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Macedonia

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**Strengthening Intelligence Governance in the
Western Balkans**

Intelligence Governance in Macedonia

Andreja Bogdanovski

Introduction¹

Macedonia's intelligence and security services² (hereinafter "intelligence agencies") have not undergone a major overhaul since the early 1990s, although a few alterations were made shortly after the country's 1991 declaration of independence and following the armed conflict³ in 2001. This stasis stands in contrast to the threats and challenges to Macedonian national security, which have evolved considerably during the past twenty years. The latest defence and security documents identify cyber warfare, environmental hazards, weapons of mass destruction, and religious radicalisation as some of the newer risks.⁴

In response, Macedonia has recently been looking for countermeasures that can balance effectiveness in safeguarding national security with governmental accountability and a respect for democratic norms. The greatest challenge seems to be how to address the increasingly diversified set of security threats while at the same time ensuring proper oversight of the intelligence agencies. Because Macedonia is still consolidating its democracy, it often looks elsewhere for best-practice models that embrace both effectiveness and civilian governance of intelligence agencies. Since its independence in 1991, however, the country has struggled to strike a proper balance in this area.

Several intelligence-related issues, especially the use of special investigative measures⁵ and the sharing of information among intelligence agencies, have led to knotty relations among the three branches of government—executive, legislative, and judicial—as well as within the executive branch itself. Amid this contentiousness, the officials responsible for civilian control of

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² The state intelligence and security services considered in this study include the Intelligence Agency, the Directorate for Security and Counterintelligence within the Ministry of the Interior, and the Army Intelligence and Counterintelligence Unit within the Ministry of Defense.

³ This study considers the events of 2001 an "armed conflict" according to the definition devised by the Department of Peace and Conflict Research at Uppsala University: "An armed conflict is a contested incompatibility which concerns government and/or territory where the use of armed force between two parties, of which at least one is the government of a state, results in at least 25 battle-related deaths." (available at http://www.pcr.uu.se/research/ucdp/definitions/definition_of_armed_conflict/?languageld=1)

⁴ Islam Yusufi. "Security Policies in the Western Balkans." Centre for Civil Military Relations—Belgrade. (2010): 122–123.

⁵ These measures are defined in Article 146, subsection (1), of the Law on Criminal Procedure –Consolidated version [Закон за кривична постапка –пречистен текст] (Official Gazette No. 15/2005). They can be authorized either by a Investigating Judge or by the Public Prosecutor and employed in criminal investigations. In addition, the 2006 Law on Communications Interception (Article 29) provides possibility for the Ministry of Interior and the Ministry of Defense with a prior decision by a Supreme Court Judge to follow communications to a person for whom there are grounds for suspicion that he/she prepares criminal act against the state, armed forces or against the humanity and the international law. Moreover interception of communications can be also ordered in cases when there is a preparation, encouragement, organising or participating in armed attack against the Republic of Macedonia or in disabling its security system.

the intelligence agencies have generally shown a lack of political will to hold the agencies accountable for their actions.

The main purpose of this study, which covers the period 1991–2011, is to assess critically how the actors in Macedonia’s intelligence sector have performed with regard to its democratic, civilian control. The study describes the current oversight system and discusses the prospects for its reform. Finally, the study identifies critical shortcomings in the current system and makes recommendations for their amelioration.

Background

Although Macedonia managed to avoid the wars that plagued many of the former Yugoslav republics, thereby transitioning peacefully into an independent country, it nevertheless faced challenging times following the 1991 breakup of the Socialist Federal Republic of Yugoslavia. During that difficult period, the country had to redesign and rebuild its entire security architecture, including its intelligence agencies.

Several critical events influenced the direction and speed of this process. Most notably, the attempted assassination of President Kiro Gligorov in 1995 called into question how well the country’s intelligence agencies were doing their job. In the aftermath of that crisis, the Macedonian intelligence community was reorganised into two new agencies: the Intelligence Agency (IA), an independent body charged with the investigation of external threats,⁶ and the Directorate for Security and Counterintelligence (DSCI), a unit of the Ministry of the Interior (MoI) charged with the investigation of internal threats.⁷ Previously, the 1992 Law on Defence had established the Army Intelligence and Counterintelligence Unit (AICU) within the Ministry of Defence (MoD). This basic structure has remained in place ever since.

The decision to assign the responsibility for counterintelligence to DSCI (and thus place it under MoI control) was unusual. Most intelligence reform programs in Southeast Europe have chosen to position counterintelligence (and indeed most intelligence functions) within independent bodies that are accountable directly to the government and not part of any ministry.

The President of Macedonia was given a great deal of authority over IA, including the right to appoint and dismiss its Director at will. In addition, IA was required to report directly to the President and only afterward share its intelligence product with other government bodies. This

⁶ Although the Macedonian Parliament adopted the Law on the Intelligence Agency in 1995, IA didn’t begin functioning until 1997.

⁷ Before this change, intelligence and counterintelligence functions were performed by the Agency for State Security within the Ministry of the Interior.

procedure was instituted to balance power among the various arms of the executive branch, so that no single ministry would have control of intelligence. In addition, by spreading the intelligence and counterintelligence tasks among three different agencies, the creators of this system hoped to encourage the diversification of information sources.

