inappropriate, unauthorized, or accidental military expenditure or use of resources¹.

Parliamentary oversight of the Security Sector through budgeting (drafting and implementation of the national budget) is an important feature of the democratic governance which helps to strengthen budget control and reduce mismanagement of public money and corruption and abuse. In this framework the role of the Parliament is indispensable to exercise its constitutional right to oversee government spending. Nevertheless, as briefly identified and presented in this paper, in Albania these tasks remain a challenge due to different problems and obstacles faced in the process. The role of the parliament is to act as an instrument of check and balance, ensuring that the development and implementation of security sector policies are properly conducted addressing diverse needs and priorities, as well as being opened and transparent for the public. In this framework an important task of the parliament is overseeing the budget for the security sector, where the Parliament holds the executive accountable for security sector priorities and ensures that funds are disbursed appropriately and effectively.

This paper would firstly analyze the institutional and legal framework of the parliamentary oversight framework through the budgeting instrument. This will be followed with an analyzes of the practices conducted by the parliament during this process. The paper would be finalized with e set of recommendations for MP-s and representatives of public institutions in the security sector.

¹ England. M, Security Sector Governance and Oversight, STIMSON, 12 December 2009

Importance of parliamentary oversight

The Parliament is the representative of the people. Despite the fact that the executive has the obligation to build and propose laws and compile budgets related to the security sector, it still remains in the hands of the Parliament to check if the budget is realistic and if these money are spent effectively. Check and balance, is the theory behind any well developed democratic governments and in this framework it is the Parliament which has the constitutional role in scrutinizing the budget of the security sector and keeping the executive accountable.

In general, the functions performed by the parliamentary bodies in regards to the oversight of the security sector, are grouped in three main fields: (1) *debating the draft budget for the respective ministries and institutions and to oversee the implementation of the budget*; (2) *to examine any lawmaking initiative and normative decrees*; (3) *and to oversee the general performance of the public institutions whether their activity complies with the legal framework and program*. The Parliament, through the **Committee of National Security** (CNS), is responsible for evaluating, scrutinizing, analyzing every aspect regarding security and defense sector in Albania. Through this body, the Parliament make sure that there is a clear link between what has been vowed to be done and the actual budget requested, and later if the expected goals, results and outcomes are accomplished according to the approved budget. As such, referring to the law², the Parliament is presented with the budget proposal and an analysis of the potential implications of the budget for the realization of all voices of the budget. In this regards, the Constitution empowers the Parliament as the highest authority for the budgetary control of the security institutions. An *ex ante* control is performed by the parliament through the approval by of the budget of security actors within the entire state budget upon proposal from the Council of Ministers (CoM).³

While the Parliament's activity should constitute a critical component of oversight, in practice, yet the Parliament is often undermined in carrying out this role. Plans, priorities and budgets for the security sector are often presented by the executive, while the role of the parliament is narrowed which due to lack of available information, democratic debate and wide consultations with other groups.

² Kuvendi Popullor, Vendim Nr. 166, Date 16.12.2004, "Për miratimin e rregullores së Kuvendit të Republikës së Shqipërisë"

³ Constitution, Article 158

Organization and functioning of the National Security Committee

Committee for National Security is the principal parliamentary body in charge of the control and oversight tasks of the activity of the military, police, intelligence and other security services. This body is in charge for discussing the details of the proposed budgets of security sector institutions as well as exercising continuous supervision on respective budgets' spendings.

According to Article 33 of the "Rules of Procedure of the Albanian Parliament" (*RPAP*), the committee chairperson, advised by the vice-chair and the committee's secretary, prepare and propose the work program and calendar. It is the chairperson to organize the day to day work and the hearings before the committee, represents the committee in relation to other organs of the Parliament and outside the parliament, signs and presents the reports of the committee hearings and works to the plenary session of the Parliament. With the approval of the chairmanship of the committee or when this is demanded by the majority of the members of the committee, the chairperson summons for reporting or informing in front of the committee, heads of state and public institutions, as well as other state officials or private individuals/entities that may be relevant to the scope and object of the committee's work. Committees produce a majority report, but in any case the minority opinion is noted and added to the majority opinion.

