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SALW legislation and regulatory frameworks

4.1 Licensing of exports and imports

AT PRESENT, the Albanian legislative basis for import and export controls appears to be particularly weak. Albania does not have a law on export or import controls for military equipment and dual-use goods, relying instead on a number of governmental and ministerial orders, decisions and regulations.

According to an Albanian Government report submitted to the UN Department for Disarmament Affairs (UNDDA) in 2004,²⁹⁸ the current export control regime for military equipment is based mainly on the following decisions of the Council of Ministers and regulations of the Albanian Government:

- Council of Ministers (COM) Decision No. 366, “On the foundation of the import-export enterprise [depending] on the Ministry of Defence”, 5 October 1991;
- COM Decision No. 135, “On the approval of the sale of weapons and ammunitions by the Ministry of Defence”, 1 May 1992;
- COM Decision No. 275, “On the administration and controls for weapons of individuals, legal persons and entities”, 25 June 1992;²⁹⁹
- COM Decision No. 365, “On the destruction or selling of ammunitions for which the period of use is coming to an end or has already expired and on the selling of surplus armaments and ammunitions”, and its amendments, 6 June 1994;³⁰⁰
- Regulation of the Albanian Government No. 366, “On selling armaments and ammunition”, 10 August 1996;
- COM Decision No. 05 “On the functioning of the army’s import-export company, MEICO, and its relations with other departments and units in the Ministry of Defence”, 08 January 2002;
- COM Decision No. 617, “On the removal of armaments, parts of weapons and military equipment from the Armed Forces for their destruction, dismantling and selling”, and related regulations, 4 December 2002.³⁰¹

²⁹⁸ Source: Albania UN PoA Report 2004.

²⁹⁹ COM Decision No. 389, “On some supplements to the COM Decision No. 275”, 6 August 1993.

³⁰⁰ Council of Ministers (COM) Decision No. 822, “On an amendment to COM Decision No. 365”, 9 December 1996; COM Decision No. 564, “On an amendment to COM Decision No. 365”, 22 December 1997; COM Decision 829, “On an amendment to COM Decision No. 365”, 30 December 1998; COM Decision No. 344, “On an amendment to COM Decision No. 365”, 7 July 2000; COM Decision No. 113, “On an amendment to COM Decision No. 365”, 8 March 2001; COM Decision No. 17, “On an amendment to COM Decision No. 365”, 28 January 2002; COM Decision No. 1, “On an amendment to COM Decision No. 365”, 10 January 2003.

³⁰¹ Regulation No. 485/1, “On the procedure for the auction of military equipment, which have been removed from use, as defined in the COM Decision No. 617”, 14 October 2003; Regulation No. 495/2, “On the procedure for the auction of military equipment, which have been removed from use, as defined in the COM Decision No. 617”, 21 October 2003.

Although Albania's 2004 submission to the UNDDA stated that Albanian authorities control brokering activities, there are no legal requirements for this to take place at present, just as there are no legal requirements for controlling transit and transshipment of arms and dual-use goods. However, retransfers of military equipment are covered under Law No. 8671 "On the Command and authority of the Armed Forces", 26 October 2000, and in 2003 a Government regulation was issued that required potential arms traders to provide end-user certificates for each transfer.³⁰² The research team was informed that Albania uses both the EU common list of military equipment and the Wassenaar Arrangement lists of dual-use goods, technologies and munitions for controlling arms, military equipment and dual-use goods that are subjected to export controls. Albanian officials also stated that every year in January, the MFA provides the state-owned arms trading company MEICO with an updated list of UN and EU embargoed states. The MFA also provides information on new embargoes as soon as they are announced.³⁰³

There is a legal distinction between the import of hunting weapons and that of other firearms and military equipment. According to article 11 of Law No. 7566 "On weapons", "an individual or legal person can bring a hunting weapon from abroad only when they have permission from the Ministry of Public Order to do so". In practice, this means that when an individual has fulfilled the criteria for possessing a hunting weapon, they can then apply for permission at their local police station to be able to import a hunting weapon.³⁰⁴