In the early 2000s, public criticism of the Macedonian intelligence agencies erupted again—precipitated this time by the 1999 Kosovo War and the accompanying refugee crisis; the 2001 armed conflict in Macedonia;⁸ and several domestic controversies, notably the Big Ear wiretapping scandal. In addition to arguing about the intelligence agencies' effectiveness, the public questioned the value of their work to the decision-making process and the extent to which the government exercised proper oversight of the agencies. The debate revealed some serious weaknesses in the system, especially its lack of information flow and the poor quality of the information being provided. Instead of improving intelligence collection through a diversification of sources, the division of labour among the three different agencies, each operating under a different authority, had led to a polarisation of the agencies and poor cooperation among them. In 2003, an IA employee illustrated this situation with his public comment that IA and DSCI were “not in contact at all.”⁹

Certain intelligence challenges have remained constant, however, relating primarily to the professionalism of the agencies (or lack thereof). “Whatever political party comes into power, its main objective is to take full control of these bodies,” a former high-ranking AICU official observed. “It is considered to be ‘normal’ for political parties in power to use that opportunity and misuse these bodies for their personal political gain.”¹⁰ Encouraging this behaviour is the mistrust that members of the ruling coalition commonly feel toward intelligence agency employees, either because the employees have close ties to members of opposition parties or because they once served the leaders of opposition parties when those parties were in power.

Of course, such behaviour has a strongly negative effect on intelligence agency personnel. Whenever the government changes hands and new political parties take over, they turn over much of the staff and thus lose valuable knowledge gained through trainings and experience. In 2006, for example, a change in government resulted in the appointment of a new DSCI Director, who immediately dismissed the heads of all five Skopje departments, transferring them to

⁸ For a more detailed analysis of the 2001 armed conflict, see International Crisis Group: Report No. 109, *The Macedonian Question: Reform or Rebellion*, 5 April 2001. (available at <http://www.crisisgroup.org/en/regions/europe/balkans/macedonia/109-the-macedonian-question-reform-or-rebellion.aspx>)

⁹ S. K. Delevska. “Македонските разузнавачи скарани [Macedonia’s intelligence officers in a clash].” *Vest*. 18 August 2003. (available at <http://star.vest.com.mk/default.asp?id=65408&idg=4&idb=934&rubrika=Makedonija>)

¹⁰ Interview with a former high-ranking AICU official on 10 March 2011.

different police stations as inspectors.¹¹ “Instead of continuing in the work we were trained for, which is counterintelligence,” one of those dismissed complained, “we will now have to deal with crime, pickpockets, and juvenile delinquency, something that we have never done before.”¹²

This sort of mismanagement goes hand in hand with the politicised nature of directorial appointments. Since 1995, there has been a great deal of public criticism of the choices made by the various Presidents for IA Director and, to a lesser extent, the government’s choices for DSCI Director. In nearly every case, the officials appointed to lead these agencies have had a political background. Recently, for example, the DSCI Director participated in the negotiations that took place between the Internal Macedonian Revolutionary Organization—Democratic Party for Macedonian National Unity (VMRO—DPMNE¹³), which placed first in the June 2011 parliamentary elections, and the ethnically Albanian Democratic Union for Integration (DUI¹⁴) prior to their formation of a ruling coalition.¹⁵ The intrusion of party politics into the work of the intelligence agencies that follows from political affiliation at the highest levels adversely affects the quality of intelligence work while degrading the professionalism of the institutions.¹⁶

A related problem has been the misuse of intelligence agency assets by the ruling political parties for the purpose of strengthening themselves at the expense of the opposition parties. Two cases, in particular, have grabbed the attention of the media and the public. The first, the 1992 *Duvlo* (“Burrow”) scandal, involved the ruling Social Democratic Union of Macedonia (SDSM¹⁷), which was accused of using MoI equipment to wiretap its primary rival, VMRO—DPMNE.¹⁸ The second was the 2001 *Golemoto Uvo* (“Big Ear”) scandal. This time, SDSM members (now in opposition), along with some journalists and leaders of civil society organisations, were allegedly the victims of intelligence agency wiretapping and other forms of

¹¹ E. Z. “Разрешени скопските началници на УБК [Skopje’s DSCI heads discharged].” *Vreme*. 17 September 2006. (available at <http://www.vreme.com.mk/DesktopDefault.aspx?tabindex=12&tabid=1&EditionID=863&ArticleID=57378>)

¹² Z. K –D. T. “Партиски чистки во МВР на неподобните [Partisan purges at the MoI of the incompetent].” *Utrinski Vesnik*. 16 October 2006. (available at <http://star.utrinski.com.mk/?pBroj=2190&stID=77367&pR=2>)

¹³ Vnatesna Makedonska Revolucionersna Organizacija—Demokratska Partija za Makedonsko Nacionalno Edinstvo
¹⁴ Demokratska Unija za Integracijia

¹⁵ M. T. – T. P. “Мијалков и Адеми ги водат преговорите за новата влада [Mijalkov and Ademi lead the talks for new government].” *Dnevnik*. 15 June 2011. (available at <http://www.dnevnik.com.mk/default.asp?ItemID=463DB859FE3FCA4AAAB40E4F2D2BCF9E>)

¹⁶ Venco Donecev, “Чистка на партиските војници во безбедносните служби [Overhaul of the party soldiers in the intelligence agencies].” *Nova Makedonija*. 12 June 2009. (available at <http://www.novamakedonija.com.mk/NewsDetal.asp?vest=612933830155&id=9&setIzdanie=21710>)

¹⁷ Socijal Demokratski Sojuz na Makedonija

¹⁸ Stenographic notes, Macedonian Parliament. April 1993. Page 22. (available at <http://www.sobranie.mk/WBStorage/Files/56sednica7prod21april93god.pdf>)

surveillance.¹⁹ Needless to say, these two scandals highlighted the need for more efficient oversight and control of the intelligence community.

Intelligence Sector

Intelligence Agency (IA)

Following its declaration of independence, Macedonia consolidated its civilian intelligence agencies within a single institution, the MoI. This arrangement lasted until 1995, when the Law on the Intelligence Agency established IA.²⁰ The law has not been amended since, although the Constitutional Court has annulled several provisions.²¹ One such provision denied IA employees the right to protest actions of the Director in prescribing the work of IA. It was deemed unconstitutional. So was a provision that banned citizens charged with or convicted of crimes against the constitutional order or the security of Macedonia from IA employment.²²

The Law on the Intelligence Agency, which regulates the work of IA, is not very detailed. Article 2 stipulates that “IA is in charge of gathering information for the state’s security and defence as well as the state’s economic, political, and other interests.”²³ The law also makes the agency responsible for reporting its findings to the President. Other governmental institutions are permitted to receive information and analysis from IA within their areas of responsibility. Indeed, many do receive such reports on a weekly basis. With regard to other functions, however, especially IA’s interaction with other intelligence agencies, the effectiveness of the agency would benefit from a clearer legal mandate.