Committee hearings, as a rule of thumb, are open to the public⁴ with representatives of the media, interest groups or visitors being able to attend. The committee, through simple majority vote, can decide for committee hearings to be held behind closed doors (art. 35, par.2). Due to the sensitive nature of issues discussed and relevance to national security, the Parliamentary Committee on National Security often opts to hold its meetings and hearings behind closed doors.

According to Article 36 of the *RPAP* the committee can organize public hearings with members of the Council of Ministers, high representatives of state or public institutions, field experts, representatives of civil society, representatives of interest groups, as well as other

⁴ (art. 35, par.1 of the *RPAP*),

concerned groups. The committee is obliged to hold a public hearing in case one third of the committee members demand, in written form, for such a public hearing to take place.

According to Article 38, paragraph 2, of the RPAP, the committee appoints reporters for specific issues of interest, whom are also aided by specialists of the Council of Ministers (and in-line ministries), the legal service of the Parliament, or other experts, as needed. According to paragraph 3, when necessary, the committee may either choose to adopt a stance on a specific issue and present a draft-law to the plenary session of the Parliament, or dismiss the case.

As provided by Article 39 of the RPAP, paragraph 3, when the committee examines issues of particular importance, upon a decision of the committee, the hearing is recorded and made available to the public, with the exception of hearings related to information classified as state secrets.

Some of the methods the Committee on National Security can utilize to achieve better understanding of what is being proposed by the Ministry in regards to the budget, is through questioning. The Minister should be able to provide members of the committee with an opportunity to obtain accurate and up-to-date information about the government's defence and security policy, strategies, the main focuses and what it is aimed to be reached through that particular budget. In these sections the MPs of the opposition can raise questions and concerns regarding missing information. In accordance with Article 41 of the RPAP, in fulfilling their work scope and objectives the committee could engage specialists and experts of different fields.

Apart from the Minister or any other high official of the government, the commission can discuss issues on the budget also with lower members of government as much as with the groups of interests representing the subject that might or might not profit from the proposed budget.

Based on its legal right, the CNS can invite the Ministers which are under the scrutiny of this committee and other lower members of the government for questions and clarifications in regards to budget allocation or expenditure. Since the Parliament has a permanent role of controlling and balancing the power held by each independent institution

of the Albanian society, the scrutiny of the committee should be extended even to the daily functionality of the ministries.

Despite the developments in the legal and institutional framework concerning parliamentary oversight of the security sector institutions, at the moment many problems are identified in the parliamentary activity, something admitted by the Adviser of the Committee for National Security⁵. As also stated in the interview given by Mr Gazmend Oketa, there is still a lack on legislation that impedes this Committee from better scrutinizing the work of the respective ministries of defence and of Internal Affairs. Currently there is a draft-law ready to be analyzed from the Committee of Laws, which is believed to delegate more powers to the Committee of National Security in the future, aiming to provide a better control of the ministries from the parliament, without intervening in their daily work.

The Committee for National Security works in close collaboration with the Committee of Economy and Finance. These committees examine the expenditures and estimates given by the Ministers. They also discuss and evaluate any supplementary request, any change in expenditure the budget can offer. The Minister must be able to support his budget- plan by explaining every detail of it and by answering any scrutiny questions that might be posed from the members of the opposition. The Committee for National Security, recommends amendments to the budget, which are sent to the Committee of Economy and Finance, which does most of the work concerning the budget. The members of the committee have the right to lobby when any particular issue is perceived as of major importance for a budget increase.

Parliamentary oversight of the security sector; a critical approach

Parliamentary control and oversight has been one of the less consolidated aspects of the democratic governance in Albania during the last 20 years. Despite some identified achievements to meet some democratic criteria concerning oversight of the security sector in Albania, previous studies in the field, highlight the lack of real democratic control, including budget issues, in the security sector⁶. It can be noted that the institutional and administrative framework have developed in the last years and the legal framework and can be considered in

⁵ Interview: March 2011

⁶ Arjani Paper.

place. However not much has been done to ensure proper implementation of the parliamentary oversight of the security sector in the last years. This statement is confirmed by the MPs, in a poll that the Institute for Democracy and Mediation carried out in 2009 with former MPs who have served in the 2001-2005 and 2005-2009 legislatures. Concerning different issues surrounding security sector reform around 50 % of the interviewed MPs believed that the existing legal framework that regulates the relations between parliament and the executive is partially recognized and applied correctly by the Parliament, while about 19.3% and 20% were respectively negative and positive about the process⁷. In this regards, can be noted weaknesses in the application of the institutional instruments (such as the parliamentary commissions and hearings), which are established to limit and control the power of the executive, but have developed negative implications for the decision making processes and democratic governance of the security sector in particular.

