

Failings of the Parliamentary Oversight of the Security Sector (2001–2011)

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1. Parliamentary oversight of the Security Sector in Bulgaria

Although combating OCPD managed to push down all other priorities in the agendas of Bulgarian institutions, and although the measures undertaken by the executive authorities can definitely be described as unsuccessful, the National Assembly remains surprisingly indifferent to the problem. This institutional apathy is most apparent in terms of parliamentary scrutiny of law enforcement authorities. The empiric material gathered in the course of our project revealed three main causes for the failing efficiency of parliamentary scrutiny of the security sector in Bulgaria.

1.1 Lack of in-depth understanding of the essence of parliamentary scrutiny and its role in parliamentary practice

The analysis of the group discourse of the interviewed experts indicates that Bulgarian parliamentarians perceive scrutiny mostly as referring to asking questions within the regular Friday “parliamentary oversight” procedure, setting up inquiry commissions, or as actions involved in seizing judiciary authorities, mainly the prosecution. The formalisation of parliamentary scrutiny into a special session, held once a week, means that the rest of the time (or roughly 4/5 of the overall time), parliamentarians are busy doing other things which they obviously find to be of greater significance and political priority. At the same time, the share of questions raised in those sessions which deal with countering organised crime and political corruption is minimal, despite the fact that this is the most persistent criticism addressed at the functioning of government institutions in this country. This problem can be explained by the subordination position (as described earlier) of parliamentary majority *vis-à-vis* the executive branch, and the understanding shared by parliamentarians that their role boils down to representing the people in principle through making law (mostly, at the initiative of the executive branch) the implementation of which is the business of the government, the administration and the judiciary system in the broadest sense of the word.

1.2 Failings in the adequate institutionalisation of parliamentary scrutiny

Parliamentary committees are seen mostly as sections where MPs with relatively similar areas of expertise get together to discuss draft acts. Scrutiny work by parliamentary committees is minimal, but that is perceived as logical since there is a special plenary session dedicated to that.

1.3 The budget procedure as a scrutiny instrument remains unused

No attention is paid to the scrutiny possibilities offered by the budget procedure. At first sight, this is surprising because for a long time countries with a lasting democratic tradition have been using the budget as the most powerful checks-and-balances instrument to oversee the executive branch. In that instrument, parliament has a mechanism for setting goals for the executive, identifying the means to achieve such goals, and checking the effectiveness of actions in the use of those means to achieve the set goals. In the Bulgarian context, however, this instrument for oversight of public policies is not applied. The main reason for that is the overall logic of Bulgarian governance and the historic budgeting principle, which is to cover expenditure and not to fund targeted policies that have clearly measurable outcomes. This logic turns the debates on tax legislation and the budget into disputes over the concrete allocations of funds, and not into a debate on the objectives of public policies and their results, a debate which is a prerequisite for effective parliamentary oversight through the budget.

1.4 Poor efficiency of parliamentary scrutiny from 2001 till 2009

The above-mentioned prerequisites, coupled with the large parliamentary majorities in the 39th and particularly in the 40th National Assembly, explain the poor efficiency of parliamentary scrutiny in the period 2001-2009. In the 41st National Assembly, the parliamentary scrutiny system in the Bulgarian security sector exhibits a positive development, although it is too early to talk about full efficiency. On the one hand, this term began with a minority government, which predetermines the bigger weight to be carried by Parliament in inter-institutional relations. On the other hand, the State Agency for National Security Act, which came into force in 2008 as the first attempt to regulate the security services, provides legal grounds for a systematic and institutionalised scrutiny in this area, although a predominant number of the interviewed experts interpreted the adoption of the Act as a move in the internecine struggle within BSP, aiming to isolate the then Minister of the Interior Roumen Petkov. The scrutiny mechanism envisaged in the Act started to function in real terms at the beginning of the term of the 41st National Assembly. Until then, there was no legal basis for specialised oversight and general scrutiny was performed mostly by the Committee for Home Security and Public Order.

