DCAF Geneva Centre for Security Sector Governance

ANALYSIS OF THE CONTENT AND PRACTICAL IMPLEMENTATION OF THE LAW ON THE NATIONAL SECURITY AGENCY AND LAW FOR COORDINATION OF THE SECURITY AND INTELLIGENCE COMMUNITY IN THE REPUBLIC OF NORTH MACEDONIA

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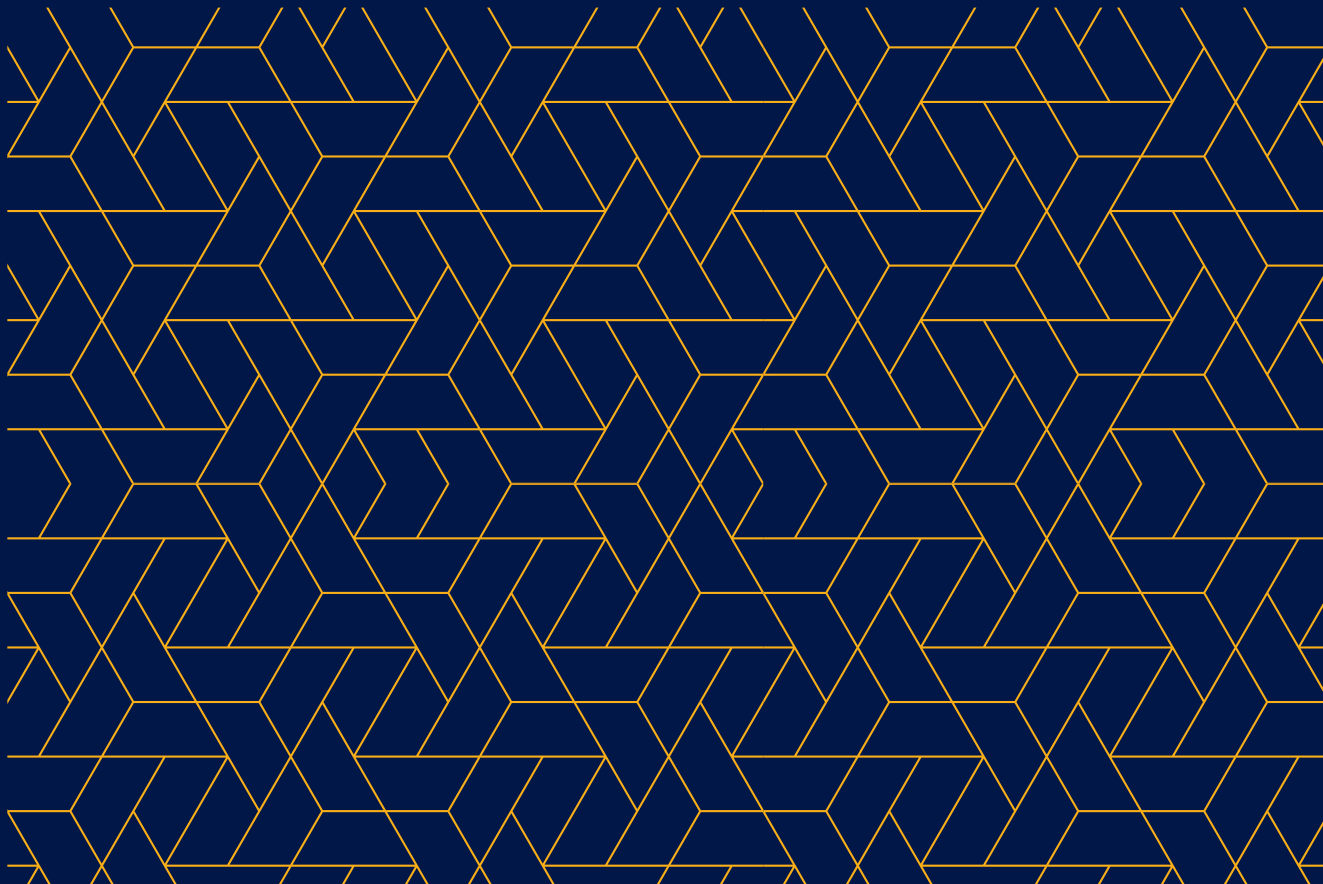

About this analysis

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The views expressed are those of the author and do not reflect the views of the institutions referred to or represented within this publication.

Note

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EXECUTIVE SUMMARY

RNM, relying on the experiences of the past, tried to build a security system that will serve as a function of protection of the constitutionally defined social system and the citizens of the country. Within the functioning of the services that were within the security system in the entire period of Macedonia's existence outside the federal SFRY and the construction of the so-called democratic system, the services have shown that they do not fit well enough into the new social trends due to the desire to always dominate the availability of all kinds of information (political, economic, demographic, social), the least of all, security information. Such developments served the governing structures, which, applying methods and means from the public and secret mechanisms, invested their efforts to stay up to date with all events in the country, first and foremost with the activities of their political opponents. As a rule, the political establishment in power abused the security-intelligence capacities while the other side, possessing knowledge about the abuses, disclosed some of them according to the political needs. This created aversion and a negative opinion of the services in that area and gave the impression of the existence of a "political police". The tendencies for RNM to keep pace with the modern trends imposed through the criteria for NATO and EU membership, also initiated a scan of the situation in the security and intelligence community, which according to several reports from external evaluators are devastating. They all talk about continuous abuses and threats to human rights and freedoms and the operation of services outside their mission and vision and legal authority, hiding under the guise of "conspiratorial nature of activities". It was realized that the situation is unsustainable and reforms of the intelligence and security community in RNM were initiated. The expectations were that we would act much more conscientiously, more realistically and more professionally in conceptualizing the legal framework of the services and harmonizing the mission, powers, competencies and subject matter of all services belonging, by the nature of the activity for which they are established, within the security community. Instead, a political decision was made to reform only one service, the former UBK in the ANB and with several so-called cosmetic procedures to establish a reform and to launch a new service. Political context was such as to lead to a replication of the Croatian model of reformed services. Several elements of the service there were neglected: experience, knowledge, cooperation with other services and building their own model, geo-strategic circumstances, internal conditions, the mentality of the citizens, the level of practice of democracy and the overall events in the past. The initial draft law based on the mentioned elements went through all stages and underwent certain changes, where the proposer respected the proposals and remarks of the community of professionals, political views and directions from the friendly EU countries. The final text again shows many omissions in terms of compliance with the Constitution of RNM and other laws governing areas that overlap with the proposed draft laws.

The most pressing problem, which was subject of the most intense interest in the past period, was the possibility for UBK to use secret methods and means, especially special investigative methods and means (with the approval of the Director, which is not possible), including secret control of communications or „wiretapping„. Information was received from political structures that the number of people being wiretapped was enormous, as evidence of such activity was published, but conversations, which are still being published as "wiretapped" conversations, are used as a tool in the "political struggle". Such

a situation initiated the need for the formation of OTA, strict regulation of the possibilities for application of the measure of interception of communications and definition of procedures for approval, enforcement of measure, exploitation of results, use and control of the overall activities. The initial draft law on ANB failed to provide opportunities for enforcement of the measure of interception of communications without the mediation of OTA, but later, with the adoption of the law, grounds were legalized according to which, in specific cases, ANB can apply such measures, by using special means in its possession, and the process to be transparent in terms of creating opportunities and authorizing entities to control and supervise the measures. However, the control over the disposal of results of the measure and the possibilities for changes, alteration, falsification, etc. of the transcripts obtained from the application of the enforcement, remain unregulated.

The Law on ANB envisages several bodies and institutions from different spheres as control and supervisory bodies. Within the Parliament of RNM, in accordance with the Rules of Procedure, two Committees were established that have the authority to control the work of the ANB. However, the legislator in the new story for ANB has envisaged provisions that constitute a violation of the Constitution of the RNM, by limiting the competencies of the Committees and limiting the scope of feasible control.

These Committees have the opportunity to call the Director of the ANB to account by providing reports, analysis, briefings on the work of the ANB or on certain situations and activities. Although one seems to get the impression that the Committees with their work can contribute a lot to the legal and transparent operation of ANB, still they have not yielded the expected results. Prior to the dissolution of UBK, the Director would take liberties in terms of choosing not to attend the duly convened meetings with the members of the Committees and through that act of demonstration of force, arrogance and disobedience one got the impression that the Government controlled the Parliament, and not vice versa, as the law actually dictates. Such behavior was a result of the absence of instruments to establish responsibility of that person and initiate a procedure for that person's removal. Although the new law sought to raise the level of responsibility of the Director of ANB, but also to limit his powers, this has not been sufficiently done. Namely, again the Director has enormous powers, from adopting bylaws in the newly formed ANB, by giving authorizations and approval to undertake certain secret operational actions, through to the authority to decide on his own, at his discretion, on the admission of persons in ANB, without an open, public competition. In conditions of practicing democracy as in RNM, where the parties strive to infiltrate as many of their supporters as possible in all pores of social life, and especially in the security services, it seems needless to give such an opportunity to one person.