Despite the role of the CNS, in exercising its oversight tasks of the security sector institutions through budgeting, its authority seems undermined due to political influences and affiliations. This fact is revealed by manye former MPs. Half of them participating in the poll, assessed that the parliament have not manage to provide a real balance to the power of the executive in the process of adoption of the defense budget, while 20% responded “somewhat” and 30 % were positive. It can be noted that allocation of budget constitutes to be a hot political matter in Albania, between majority and the opposition. Therefore the two main political forces have shown great tensions while discussing in Parliament budget allocation of security sector institutions. Even when the Committee has reached an agreement to modify the proposed draft, the executive has always managed to approve its original version by securing the required majority in the voting process, avoiding changes or revision.

On the other hand, the process of preparation for discussing the budget is perceived by half of the former MP’s as properly structured, while the other half expressed scepticism and discontents about the process. The same trends are identified in the both legislatures (2001-2005 and 2005-2009). Therefore it can be argued that the process of budget discussion is rather formal and this has not improved during the two legislatures surveyed.

In regards to the cases when Committee of National Security has requested further explanations on the budget expenditures from specific institutions, based on the reports of the

⁷ IDM Poll

High State Control (the highest financial auditing office in the country), the situation seems more optimistic, where 90% of the respondents were positive from the cooperation. This has mostly happened due to the legal obligation of PCNS to ask explanations from the responsible public institutions, twice a year, or when the budget is not realized at a full 100% extent.

Other important issues to address in the framework of parliamentary control and oversight of security sector, are the absence of constitutional provisions to make obligatory the broader consultations between the government with the parliament mandatory; parliament limited access to information; lack of resources of expertise in budgeting, and lastly the limited number of qualified technical staff available to the Parliament. As a matter of fact, MPs claim that they are not empowered with a qualified personnel to consult and be advised during the discussions about budget allocation, while the assistance provided per the Parliament Secretary and the Legal Office of the Parliament is not satisfactory. This is because the staff is limited in the number, capacities and expertise for specific fields of legislation. MPs enjoy the right to gather information through other sources and consult external experts that might be included in the process. However this needs time and efforts by MPs which is usually lacking. Very often the activity of parliamentary commissions turn into a routine where barely someone reads the draft project unless this law does not have political implications. If not the law is unanimously approved with little debates⁸.

Furthermore the control and oversight tasks that parliament is exercising in regards to the security sector, seems restricted. Parliament seems to have no influence or authority in regards to the procurement of the defense equipment and services. Given that in the future the reforms will focus in the modernization of equipments of the security sector, this issue gathers further importance and needs to be properly addressed by the parliament. During the period 2009-2011 only one procurement contract has been discussed in Parliament.⁹ In this regards, some of the former MPs emphasized the fact that the parliament cannot have competences in the procurement sector because of the long procedures that would slow down the decision making process. However the procurement remains one of the most vulnerable

⁸ Frasher. E, Transformation and Social Change: Legal Reform in the Modernization Process, Harvard Law School, 9.5.2008

⁹ www.parliament.al

sectors concerning corruption and abuse of power in the central and local government and in this regards, the parliament should have a more active role in control and oversight.

Another important issue stressed during interviews with MPs in the framework of parliamentary oversight of the security sector institutions, is the lack of time accorded to MPs, to review the draft laws and budget. Referring to them sometimes the time for revision is unrealistic. “...*there are laws that are pending since two years due to political disputes, while there are other important decisions which needs time and analysis but are approved in a matter of days*”¹⁰.

The conflictual political climate and lack of cooperation between the two main political fractions has been reflected in the activity of the parliament concerning control and oversight of the security sector. Seems that the act of voting the budgets in the last 20 years from the majority solely neglecting opposition demands, is closely related with the pace of the implementation of the budget. In this context can be claimed that the adoption of legislation (including budget law), without following a proper consultation process and norms of transparency, leaves room for the public administration to either neglect power division, or abuse with its competences¹¹. This situation might be caused by high conflictual political agendas in the parliament, where both sides blindly argue in favor of a settled position based in their political positions, leaving no opportunity for constructive discussions and consensual decisions.