IA was created as an independent body, subordinated to the President. Nevertheless, there are some areas of competence that allow the Government to shape directly the work of IA. These include personnel-related approvals, as well as approval of IA methods and means.²⁴ In addition, the Government can hold the Director of IA accountable for his/her actions and has control over the agency’s budget.

Directorate for Security and Counterintelligence (DSCI)

Although its mandate and authority derive from the 1995 Law on Internal Affairs, DSCI represents organisationally a consolidation of existing MoI counterintelligence units. Since

¹⁹ U. V. “Прва пресуда за “Големото Уво”, новинарите го добија процесот за прислушкувањето [The first conviction of the ‘Big Ear’—Journalists won the case of wiretapping].” *Utrinski Vesnik*. 16 June 2007. (available at <http://www.utrinski.com.mk/?ItemID=78934BEAF767214D9A4F2E2C4CE439EF>)

²⁰ Law on the Intelligence Agency [Закон за Агенција за разузнавање]. Official Gazette No. 19/1995.

²¹ Rulings of the Constitutional Court No. 76/2000 and 211/2000.

²² IA employs more than a few veterans of the old Yugoslavian intelligence system.

²³ Law on the Intelligence Agency [Закон за Агенција за разузнавање]. Official Gazette No. 19/1995. Article 2.

²⁴ Ibid. Article 13.

1995, the Law on Internal Affairs has been amended several times, most recently in 2009.²⁵ It sets forth these areas of responsibility for DSCI:²⁶

- Counterintelligence
- Terrorism
- Activities endangering the country's democratic institutions or promoting their forceful overthrow
- Organised crime that originates within or targets the country's democratic institutions

In the course of its work, DSCI can, with the prior approval of a Investigating Judge, Public Prosecutor or the Supreme Court Judge²⁷, utilise special investigative measures such as wiretapping, secret surveillance, searches of private property, and the use of false identities. In addition, MoI has the authority to invest DSCI personnel with police powers, including the use of firearms and the authority to make arrests.²⁸

In its report for 2006, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment stated that DSCI has in several instances used unauthorised detention facilities for the purposes of its work.²⁹ This practice violates domestic legal standards as well as international human rights covenants to which Macedonia is a party. Despite persuasive testimony describing clearly the practice of torture in these facilities, DSCI has persistently rejected these allegations.

Like other state security institutions (including IA), DSCI sometimes fails to react promptly or wisely to real or perceived security threats. For example, former Prime Minister Vlado Buckovski has stated publicly that "DSCI had information about a group of eighty unknown armed people passing near Skopje,"³⁰ but this information was soon dismissed by the President's Cabinet as inaccurate. Furthermore, the lack of coordination between DSCI and IA, which rarely share information, is a flaw in the system that should be addressed.

²⁵ Law on Internal Affairs [Закон за внатрешни работи]. Official Gazette 92/09.

²⁶ Ibid. Article 16.

²⁷ Supreme Court Judge can only grant permission to communications interception for acts outlined in Article 29 Law on Communication interception. [Закон за следење на комуникации]. Official Gazette No. 121/2006

²⁸ The Directorate for Security and Counterintelligence carries out interception of communications for cases related to the security and defense of the country as outlined by the Law on communication interceptions (Art. 29 – 40). For other criminal acts, stipulated by the Law on communication interceptions (Art. 8) the communication interception measures are implemented by the Department for Organized Crime at the Ministry of Interior. Organisation for Security and Cooperation in Europe, Spillover mission to Skopje *Special Investigative Measures* (2010): 19, 22. (available at: <http://www.osce.org/skopje/78152>)

²⁹ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. *Report to the Government of the Republic of Macedonia on the visit to the Republic of Macedonia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 15 to 26 May 2006* (2008): 22. (available at: <http://www.cpt.coe.int/documents/mkd/2008-05-inf-eng.pdf>)

³⁰ Miomir Serafinovikj, "Никој не ги контролира македонските тајни служби [No one controls the Macedonian secret services]." *A1 Television*. 12 January 2006. (available at <http://www.a1.com.mk/vesti/default.aspx?VestID=56827>)

The public perception of DSCI is strongly influenced by the directorate's use of special investigative measures and police powers, frequently with problematic results. Both the Burrow and Big Ear scandals involved activities carried out by DSCI units.

Army Intelligence and Counterintelligence Unit (AICU)

Situated within MoD, AICU derives its mandate and authority from the 1992 Law on Defence,³¹ which has since been superseded by the more operationally detailed 2001 Law on Defence.³² When IA operations began in 1997, AICU's intelligence department was transferred over to the new agency, while its counterintelligence department remained within MoD. However, according to a former high-ranking AICU official, "Such a structure did not show satisfying results, and army intelligence was returned to MoD."³³

In addition to its intelligence and counterintelligence departments, AICU includes an administrative department tasked with analysis, logistics, and financing and an investigative department whose jurisdiction includes criminal activities. AICU is also authorised to intercept communications for acts targeting the Armed forces and the State (armed attack against the country or against its security system).³⁴ However the Law prescribes that the AICU can only act in the following (High Frequency- HF, Very High Frequency-VHF and Ultra High Frequency-UHF) radio waves which are specific only for defence needs. Although Macedonia's military police are subordinated to the General Staff, they also provide assistance to AICU. The Minister of Defence appoints the head of AICU, who is responsible to both the Minister and the President. When Macedonia has participated in international peacekeeping missions that have a military character, AICU has contributed personnel.