In expectation of strengthening the mechanisms for exercising oversight and control of the security community, the same bodies and institutions are envisaged as before. Taking into account the negative experiences from their activity, one gets the impression that the idea of the new Law is to provide for control and supervision, though in reality, for such control and supervision not to work. In that sense, I noticed several omissions, ambiguities, overlaps with other laws and contradiction with the provisions in the Constitution. Namely, the control bodies such as the Public Prosecutor's Office and the Supreme Court during their daily work are limited to control only the measures for which they have given approval for enforcement. The Ombudsman, the Directorate for Security of Classified

Information, the Agency for Personal Data Protection as well as the State Audit Office are bodies that exercise supervision over the disposal, use and violation of only certain segments of the work of the ANB. A Citizens Supervision Council was also established, in accordance with the Law on Interception of Communications, which body has certain competencies, but does not have any instruments that would additionally ascertain and process illegal actions. Within the ANB, a Sector for Internal Control was established as an organizational unit, but with unclear and limited possibilities for control and even more so, for taking measures in order to ascertain, provide evidence and file appropriate submissions to the competent institutions, with its powers most limited in reference to the management team (Director, Deputy Director).

This set-up would promise a favorable degree of control and supervision if each body performed its legal function properly. Given that "political" influences are still significant, we justifiably doubt that control and oversight, set up in this way, would achieve the desired results. Therefore, I point out that the legislative framework is sufficient, with corrections of the given ambiguities, but lacks a degree of implementation of control and oversight mechanisms and implementation of the theory into practice. The declared non-partisan bodies are in fact conspiratorially partisan, which is mostly due to the tendency of the ruling party to exercise its influence in all segments of social life. That is why there are always many ambiguities in the laws, legal gaps, in order to skillfully disavow legitimate actions. It is necessary to pay great attention to raising awareness and building capacity for awareness of such actions that erode the organism of the state, create conditions for the most severe forms of legal violations, create dysfunctional institutions, encourage behavior of clientelism, corruption and other social negative phenomena that in the long run, burden the state and keep it closed for the development of modern relations.

The situation with the employees is a situation that also deserves attention. Namely, the takeover of the UBK employees in ANB was followed by certain anomalies, such as unclear criteria, incorrect assessment, party influences, etc. Also the procedure for promotion and career building as well as the necessary training, experiences and knowledge, received positive results needed for the work to satisfy the evaluation process, are not clearly and unambiguously defined in the Law. There are no objectified criteria for pefrormance evaluation, there is no promotion cycle, there are no mechanisms that would limit the "arbitrariness" of the management team in terms of evaluating the result of the employees and promoting them to higher positions. Such situations need to be changed in order to create an environment of security and employees' commitment to the job.

By constituting the Coordination Council of the security and intelligence community, it seems that the picture of domination of the services by the political-party elites and obtaining opportunities for directing, collecting, analyzing and disseminating information and intelligence products for their purposes and needs, is completed. Therefore, the analysis provides a number of remarks and recommendations to overcome this situation.

The conditions that are highlighted are the actual, real context and through the analysis of the legal provisions, light is shed on our reality, and when the inappropriate implementation of legislation is added to all this, the picture for leveling the expectations and needs is completed. Such synthesized thoughts and identified state of affairs are contained in the conducted analysis of the laws.

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INTRODUCTION

The Republic of North Macedonia has seen the security and intelligence sector in existence since it was a federal unit in the former SFRY. Quite naturally, a centralized system was operational on a national level for the entire country. Later on, with the independence, it was necessary to change certain elements in order to be able to make specific changes in the security and intelligence system, to introduce a new direction and to set an appropriate course that would not be recognized and followed by the former partner services within in the SFRY. Thus, in 1991, the so-called **modernization process was imposed on the State Security Service - SDB** and the Law Amending the Law on Internal Affairs of 1980 (Official Gazette of the SRM No. 36/91) of August 6, 1991 renamed the so-called "Secretariat for Internal Affairs of SRM" into the "Ministry of Internal Affairs of the Republic of Macedonia", whereas the State Security Service within the Ministry continued to be in charge of state security affairs.

Complementary and as a separate body, in 1992 the **Sector - Military Security and Intelligence Service - SSVBiR** born out of KOS (Counterintelligence SFRY army service) was established, constituted by a systematization act of the Ministry of Defense after the Republic Secretariat for National Defense of the SR of Macedonia, following the independence, was transformed into a Ministry of Defense. This sector still exists today and is in charge of intelligence and counter-intelligence protection of the military sector and the members of the Ministry of Defense of the Republic of North Macedonia.

The State Security Service - SDB ceased to exist with the adoption of the new Law on Internal Affairs (Official Gazette of the Republic of Macedonia No. 19/95) of 06.04.1995, so that the powers of SDB were passed to the **Directorate for Security and Counterintelligence - DBK**, as an integral part of the Ministry of Interior. All sectors except for Sector 1 of SDB moved to the DBK. From that Sector, the **Intelligence Agency** was set up, established as an independent body of the state administration pursuant to the Law on the Intelligence Agency (Official Gazette of the Republic of Macedonia No. 19/95) of April 6, 1995. The Director is accountable to the President of the Republic of Macedonia for both his and the work of the Agency. The Government of the Republic of North Macedonia may hold the Director accountable for the work of the Agency.

According to Art. 65 para.1, indent 1 of the Law on Organization and Work of the Bodies of the State Administration (Official Gazette of the Republic of Macedonia No. 58/2000) of July 21, 2000, the Directorate for Security and Counterintelligence continues to operate **as a Directorate for Security and Counterintelligence (UBK), a body under the Ministry of Interior**.

The Law on the Operative-Technical Agency (Official Gazette of the Republic of Macedonia No.71/18) of April 19, 2018 stipulated the set up of the **Operating Technical Agency (OTA),** which started operations on November 1, 2018. The Agency is accountable to the Parliament of the RNM and the Government.

A year ago, the Law on the National Security Agency (Official Gazette of RNM No. 108), of May 28, 2019, envisaged the establishment of the successor of the UBK, t**he National Security Agency (ANB),** which started working on September 1, 2019.

The Law for Coordination of the Security and Intelligence Community in the RNM (Official Gazette of the RNM No.108) of May 28, 2019 also, envisaged the set up of the **Body for Coordination of the Security and Intelligence Community in the RNM**, which started operations on September 1, 2019.

Throughout the existence of the UBK (as the last name of the institution before it was reformed into ANB), the service was the source of numerous affairs. The accusations would always come from the opposition parties, which continuously alleged they were being followed or tracked (directly or through interception of communications or other technical and operating resources), and so the scandals called "Blue Bird", "Big Ear", "Census", "Theft of the digital archive of UBK "," Bombs" and other ensued. Events of this type have led to disorganization and devaluation of the role of UBK. The actions of removing the veil of conspiracy from the work of UBK were also important. The first step was taken in 2000 when the Declassification of the files for persons kept by the State Security Service was made, through the Law on Handling Files for Persons kept by the State Security Service (Official Gazette of the Republic of Macedonia No. 52/2000) from 05.07. 2000. This Law regulates the procedure of information and access to personal files, kept by the former State Security Service, i.e the Directorate for Security and Counterintelligence at the Ministry of Interior for the period from 1945 to the legally determined day (July 13, 2000), i.e. the day of entry into force of that law. The Law determined the procedure for safekeeping, use and destruction of those files, as well as control over the legality of the undertaken activities. At that time, a large number of people who were aware that they were registering with the UBK asked for their files to be opened. In addition, they had the opportunity to request that their materials be microfilmed and that the contents of the entire files be submitted to the claimants, even to some of those who were still actively under operational control.