According to one MOD official charged with implementing the export control regime, penalties for transgressions involve the revocation of the licence, confiscation of the shipment and fines ranging from the value of the transfer to one hundred times such value. In the draft law on export controls, there is a proposal to increase the value of the fine to 150 times the value of the transfer.³⁰⁵

Albania's arms export controls would benefit from the adoption of a new Law that would establish a comprehensive legislative framework. A draft law was prepared in November 2004 by lawyers based within the Ministry of Defence – although assistance was also provided by international experts. Recommendations were sought from other relevant Government agencies such as MOI and the Ministry of Justice. The draft version of Albania's "Law for the control over import-export activity of military materials and dual-use goods and technology" reportedly drew heavily upon the Law of Ukraine "On State Control of International Transfers of Goods Designated for Military Purposes and Dual-Use Goods" (20 February 2003). Albanian interviewees informed the research team that they believed that the Ukrainian legislation was a good model for Albania. In their opinion, it is the most comprehensive and up-to-date export control legislation.³⁰⁶ Several interviewees also stated that the proposed legislation would enshrine in law the requirements of the EU Code of Conduct on arms exports and the Wassenaar Arrangement.³⁰⁷ The new law was also expected to include regulations for transit and transshipment controls, controls on brokering and associated activities and would require each transfer to be accompanied by an end-user certificate and pre-shipment verifications before a licence can be issued.

However, the draft law was not passed by parliament before it closed for the 2005 parliamentary elections. Although one could lament the fact that the parliamentary recess appears to have killed off much needed improvements to the legislative base for SALW transfers, it also provides another opportunity for an inter-ministerial commission to review Albania's needs thoroughly in this sphere, before preparing a new draft law to be presented to parliament for consideration in the near future.

³⁰² Regulation No. 9603, "For the Compilation and documentation of military equipment import-export activities", 18 September 2003.

³⁰³ Interview, MOD official, 20 April 2005.

³⁰⁴ Interview, MOPO official, 25 April 2005.

³⁰⁵ Interview, MOD official, 27 April 2005.

³⁰⁶ Interview, MOD official, 27 April 2005.

³⁰⁷ Interviews, international official, 29 April 2005; MOD official, 27 April 2005; MOD official, 20 April 2005; international official, 19 April 2005.

4.2 Anti-trafficking framework

According to Edmond Bahiti, Head of the Sector for Illegal Trafficking within MOI, trafficking was not covered in the communist-era criminal penal code and in a sense, was therefore not a crime during these times.³⁰⁸ However, he argues that in the post-communist period Albanians have taken advantage of the relative freedom to travel abroad, and some Albanians have made connections with organised crime groups around Europe and the world. Since 1999, Albanians have become both the objects and the subjects of trafficking.

Although articles defining armed gangs and criminal organisations were contained in the 1995 Albanian Penal Code,³⁰⁹ it was not until 2001 that articles on “trafficking in weapons and munitions” (278/a) and “Production and illegal possession of small arms and light weapons” (279) were introduced into the Penal Code. Article 278/1 on “trafficking in weapons and munitions” includes sanctions of imprisonment for seven to fifteen years for those found guilty, while article 279 on “Production and illegal possession of small arms and light weapons” carries penalties ranging from a fine to five year’s imprisonment.³¹⁰ If a weapon that had been smuggled had caused a fatality, then the smuggler would receive a minimum of five years imprisonment for involvement in trafficking arms. If it could be proven that the trafficker had links with organised crime, then the penalty would be in the range of 15–25 years imprisonment. It is now possible for life sentences to be given for trafficking in arms.³¹¹ In reality, whether due to poor marking of weapons, or the challenges of effective intelligence-based policing and information-sharing, it would be difficult to envisage the availability of evidence which could attribute specific impacts to particular weapons or prove the links between particular groups. Thus the imposition of these harsher sentences is improbable.