As set forth in the 2011 Law on Defence, AICU's scope of work includes:³⁵

- collecting, documenting, and analyzing intelligence data relevant to national defence
- detecting and preventing subversive activities originating with foreign intelligence agencies or other international groups (such as terrorist organisations) relevant to national defence
- protecting the armed forces
- protecting classified defence information

Cooperation Among the Intelligence Agencies

³¹ Law on Defence [Закон за одбрана]. Official Gazette No. 8/92. Article 119,

³² Law on Defence [Закон за одбрана]. Official Gazette No. 42/2011. Article 133.

³³ Interview with a former high-ranking AICU official on 10 March 2011.

³⁴ Law on Communication interception Article 29 and 30. [Закон за следење на комуникации]. Official Gazette No. 121/2006.

³⁵ Law on Defence [Закон за одбрана]. Official Gazette No. 42/2011. Article 133.

The intelligence agencies' performance during the 2001 armed conflict made apparent the insufficiency of the cooperation taking place among them. According to IA official Ljupco Stevkovski, "the armed conflict in 2001 caught the intelligence agencies completely by surprise. They functioned only partially, without any coordination, looking out only for themselves rather than the overall national security."³⁶ Stevkovski also revealed that "very often the primary users [of intelligence]—the President; the Prime Minister; and the Ministers for Defence, Internal Affairs, and Foreign Affairs—received different information."³⁷

A 2003 agreement among the three agencies tasks them to share information at weekly meetings and to deliver a unified report to Macedonia's political leadership. However, according to one IA official interviewed for this study, the weekly meetings do not evidence much cooperation: "It is always only one side that shares most of the data, while there are others that are not really willing to do so. Moreover, the data that is shared at these meetings is filtered many times before it is put on the table."³⁸

Internationally, Macedonia has entered into intelligence cooperation agreements with as many as forty countries, primarily in Europe (including all of its neighbours in Southeast Europe) but also in the Middle East and Euro Asia.³⁹ The level and manner of cooperation is determined on an agency-by-agency basis by the head of the agency and the official to whom he/she reports. Macedonia is currently taking part in the Conference for Security and Intelligence Services of Southeast Europe and is working toward full membership in the Middle European Conference (in which it now has only observer status).⁴⁰

Foreign intelligence services, especially those of the United States and the United Kingdom, have been actively assisting Macedonia in the preparation of a new law to govern all of its intelligence agencies.⁴¹ Meanwhile, DSCI has become involved with the Partnership Action Plan against Terrorism (PAP-T), in which the countries of the North Atlantic Treaty Organization (NATO) and their allies share best practices and other information relating to the fight against international terrorism.

Proposed Changes in the Security and Intelligence Sector

³⁶ "Политичките елити сеуште ги гледаат разузнавачките служби како инструмент за меѓупартишки пресметки [Political elites still see the intelligence agencies as an instrument for interparty calculations]." *Radio Slobodna Evropa*. 3 June 2007. (available at <http://www.makdenes.org/content/article/1483411.html>)

³⁷ Ibid.

³⁸ Interview with an IA official on 18 August 2011.

³⁹ Ibid.

⁴⁰ The two conferences bring together security and intelligence services for the purpose of discussing a range of issues related to common interests. The services exchange information on current conditions as well as agency structure and working methods.

⁴¹ Miomir Serafimovikj. "ЦИА помага за македонскиот закон за тајни служби [CIA helps Macedonia's law for the secret services]. *Kanal 5*. 21 September 2010. (available at <http://www.kanal5.mk/default.aspx?mId=37&egId=13&eventId=65083>)

In late 2010, the Minister of the Interior announced that the Government would soon be proposing a significant reorganisation of Macedonia's intelligence agencies.⁴² IA and DSCI would be the agencies most affected. Although the new law is still in draft form and details have not yet been made public, the Government has revealed that it will propose the merger of IA and DSCI into a single civilian intelligence and counterintelligence agency. The primary purpose of the merger, according to the Government, is to improve intelligence collecting and data sharing. Secondarily, a single, unified agency would be less expensive to operate.

The new agency would reportedly be subordinated to the Government. Thus, the President would lose the most under the new arrangement, giving up his/her control over an important aspect of the national security machinery and leaving him/her without an "independent" source of information. Nevertheless, the President has not yet come out against the proposal. On the other hand, IA employees have denounced the proposed merger in a public statement citing the agency's poor relationship with DSCI:

It is true that since last year IA has been facing incursions from DSCI and MoI that have entirely downplayed IA. It is also true that they have limited our financial resources to the bare minimum and that by these methods they want to limit the work of IA to a minimum and eventually cut it off.⁴³

Macedonia, of course, had such a unified civilian intelligence service prior to 1995, when the decision was made to divide that service's function between IA and DSCI.

Oversight and Control

Macedonia's legal system provides for several oversight bodies to control, directly or indirectly, the work of the intelligence agencies. This study examines only the external oversight bodies, because the array of different control mechanisms available to them covers comprehensively the entire range of the oversight sector. In addition, the fact that external bodies must account for their work to the public makes their examination more practicable.

This study will examine the following external oversight institutions: the Ombudsperson, Parliament, the Judiciary, the National Security Council, and the State Audit Office.