The second step was taken in 2012, when a completely new Law on Lustration was passed, as a replacement for the 2008 Law. The 2012 Law, whose official name was the Law on Determining an Additional Condition for Performing a Public Function, brought more novelties compared to the previous law, such as: public announcement of lustrated persons; extension of the lustration coverage until 2006; possibility to have as sources of information for lustration entities other than state bodies, such as natural and legal persons, etc. Also, this Law expands the definition of cooperation with the secret police. Unlike the Law of 2008, in which the cooperation was defined as "secret, conscious, continuous and organized cooperation and activity, based on a written document with the state security bodies", under the Law of 2012 the Commission for Verification of Facts (as a body competent for the implementation of lustration) is authorized to lustrate a person registered in the files of the state security bodies as a "secret collaborator, operative liaison or secret informant", during operational collection, reporting and provision of data that were subject to processing, storage and use by state security bodies. Under the alleged clearing of the remnants of the past and lustration of the persons who received certain benefits through the cooperation with UBK, the lustration was directed towards certain public figures and their defamation, as well as towards some of the operational workers. The results were devastating in terms of loss of trust in the UBK.

In 2015, in accordance with the Pribe Report, as part of resolving the political crisis in Macedonia, the lustration process was halted, and the Fact-Verification Commission continued to operate until the completion of the trials initiated by some of the lustrated persons. So far, 300 people have been lustrated in

Macedonia, although the Fact-Verification Commission has checked 30,000 people.These two main steps lead to disorganization, compromise, mistrust which in turn led to labeling UBK as dishonest, political, clientelistic and inefficient.

As a result of all the developments, with a special emphasis on the latest "Bombs" affair and in accordance with the opinion (in 2015) expressed in the report of the German EU expert, Reinhard Pribe, made on the scandal of mass wiretapping, the need for urgent reform in the entire security intelligence system of the state was underlined. This reform was supported by the EU and the USA and the proposal for the reform project of the security and intelligence system of the Republic of Macedonia was made, after which the two legal texts were adopted, which will be the subject of analysis in this Report.

The reasons for the current situation

The reasons for the reforms in the Republic of North Macedonia are contained in the findings that there was a concentration of power in the National Security Service (UBK) and in the abuse of the UBK oversight mechanism. This service worked outside its legal powers, on behalf of the government, to control high-ranking officials in the public administration, the prosecution, judges and political opponents, and as a result the independence of the judiciary and other national institutions was threatened, which had, as a result, the impression that all institutions are controlled and managed not on the basis of the legislation in force, but by one political center to serve their tight partisan and personal interests.

In terms of technical equipment, UBK had a monopoly over the use of tracking equipment in intelligence and criminal investigations. The exclusivity for monitoring and surveillance in the country on behalf of the police, the Customs Administration and the financial police, as well as on its own behalf, was enjoyed by UBK. Therefore, UBK, taking advantage of the results from the use of the secret operational machinery, has had the knowledge through various means of interference in criminal investigations and indirectly devalued/ undermined the independence of the head of the investigation (the prosecutor). Acting in accordance with Articles 175 and 176 of the Law on Electronic Communications, each of the three national telecommunications operators supplied UBK with the necessary technical equipment, enabling them to directly monitor their operational centers. UBK could monitor communications directly, independently and freely, regardless of whether or not a court order was issued under the Communications Tracking Act. The scandal with the mass wiretapping, which is still current, demonstrates the disrespect for professional ethics, the basic principles of risk management and lack of knowledge of the sensitivity of intelligence tasks within the UBK. The obvious absence of a trained service for fundamental rights and data protection rules is also a matter of concern. The family connection between high-ranking politicians and high-ranking officials in UBK, as well as in the Public Prosecutor's Office, also created a risky environment in terms of conflict of interest.

Reform steps

In June 2018, the EU Council adopted conclusions for the Republic of Macedonia in relation to the European perspective of the country. The conclusions were later confirmed by the European Council on June 28, 2018, emphasizing the importance of continuing the progress in the implementation of the current reform priorities and delivering additional sustainable results in four key reform areas. This includes the rule of law, as well as the reform of the security and intelligence services.

The country's success in achieving these priorities will also be influenced by the decision to set a date for the start of negotiations for membership in the Union. For these reasons, achieving concrete results in the reform of the security and intelligence services is one of the priorities contained in the Indicative List of Priorities to be implemented by June 2019, and was submitted by the European Commission.

With a view to accomplishing the stated priorities, the Government of the Republic of North Macedonia has placed the reform of the security and intelligence services high on the agenda in the Reform Plan.The reform of the security and intelligence services aims to create a reformed, professional, independent and accountable institution, which will act in accordance with new strict prescribed legal norms, in accordance with high ethical and professional standards, and in order to fulfill the recommendations given by Pribe.

The National Security Agency Act was one of the draft laws to reform the security and intelligence services.

In order to ensure a high degree of efficiency and successful functioning of the security services in the Republic of North Macedonia , as well as the establishment of an appropriate mechanism for their coordination in accordance with the standards that are imperative in improving the security and intelligence systems of modern European countrie, The Government of the Republic of North Macedonia, at the Hundred and Fourth Session held on November 20, 2019, adopted the proposed model for the reform of the security and intelligence system in the Republic of North Macedonia and the Plan for its establishment.

The essence of the adopted model consists in separating the Directorate for Security and Counterintelligence from the Ministry of Interior, i.e establishment of a new independent body of the state administration in order to ensure internal security of the state and perform counterintelligence activities, in order to create an independent, professional and accountable institution.

The establishment of the new autonomous and independent body implies the enactment of a special law which will regulate its powers, management, organization, financing and control. The subject of the work will be the protection of the national security of the state, i.e independence, sovereignty, constitutional order, fundamental human and citizens' freedoms and rights guaranteed by the Constitution of the Republic of North Macedonia, as well as other matters of national security interest.

At the same time, the model for reform of the security and intelligence system in the Republic of North Macedonia imposes the need to establish appropriate coordination of the security and intelligence services in the country, through appropriate legal solutions, which will determine a mechanism, the implementation

of which will allow for overcoming the weaknesses and inconsistencies identified as being an essential problem in the current functioning of the security and intelligence services.

To that end, a special Law for Coordination of the Security and Intelligence Community in the Republic of North Macedonia was adopted, which regulates the purpose of the coordination, formation of a special body for coordination of the security and intelligence community with precisely defined scope of work, composition, method of operation and decision-making, as well as specific aspects related to its work, which are envisaged to serve the purposes of implementation of an effective coordination of the security and intelligence community - on the one hand, and the obligations that the security and intelligence community has towards the said body, on the other.

Law on National Security Agency

The adopted Law on the National Security Agency is a document, which during the stage leading up to the adoption of the Paroposal to the Law by Parliament underwent certain amendments that I can qualify as such that augment quality and emphasize the principles of legality, accountability, effectiveness, efficiency and comprehensiveness. This approach is to be appreciated, however from the moment of enactment of the Law and the procedures up until the start of operations of the ANB, and even today, while it is operational, the practice shows certain degree of improper, misaligned and insufficient professional and expert implementation of the conditions, methods, means and procedures for the functioning of the body.

For clarification, I will present my remarks on the legal text and in parallel I will explain them and the omissions that are made so that in the end I can offer certain recommendations for decisions that in the next parliamentary composition should be corrected, or at the very least, the committees for supervision and control should point them out to the ANB so that they can make the necessary corrections of the oversights on their part.

Article 2 states the reasons, the need and the purpose of the establishment of the ANB and states certain values and rights that are laid down in the Constitution of the RNM and in accordance with the signed international documents. I believe that the enumeration of individual values and rights can be sublimated in one expression “for the protection of the values provided for in the Constitution and ratified international agreements”. This term will avoid enumeration and the danger that a value or right may not be mentioned, or if it is ascertained in the following period, not be accepted.

In Article 3, paragraph 2 should be deleted. Legality in the conduct has nothing to do with political parties. That point is sufficiently mentioned in continuation of the text of the law. Such a statement does not lead to the depoliticization and departmentalization of the agency, but rather as a declarative provision.

Article 4 lists the competencies and lists individual or groups of criminal offenses. Other offenses in Chapter 28 are not mentioned - Offenses against the State, for which the Agency should have jurisdiction. There is also no mention of the attacks that the Agency should investigate, which fall in the IT and technical-technological spheres, as a modern form of threat. There is also no mention of the various forms in which the so-called hybrid attacks may appear, which are quite current now, and will be in the future.

Failure to clearly define the powers can be an obstacle to further investigation of emerging forms of crime and attacks on state security of this kind. I propose to supplement the article, because the legality of the actions in the coming period will be challenged again.

Article 6 is vague, unclear and inconsistent with the CPC. Namely, the Agency, as an institution that has the authority to collect, process, exchange and protect information under the competence of national security, and its employees are persons with powers, part of them also with police powers, it is insufficient in this case to envisage only that information is provided to the Public prosecutor, because the prosecution does not have special instruments and resources for investigation without the mediation of all the services of the security and intelligence community, including the Ministry of Interior and the Ministry of Finance. If the Agency has such information and data, it can act quickly in close coordination with the other listed services and bodies, and achieve great efficiency and effectiveness. That is why I propose to add "exchange of information with other law enforcement agencies, in accordance with their legal competencies".