Bahiti argued that the introduction of the articles on trafficking and illegal possession of arms into the Penal code were the result of international pressure.³¹² This is a view with which a number of Albanian analysts appear to concur, as they argue that Albanian authorities have drafted and attempted to implement a number of strategies to address trafficking in recent years, mainly due to international expectations.³¹³ For example, in 2001, the Albanian Government adopted a National Anti-trafficking Strategy, which contained a four year action plan and the establishment of an inter-ministerial steering committee. Yet the Strategy only explicitly referred to trafficking in persons and a number of weaknesses were identified by international donors, leading to a revised strategy being adopted in 2003.³¹⁴ International observers stress that Albania’s good anti-trafficking legislation with regard to human trafficking still needs to be implemented to internationally recognised standards.³¹⁵

According to the Albanian General Director of Police, Bajram Ibraj, a number of national initiatives directly and indirectly related to SALW trafficking have been established in Albania in recent years, including:

- Developing a ‘National Strategy against Illegal Trafficking and Organised Crime’;
- The establishment of a Task Force for enhancing co-operation between the police and customs services for combating trafficking;
- The ‘National Strategy for the Control of SALW’;

³⁰⁸ Interview, MOPO official, 20 April 2005.

³⁰⁹ Articles 28, 233 and 234 of the Law No. 7895, ‘The Penal Code of the Republic of Albania’, 27 January 1995, define armed gangs and criminal organisations based on the kind of co-operation undertaken, numbers of participants, levels of organisation, criminal offences to be considered and also allows for custodial sentences of between five years to life.

³¹⁰ Report of the Albanian government on implementation of UN Security Council Resolution 1373 on combating terrorism (undated).

³¹¹ Interview, MOPO official, 20 April 2005.

³¹² *Ibid.*

³¹³ *Op cit* Bumçi, Ymeri and Dakli, p. 26.

³¹⁴ *Ibid.*, p. 27.

³¹⁵ ‘OSCE’s Konrad Criticizes Failure to Implement Trafficking Laws’, Albania Crime and Corruption Issues, 15–21 January 2005. Source: Shekulli, 21 January 2005.

- The creation in 2001 of special structures for anti-trafficking in the General Directorate of police and Albania's 12 Districts;
- The establishment of the Directorate against Organised Crime and for Witness Protection.³¹⁶

In addition, further provisions relating to anti-trafficking efforts were introduced in 2004. For example, amendments to Law No. 7905, 'Criminal Procedure Code' (21 March 1995) were adopted in May 2004. These enable the use of undercover agents, surveillance equipment, sting operations, and a number of other mechanisms for uncovering evidence that had previously been inadmissible.³¹⁷ Another significant legal change was the amendment of Article 12 of the Law No. 8553, 'On the State Police' (25 November 1999), which enabled a number of changes in fields relating to the institutional arrangements for combating organised crime and trafficking, witness protection, and integrated border management. Following this amendment, the then MOPO's 'Department for the Fight Against Organised Crime and Justice Collaboration', which was established as a sub-Directorate under the General Directorate of Criminal Police in 2001, was upgraded to a separate directorate – the Directorate of the Fight Against Organised Crime & Witness Protection – in October 2004.³¹⁸ Moreover, a Serious Crime Prosecution Office was established in 2004.