Ombudsperson

⁴² Slavica Arsova. "Две разузнавачки служби со новиот закон [Two new intelligence agencies with the new law]." *Sitel*. 29 September 2010. (available at <http://www.sitel.com.mk/dnevnik/makedonija/dve-razuznavachki-sluzbi-so-noviot-zakon>)

⁴³ "Разузнавачите се делат на цивилни и на воени [Intelligence officers are being divided into civilian and military]." *Vreme*. 24 September 2010. (available at <http://www.vreme.com.mk/DesktopDefault.aspx?tabindex=0&tabid=1&ArticleID=148938&EditionID=2128>)

The legal basis for the work of the Ombudsperson derives from Article 77 of the Macedonian Constitution, which empowers the Ombudsperson to “protect the constitutional and legal rights of the citizens when violated by bodies of the state administration and by other bodies and organisations having public mandates.”⁴⁴

Every citizen has the right to submit a complaint to the Ombudsperson—who is elected by Parliament for a term of eight years, renewable once. The Ombudsperson can also initiate investigations on his/her own authority given probable cause or the possibility that abuses may be taking place. This latter justification has particular significance with regard to the intelligence agencies because of the special investigative measures they use and the police powers that some of them possess.

In a national television interview, former DSCI Director Goran Mitevski addressed the abuse issue, stating that mistreatment happens when DSCI personnel bring suspects to police stations without the prior knowledge of the Directorate for Public Safety (the MoI department in charge of the police). Some of these suspects, he continued, are not listed in the records of detained people.⁴⁵

Despite his/her clear mandate and substantial authority, the Ombudsperson has thus far compiled a rather poor record overseeing the intelligence agencies. At least since 2008, he/she has conducted no preventive field visits.⁴⁶

Interestingly, Article 20 of the Law on the Ombudsperson defines those circumstances in which the Ombudsperson need *not* initiate an investigation—specifically, “if the complaint represents an insignificant case that, even after completion of an investigation, would not produce adequate results.”⁴⁷ In other words, the Ombudsperson has the rather arbitrary power to decide whether a particular case merits attention. If the decision is made not to pursue a complaint, the Ombudsperson must inform the complainant and provide specific reasons for the complaint’s denial. At that point, the complainant may submit an appeal to the Constitutional Court, whose jurisdiction includes infringements of human rights.⁴⁸

In terms of competencies, the Ombudsperson has the authority to compel public institutions to provide in a timely manner information and detailed explanations regarding any complaint. All

⁴⁴ Constitution of the Republic of Macedonia [Устав на Република Македонија]. Article 77. (available at <http://sobranie.mk/?ItemID=A431BEE83F63594B8FE11DA66C97BEAF>)

⁴⁵ Katerina Geteva. “Новите разузнавачи ќе добијат полициски овластувања [New intelligence officers will receive police authorizations].” A1 National TV Station, 28 September 2010.

⁴⁶ Information from the Ombudsperson of the Republic of Macedonia, obtained using the right to access information of public character. Methodological note: The information obtained does not cover the period prior to 2008.

⁴⁷ Law on the Ombudsman [Закон за народниот правобранител]. Official Gazette No. 60/2003. Article 20. (available at <http://www.ombudsman.mk/default.aspx?cId=100&Lan=EN>)

⁴⁸ Rules of Procedures of the Constitutional Court of Macedonia. Article 51.

state officials (including the heads of IA, DSCI, and AICU) must comply whether or not the information requested is classified. However, the data available (for 2008–2011) shows that the Ombudsperson has not requested access to any classified information regarding the work of the intelligence agencies.

Once the Ombudsperson determines that there has been a violation, he/she is entitled to:

- suggest ways in which to remove the obstacle(s) found
- initiate disciplinary proceedings
- request that the Public Prosecutor initiate a criminal investigation

State institutions must report back to the Ombudsperson regarding implementation of the Ombudsperson's recommendations. If they fail to do so, the Ombudsperson can report their noncompliance to the Government and Parliament.

The Ombudsperson reports to Parliament annually on his/her work, submitting a publicly available report and presenting it during a plenary session of Parliament attended by representatives of the Government. The annual reports of the Ombudsperson show almost no involvement with the work of the intelligence agencies. To date, the Ombudsperson has only once taken action relating to the world of the intelligence agencies. In 2000, the Ombudsperson began actively recommending that Parliament amend legal provisions slowing down the process by which applicants for citizenship could obtain information about their qualification for citizenship. (DSCI plays an essential role in this process, assessing whether applicants pose a threat to the country's national security.) In 2004, Parliament amended the citizenship law in accordance with the Ombudsperson's recommendation.

One reason for this lack of activity with regard to the intelligence services may be the public's generally low awareness of the Ombudsperson's role. Another might be that as long as the use of special investigative measures is kept secret from the target of those measures, the target lacks the awareness to complain. A third reason might be that some of the complaints involving DSCI, instead of being made to the Ombudsperson, are being made to the Sector for Internal Control and Professional Standards, which is an internal control mechanism within MoI. Nonetheless, there does appear to be a lack of will on the part of the Ombudsperson to operate proactively with regard to the intelligence agencies.

Parliament

Like the Ombudsperson, Parliament has performed less than impressively in its oversight of the intelligence agencies. The necessary legal structures have been created, but the record shows

that no real oversight has taken place. Two key elements appear to be lacking among the members of Parliament (MPs): expertise and political will.

Two parliamentary committees are responsible for overseeing directly the work of the intelligence agencies:

- The Committee for Supervising the Work of the Intelligence Agency and the Directorate for Security and Counterintelligence (CSWIADSCI)
- The Committee for Supervision of the Application of Communication Interception Techniques by the Ministry of the Interior and Ministry of Defence (CSACITMIMD)

CSWIADSCI was established in 1995 as part of the reforms that created IA and DSCI. Its specific mandate is to monitor whether these two agencies are respecting the law as well as the rights and freedoms of citizens, companies, and other legal entities. The committee is also responsible for assessing whether the agencies are being properly supplied with personnel and technical facilities.⁴⁹ CSWIADSCI consists of nine members plus eight alternates who substitute for missing members at committee meetings. The committee has no advisors, no independent budget, and just one staff person to attend to its administrative needs. It carries out its work in closed session because of the sensitive nature of its discussions, which involve classified information.