Article 7 is vague and confusing. The purpose for the collection of data and information was in accordance with the "purpose for which they are collected". My proposal: "the purpose of the collection of information by the ANB will be their evaluation, processing, analysis and preparation of finished products that fall within the scope of competencies of the ANB."

The provision of Article 8, paragraph 3 is not in accordance with the objectives and competencies of the ANB provided for in Article 4. Mention is here made of counterintelligence protection of facilities and persons to be secured, and this "counterintelligence" is not within the competences specified in Article 4, nor is the content of such measures. This notion creates a legal gap and room for abuse.

Article 11 is in conflict with this Law. Namely, the Director of the ANB submits an annual report to the Parliament, which means that he is indirectly accountable to the Parliament, though it is not clearly stated that he is also accountable to the Parliament.

Article 19, paragraph 2, last indent, "the modalities and methods of operation of the Agency" should be added. In order to perform the tasks within its competence, the Agency may also take measures to conceal the identity of the employees and other persons, the ownership of objects and legal entities as well as the purpose of collecting the information. If the ways and methods are not foreseen, room is left for certain abuse, because through non-protection of the aforementioned, there is room for abuse, and those elements are of the highest operational interest of another service. Through their overtness, the entire system of functioning of the ANB is revealed. Also, unless the ways and methods are stated, their legal protection is not provided and the activation of the system of determining responsibility for conscious or unconscious detection is prevented.

Article 21, paragraph 4 should be deleted, because the cooperation with other law enforcement agencies is realized through memoranda of cooperation, and the PPO and the Ministry of Interior are the services which under the Public Prosecutor's Office Law are authorized to act in case of receiving information for preparation, execution or concealment an act committed ex officio.

Article 22, paragraph 3 stipulates that the Agency may also have electronic access to the records, collections, registers that the entities keep in accordance with the

Law, on the basis of a concluded memorandum with the management person of that entity. It is envisaged to conclude an agreement not with the institution and by an unauthorized person for signature, but with the managing person, so a question is asked whether under this provision, if the managing person NN. is changed, retired, died or similar, agreement is rendered null and void, considering that refers to the manager. It is necessary to correct it and replace it"with the institution", and under the internal acts of the institutions, it is well known who signs what type of agreements.

Article 23, paragraph 4 is contrary to the Law on Classified Information. Classified information is information that should be protected because its disclosure would cause harm according to the degree of classification. In order for the information to be classified, it must be appropriately marked in a visible place with the degree of classification, with clear indication of who the producer of information is, according to the principle "need-to-know" to be submitted and used only by certain persons, etc. "Knowledge for the application of measures for secret data collection" cannot be **treated** as classified information, while they are neither marked nor created in accordance with the Law on Classified Information, and appropriate procedures for the creation and classification, dissemination, storage, protection and use have not been applied. When someone acts contrary to this provision, he/she may not be liable in accordance with the Classified Information Act. When this is the case, it is pointless to have such a provision. Proposal to apply "to be treated as an official secret of the highest order".

Article 27 lists provisions for covert collaboration. It should be specified in this part (new paragraph 6) that the covert collaborator, during the execution of his tasks, enjoys protection by the Agency, and if he is injured or loses his life, the obligations for treatment, compensation and funeral, are at the expense of the Agency. Paragraph 7, the file for collaboration with a person shall be destroyed five years after the completion of the collaboration with the act for erasure from records. This is done in order to gain more trust in the institution, stimulate collaboration, a sense of security while the collaboration lasts, and then prevent any further lustration or declassification of the files of employees (past experiences). This will strengthen the integrity of the institution. Paragraph 8 - in situations of urgent and necessary testimony by the person with whom covert collaboration was established, in exceptional situations, when there are no other witnesses, and possibilities for presenting evidence, the person who collaborated with the Agency covertly receives the status of collaborator of justice and enters in the witness protection program, to ensure that it will be impossible for him to be identified by the defendants.

Articles 29 and 30 are in conflict with the CPC. Namely, Article 269 of CPC stipulates that "persons with a disguised identity are members of the judicial police or exclusively other persons who, with the approval of the Public Prosecutor, conduct an investigation under a disguised or altered identity." The Law on ANB envisages the use of persons with disguised identity to be determined by the Director by a by-law. The CPC is considered a higher order act and therefore the provision for the use of persons with a disguised identity should be respected. If approved by the Director, it will not be possible to exercise the overall rights of the person with disguised identity, in connection with the change of personal documents, production of new ones, entering into legal transactions with changed identity, etc. without the knowledge and order of the Public Prosecutor. The order will have to be submitted to the institutions and bodies that will prepare the documents and the conditions under which the person with a disguised identity

may act, of which only the ANB is aware. The same is true with the measure of secret purchase of indents and documents. In addition to operational purposes that would refer to orientation-elimination goals, the purchased indents and documents in most cases will have to be presented as evidence at some stage of the investigative procedure, if any. In such a case, it is necessary to have an order from the Public Prosecutor or a pre-trial judge, as warranted by the principle of legality. These articles need to comply with the CPC.

Article 32 (2) and Article 33 (2) shall redefine the covert methods and means of gathering information and the method of approval and execution. Article 33 (2) needs to emphasize "only in so far as the information and data may be used exclusively for operational purposes may an order be issued by the Director", due to the aforementioned remarks. When supervision or control is carried out, it should be insisted that the facts justifying the measures are reviewed, the specific goals for which the measure was implemented should be ascertained, the results obtained from the implemented actions, and in order to determine the possible abuse for party or personal purposes. This is necessary in order to leave room for increasing accountability, transparency and responsibility.

Article 45 paragraph 1 is controversial due to the statement that "the Director may authorize the implementation of measures for covert collection of data and information, when the data and information under the competence of the Agency for the purpose of achieving the goal cannot be collected otherwise, or their collection involves disproportionate difficulties'. Such a provision creates legal uncertainty and the possibility of abuse of the position of Director. Namely, there is no mention of the degree of risk or threat for which knowledge and evidence should be proposed, which will be a sufficient fact and will provide the grounds grounds for suspicion of an identified activity within the competence of the ANB, in order to proceed with a takeover permit and justified actions and measures. There are no objective criteria that will show that the goal could not be achieved with another measure. Absence of measurable criteria and failure to insist on proving the impossibility of applying other measures, different from the covert collection of information gives rise to confusion. How will the possibilities, conditions and the presumed result from the application of other measures besides the secrets be presented? This assumption cannot be verified or compared, so in any case, although it may not be necessary, the services will take the measures from the secret operational mechanism, justifying the legal possibility with legal coverage that the other measures would not give adequate results. Such a broad layout is a precondition for possible abuses.

Article 46 is contrary to Article 256 of the CPC. Namely, Article 46 of the Law on ANB provides for the Director to decide, i.e approve the implementation of measures for covert collection of data and information on the basis of a well reasoned written request submitted to an authorized official of the Agency. In Article 256, in respect of the measures with the same title and content, the following are identified as the body authorized to order special investigative measures such as: the measures from Article 252 paragraph (1) indents 1, 2, 3, 4 and 5 of this Law upon reasoned request of the public the prosecutor shall be appointed by the pre-trial judge by a written warrant, and the measures referred to in Article 252 paragraph (1) indents 6, 7, 8, 9, 10, 11 and 12 of this Law shall be approved by the public prosecutor by a written warrant. The measures are implemented by the public prosecutor or the judicial police under the control of the public prosecutor. During the execution of the measure, the judicial police prepares a report which is submitted to the public prosecutor upon his request.

ANB is not a judicial police force. The legislator certainly wanted to separate the SIM measures from the measures ANB can take with the approval of the Director, but it did so clumsily, as the name of the measures, as well as their content are identical, while the implementing agents are different. Such a provision should be changed either by changing the measures or by inserting amendments to the CPC.

Article 50 provides for the Agency to maintain a database for persons under operative treatment of the Agency for a certain period of time. The measure of operative treatment may be clear for the persons employed in the Agency or in the law enforcement bodies, but for the citizens it is not. There is a need for this notion of taking action and placing persons under operative treatment of the ANB to be clearly explained, defined and limited. This gives the impression (this term is first mentioned in this part) that the employees in the ANB through the so-called operative treatment can take actions that are not clear, may endanger basic human freedoms and rights, and yet, be classified as operative treatment and have legal basis for it. Due to the subtlety of the activities of ANB and the remnants of the past as a "political police", this measure needs to be clarified.