Evidence of the lack of effective institutionalisation of scrutiny in the 39th and the 40th National Assembly can be found in the various weights carried by that function under the various Committee chairmanships. Throughout the entire term of the 39th National Assembly, the Committee for Home Security and Public Order was chaired by Vladimir Donchev. The available data, which have been summarised in Table 1, indicates that in that period the Committee held approximately 30 meetings per month, and work on draft acts exceeded its oversight activity by a factor of 4. From the start of the term of the 40th National Assembly in August 2005 until January 2008, the Committee was chaired by Nikolai Svinarov. During that period, oversight work in the Committee registered a tangible increase, and in 2007 the number of meetings dealing with oversight activities almost equalled the number of meetings where draft acts were discussed. This ratio was retained under the chairmanship of Mincho Spasov, from February 2008 until June 2009. With the start of the term of the 41th National Assembly when the Committee chairmanship went to Atanas Atanassov, the oversight activity went down again. These dynamics can be explained by the fact that Vladimir Donchev was a representative of NDSV, the main party in the ruling coalition in

the 39th National Assembly, while Atanas Atanassov was a representative of the ruling party in the 41st National Assembly.

When the ruling majority has a monopoly on setting the Committee agenda, and the chairman and the sectoral minister belong to one and the same party, it is logical that oversight activities tend to drop down to the minimum level. Although Nikolai Svinarov and Mincho Spasov also represented the ruling coalition during the term of the 40th National Assembly, they were not nominated by the main party in that coalition, which made them more independent of the executive government, particularly as the sectoral minister was not from their party.

1.5 Contribution of the specialised parliamentary committees

In the case of the 41st National Assembly however, there is yet another significant factor in play. Several specialised parliamentary committees were set up with the main function of overseeing the security sector. This leads to a differentiation in tasks and a lesser involvement of the Home Security Committee in oversight activities. Although the oversight of the activities of the Interior Ministry, which is a key instrument in combating OCPC, remains within the remit of that particular committee, the specialisation and institutionalisation of parliamentary scrutiny in the sector take their first steps in the specialised committees.

According to the publicly accessible database of the National Assembly⁴¹, the organisational structure of the 39th National Assembly did not include any specialised committee or subcommittee to deal with scrutiny of the security sector as its priority task. In the 40th National Assembly, two specialised subcommittees were established: a Standing Subcommittee for Oversight of the Work of Security Services and Public Order Services, and a Subcommittee of the Defence Committee which was tasked with parliamentary scrutiny of the activities of the National Intelligence Service, the National Protection Service and the Military Information Service of the Ministry of Defence. The former comprised ten members, and the latter consisted of three MPs. There is no publicly accessible, institutional information about the activities of these two permanent subcommittees. According to the available records, they did not meet at all and did not perform any activities. The situation with the Standing Committee for Oversight of SANS which was set up at the end of the term of the 40th National Assembly is identical (Table 1).

The mechanisms for specialised parliamentary scrutiny in the security sector became functional only in the 41st National Assembly. In addition to the traditional Committee for Home Security and Public Order, the following standing bodies were set up in the 41st National Assembly: Committee for Oversight of SANS, and a Subcommittee of the Legal Affairs Committee, which performs the parliamentary oversight and monitoring provided for in Article 34b of the Special Investigating Techniques (SIT) Act, and Article 261b of the Electronic Communications Act. The Subcommittee for Parliamentary Oversight of the Activities of the National Intelligence Service (NIS), the National Protection Service (NPS) and the MoD Military Information Service (MoDMIS) set up during the previous parliamentary term is also retained.

⁴¹ www.parliament.bg visited on 25 June 2011.