4.3 SALW and ammunition disposal

From the perspective of controlling the flow of SALW to undesirable end users, the optimal method for disposal of surplus stocks of SALW, particularly of older weapons which are usually not items of choice for legitimate end users, is destruction (rather than sale, gift or re-use). The legal bases for the disposal and destruction of SALW and ammunition are considered to rest upon the following governmental decisions and ministerial orders:

- Council of Ministers Decision No. 617, 'on Assigning the Ministry of Defence with the responsibility for destroying surplus weapons, ammunition, and military equipment', 4 December 2002;
- Order of the Minister of Defence No. 281, 'On the treatment of surplus and decommissioned equipment of the Armed Forces of the Republic of Albania', 17 June 2003;
- Order of the General Staff of the Armed Forces of Albania No. 22, 'On the implementation of the demilitarisation process and the procedures for the destruction of surplus military equipment (tanks, artillery units, etc.)', 12 January 2004.³¹⁹

Taken together, they outline the conditions under which surplus armaments and ammunition are to be dealt with. In the main, they call for the salvaging of scrap metal from demilitarised equipment, which can then be sold. Collected SALW and ammunition are often included in the consignments of surplus equipment sent to destruction facilities.

³¹⁶ Bajram Ibraj, General Director of Police, 'Albanian Initiatives on the Fight against Illegal Trafficking of Small Arms and Light Weapons', presentation at workshop Tackling Small Arms and Light Weapons (SALW) trafficking in South Eastern Europe (SEE), Tirana, Albania, 14–15 December 2004. Press Release on web-site of the Ministry of Public Order, 14 December 2004, <<http://www.mpo.gov.al/anglisht/mrp-ENGLISH.htm>>, 7 April 2005.

³¹⁷ Interview, MOPO official, 20 April 2005.

³¹⁸ Interview, MOPO official, 20 April 2005.

³¹⁹ Report on Implementation of the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects. Data submitted by Albania to the UN Department for Disarmament Affairs in 2004. <<http://disarmament.un.org:8080/cab/nationalreports/2003/Albania.pdf>> (hereafter 'Albania UN PoA Report 2004').

4.4 SALW amnesty and collection legislation and structures

The law covering amnesty on illegal possession and collection of weapons lapsed at the end of May 2005, thus bringing to a halt the ongoing collection of weapons from the public. The evolution of the legislative framework relating to amnesty and collection, and the status of current legislation is dealt with separately in section 6.

4.5 Legal basis for the control of PSCs

The main laws regulating the work of the security industry are:

- Law no. 8770, (19 April 2001) ‘On the Guarding and Physical Security Service’;
- Supplements to the Law, passed in September 2002 (Law No. 8936, ‘On a supplement to Law no. 8770’, State Gazette No. 23 May 2001) and February 2005 (Law No. 9343, ‘For some amendments in the Law No. 8770’).

In terms of the possession and use of SALW by PSCs, security guards are permitted to carry a Kalashnikov assault rifle and pistol, while technical directors and bodyguards are permitted to carry concealed weapons. All weapons used by PSCs should be supplied and registered to the employer and individual guards by the police, who also determine types and quantities of weapons and ammunition required by the PSCs. Technical directors and employees are not allowed to use their own firearms or purchase firearms from private dealers for security work. However, sprays and weapons that can cause temporary paralysis can be purchased directly from suppliers by PSCs, if they hold special permits issued by the police and then inform the police upon receipt of these items.

The law on PSCs does not cover storage methods, but PSCs must observe the same general laws and norms that regulate the use and storage of SALW held by the state police and military forces. Some of the regulations and norms are collected in a manual prepared for PSCs by the State Police, which states that “weapons are secured in armouries and safes”.

The current legal framework requires PSCs to be licensed by the Ministry of Public Order in order to operate. Company licences are granted for a period of three years³²⁰ and the type of licence granted depends on the specific duties that applicant firms apply to carry out. Those firms that wish to provide protection for private and public buildings must seek and obtain a ‘Category A’ licence. ‘Category B’ licences permit firms to provide physical security to persons, while ‘Category C’ licences cover the guarding of money and valuable objects.³²¹ The Ministry is also responsible for determining whether applications to carry firearms are warranted, and for issuing firearms licenses to the firm.³²²

Permission to trade is itself conditional on the status of the firm’s Technical Director and other employees, all of whom must be registered with the state police.³²³ Technical Directors and employees must be Albanian citizens with a permanent residence in Albania,³²⁴ and anyone holding a criminal record is barred from such employment.³²⁵ In addition, police officers cannot have a second job as security officers, while police officers dismissed from their posts for corruption are not permitted to work for PSCs.