In Part VII of the Law on ANB, a subtle area of control and supervision over the Agency is introduced. Having in mind all the developments surrounding the disbanded UBK (listed in the introductory part) and the perception of the same as a service of abuse and mistrust, in this part it is necessary to envisage, organize and implement measures that will restore trust of the citizens in the ANB, and citizens will believe that it takes actions in accordance with legislation in force, and not as an instrument for political and other calculations. Therefore, in the phase of adoption of the Draft Law, the need to put in place more control mechanisms for the work of ANB along the lines of monitoring, recording, ascertaining and repression of illegal and non-transparent work was highlighted. Throughout the period of existence of UBK, the control mechanisms, which were provided for in the legislation in force, were not consistently implemented and did not give results, and this service never came out transparently to report on its steps, methods and procedures, although it was called to do so throughout the period since the independence of RNM. In this sense, the formation of internal control is envisaged first. The existence of independent, efficient and timely mechanisms to control the work of law enforcement agencies is a requirement in accordance with the ECHR and its case law, as well as in accordance with the findings of the European Committee for the Prevention of Torture (CPT). Such mechanisms must be practically and hierarchically independent of those whose conduct is under investigation, open to public scrutiny and be able to make binding decisions. Reports on the human rights situation in the country, such as those put forward by CPT, OSCE, Amnesty International, the US Department of State, as well as the reports by the Ombudsman and human rights NGOs dealing with complaints of abuse of law by enforcement agencies strongly suggest that enforcement mechanisms over law enforcement agencies are not at the appropriate level required for an EU candidate country. Therefore, the Law on ANB provides for a special Organizational Unit for Internal Control. Within its competencies, wide possibilities are given both in volume and content. However, the ways and the entities that can submit an initiative for control and supervision by the internal control are not specified. Also, an omission was made in the part of providing possibilities to (not specified), but also the authorization of the head of the Internal Control Unit to be able to be called and to provide information to the supervisory bodies, because this unit should work independently, transparently

and responsibly in cases of checks and other measures against the Director or his deputy. According to the current decision, the Director can answer for certain actions, while it is not specified who will inform in cases of possible abuses made by him. It is certainly not appropriate and functional for him to be informed about such activities by the person who has been a subject of inspection. Therefore, it is necessary to give the possibility for exercising supervision over the work of the Internal Affairs Unit by the control and supervisory bodies. It is also necessary to provide for this Unit to act on complaints from persons who, in accordance with the obligations under Article 51 of the Law on ANB, have been informed that certain operational tactical or technical methods and means have been taken. The procedures for complaints from citizens are not provided for in the Law at all, so it is not known who will act on them. It is possible that this matter will be regulated by a bylaw, but it must be provided in the Law.

In order to include all the elements that should be covered by the internal control in order to be comprehensive, in Article 52, paragraph 1, I propose that instead of listing of competencies of the internal control, a clear wording should be introduced to read: "the Unit supervises the legality of the operational activity and the policy of taking actions; over the effectiveness of the operational activity; over administrative practice and over the handling of finances". Such provisions, which fully cover the activities over which control and supervision can be exercised, would cover all elements of the part of the functioning of ANB and would leave the possibility to come up with a clear wording of the activities and actions in relation to the means and methods with a piece of secondary legislation.

Within the PPO, a new specialized department for prosecution of criminal offenses committed by persons with police powers and members of the prison police[1] has been established, where the term person with police powers is defined. This term means a police officer, an **authorized official for security and counterintelligenc**e with police powers, members of the financial police and forest police, legally authorized persons of the Customs Administration who work on the detection of criminal offenses and authorized officials of the Ministry of Defense who work on the detection and investigation of criminal offenses. This department works in direct coordination with the organizational Unit for Internal Control." In the Law on the National Security Agency, this Article 33 of the Law on Public Prosecutor's Office is not covered, although the competence of the PPO is envisaged for the persons employed in the National Security Agency with special police powers. The changes should be made soon for the sake of harmonization, but also to create an opportunity for the Internal Control Unit to directly cooperate with the department in the PPO.

Pursuant to the Law on ANB, control over the measures for secret collection of data and information ordered by the court and control over the use of special technical devices and equipment, the control function is performed by those who allowed the measures, as well as the Council of Public Prosecutors, which enables quality control.

In Article 58, paragraphs 2 and 3 of the Law on ANB states that the Public Prosecutor of the Republic of North Macedonia may at any time request from the authorized official of the Agency to listen in or rerun and listen to a conversation which is the subject of the measure, to inspect the content of the following communication, to inspect the data related to the following communication, to inspect the records prepared in writing for the use of devices and equipment,

[1] The Law Amending the Law on Public Prosecution, Official Gazette of the RNM no.198/18 of 31.10.2018

to inspect the electronic records that are automatically created in the special technical devices and equipment, as well as to control the official records that are maintained in the Agency. The judge of the Supreme Court of the Republic of North Macedonia who issued the order may inspect the electronic records for the use of the devices and equipment.

We can conclude that such a solution is practical, so that for this type of control the Public Prosecutor and the Judge can also use technical experts for verification, but the question arises for the possibility of manipulation of the electronic records of the equipment (modification, deletion of logs, addition on content, etc.). This opens up the possibility of misuse as only ANB, which is the user of the equipment, can manipulate the electronic records. I have in mind OTA, which as an operational and technical agency, needs receive a single and strict powers and authority to handle the records for the use of the equipment (being the administrator) and to control the records, independently and at the request of the Public Prosecutor or the judge. Thus multi-tiered control will be achieved, and ANB will only be able to use the device, but not to handle the usage records. Such an approach would achieve the goal of implementing the special investigative measure with the help of special technical devices and equipment, which enable the implementation of the measure without the mediation of OTA and operators, but without the possibility of abuse, i.e with only a minimal risk of abuse. This is not resolved in the existing Law and opens the possibility for abuse. The situation with online tracking of communications is similar. OTA has been unjustifiably removed from the process control system. Given that almost all electronic communications are striving for an online platform, this can be a serious problem and omission and in a few years bring into question the existence of OTA. **An alarm must be sounded and pressure put in respect of the foregoing**.

The Parliament sets up committees that have the ability, the task and the competence to control and supervise the work of the services of the security and intelligence community. On the other hand, a system of parliamentary oversight has been established through the Committee for Supervision of the Work of the National Security Agency and the Intelligence Agency and the Committee for Supervision of the Implementation of the Special Investigation Measure Monitoring of Communications. These committees never did function properly[2]. The committees have narrowly determined matters that need to be examined, processed and dealt with in a working manner in relation to the identified irregularities, each one separately. Each of them adopts acts for defining the work and the manner in which the control mechanisms are put to work. However, in the period up to the present day stretching back to the independence of our country, no committee has exercised its legal competencies. Such remarks are also noted in the Pribe Report. I think that when it comes to the work of parliamentary oversight, a general conclusion is that that the poor legislative regulation of supervision and control and its coverage in a number of laws is unproductive. The legal provisions need to be reviewed, redefined and consolidated. The best practice in European democracies is that this matter should be regulated by a special law for parliamentary oversight of the security and intelligence system.

[2] The members of the Committee did neither inspect the UBK nor did they collect statistics on the interception of communications. It is obvious that the Committee did not have the necessary technical knowledge to collect data from the UBK devices or the telecommunications operators in order to compare the number of wiretaps with the number of orders issued by the court, in order to detect abuse. The Commitee was also prevented from conducting inspections in the UBK, given that out of a total of 5 members, there was always one or two members who did not have a security clearance to access classified information such as wiretapping data, which is an obvious conflict of interest, given that the security certificate was issued by UBK itself. The director of the UBK failed to appear at scheduled meetings, where he was supposed to answer questions posed by Committee members.

The law in Article 60, paragraph 2, also provides for restrictions when the supervisory bodies cannot request and receive information. Article 60, paragraph 2 reads "The members of the competent working body of the Parliament for Supervision of the Agency **may not** request from the Agency data for: ...." . Such a position is explicitly unconstitutional and as such, it must not exist in the Law. The constitutional right of the Parliament to supervise the executive cannot be limited by law. The procedures of supervision may be regulated depending on the need to monitor a particular segment, but in no case be prohibited. The statements in Article 60 about the impossibility to control and supervise (identities, employees, third parties, classified information obtained from other institutions or through international cooperation, etc.) are indeed information that protects the permanent interests of the state, with the highest degree of classification and significance, but the question that arises is what if someone abuses it for criminal, political, extremist or other purposes? Such a view is based on experiences from the past, which were a direct reason and cause for embarking on the reforms in the security and intelligence community of the RNM. I therefore propose that Article 60 be reworded and brought in line with the Constitution. The Parliament's oversight of the executive is in theory unlimited.[3] To prohibit by law, the constitutional powers of the Parliament is in the slightest absurdity, i.e it amounts to rendering the Constitution null by law.