Table 1.
Work done by the specialised parliamentary committees (2003-2011)

	Committee	Meetings		On Draft acts	On Oversight
		Total	ave/mo		
2003	Committee for Home Security and Public Order	15	3	11	5
2004	Committee for Home Security and Public Order	30	3	26	6
2005	Committee for Home Security and Public Order	28	2	22	3
2006	Committee for Home Security and Public Order	32	3	22	10
	Subcommittee for Oversight of the Work of Security Services and Public Order Services	-	-	-	-
2007	Committee for Home Security and Public Order	23	2	13	10
	Subcommittee for Oversight of the Work of Security Services and Public Order Services	-	-	-	-
2008	Committee for Home Security and Public Order	40	3	25	21
	Committee for Oversight of SANS	-	-	-	-
	Subcommittee for Oversight of NIS, NPS and MoDMIS	-	-	-	-
	Subcommittee for Oversight of the Work of Security Services and Public Order Services	-	-	-	-
2009	Committee for Home Security and Public Order	34	3	25	11
	Committee for Oversight of SANS	15	3	4	11
	Subcommittee for Oversight of NIS, NPS and MoDMIS	0	0	0	0
	Subcommittee for Oversight of the Use of SIT	-	-	-	-
	Subcommittee for Oversight of the Work of Security Services and Public Order Services	-	-	-	-
2010	Committee for Home Security and Public Order	36	3	25	7
	Committee for Oversight of SANS	22	2	4	20
	Subcommittee for Oversight of NIS, NPS and MoDMIS	0	0	0	0
	Subcommittee for Oversight of the Use of SIT	15	2	0	14
2011	Committee for Home Security and Public Order	16	3	13	3
	Committee for Oversight of SANS	6	1	2	6
	Subcommittee for Oversight of NIS, NPS and MoDMIS	4	1	0	4
	Subcommittee for Oversight of the Use of SIT	4	1	0	3

Source: *www.parliament.bg* visited on 25 June 2011. The 2003 data refers to one-month periods from July to December. The 2011 data covers January to June.

The data shown in Table 1 demonstrates that the main function of the Committee for Home Security and Public Order in the 41st National Assembly is to work on draft acts within its sector. The Committee has been quite active. From the beginning of the term until the end of Q2 of 2011, it held 69 meetings, or an average of 3 meetings per month. In 52 of these meetings, it discussed a number of draft acts. At the same time, only 11 meetings dealt with parliamentary oversight activities. The ratio between law-making activities and oversight activities is almost 5:1 in favour of the latter.

In the period under review, the Committee for Oversight of SANS (COSANS) met 43 times and at 10 of its meetings it discussed draft acts, while in 37 meetings it carried out various oversight activities. A particular feature of this committee is that it is composed on the basis of the parity principle and includes one representative from each parliamentary group and it is chaired on a rotating basis by each of its members, with the exception of the representative of the largest parliamentary group. This model of organising the committee has a number of positive aspects, but it also generates certain problems. One such problem is weak leadership, which is a negative consequence of having a rotating chairmanship. The Committee was most active in the beginning, during the chairmanship of Ivan Kostov (23 meetings). Its activity slowed down under its next chairman Volen Siderov (14 meetings), and under the third, Kamen Kostadinov (with 6 meetings over six months), meetings became a rarity.

The Subcommittee for Oversight of the Use of Special Investigating Techniques, which was set up in 2010, held 19 meetings, 17 of which dwelled on matters of parliamentary scrutiny. At the same time, the Subcommittee has not discussed a single draft act. Similarly to COSANS, this committee is designed on the basis of parity and has a rotating chairmanship. The other specialised subcommittee had no activity whatsoever in 2009 and 2010. In 2011, it held 4 meetings, 3 of which were dedicated to parliamentary scrutiny. The Committee has not discussed any draft acts.

1.6 Conclusions

Several key conclusions can be drawn from the review of the performance of these parliamentary committees.