Consultations' Process

One of the key elements in the process of parliamentary control and oversight of the security sector, are the consultations and exchange of information between Parliamentary Commission of National Security, governmental bodies and other independent organizations or groups of interest. In fact, for the Committee to better understand budget expenditure in the defense area, it is necessary an attempt to gather information from various governmental as well as independent sources including research institutes, NGOs, experts, the media and more. However difficulties can be noted in the process of consultations between the

¹⁰ Tamo et al, Social Trust and Institutional Authority in the Albanian Democracy, IDM, 2011, www.idmalbania.org

¹¹ FRIDE, Democracy Monitoring Report: Albania, April 2010

government and parliament. One of the main concerns is the fact that MP's face difficulties in access to information from governmental bodies, so they are not able to perform properly constitutional and legal functions. Although there is some level of collaboration and exchange of information between government and parliament, such practices are not assessed at satisfactory level. Referring to the answers gathered from the poll conducted by IDM in 2009 with MPs and former MPs, can be stressed that the cooperation between government and parliament, the trend has been negative and the process has deteriorated if we compare the results of 2005-2009 & 2001-2005.

Furthermore the consultations with other inter-governmental and non-governmental bodies is crucial. The collected information from various (independent) sources can be used to analyze the draft budget law and to ensure that information provided by the Government regarding the budget is accurate. In this perspective the consultations are necessary to make possible a proper assessment of the budget allocation for various fields and groups and interest. This provides an opportunity to identify and assess different perspectives coming from different groups of interest which might be directly affected by the decision-making.¹² Allowing wide consultations with other groups and independent experts might result as having a positive impact for the public administration as well as, avoiding criticism during the implementation phase.

Although the legal framework recognizes the utility for consultations in the drafting process, it does not oblige public institutions and parliamentary commissions to consult interested groups; however the procedures in force ensure some level of transparency when the process is finalized. Despite the fact that in different occasions Parliamentary Commission have invited different groups of interest to participate in the discussions, this has not been developed into a routine practice. In general the process of budget drafting is lacking a normative culture to be opened for wide consultations and transparent policies, causing a situation that many important decisions pass unnoticed. In those cases when particular independent organizations or groups of interest are invited, mostly they share the same views with the government. As a consequence the process is quickly closed with lack of debates and discussions.

¹² EURALIUS & Ministry of Justice & European Council, LawDrafting Manual in Albania – A guide to the legislative process, May 5 2006

Furthermore, during the drafting phase of the budget, a detailed procedure of justification and argumentation must take place by the governing bodies (ministries). Nevertheless according to different interviews being conducted with members of parliament, this process is poorly implemented, while the reports concerning justification of the budget, from the Council of Ministers are not made public and are not published in the Official Gazette, as it is the case of the law on the budget allocation. This raises concerns about the transparency of the process.

Transparency is a key element of democratic governance and in this regards the parliament should play a more active role on increasing public participation and access to information regarding the budgeting process. This would help promote transparency which is a cornerstone for maintaining an open budget process. Public debates between groups of interests where possible and the Government, Parliament could enhance the accountability, increase support for governmental and parliamentary decisions, and improve efficiency in government programs and projects.

In a general framework can be concluded that lack of political consensus and democratic tradition has caused deviation from consultations with other parties. In this regards, the law-making process (including the budget law) can be perceived as institutionally structured, but the problem lies in the institutional capacities, limited human resources and mismanagement of the administrative practices.

Recommendations

- The human and administrative capacities related to Parliamentary Commission of National Security should be increased and consolidated in order to provide better expertise and advice for members of the commission in their daily activity related to security sector oversight through budgeting.
- Members of Parliament and especially members of the PCNS should have the necessary time to revise and discuss the draft budgets and laws, as well as be supported during the overall process by experts in the field.
- The role of the parliament in process of oversight through budgeting, should be expanded to cover all the aspects of the budget of security sector institutions including the procurement of the defense equipment and services. In this regards the parliament

should have an unlimited access to information related to the activity of the public institutions.

- Although the legal framework recognizes the possibility for broader consultations in the drafting process of the budget, the constitution and legal framework should make the consultation processes with third actors, obligatory.
- The drafting process of the budget of respective public institutions of the security sector, should include a detailed procedure of budget justification and argumentation by the governing bodies, which will serve as a basis for future oversight of the security sector budget.