CSACITMIMD, on the other hand, is of fairly recent origin. Composed of five members and four alternates, it was created by Parliament in the 2006 Law on Communication Interception to provide an external check on the use of electronic surveillance by MoI and MoD.⁵⁰ (Prior to 2008, this responsibility fell to CSWIADSCI.) In 2010, Parliament made further changes, amending the Law on Electronic Communication to compel internet service providers and mobile phone companies to install technology giving the intelligence agencies the capability to intercept electronic communications.⁵¹

Both committees enjoy full access to classified information and are empowered to conduct field visits to the intelligence agencies they oversee. A requirement that the chairs of the committees belong to opposition parties contributes greatly to their independence.⁵²

⁴⁹ Information on CSWIADSCI can be found at <http://sobranie.mk/en/default-en.asp?ItemID=07129CC529687F479390CEB4A34DDEE1>.

⁵⁰ Law on Communication interception [Закон за следење на комуникации]. Official Gazette No. 121/2006.

⁵¹ Amended Law on Electronic Communication [Измена и дополнување на законот за електронски комуникации]. Official Gazette No. 83/2010.

⁵² Apart from the President of the Committee coming from the opposition parties the majority of the members of the CSACITMIMD also from the opposition block.

Members of Parliament's Oversight Performance

MPs receive no intelligence oversight training, resulting in a lack of expertise that greatly hampers the ability of CSWIADSCI and CSACITMIMD to conduct intelligence oversight. According to one former AICU official, “there is no methodology by which the MPs perform their oversight, thus we have only a de jure and not a de facto committee.”⁵³ This official can recall no instance during his work experience when a parliamentary committee performed a field visit or any other act of control. Speaking about the capacity of MPs to carry out their oversight responsibilities, the official observed that even if MPs do make field visits, they lack the necessary knowledge to understand or act on what they observe.⁵⁴ Esad Rahikj, who chaired CSWIADSCI between 2006 and 2008, confirmed this judgment, noting that his one visit to IA “had nothing to do with real control and oversight but was just a pro forma visit.”⁵⁵

Both officials agree that there exists a systemic deficiency in the current parliamentary oversight model, especially with regard to field visits. Current law does not prescribe whether these need to be announced or approved by agency authorities. The cumbersome process by which announced visits are at present arranged significantly reduces their usefulness. According to the former AICU official, “The period [of time necessary to arrange a visit] is so long that the directors of the departments can easily manipulate the MPs.”⁵⁶

Relations between intelligence agency staff and MPs are mixed. On the one hand, according to the former AICU official, those involved “do not have the option to opt out from cooperation because it is embedded into a legal framework.”⁵⁷ On the other hand, the agencies sometimes act as though they can “opt out.” After Rahikj’s visit to IA, for example, he several times attempted to arrange a similar visit to DSCI. Each time, DSCI refused his request.⁵⁸

Recently, Parliament has taken some steps to address the lack of expertise among its members. Most notably, it has established a new Research Centre to provide MPs with background knowledge and up-to-date information. The Research Centre was supposed to become operational in early 2010. As of this writing, however, it has not yet begun to function.

Reporting

Reporting requirements to the parliamentary committees vary by intelligence agency. DSCI is required to deliver a report of its work to CSWIADSCI once a year and to update the committee

⁵³ Interview with a former high-ranking AICU official on 10 March 2011.

⁵⁴ Ibid.

⁵⁵ Interview with former CSWIADSCI chair Esad Rahikj.

⁵⁶ Interview with a former high-ranking AICU official on 10 March 2011.

⁵⁷ Ibid.

⁵⁸ Interview with former CSWIADSCI chair Esad Rahikj.

on the implementation of its action plan twice a year.⁵⁹ IA is merely required to present an annual report to CSWIADSCI.

These requirements are observed more in letter than in spirit. For example, both DSCI and IA waited until 29 December 2010, just two days before the end of the year, to deliver their annual reports for 2009. Moreover, the Director of DSCI has never attended a CSWIADSCI session, always sending the deputy director in his place.

Vetting Process

Before beginning their committee service, members of CSWIADSCI and CSACITMIMD must first undergo a vetting process in order to obtain a state secret-level security clearance. This process is problematic, however, because it makes the service of committee members dependent on the approval of nonparliamentary authorities. For example, it is the Directorate for Classified Information, a department of the Government, that ultimately decides whether or not to issue a security clearance, and the directorate outsources a key aspect of this determination—identifying the “security risk”—to DSCI. Even if DSCI doesn’t explicitly reject an MP, it can draw out the process so long that the delay has the same practical effect as a denial.

As a result, committee members often have a difficult time obtaining the necessary security clearance. During the most recent Parliament (2008–2011), it took seven months for the CSACITMIMD chair to get his clearance, and some committee members never received theirs.⁶⁰ Yet according to Parliament’s official communications, there has never been a problem; MPs have always obtained their security clearances in a timely manner.⁶¹ Anecdotal evidence suggests that the normal timeframe for obtaining a highest-level security clearance is three to twelve months.

Parliament’s Finance and Budget Committee

The budgets for the intelligence agencies are approved by Parliament as part of the normal budgetary process—that is, they pass through the Finance and Budget Committee.⁶² In this process, CSWIADSCI and CSACITMIMD have no formal role.⁶³ Nevertheless as MPs, the members of these committees are entitled to attend the working sessions of the Finance and Budget Committee and to take part in its discussions. They can also, during their own meetings, question the intelligence agencies about their budget requests. As a matter of practice, however,

⁵⁹ Law on Internal Affairs [Закон за внатрешни работи]. Official Gazette No. 92/09. Article 41.

⁶⁰ N.Selmani. ‘Тајните служби го владеат парламентот [Secret services rule Parliament].’ *Vest*. (available at <http://www.vest.com.mk/?ItemID=8C12D57DEDDEB54BA13FB80AFC225CEA>)

⁶¹ Information from the Parliament of the Republic of Macedonia, obtained using the right to access information of public character.