³²⁰ Article 3, Paragraph 2, Law No. 9343.

³²¹ Articles 4 and 5 of Law no. 8770, ‘On the Guarding and Physical Security Service’, 19 April 2001, explain licensing requirements, including the geographical constraints imposed upon category A licence holders, as they can only operate within the district for which they hold a licence. PSC holding category A+B, B and C licences are authorised to operate nationwide.

³²² Article 2, Paragraph 3, Law no. 8770.

³²³ Article 7 of Law no. 8770 specifies that the PSC must be registered with the General Directorate of State Police; Article 14, Paragraph 2 states that the technical director of PSC must be registered with the General Directorate of Police; and article 15, Paragraph 2 specifies that PSC employees must be registered with the Directorate of Police at the District level.

³²⁴ Article 2, Paragraph 2, Law no. 8770.

³²⁵ Article 14, Paragraph 1c of Law no. 8770 covers the technical director and Article 15, Paragraph 1c covers employees of PSC.

In order to protect the local industry from foreign competition, the law stipulates that international PSCs may only enter the Albanian market in co-operation with an Albanian firm or Albanian individuals.³²⁶ A second restriction places strict limits on the number of staff each company may employ. This is unique to the South East European region and intended to protect the dominant position of the public security sector against private competition – PSCs may employ no more than five per cent of the total number of police in the district in which they are licensed to operate.³²⁷ Other legal requirements include a provision that private security guards receive a minimum of 15 days of training (which is to be provided by the Technical Director of the company) before passing an examination which the state police administer. Employees are also required to undertake five-day refresher courses every year.³²⁸

The above laws provide the following legal sanctions: companies may be fined between €800 and €1800 for legal breaches, and Technical Directors may themselves be fined anywhere between €150 and €400 for transgressions.

4.6 Civilian SALW possession legislation

Civilian weapons possession is regulated primarily by Law No. 7566, “On weapons” (25 May 1992). Law No. 7566, “On weapons”, states that civilians can only possess weapons classified as hunting weapons,³²⁹ with even sporting weapons remaining the property of the state. However, there are a number of exceptions to this rule. For example, the following have the right to carry a firearm, which can only be issued to them by the MOI:

- Members of Parliament
- Members of the Council of Ministers and other people equal to them
- Leaders of Political Parties
- The Head of the Constitutional Court
- The Head of the General Investigation Office and their deputies
- The heads of certain administrative units of local government administrative units
- Magistrates
- Judicial executors
- Prosecutors
- State investigators
- The drivers of MPs, political party leaders, the Heads of Constitutional Court and General Investigation Office.³³⁰

In addition, MOI can also grant permission and equip private security guards with firearms and train staff for passenger and cargo trains.³³¹ Two Council of Ministers Decisions, enacted in accordance with Law No. 8388 ‘On SALW collection’ (5 August 1998), extended the number of categories for legal possession to people living in border areas and businessmen with capital over 50 million Leke (about \$500,000).³³² The rationale behind permitting those living in border areas to possess firearms legally was reportedly that they were expected to act as ‘civilian border guards’ following the collapse of the state in 1997.³³³ Also, in contrast to the categories entitled to carry a

³²⁶ Article 2, Paragraph 1, Law no. 8770.

³²⁷ Article 11, Paragraph 2, Law no. 8770, ‘On the Guarding and Physical Security Service’, 19 April 2001.

³²⁸ Article 16 explains training requirements. The training provided by the technical director should describe legislation and regulations, PSC responsibilities and duties under the law, the use of weapons, the use of telecommunication equipment, basic first aid and how to extinguish a fire. Technical Directors are expected to have graduated from military or police academies, and have between five and ten years of police or military experience.