Other recommendations that should be submitted to the new Parliament are: immediately after the constitution of the Parliamentary composition, to define the above mentioned parliamentary oversight committees, to meet immediately (to determine the methodology of work through the rules of procedure based operations) and to meet regularly in order to ensure parliamentary accountability and exercise effective and efficient control. In that sense, it is necessary to: define the work and the procedure. In this part the most urgently needed is the following:

- To submit applications and obtain security certificates for access and handling of classified information;
- To continuously operate and implement consistent supervision/ oversight;
- To define actions in ad hoc situations, following initiatives given by bodies or entities on various grounds of suspicion in the legality of ANB's operations;
- To create opportunities for reporting illegal operations in the ANB by submitting complaints filed by citizens to the Committee, and in turn, through the internal control unit the Committee to order supervision and action following the complaint and to seek full clarification in cases of wrongdoing;
- To create opportunities to hire experts, members of the academic community; to organize training and expert counseling, in order to direct actions and lawful activity, as well specification of the content of the supervision/oversight; to enable legal possibility for

[3] In comparison with Croatia and Slovenia, there is no data or information to which the Parliamentary Commission cannot have access, but there should be a reason, public interest and it is regulated to take place in a strict procedure.

the supervisory Committee to establish contact with employees of the ANB for the purpose of immediate clarification of reported illegal activities;

- To enable transparency by the Supervisory Committee and publication of special reports, without disclosing confidential data, on the Committee's website;
- To create opportunities for conducting interviews and submitting an opinion on the proposal for election of a director of the ANB, in order to nominate the appropriate person with the most favorable competencies, to raise public confidence in ANB and avoid partisanship and politicization during the director's election process;
- To produce a procedure for actions to be taken by the supervisory body on complaints or abuses of office against the Director and to submit proposals for the dismissal of the director.

In accordance with the Law, the Ombudsman has also the possibility to supervise the work of the ANB. The appointment of the Ombudsman as an independent body enables him to independently review and assess the omissions and illegal actions of the state bodies. He may initiate proceedings at his own discretion or act on filed submissions. The decisions of the Ombudsman are not legally binding (however, he has some investigative powers such as: to seek explanations, information or evidence, to enter official premises and to invite elected or appointed persons or any officials for interviews). On the basis of the organizational set up, he relies on the good will of the heads of the institutions to comply with his recommendations, who are under the obligation to inform him if they fail to comply. If the heads fail to act, regardless of whether they have informed him or not, he may initiate disciplinary proceedings against an official or submit a request to the competent Public Prosecutor to initiate criminal proceedings. However, so far the work of the Ombudsman in the area of monitoring and control of ANB, previously UBK, has not shown adequate results. There was an impression that "politicized public relations" had an adverse effect over the work of the Ombudsman, and the "arrogance" of the heads of the services were a detterent to the Ombudsman. It is obvious that political interests were placed above the realization of the security policy of the state.

Legal grounds should be stipulated for the Ombudsman to carry out a more subtle supervision in some cases, acting on complaints submitted to his Office, about the work of the ANB. In this sense, it is necessary to create legal provision for the Ombudsman to be able to exercise supervision directly, through direct inspection of certain documents, which the ANB will decide to make available, upon the initiative of the Internal Control Unit to check and submit information to the Ombudsman for a specific case, and if and when needed, in case of serious abuse, the Ombudsman to be allowed to interview ANB heads.

The Supervisory Body of ANB is also the Agency for Personal Data Protection established in accordance with the Personal Data Protection Act.[4] Article 59 of the Law on ANB states that, inter allia, the Directorate for Personal Data

[4] Official Gazette of RNM, no. 42 of 16.2.2020

Protection, which has been renamed in the Agency for Personal Data Protection is also a supervisory body. Therefore, it is more practical in the Law on ANB to avoid mentioning bodies and authorities (due to the rapid implementation and amendment of legal projects), but to mention the laws under which they have the right and obligation to exercise supervision. Protection of personal data in law enforcement agencies is of particular importance and requires special attention in obtaining, processing the rights of the personal data subject, the position of the controller and the processing person, the transfer of personal data to other countries, special personal data processing operations, legal remedies and liability in the processing of personal data, supervision over the protection of personal data, as well as offenses and misdemeanor proceedings in this field. The purpose of ANB is to collect, process, analyze, evaluate, exchange, store and protect data and information in order to detect and prevent activities related to security threats and risks to national security of the country by certain categories of persons. In accordance with the purpose and competencies, it is of particular importance to fully respect the provisions of the Law on Personal Data Protection, because otherwise invaluable damage to personal integrity may occur for the persons subject to the work of ANB, persons whose actions and deeds are surveilled by ANB or in respect of whom ANB takes special operative measures or activities. Therefore, the Agency for Personal Data Protection has the possibility to conduct an audit. The audit may be regular, extraordinary or for control purposes, and must be comprehensive, meaningful and purposeful, as the Agency finds fit or upon an objection, complaint or request by a body or person who feels that a certain right has been violated in accordance with that law. The obligation of ANB is to enable full implementation of the audit without obstructing or concealing, changing or disabling the audit and handling of certain personal data.

Another supervisory body in accordance with the Classified Information Act[5] is the Directorate for Security of Classified Information. The Directorate, through inspectors in charge of security of classified information, may conduct supervision, on a regular, extraordinary or control basis. In the bodies and institutions that handle classified information, it is necessary to appoint an officer/s for security of classified information, who will be responsible for consistent and legal handling of classified information. Due to the nature of its work, ANB, in accordance with the "need to know" principle, handles classified information and it is necessary to appoint more than one security officer for classified information. ANB is also obliged to provide physical, administrative, industrial security, security of communication and information systems and security of the persons users of classified information. In conditions and procedures for supervision and control over certain actions of ANB by a supervisory or control body, ANB must identify, control, indicate and disable access to a person who is not authorized to work with classified information. However, on the other hand, if a member of the supervisory or control body requests access and complies with the legal measures, s/he should be able to inspect the handling of classified information.

The State Audit Office has the opportunity and obligation to audit the ANB's financial and legal disposal of funds, at its own discretion or following a complaint. In that context, the auditors from the State Audit Office have the right and obligation to perform an audit and they need to have access to all documentation and persons related to the financial operations and the legal grounds of operation of the ANB. The audit report is submitted to the responsible person, in this case

[5] Official Gazette of RNM, no. 275 of 27.12.2019

the Director of the ANB and to the supervisory and control bodies, and it is also published on the website of the State Audit Office. This legal provision achieves transparency in the financial and legal operations of the ANB. The Law on ANB, with regard to the financial operations, does not specify the existence of special funds for the Agency's operation, which may be used for implementation of secret cooperation, or the so-called "spec. purse". Such omission in the Law may imply problems, especially during the inspection by auditors, because they will have to state that no legal grounds exist for the "purse". Such funds can certainly not be controlled by auditors in detail, but their existence as a separate accounting item is debatable. The existence of such a "purse" implied additional discrediting of the ANB, especially after the public information about certain abuse of such funds outside their earmarked purpose[6]. I propose amendments and adding a special article for allocation of funds for special purposes of ANB.

The Law on Interception of Communications[7] (Article 47) in 2018 introduced the Citizens Supervision Council as a new, non-state, supervisory body over the measures implemented by the authorized bodies and the OTA, without the possibility to supervise the operators. The Council submits an annual report for its work to the Parliament of the RNM. The initiatives for action are as follows: following their own initiative or upon a complaint submitted by a citizen. The Council acts on the basis of a request from citizens and legal entities for observed illegal actions or irregularities in the implementation of measures for interception of communications, especially in cases where a violation of constitutionally guaranteed human rights and fundamental freedoms is established. With regard to the ascertained irregularities, the Council notifies the Parliamentary Committee for Supervision of the Implementation of Measures for the Interception of Communications, the responsible Public Prosecutor and the Ombudsman. The Council works in sessions convened when necessary. The Council conducts supervision with prior notice, except when the nature of the complaint is such that may require urgent action. The Council may request the managers of the authorized bodies, the OTA and the operators to provide information and data necessary for establishing the merits of the allegations specified in the complaint. As a result of the performed supervision, the Council may only establish whether certain abuse occurred or whether the telephone number of the complainant was tracked. In essence, the Council is not a direct ANB oversight body. It is established in accordance with the provisions of the Law on Interception of Communications and its competencies are limited only to ascertaining abuse, not to oversee undertaken operative measures and actions or to establish overstepping, abuse or negligent work. Such a mission of the Council does not meet the expectations for the implementation of an impartial, qualitative and free-from-political-influence oversight. The reasons are many. I will address some of them. Firstly, the legal framework does not allow for the Council to expand on its powers and ascertain more than abuse only, on its own initiative or following a complaint from a citizen. Such a position is only a declarative realization of the

[6] The competent public prosecutor from the Basic Public Prosecutor's Office for Prosecution of Organized Crime and Corruption, today issued an investigation procedure order against four persons, Macedonian citizens. The persons are suspected to have abused office and authority of the Security and Counterintelligence Directorate at the Ministry of Interior, and thus damaged the Budget of the Republic of Macedonia in the amount of MKD 50,670,000.00. Namely, in the period from January 2007 to May 2017, the suspects as officials in the Security and Counterintelligence Directorate, by failing to perform their official duties, acted contrary to the «Instructions for use of funds for special purposes of the UBK». During the mentioned period, on 172 occasions, the suspects withdrew funds for which they submitted withdrawal requests and receipts. At the end of the year, they would destroy the payment records «main ledgers», without special approval by the Director of the Directorate and without any reports or minutes, leaving no copy of the records, reports or main ledger.