⁶² Because intelligence agency budgets contain classified information, members of the Finances and Budget Committee must also acquire state secret-level security clearances.

⁶³ Friedrich Ebert Stiftung and the Centre for Research and Policy Making. *Водич во буџети [Introduction to budgets]*. 64.

such questioning rarely takes place. First and foremost, many MPs lack the security clearances necessary to ask the right questions and hear the answers. Second, because there is a practice that committee decisions require a consensus, members of the ruling coalition can easily obstruct awkward questioning by voting against it or by failing to attend a committee session and thus denying the other members a quorum.

It is frequently the case that members of CSWIADSCI and CSACITMIMD are also members of the Finance and Budget Committee, which offers them another opportunity to initiate a debate over the intelligence agency budgets. Indeed, according to Esad Rahikj, there exists a strong bureaucratic tradition of collaboration between the oversight committees and the Finance and Budget Committee.⁶⁴

Parliament's Plenary Sessions

Two other opportunities exist for MPs, whether or not they belong to CSWIADSCI and CSACITMIMD, to scrutinise the work of the intelligence agencies. Both occur during plenary sessions of Parliament. The first is parliamentary questioning. Once per month, MPs may pose questions to Government ministers related to their work and performance. A good number of the questions posed to the Minister of the Interior concern DSCI, especially its Director (because of his high profile as a member of the executive committee of the ruling party). Typically, the questions are posed by members of the opposition, while members of the ruling coalition observe party discipline and support the work of the ministers.

The second opportunity is the interpellation procedure that members of the opposition parties sometimes use to make up for a lack of scrutiny at the committee level. During the past decade, the Minister of the Interior and the Minister of Defence have been confronted with interpellation several times. So far, neither has been removed from office on this basis.

MPs also have the constitutionally guaranteed right to question the President of the country about matters of governance that are within his/her competence, such as control of IA. In comparison with the scrutiny of DSCI, however, this mechanism is used much less regularly.

Judiciary

Although the judiciary has certain other obligations with regard to IA and DSCI, its primary role in intelligence oversight is to evaluate MoI's and MoD's requests for the use of special investigative measures including communications interception. In order to use any of these measures (enumerated in the Law on Criminal Procedure and the Law on Communication

⁶⁴ Interview with former CSWIADSCI chair Esad Rahikj.

Interception),⁶⁵ The MoI and MoD must first obtain approval from a investigating Judge, Public Prosecutor and Supreme Court Judge.⁶⁶

Once the use of the special investigative measures has been completed⁶⁷, MoI must deliver a report to the Public Prosecutor/Investigating Judge that includes:

- the start and end dates for the use of the special measures
- the identities of the people targeted
- a description of the methods employed and the end results

It has been suggested that investigating Judges may not be in the best position to rule on MoI requests for the use of special investigative measures because most lack a profound understanding of the subject.⁶⁸

National Security Council

The members of Macedonia's National Security Council (NSC) include the President of the Republic, who chairs the body; the Minister of Defence; the Minister of Foreign Affairs; the Minister of the Interior; the President of Parliament; the President of the Government; and three other members appointed by the President of the Republic.

In general, NSC plays a purely advisory role and meets only in the event of a grave threat to the security of the country—that is, only very rarely. The body has no direct authority over the intelligence agencies, but it can initiate changes in security policy that indirectly affect the agencies.

State Audit Office

Given the large amount of money being spent—DSCI's budget increased by twenty-five million Euros in 2009—meaningful oversight of the intelligence agencies must include thorough scrutiny of agency finances. The legal basis for this scrutiny can be found in the Law on State

⁶⁵ Law on Criminal Procedure –Consolidated version [Закон за кривична постапка – Пречистен текст]. Official Gazette No. Official Gazette No. 15/2005. Law on Communication interception. [Закон за следење на комуникации]. Official Gazette No. 121/2006

⁶⁶ According to Article 148 subsection 1 of the Law on Criminal Procedure –Consolidated version [Закон за кривична постапка –Пречистен текст] (Official Gazette No. 15/2005), the Public Prosecutor and Investigative Judge can approve the use of the special investigative measures only in pre-trial proceedings, while during investigation the use of special investigative measures can be employed only by a decision of a Investigative Judge.

⁶⁷ Refering to the Law on Criminal Procedure –Consolidated version [Закон за кривична постапка – Пречистен текст]. Official Gazette No. Official Gazette No. 15/2005.

⁶⁸ Pandorce Dimitrovska. "Експертите против злоупотреба на посебните истражни мерки [Experts against the abuse of special investigative measures]." *Alfa TV*. 25 November 2008. (available at <http://vesti.alfa.mk/default.aspx?eventid=2583&mid=44>)

Audit, which subjects state institutions—including IA, MoI, and MoD—to financial inspection.⁶⁹ The audits authorised by the Law on State Audit incorporate:⁷⁰

- analysis of documentation bearing on whether an institution's financial reports accurately represent its financial situation
- investigation and evaluation of the institution's internal control reports
- scrutiny of the expenditure of public funds with regard to the lawfulness of the spending
- evaluation of the measures taken in response to State Audit Office recommendations

The Law on State Audit grants the State Audit Office (SAO) access to all of the information required for the completion of its audit, including access to the premises of the institution being audited and to all of its documentation whether or not that documentation is classified. Auditors can also request detailed explanations from the staff of the institution being audited. Indeed, the law prohibits the institution being audited from restricting the work of the auditors in any way.⁷¹

SAO delivers annual reports of its findings to Parliament and to the Finance and Budget Committee. These reports include the audits themselves. SAO also presents to Parliament annually a list of the institutions to be audited in the coming year.