³²⁹ From Decree No. 195, “On the promulgation of the Law No. 7566 ‘On weapons’”, 25 September 1992.

³³⁰ Article 5 of Decree No. 195, “On the promulgation of the Law No. 7566 ‘On weapons’”, 25 September 1992.

³³¹ Article 7 of Decree No. 195, “On the promulgation of the Law No. 7566 ‘On weapons’”, 25 September 1992. Article 9 states that they must be over 22, neither insane nor physically impaired, and have no criminal record. Article 7 also states that MOI can also grant permission and equip with firearms the film studio “Albafilm”, the public broadcasting, the theatre troupes, the national and local museums, although Article 8 states that these firearms must be ‘ineffective’.

³³² COM Decision No. 53, “For the definition of border areas, types of weapons, number of ammunition, the criteria for granting licences for legal weapons and the respective tariffs”, 4 February 1999; COM Decision No. 56, “For the granting of licences for legal weapons for the heads and partners of commercial companies”, 4 February 1999.

³³³ Interview, MOPO official, 15 April 2005.

firearm listed above, the two categories specified in the 1998 SALW collection law were permitted to register weapons that had not been 'directly' supplied to them by the then MOPO, but which had most probably been looted in 1997. This provision was not carried over into the 2003 Law on SALW collection, and we were therefore informed that businessmen can no longer register firearms for self-protection.³³⁴

However, a chief inspector from Fier stated that businessmen can still apply for a licence for a pistol. It is clear however, that those businessmen who registered weapons in 1998 have not been asked to return their weapons and licences. Although the applications of those seeking to register weapons in accordance with the 1998 SALW collection law were assessed, we were not told of any cases of denial. Therefore, one of the most interesting features of the fieldwork carried out in the regions of Albania is that there were a variety of opinions about who has the legal right to possess a weapon. For example, according to Director of Kukës regional police, Ylli Tafilli, two types of people have a right to register a weapon: businessmen and people living in border areas.³³⁵ Yet Shkelqim Pepkola, chief of the police commissariat in Kukës, stated that since 1997 it has only been possible to register hunting weapons.³³⁶ In Kukës, police stated that they were in the process of collecting weapons that had been registered between 2001 and 2003, as this has been ordered by the MOI.³³⁷ No other interviewees mentioned this order to us. Therefore, confusion no doubt stems from the uncertainty over whether the 1998 law on SALW collection still applies.

A new draft law would allow all businessmen with 50,000 Lek, or owners of more than fifty animals to apply for a weapon. This follows a recommendation from the police department, since it is believed that such individuals already have weapons.³³⁸

Police weapons are regulated under the 'Law for State Policy'.³³⁹

The present system for issuing weapons licences to civilians is that the community, criminal and public order police chiefs from the area meet in a committee in the local police station to assess the application. Decisions on the granting of licences must be made within 30 days according to the law.³⁴⁰ Both the 1992 and 1998 laws require, among other things, that you obtain a declaration from your local police officer that you are not in conflict with your neighbours when you apply for a firearms licence.³⁴¹ The present registration process is not well publicised, though it was at one time on the internet.³⁴²

³³⁴ Interview, MOPO official, 25 April 2005.

³³⁵ Interview, MOPO official, 27 April 2005.

³³⁶ Interview, MOPO official, 27 April 2005.

³³⁷ Interviews, MOPO official, 27 April 2005; MoPo official, 27 April 2005.

³³⁸ Interview, MOPO official, 25 April 2005.

³³⁹ Interview, MOPO official, 25 April 2005.

³⁴⁰ Interview, MOPO official, 25 April 2005.

³⁴¹ Interview, MOPO official, 25 April 2005.

³⁴² Interview, MOPO official, 25 April 2005.