[7] Official Gazette of RM, no. 71 of 19.4.2018

efforts for transparent operation of the law enforcement services. Secondly, the composition of the Council is prescribed in the Law and no different than usual, the qualifications of persons eligible to become members in the Council is limited (the list is inclusive of lawyers, telecommunication and information technology engineers), and fails to make eligible those who have completed studies in the area of security, customs, public administration, etc. Experience shows that such citizens' councils are bodies of people comprising different professions and professionals, without special emphasis on previous educational background. The main argument should be for the candidates to be honest, non-partisan, to have the will, intention and opportunity to perform additional and transparent work. Although the Law itself provides for a public announcement for vacancy, in the current situation, only a small number of persons were informed by indirect party decision-making, the announcement had a short application deadline and its publication lacked in transparency. If one looks at the composition, one will detect other weaknesses, omissions and deviations from the provisions in the Law. In general, attention must be paid to the experience, knowledge, skills and scope of interest of any person who aspires to be a part of the Council. If efforts are made merely to have a Council set up, then one does not need to mobilize excessive resources. On the other hand, the body itself may wait longer to obtain premises, to start activities, to get a chance to consult with experts (experts can be council members if one makes the right choices, which I did point out in the section about the competition/public announcement), longer waits to receive a security certificate for access to classified information with the degree of "state secret", failure to establish a council budget and ultimately the influence of the parties that have notified the council candidate members of the public announcement, are merely some of the problems due to which almost no reports on the work of this body exist. Its mission is to inform the public through reports, observations and cross-reviews about the legal operation of the ANB (in this case) and to direct actions towards restoring trust in the institutions of the system. Proactive behavior should be a marking feature of this body, instead of reactive behavior i.e waiting for a citizen to report a case, so that they mobilize resources. In order to improve the work of this body, I propose amendment of the mission of the Council, to be able to act not only for violations during the application of the measure of illegal wiretapping, but also to carry out supervision of the collection of metadata, the manner and legal use of special technical devices and equipment from Article 26 of the Law on ANB; supervision over the legality of the implementation of the measures for secret collection of data and information; changes in the section governing the type of personnel to be hired, to employ persons with previous experience, knowledge of the work, and work- related skills of the former UBK and now the ANB, persons with integrity and proven in their respective field of work, persons with no political affiliation; in terms of funds, planning and accessible sufficient funds for the delivery of tasks, provision of premises, support staff and resources[8]; creating a legal opportunity to initiate proceedings, not just notify certain authorities; obligation to timely notify the public about the legal operation of the ANB; establishing close cooperation with other control and supervisory bodies for the purpose of joint action.

Similarly, the forms of supervision by the media, non-governmental organizations, individuals interested in or affected by the work of the ANB are of no less importance. The Law does not cover these forms of supervision but only stipulates "other bodies for different forms of supervision". NGOs are an important factor

[8] On June 14, 2020, according to the media information, the President and the Vice President resigned from the Citizens Supervision Council due to the mentioned deficiencies.

in the overall social context, and especially for exercising oversight based on their own research and perceptions, based on reports from citizens, who are happy to contact them and share information from related organizations in the country and abroad. The oversight by non-governmental organizations should be stimulated and more specific cooperation should be initiated with the ANB, through the persons designated for public relations. In order to provide timely, objective and impartial information on the work of the ANB and with regard to the transparency in their work, such PR personnel should also cooperate with the media that should report to the public about ANB activity. It must be noted that the UBK was closed to the media and precisely due to the lack of public information, the distrust in that service culminated and the ANB was formed. The placement of false or fake information or information limiting the truth about the work of the UBK led to its dissolution and even though we expected an evolution, a formation and setting up of a new agency based on different and new principles, measures and powers, it is to be noted that the ANB, as of yet, functions following the established, old principles, with slight cosmetic changes. Therefore, it is justified to expect that the Director of the ANB, shall adopt secondary legislation and within his purview, regulate the openness, transparency and cooperation of the ANB with the media and non-governmental organizations, and even will create opportunities for signing memoranda for cooperation on issues of shared interest with the media and NGOs.

Further provisions specify international cooperation. International cooperation must be realized on the principles of reciprocity, protection of personal data and protection of classified information in compliance with bilateral and multilateral agreements as well as international agreements. The fight against terrorism, various forms of organized crime, espionage and other emerging forms of crime must be carried out through shared information, assistance, training, realization of tasks and joint investigative teams. Provision of security for persons and facilities on bilateral or multilateral basis should be provided for and enforced according to the Law. The most important element in international cooperation is to establish, raise awareness maintain trust among the security and intelligence services or communities.

Lately, the practice shows that when constituting legal regulation projects for the employees, provisions are foreseen, which are not a part of the substantive but of the financial aspect. Therefore, I think that envisaging points ranking employees in the Law presents more of a legal burden. The ranking can be carried out with the jobs systematization act and dependent on the employee's workload and complexity of activities for a job position, points and benefits can be awarded.

The recruitment, the work, the promotion and the execution of the official tasks are foreseen to be realized in accordance with this Law or with the general acts for employment in administration. A general remark is the lack of provisions for career building and criteria for promotion, building and maintaining the integrity of the employees and the broad discretionary powers of the Director to hire without announcing a public competition. Such provisions, in the current context of exercising political power in the RNM, may be the cause for abuse and an opportunity to fill vacancies in the service with party-affiliated staff. During the constitution of the ANB, although the Law provides for integrity test and polygraph testing, none has been carried out to date. In this respect, the control and supervisory instruments should be strengthened and the reasons stated for lack of implementation of the statutory procedure and successively consider the potential abuse by the Director. I propose amendments to this section, to diminish

or disable the right of the Director to recruit and employ without clear criteria and without a public announcement.

In this context, Article 187 provides for transfer of employees from the former UBK. The Selection Committee headed by the Director made a selection, and they used the security vetting as the defense mechanism to disqualify the "inadequate". Many former employees were declared "inadequate" to work in security, with third-degree vetting performed in accordance with the Classified Information Act, whereas other employees who were transferred or newly recruited and subject to second-degree vetting, were declared "adequate, or eligible". There should be no lower degree of security vetting. More than 100 former members of the UBK were available for deployment and possible reassignment to positions in the Ministry of Interior as a result of the security vetting, mostly experienced, long-term employees. Therefore, the capacity of the ANB was weakened from the very beginning, taking into account the fact that a number of employees retired, some left on their own, and so on. The current situation should be closely monitored since the oversight bodies of the Parliament have not been functional for a longer period of time[9], other oversight bodies are also awaiting elections results, so no assessment of the work of the ANB by the oversight bodies has been carried out. Also, after the elections, according to our practice, depending on the results, there will be a mass filling of vacancies, mostly using the discretionary powers of the Director. The control and supervisory bodies should be trained, prepared and given priority to monitor such occurences being that they are a reality in our country.

Law for Coordination of the Security and Intelligence Community of the RNM

The Law for Coordination of the Security and Intelligence Community in the Republic of North Macedonia[10] was adopted as a result of the response to the remarks that were given on the necessary reforms in the security and intelligence sphere. The reasons were to end the abuses by using illegal wiretapping that took place during the existence of the UBK, a reform to be applicable to ANB as well. This Law for coordination of the security and intelligence community, envisages creation of opportunities for monitoring and coordination of three services working on the plan of collection, evaluation, assessment, selection, analysis and actions in accordance with the mission for identification, prevention and disabling of risks and threats to the national security of RNM.

