

THE PARLIAMENT OF THE REPUBLIC OF MACEDONIA AND THE REFORMS IN THE SECURITY SECTOR: A voting machinery or a genuine forum of deliberation?

The reforms in the security sector (with a special emphasis on the Bureau of security and counterintelligence - UBK) is the first priority in the recommendations of the Group of high experts on systematic issues regarding the rule of law (further referred to as the Reinhardt Priebe report). In a way, this reform is considered as a *conditio sine qua non* for the realization of any further systemic reform in the country.

On the other hand, the complexity and the obscurity of regulating this matter does not leave much space to the public - even the expert one - to be able to discern in a qualified manner the inclusiveness and the purposefulness of the reforms in the security sector. To a certain extent, the aforementioned is understandable, having in mind that the very topic is delicate and affects aspects of the political system which by definition are or should be regulated with a certain extent of discretion.

Within a sea of information and the high number of proposed law changes (as high as five law amendments or new laws related to the area of communication surveillance), the public cannot really discern the degree to which these changes/reforms will bring forth an actual realization of the recommendations given in the Priebe report. Additionally, an impression has been created that the government's 3-6-9 plan insufficiently or with insufficient precision "transforms" Priebe's recommendations into actual reforms. Compared to the two reports by Priebe (2015 and 2017) abounding with highly accurate qualifications and proposals on the resolution of the current state of affairs, the government's 3-6-9 plan appears more of a political bulletin that abstractly points to the assumed reforms and priorities, while its indeterminacy justifiably gives the public the right to pose and open further questions and dilemmas.

This brief has the general goal of clarifying to the public the potential weaknesses and "voids" in the proposed reform in the security sector, as well as to warn against potential imprecisions that in the future may create precedents and possible political interference in this area.

Also, this brief (and the on-coming ones) has a specific objective to help the members of the Assembly of the Republic of Macedonia (both from the ruling majority and the opposition) to be able to, in a relatively competent manner, deliberate and essentially contribute to the development of the state of affairs in the Republic of Macedonia. The reform of the security sector is a responsibility of not only the Government but of the legislative branch of the Republic of Macedonia as well, and it nonetheless needs to be of benefit to all the citizens of the Republic of Macedonia and to the opposition (current or any future one) in the narrowest sense.

WHAT ARE THE SO CALLED "NEURALGIC NODES" THAT THE CIVIL SECTOR AND THE MEMBERS OF THE ASSEMBLY OF THE REPUBLIC OF MACEDONIA SHOULD PAY SPECIAL ATTENTION TO?

1. The changes in the Law on communications (and the accompanying four laws that are part of this corpus) are but a part of the all-inclusive reform in the security sector, or a beginning of the process of separation of the party from the state. These changes in the law, which needs a qualified vote of two thirds majority, represent a kind of test given by the European Commission to ascertain whether the Government but first and foremost the Parliament shows any signs of reform capacity. The remaining, essential part, is a more thorough reform of the security sector that will lastingly and thoroughly create preconditions in preventing abuse of the security service for political and party ends.

During the whole process, the European Commission continuously insists on inclusiveness in the process, i.e., substantial inclusion of the opposition in the passing of the laws throughout the process, and a consensus in some segments (particularly where two third majority is necessary to pass the law). This necessity of inclusion is not only aimed at establishing a dialogue between the MPs in the parliament and/or potentially ease the process of passing laws, but it also has a long term goal: namely, to position the parliament and its MPs as a main locus of discussion, deliberation and essential inclusion in the process of passing and changing laws. Without such critical emancipation of the Assembly of the Republic of Macedonia from the executive power, the parliamentary democracy cannot thrive.

2. Out of the four models suggested, the Government has chosen the one relying on a so-called intermediary body, that is an Agency that will act as mediator in the process of intercepting communications. This Operative-technical agency (OTA) will be established ex novo by the Government and its director will be elected in the Parliament with a simple majority vote and a mandate of five years.

Yet, it is worth noting that according to Priebe's report (p. 12), it seems that this solution is the least desirable by the Senior Expert Group led by Reinhard Priebe since this model is not impervious to potential political influence in the interception of communications. The most desirable model for Priebe is the one in which the proprietary switches and the right to mirror upon court order belong directly to the telecommunication operators and not, as according to the model suggested by the government, through a new body of the executive branch (an agency). Priebe's remarks in this context point to the fact that even the new body, considering the political culture in the country may be subject to political influence, thus OTA becoming the old-new UBK. What gives extra strength to this remark is the manner in which the director of OTA is elected (by a simple parliamentary majority contrary to the unofficially announced two third majority) and the relatively short mandate (five years instead of the unofficially announced seven or nine years).

3. The two Priebe reports, the Urgent Reform Priorities set by European Commission and all the public statements by the high representatives of the international community postulates the parliament as key institution in a democratic system that needs to take its role of a lawmaker and a forum of deliberation through which in a substantive debate all reform-related issues need to be processed. In this sense, it seems that the Assembly of the Republic of Macedonia does not own the role that naturally and constitutionally belongs to it in a democratic system of governance. For instance, the proposal on the establishing of the new body, the Operative-technical agency (OTA) is a solution imposed by the Government and a solution that has not previously been discussed in the parliament, along with the other three proposed solutions stated in Priebe's second report. This is gravely problematic given that the Priebe report expresses concerns regarding the complete independence from political influence in the new state body-OTA.
4. Due to the previous negative experiences with the (non)separation of the party from the state, the Government, in accordance to Priebe's recommendation, proposes a set of measures and solutions for an enhanced oversight by the parliament and the expert public regarding the reforms in the security system. Oversight is a very important aspect in the whole process and it is being insisted upon in order to fill all potential law "holes" that could be abused by the Government (the current one or any future government).

The law on communications suggests several types of oversight:

- Parliamentary oversight, that is a parliamentary committee consisting of five members whose president and majority come from the opposition. The committee has an increased mandate in the new legal solutions as well as the right to invite external collaborators (filed experts) that will facilitate the oversight.
- Council of civil control. It is a new body that should be elected by the parliament consisting of experts and representatives of the civil sector.
- Overseeing the operators. OTA will be in charge of overseeing the operators in the process of executing the measures undertaken for communication surveillance. (Note: this aspect is potentially troublesome as it leaves space for OTA i.e. the Government to exert pressure on the operators).
- The Directorate for security of classified information will oversee the

handling of classified information.

- The Directorate for the protection of personal data oversees the lawfulness of the actions undertaken towards the processing personal data.
- Ombudsman, executes overseeing from the aspect of respecting human rights and liberties.

If this relatively complicated scheme of overseeing and “tied signatures” does its work in an efficient and law abiding manner, we can expect a relatively coherent oversight mechanism of the communication surveillance in the future.

Nonetheless, the Assembly of the Republic of Macedonia, through its committees in which the majority comes from the opposition, must be the first and the key barrier to any potential future non-democratic behavior by the Government.

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