1.6.1 Real oversight is exercised in the presence of a clear mandate assigned by law.

Committees which are actively engaged in parliamentary scrutiny are so by way of complying with obligations prescribed by a special law (the SANS Act and the SIT Act). Where there is no such legal prescription and, therefore, Parliament has the initiative and not the obligation, oversight is, instead, a practice of formalities and neither the overseen, nor the overseers expect to achieve any real result.

1.6.2 Specialised parliamentary oversight appeared only as late as at the end of 2009.

The Committee for Home Security and Public Order has always had predominantly legislative functions. Oversight activities carried out by this Committee involve no more than discussing the annual reports of various executive bodies, which are required by law to produce such reports. It is noteworthy that, where the Committee chairman and the interior minister are representatives of different parties, oversight activities have a significantly larger share in proceedings. Unfortunately, the number of empirical observations on this issue are not sufficiently high enough to allow for valid generalisations. Of the remaining three committees, two can be described as active (this is due to the fact that they have been set up under concrete legal provisions and have a clear mandate). The case of the Subcommittee for Oversight of NIS, NPS and MoDMIS is quite different. Currently, the activities of the services it is supposed to oversee remain secret and outside any legal regulation. Practically, this poses substantial difficulties in the performance of adequate parliamentary scrutiny.

1.6.3 Role of parity-based composition and rotating chairmanship

The principles of parity-based composition and rotating representation, on which two of the actively functioning specialised committees are based, enhance the institutionalisation of effective parliamentary scrutiny of the security sector. They ensure that decision-making is free from any domination on the part of the parliamentary majority and that there is no monopoly on agenda-setting. At the same time, the rotation of chairmanship, in its present form, is conducive to weak leadership. It does not allow the committee to elaborate a comprehensive action programme and measures, which results in a lack of activity.

1.6.4 Limited scope of specialised oversight

The scope of specialised parliamentary oversight is limited. It refers only to the work of SANS. The remaining services are subject to scrutiny only in case they employ special investigating techniques.⁴²

1.6.5 Lack of internal parliamentary know-how

Parliamentary committees are not supported by any specialised administration consisting of experts who could produce adequate expertise and assessments. Currently, committees rely primarily on the expertise of the very agencies they oversee.

1.6.6 No use made of the budgetary oversight mechanism

The current practice in the adoption of the state budget does not involve any active participation by Parliament. On the contrary, the executive branch carries out the budget planning and it is extremely easy for them to push their budget draft act through, which gives them a free hand to act completely at their discretion, and above all, at the discretion of the minister of finance. This is a problem for the Bulgarian parliamentary system in general but in the security sector its consequences are even graver. Since a large part of the activities of security agencies is secret, their behaviour can be subject to scrutiny almost exclusively through the budget funds they are granted in order to carry them out.

2. Vision and development

In addition to its specific oversight activities, Parliament has the possibility to take an active part in the strategic planning process in the sector and could even be a key player in it because the identification of general guidelines in the area of security calls not only for strictly specialised, technical knowledge and classified information but a political vision as well. This enables parliaments to be active and useful in the discussion and adoption of the overall security policy, various strategic and reference framework documents such as strategies concerning national security, combating organised crime, corruption, etc. At the same time, being the most representative of authorities and the principal in terms of public spending, the parliamentary institution can make use of the budget mechanisms to determine the course of security policies. As in any other sectoral policy, the active participation of Parliament in the strategic planning and budgeting in the security sector equips it with this valuable instrument in the process of ex-post control.

⁴² For more on the specifics of oversight of the performance of SANS by the parliamentary committee, see *Monitoring of State Agency for National Security 2010*. Sofia: RiskMonitor.

2.1 Institutionalisation

In order to be effective, parliamentary scrutiny of the security sector should, first and foremost, be institutionalised as an element of the overall institutional set-up in this priority area.