In this Law, the role of the President and the Vice President of the Government, who are members of this body and chair the body is questionable. Namely, if the main concern for reforming the UBK was the perception that the service was used to achieve partisan and personal interests of a small group of heads headed by the Director[11], then the issue arises as to why again, great power is concentrated in the hands of one man, the Prime Minister. One gets the impression that the entire text of the Law is in favor of legitimizing that power, channeling the subtlest of information in that body, directing the services, their coordinated approach, despite the fact that they have a different set-up, competencies and methodology of work. One would understand the purpose of it when considers

9 Parliament was dissolved on 17.02.2020

10 Official Gazette of RNM, no. 108 of 28.5.2019

11 Relative to the Prime Minister of the RM.

the legal elements for the job position of each service that is intended to be part of the coordinating body through its minister, director/manager. This Law intrudes onto the Law on the Intelligence Agency.

Namely, Article 4 of the Law on the Intelligence Agency[12] stipulates that the Director is accountable to the President of the Republic of Macedonia for both, his, and the work of the Agency. The Government of the Republic of Macedonia may hold the Director accountable for the work of the Agency. If the Director answers to the President of State and the President appoints the Director, then why the President is not a part of, or even a Chair to the Council for Coordination? In circumstances when the President of State and the Government come from the same political provenance, this may be of no great concern, but if the relationship changes, then a problematic cohabitation may occur. That relationship may further heat up since the members of the Government who are members of the Coordination Council, are also members of the Security Council. If cohabitation fails, then the members of the Coordination Council will use the proposals of the Security Council, but in turn will selectively notify the President of State. This hypothetical situation is feasible in conditions and political context that is prevalent in North Macedonia. During the stage leading up to the adoption of the Law Proposal for Coordination, concerns were raised regarding the inclusion of the President of State, but such concerns were not incorporated in the final version of the Law.

The Law for Coordination of the Security-Intelligence Community in RNM determines the mission of the coordination body and is basically concerned with definition of security policies.The security policy is defined by Strategies for security, defense, so that the coordination body does not have much maneuvering space to redefine strategic commitments. Also, one of the tasks of the Coordination Council is to review and implement proposals by the Security Council submitted to the Government of the RNM. Firstly, the Coordination Council is composed of the three ministers who are members of the Security Council and the Prime Minister, and they constitute the majority in the Security Council, since the President of State appoints three external members. In order for the Security Council to be able to deliberate on security issues, it must have adequate intelligence that speak of a particular risk or threat. Given that orders cannot be issued, the Security Council may make proposals, which may or may not be binding to the Government and the institutions in the field of security and intelligence. If the same proposal voted by the members of the Security Council, who are also members of the Coordination Council is adopted, then the question arises as to what is to be deliberated about? Even without this Law for coordination, so far there has been a practice of submitting proposals by the Security Council to the Government, and in turn the Government, within its purview, would disseminate duties to the ministers/ heads of the security and intelligence field, and the President of State would forward proposals with specific measures to be implemented by the Intelligence Agency. This explanation supports my statement that this Coordination Council is just a reflection and duplication of the already existing actions. If no other functional solution exists, then one may conclude that the establishment of such a body is only to exercise full control over the security-intelligence area by the Prime Minister (who is in principle the president of the party that has won the most electoral votes). In this case, definitely the only interest would be to politicize the security and intelligence community. Since it is known that the Director of the ANB and the

[12] Official Gazette of RNM No. 19/95 of 06.04.1995

Head of the Military Intelligence Service are appointed- one directly following the proposal of the Prime Minister, and the other by the Minister of Defense, who is a member of the Government, only the Director of the Intelligence Agency remains under the authority of the President of State. In context such as the current one in RNM, when the President of State is proposed by the ruling party, we can safely conclude that the entire security and intelligence community is under the auspices of the ruling party, that is, the one who forms the government. Such conditions and set-up were the immediate cause for the disbandment of the UBK.

The coordination is regularly performed, no later than once every three months. The sessions are convened by the Prime Minister. The sessions are used to review reports and proposals prepared by the Coordination Council. The Council directs the members of the Security Intelligence Council to work on or examine a particular risk or threat and pursuant to the Law, asks them to produce intelligence products.

It is illogical that within the scope of the Office of the Coordination Council it is envisaged to "unite and assess the objectivity and relevance of the submitted reports, briefs, analysis, assessments and other information from the security-intelligence services which address the security and intelligence threats and risks to the national security of the country." It is logical to unite the products of the intelligence analysis of various intelligence services, but it is not logical to value objectivity and relevance. This means that although any intelligence information is prepared according to the indication, procedures and methodology prescribed in the Law on Classified Information, the finished product is approved by the highest ranking officer in the service (the Director), and most certainly such is not a produce of failed analysis of multiple information etc., and the question arises as to why one would doubts its objectivity and relevance. Certainly each of the services would receive different information about certain risks and threats, and in accordance with their practices, knowledge, methods, means and mission, but it is not possible for one occurrence, event, procedure to be perceived differently to the extent that someone from the agency staff would be asked to value its objectivity and relevance. Maybe a better solution would be to amend the provision and add the following "shall unite, supplement and clarify the submitted ...".

Article 21 of this Law stipulates that the Council for Coordination of the Intelligence and Security Services is required to submit reports, briefings, analysis, assessments and other information which address the security and intelligence threats and risks to national security of the country. There is a lack of clarification "... about the threats and risks that have been identified, while the Council has notified all the security and intelligence community stakeholders to thereafter target all their actions." If such a formulation is not envisaged in the Law and coordination has not been applied, then each service will act according to its point of interest, which may or may not refer to the threats and risks in question. Therefore, the coordination needs to be active, timely, targeted and comprehensive, and the Council will be mandated after the realized coordination to prepare a document, thereby asking each of the members of the Council to act in accordance with the identified interest. Such instruction will be a part of the documents to be presented to the supervisory and control bodies who oversee the work of the security and intelligence services, and therefore show lawful action and focus on the problem that is being developed.

The current Law for coordination lacks a provision on transparency and identification of the content of coordination. This is necessary to avoid suspicion of possible abuse.

CONCLUSION AND RECOMMENDATIONS

Following the conducted analysis of the two laws, in addition to the general, I hereby present further recommendations to be considered, and maybe inserted as amendments to existing laws thereby contributing to proper implementation of legislation and statutory purpusfulness. Also, the intention is to avoid any suspicion of abuse and aspirations towards building adequate integrity of the services. In general terms it is necessary to continue the commitment to operate within legal boundaries, but as a reality, not just declaratively. The basic recommendation is to work on the process of depoliticization of the law enforcement services. Additional recommendations:

- to diminish influence of authorities outside the services;
- to diminish discretionary rights of heads of departments/units to the extent possible;
- to identify a strategic direction and ascertain appropriate security policies;
- to strengthen the control and supervision/oversight mechanisms;
- to submit timely and comprehensive reports;
- to work on increased transparency and openness of the services, by applying measures for protection of methods, means and the subject/point of interest;
- full control over the legal use of technical devices and equipment, as well as the manner of storage and handling of special devices and equipment that enable the enforcement of the measure without the OTA and operators' mediation;
- to set international cooperation on a reciprocal basis;
- to ensure a high degree of information protection;
- to practice transparent employment procedures and behavior towards employees;
- to establish a career building cycle;
- to implement clear, decisive and attainable criteria for evaluation of the work of the employees;
- to organize training, to intensify the cooperation with the academic community;
- to harmonize the methodological procedures for obtaining, processing, analysis, preparation of finished products and timely submission to the authorities for making timely and qualitative decisions, guidelines and tackling real and relevant threats and risks;
- to avoid abuse of information for political purposes;
- to timely and fully destroy unnecessary, pointless and suspicious information;
- to ensure coordinated action;
- coordinated approach for building the integrity of the services, the employees and the entire country.

REFERENCED LEGISLATION

- **Law on the National Security Agency** (Official Gazette of RNM, no. 108/19)
- **Law for Coordination of the Security and Intelligence Community of the RNM** (Official Gazette of RNM, no. 108/19)
- **Law on Interception of Communications** (Official Gazette of the Republic of Macedonia, No. 71/18, 108/19)
- **Law on the Intelligence Agency** (Official Gazette of RM no. 19/95)
- **Law on Classified Information** (Official Gazette of RNM, no. 275/19)
- **Law on Personal Data Protection** (Official Gazette of RSM, no. 42/20)
- **Law on Organization and Work of the State Administration Bodies** (Official Gazette of RM no. 58/00)
- **Criminal Procedure Code** (Official Gazette of RM, No. 150/10)

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