



GENEVA CENTRE FOR THE DEMOCRATIC CONTROL OF
ARMED FORCES (DCAF)

CONFERENCE PAPER

Parliamentary Overview of Intelligence Services in Romania

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Paper presented at the Workshop on "Democratic and Parliamentary Oversight of Intelligence Services", held in Geneva 3rd-5th October 2002, organized by the Working Group on the Parliamentary Control of Armed Forces (PCAF) and the Working Group On Democratic Control Of Internal Security Services (DCOIS) of the Geneva Centre for the Democratic Control of Armed Forces.

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Parliamentary Overview of Intelligence Services in Romania

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The following analysis focuses on a subject of considerable importance, as it refers to the case of a country that has overthrown only 13 years ago one of the most repressive regimes of the Communist dictatorships of Eastern Europe. Thus, the transition to the rule of law and parliamentary democracy has had and still has certain characteristics that have been carefully observed by foreign political analysts, as well as by the citizens of Romania.

As a Member of the Parliament of Romania ever since the first democratic elections of 1990 to the present date, I have had the opportunity to exercise from the start, as Member of the Committee for Defence, Public Order and National Security, as well as in my position as Member of the Committee for exerting parliamentary scrutiny on the Romanian Intelligence Service, an extremely interesting and challenging activity. Two fundamental aspects should be taken in consideration: the correct, efficient and law-abiding way that the intelligence services carry out their activities, and, on the other hand, ensuring the protection of the rights of the citizens as stipulated in the Constitution of Romania and the laws of the country. In the case of intelligence services, it is necessary to eliminate any possibility of having anything illegal (but difficult to prove) occurring, and at the same time to earn the confidence of citizens that their rights have not been violated.

Intelligence services in Romania. Organisation, area of responsibilities, legal basis, subordination.

The intelligence services in Romania are part of the system of institutions with responsibilities in the sphere of national security. Their legal basis resides in the Constitution and the Law of national security no. 51/1991.

The state institution that co-ordinates the activity of the entire system of national security, including the intelligence services, is the CSAT (Consiliul Suprem de Apărare a Tarii - Supreme Council for the Defence of the Country - an institution presided by the President of Romania. Decisions referring to policies regarding the gathering of information are taken within the CSAT, who also regulates the exchange of information between various intelligence services and structures and the way information is being used. CSAT includes the President of Romania, the Prime Minister, the directors of the intelligence services, the ministers in charge of ministries with competencies in the field of defence, public order and national security, as well as the counsellor on security matters of the President of Romania. CSAT presents a yearly report in Parliament on its activity.

There are two groups of intelligence services, according to the organisational criteria and level of subordination, as well as the legal framework of activity:

1. Services within the sphere of the Government, included in the organisational charts of certain ministries. Their legal basis resides in the law on the organisation and functioning of the respective ministry. Parliamentary scrutiny on these services is accomplished according to the provisions of the Constitution with reference to the relations between Government and Parliament, with the ministers accountable before Parliament. Parliamentary scrutiny is currently carried out through the Committees for Defence, Public Order and National Security of the Senate and the Chamber of Deputies, the two chambers of the Parliament. Interpellation is an instrument available to every parliamentarian.

1.1. General Department of Defence Intelligence

It is the specialised structure of the Ministry of National Defence, responsible for obtaining, processing, verifying, stocking and use of information and data regarding the external and internal military and non-military risk factors and threats that can affect national security, the elaboration of the concept regarding the security of information and cryptographic activity and ensuring the geographical information necessary to the army.

The activity of gathering information and military counter-espionage is carried out within this structure.

As far as military intelligence is concerned, compatibility with NATO structures is already in a very advanced stage.

1.2. General Department of Intelligence and Internal Protection of the Ministry of Interior

The main competencies of this service, as mentioned in its name, consist of gathering information from the field of criminal activities, using them in the current activities of the structures subordinated to the Ministry of Interior (Police, Border Police, Gendermerie etc), providing necessary information in the process of criminal prosecution, as well as organisation of intelligence protection of the personnel of the Ministry of Interior.

1.3. The Independent Service for Protection and Anti-Corruption of the Ministry of Justice

Its object of activity is information gathering in the system of the judiciary and the penitentiaries, as well as combating corruption in this field. With the growth and diversification of the types of corruption activities, the importance of this structure has grown, and the need to fight against this scourge demanded the Government's heightened preoccupation for perfecting the means for combating it.

2. Intelligence services that are not subordinated to the Executive, subordinated to the Supreme Council for the Defence of the Country, (CSAT) carrying out their activities on the basis of specific laws regarding their creation and activities.

2.1. The Romanian Intelligence Service (SRI)

It is the most important intelligence service with competencies on the territory of Romania. The Romanian Intelligence Service (SRI) organises and carries out activities in view of gathering, verifying and processing the information necessary for discovering, preventing and countering actions which may constitute, according to the law, threats to the national security of Romania.