SAO does not perform separate audits of DSCI and AICU. Rather, it audits the ministries of which these agencies are a part (MoI and MoD, respectively). Since 2001, SAO has performed one audit of IA, three audits of MoI, and two of MoD. The IA audit showed no misuse of funds and no violations of the Law on Public Procurement or other spending irregularities. In contrast, the MoI and MoD audits revealed serious deficiencies, including violations of public procurement regulations and gaps in internal payment controls.

When SAO identifies improper spending or other violations of the law, it must issue recommendations for the correction of the shortcomings. The audited institution then has ninety days in which to inform SAO of the measures being taken in accordance with the SAO recommendations. A year later, SAO performs a second audit to determine whether the recommendations have been properly implemented. In the meantime, SAO must inform the

⁶⁹ Law on State Audit [закон за државна ревизија]. Official Gazette No. 66/2010. Article 2.

⁷⁰ Ibid. Article 19.

⁷¹ Ibid. Article 25.

Public Prosecutor, among other authorities, if any of the irregularities it has discovered represent criminal acts.⁷²

Media and Civil Society Organisations

Macedonia's intelligence agencies have received a great deal of media attention—so much so that at times the coverage has played a significant role in shaping the development of the security sector. One such case was the 2001 Big Ear scandal. Journalists were one of the targeted groups of people being followed by the intelligence agencies. In response, they pressed for the erstwhile Minister of the Interior and one of his chief deputies to face criminal charges. A trial began, but it was halted when President Boris Trajkovski granted the officials amnesty. The journalists regrouped and filed a different case against the state. Seven years later, a verdict was finally reached confirming that MoI, acting in concert with a Macedonian telecommunications company, had illegally wiretapped the communications of seventeen journalists, all of whom received financial compensation from the state.

In recent years, the relationship between the media and the intelligence agencies has become even worse. According to Katerina Geteva, one of the few Macedonian journalists covering the intelligence agencies, "IA is the least open to the media among the three intelligence agencies."⁷³ Because of her proactive approach to reporting, Geteva has been banned from communicating with IA employees.⁷⁴ DSCI, in contrast, seems to be slightly more transparent in its media strategy, communicating with journalists by itself and through MoI's Public Relations Officer. On the other hand, since the current DSCI Director took office in 2006), he has granted no interviews, despite great public interest in DSCI's work.

The relationship between the media and the parliamentary oversight committees has been much more satisfactory. The primary reason for this seems to be that the chairs of CSWIADSCI and CSACITMIMD must belong to opposition parties. Thus, they are usually eager to have the shortcomings of the Government revealed to the public. Such is not always the case with intelligence oversight bodies. For example, as Geteva has explained, "The Ombudsperson has never displayed or promoted its competencies over the work of the intelligence agencies."⁷⁵

Apart from the media, many civil society actors seem reluctant to become engaged in intelligence oversight. Organisations such as Analytica and the Helsinki Committee for Human Rights have been engaged in assessing the security sector reforms (including intelligence

⁷² The SAO submitted a case to the Public Prosecutor's Office as a result of some of the irregularities found in the SAO's 2006 Final Audit Report for the Ministry of Defense.

⁷³ Interview with security-sector journalist Katerina Geteva on 22 August 2011

⁷⁴ Ibid.

⁷⁵ Ibid.

agencies) and commented effectively on proposed legislation. High-profile media reports, and citizen initiatives have resulted in some provisions of the Law on the Intelligence Agency being declared unconstitutional;⁷⁶ but these are the exceptions, not the rule.

Conclusion

The intelligence oversight bodies in Macedonia are showing worrisome signs. Although the legal basis for their work is generally sound, some legislation, such as the Law on the Intelligence Agency, does need revision. A better solution would be to enact a single legal framework covering all of the oversight bodies—thus bringing together currently diffused tasks and creating an integrated, comprehensive oversight structure.

Beyond that, the members of the oversight bodies seem to lack the political will to exercise the authorities they do have under current law. The media and other civil society actors represent an alternative check on the intelligence agencies, but more needs to be done with regard to building up their knowledge and capabilities.

Finally, whatever else the Government’s draft intelligence law proposes, it should certainly include more effective oversight tools to balance the new concentration of power in the Ministry of the Interior.

Strengthening Oversight and Control

- The Government’s proposal for a restructuring of the intelligence agencies should be opened up to public debate. All relevant stakeholders, including external experts and civil society organisations, should be involved.
- A separate law on intelligence oversight should be enacted that details a coordinated approach to overseeing the Intelligence Agency, Directorate for Security and Counter Intelligence, and Army Intelligence and Counterintelligence Unit.
- In making appointments to parliamentary oversight committees, the political parties should confirm that the Members of Parliament being appointed have an interest in the work of the committee as well as a legal background.
- Members of parliamentary oversight committees should undergo specialised training in such areas as budgetary scrutiny and intelligence agency functioning.
- Parliament should hire additional staff, including advisors, to support the work of the oversight committees.

⁷⁶ Rulings of the Constitutional Court No. 76/2000 and 211/2000.

- Parliament's new Research Centre should begin functioning without further delay.
- Intelligence Agency and Directorate for Security and Counter Intelligence officials should undergo training and attend seminars to become more familiar with the concept of oversight and its value to a democratic society.
- Investigating Judges should undergo specialised training regarding the authorisation of special investigative measures.

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2. Interview with a former high ranking official from the Army Intelligence and Counterintelligence Unit – Ministry of Defense. Interview conducted on: 10 March 2011
3. Interview with an Official from the Intelligence Agencies in Macedonia. Conducted on 18 August 2011
4. Interview with Katerina Geteva (Journalist covering security related topics). Conducted on 22 August 2011

Questioners

For the purpose of the study more than 75 questions were sent to state institutions by utilizing the Law on free access to public information. Questions were sent to the following state institutions: Ministry of Interior, Ministry of Defense, Intelligence Agency, Ombudsperson, State Audit Office and the Parliament.