Its competencies include anti-terrorist protection and intervention, as well as management of problems related to the protection of classified information, in fields in which the law regarding the protection of classified information confers such competencies to it.

SRI is authorised to possess and to use technical means for obtaining information involving a temporary limitation in exercising certain rights (intercepting communications).

The activity of SRI is subjected to parliamentary control by means of a special parliamentary Committee created for this purpose, with clearly defined competencies. Yearly, or upon a decision of Parliament, the Director of SRI presents reports before Parliament on the way SRI is carrying out its mission. The Director of SRI is designated by Parliament, upon the proposal of the President of Romania.

2.2. The Foreign Intelligence Service (SIE)

It is the state institution specialised in the field of external intelligence with relevance to national security. Its activity is organised and co-ordinated by the Supreme Council for the Defence of the Country (CSAT). The Director of SIE is nominated by CSAT upon the proposal of the President of Romania. This body fully fulfils the attributes of a secret service, as the law on its creation and functioning stipulates that: "The activity of SIE has the characteristics of a state secret". A large part of its personnel carries out its activities under cover, outside of the country.

Parliamentary control is exerted through a joint parliamentary committee of the Senate and the Chamber of Deputies with rigorous and clearly defined competencies and working procedures. In this case, parliamentary scrutiny has a limited character; the law on its creation and functioning does not stipulate obligations of the Director of SIE as in the case of the other services.

2.3. The intelligence structures of the Service for Protection and Guard (SPP)

According to the law on its creation and functioning, the Service for Protection and Guard (SPP) is specialised in ensuring the protection of Romanian and foreign dignitaries within the period of their stay in Romania, as well as ensuring the protection of the official buildings and residences of the dignitaries, in accordance with the decisions of the Supreme Council for the Defence of the Country (CSAT). In view of exercising its competence, the Service for Protection and Guard also carries out specific intelligence activities relevant to its specific field of responsibility. Mention needs to be made of the legal provision that stipulates technical operations for gathering information through special means is to be carried out by SRI. The activity

of the Service for Protection and Guard is organised and co-ordinated by the Supreme Council for the Defence of Romania (CSAT) and it is scrutinised by Parliament through the Committee for Defence, Public Order and National Security. The Director of SPP is designated by the President of Romania, upon the proposal of CSAT.

An important mention has to be made: the above-mentioned intelligence services are military structures and, according to the law, they are part of the system of national defence. The only exception is the General Department for Intelligence and Internal Protection of the Ministry of Interior which, beginning with August 24th 2002 (with the entry into force of the law on the status of the policeman), has been demilitarised, remaining within the system of national defence.

Parliamentary oversight on intelligence services.

The above-presented facts may give an image on the dimension, efficiency and the use of parliamentary scrutiny on the intelligence services in conformity with legal provisions in this field. It is quite evident that, in the development of the legal framework, the provisions regarding parliamentary control have undergone an upward trend, in accordance with the democratic development of the society and the rule of law in Romania. Parliamentary scrutiny is regulated by the legal framework itself on the basis of which the respective services function. Thus, the capacity of the Parliament to exercise one of its fundamental functions – namely to exercise control on the executive branch – is mirrored in the accuracy with which this is stipulated in the legislative framework.

In general, scrutinising intelligence services is within the realm of competencies of the Committees for Defence, Public Order and National Security of the Senate and Chamber of Deputies. In the case of the Romanian Intelligence Service and the Foreign Intelligence Service, additional parliamentary committees have been created for scrutinising their activity. Their competencies and activities are regulated through the laws on the creation and functioning of the respective services, as well as through decisions of Parliament. In the above-mentioned case, the legal framework regulating the activity of these committees stipulates the duties of the members of these committees with regard to the classified information they come in contact with. This guarantees the efficiency and consistency of the scrutiny and offers the scrutinised institutions the guarantee that information will not be disseminated. Parliamentary scrutiny does not mean access to information with operative value related to actions which are being carried out, and it is not a control in the administrative sense. It is limited to the confirmation whether in the course of their activity, these services have not violated the rights of citizens, stipulated in the Constitution. In this regard, mention should be made of the fact that these committees examine the complaints of persons who consider that their rights have been violated as a result of the activity of intelligence services. There is no special legal court to deal with such issues. Cases signalled in mass media also become the object of evaluations by these parliamentary committees. The press represents a particularly effective element in this field, as it transfers part of the scrutinising activity in the sphere of civil society. Parliamentary committees organise hearings of the directors or other high officials of these services, as well as visits of the members of the committees to the headquarters of these institutions and other locations belonging to them. These parliamentary committees also examine the conformity of the internal rules of procedure of the services with the respective legal provisions.

Communication between those who exercise scrutiny and those who are the object of scrutiny, based on trust and correctness, has undergone an interesting development, starting from the initial stages dominated by a certain irritation and distrust on behalf of those not accustomed to being scrutinised. The existence of trust in this relationship is particularly useful, as one should not ignore that the existence of parliamentary scrutiny implies the transfer of a part of the responsibility by the party exercising the scrutiny.

Another objective of parliamentary control, in no way less important, is related to the manner in which public funds are spent, which is an issue of great importance where institutions financed from the public budget are concerned. The Court of Audit, as the authority in this field, can only assess whether the public funds were legally spent. In the case we are studying, only parliamentary control is capable (even though with great difficulty!) to evaluate the justification of the expenditure of public money. In other words, limiting the natural tendency of these services to extend their field of activity, and to increase in this way their competencies beyond the strict limits stipulated by the law (sometimes not strict enough), is a major duty of Parliament. The need to prevent any organisational tendency of any institution to work "to its own end" (an effect of bureaucracy) is more accentuated in this field as compared to other institutions. This is due to the special nature of the intelligence services, namely the lack of transparency. Seen from the viewpoint of civil society, the issue can be seen in the following light: intelligence services have at their disposal more means for justifying their existence, than society does in proving the contrary. Striking the right balance between the two tendencies is the key to the issue.

Those involved in parliamentary scrutiny can note the tendency of the users of information to be informed from more than one source on the same issue. This meets the organisational interests of the services, which leads to overlapping and proliferation of the intelligence structures. It is a known fact that another intelligence service is more efficient than a parliamentary committee to scrutinise a service. A better knowledge of this field by the parliamentarians themselves will lead to diminishing this imbalance. Seminars such as the one that we have the honour to attend will contribute to strengthening this trend.

Developments after September 11th, 2001

The tragic events of September 11th, 2001 have triggered deep changes in the entire world security system. The main threat to freedom and democracy is terrorism and the fight against it demands absolute priority. The elements that have made possible the success of the terrorist attacks in New York and Washington, the vulnerability of the security systems and the deficiencies in the work carried out by intelligence services, and insecurity with respect to unconventional and unusual risks have led to the re-consideration of the global security system.

In Romania, the National Security Strategy presented in Parliament by the President of Romania includes new elements that come from the imperatives of the fight against terrorism, with precise duties incumbent to the intelligence services. The balance between preserving the fundamental values of democracy, on the one hand, and the need for security on the other, is undergoing modifications.

The recent efforts of the European Parliament with regard to conserving the recordings by telecommunication operators for security reasons can be regarded as only a first step. Humankind is beginning to realise that the exercise of democratic

freedoms should not endanger the existence of society, by making it more vulnerable. It seems that the idea according to which only the state, through its institutions, is responsible for the security of its citizens is overdue. There is an increasing need for the support (not only in terms of tax paying) of the citizens whose security is being protected.

ANNEX

Short list of legal provisions on intelligence services and parliamentary scrutiny

1. Constitution of Romania (1991)
2. Law on the National Security of Romania (no. 51/1991)
3. Law on the organising and functioning of the Supreme Council for the Defence of the Country (CSAT) (no. 415/2002)
4. Law on the organising and functioning of the Ministry of National Defence (no. 389/2001)
5. Law on the organising and functioning of the Ministry of Interior (no. 40/1990)
- modified by Law no. 40/2002
6. Government Decision on organising and functioning of the Ministry of Justice (no. 212/2001)
7. Law on the organising and functioning of the Romanian Intelligence Service (SRI) (no. 14/1992)
8. Decision of the Romanian Parliament on organising and functioning of the Joint Committee for Parliamentary Oversight on Romanian Intelligence Service of the Senate of the Chamber of Deputies (no. 30/1993)
9. Law on the organising and functioning of the Foreign Intelligence Service (no.1/1998)
10. Decision of the Romanian Parliament on the organising and functioning of the Special Committee for scrutinising the Foreign Intelligence Service (no.44/1998)
11. Law on organising and functioning of the Service for Protection and Guard (SPP) (no. 191/1998)
12. Government Decision on approving the National Programme for preventing corruption and the National Programme for action against corruption (no. 1065/2001)
13. Law on protection of classified information (no. 182/2002)



Established in 2000 on the initiative of the Swiss government, the Geneva Centre for the Democratic Control of Armed Forces (DCAF), encourages and supports States and non-State governed institutions in their efforts to strengthen democratic and civilian control of armed and security forces, and promotes international cooperation within this field, initially targeting the Euro-Atlantic regions.

The Centre collects information, undertakes research and engages in networking activities in order to identify problems, to establish lessons learned and to propose the best practices in the field of democratic control of armed forces and civil-military relations. The Centre provides its expertise and support to all interested parties, in particular governments, parliaments, military authorities, international organisations, non-governmental organisations, academic circles.

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