2.1.1 Legal regulation

This requires, above all, a legal regulation of the sector and of the mechanisms relating to the identification of objectives to be addressed by these public policies, their implementation, and their routine public scrutiny through the parliamentary process. Unless this basic prerequisite is there, it is impossible to implement the concept of public scrutiny. It is only possible in clearly regulated areas. The lack of regulation, whether explicit or conventional, means that the areas in question are not public in nature and cannot possibly be subject to public scrutiny.

2.1.2 Stability

The second precondition for the institutionalisation of scrutiny is the stability of the respective regulative mechanisms. That is why it is appropriate to make it difficult to make changes to the scrutiny functions of Parliament *vis-à-vis* the security sector. Generally, this is done by including such provisions in the text of the Constitution. An alternative solution is to regulate scrutiny in a law, which can only be amended by a qualified parliamentary majority (for example, by three-quarters of all votes). However, it is preferable to put these provisions in the Constitution because it usually implies judicial review for compliance.

2.1.3 Parliamentary specialisation

The third precondition refers to parliamentary specialisation, by setting up a standing committee/committees for that purpose and providing it with adequate administrative and expert staff. To avoid duplication of functions and the problems arising from inefficient coordination, it would be appropriate to place supervision with a single standing subcommittee of the Home Security Committee. This would enable a narrower specialisation of its members and more effective coordination in their work.

2.1.4 Balanced representation

To ensure broad representation in the exercise of scrutiny, it is necessary to take some special structural decisions concerning the constitution of such a subcommittee. Firstly, there should be parity between the representatives of the ruling majority and the opposition because a predominance of the ruling majority would largely make the existence of oversight mechanisms pointless. On the other hand, a predominance of the opposition holds the risk of politicizing oversight and of useless hair-splitting, which could end up incapacitating the special services. Although a balance in the composition of committees also holds certain risks, such as the risk of a gridlock between majority and opposition and hence a blockage of the oversight mechanism, it would foster political dialogue and efforts to reach consensus.

The requirement to take committee decisions by consensus is another instrument to achieve greater representation in exercising oversight of the sector. It can also be used as an offsetting mechanism in committees structured on the basis of proportionality or another non-parity principle. Another important precondition for wide representation in oversight is the existence of mechanisms to prevent monopolization of the committee agenda-setting and its decision-making

procedure. Such mechanisms include rotating or collegiate chairmanship, which guarantees a relatively equal access for all committee members to agenda-setting.

2.2 Scope

To be effective, parliamentary scrutiny ought to cover the entire security sector. This means that all government agencies, services and other entities involved with security matters should be subject to scrutiny. To ensure the comprehensiveness of scope, it is necessary to introduce a binding requirement to provide information and send an authorized representative of each agency or service when their presence is requested by the sectoral parliamentary committee. If such an obligation is legally binding only for the sectoral minister, the scope of scrutiny would not be comprehensive.

2.3 Budget control

As already noted on several occasions, one of the most powerful instruments in the hands of the legislative branch is participation in the discussion of the draft budget and oversight of its adoption and implementation. By controlling the implementation of the budgets of the respective agencies and services, Parliament can oversee the efficient performance of their functions and the achievement of the set goals. To have effective budget control, it is necessary above all to have Parliament play an active role in setting the goals and objectives for the sector and in the budgeting process for its activities. Under the very real threat of having their operational budget cut in case their performance is unsatisfactory, agencies and services would have a strong incentive to be more responsible and efficient in carrying out their duties, including those relating to transparency and accountability in their activities.

2.4 Administrative and expert capacity

Effective oversight in the security sector assumes that the committee exercising oversight ought to have specialised expertise and access to classified information. Usually, MPs are political figures who do not have any specific experience in the security sector. At the same time, the limited length of their term of office does not afford them the time to specialise. That is why, in carrying out their oversight functions, committees rely on two main sources of expertise: representatives of the agencies they oversee and external experts. The classified nature of the information being handled precludes its full disclosure to external experts. That is why the committees cannot rely on fully adequate, independent expertise. However, this puts the oversight committees in an unfavourable dependency in terms of information and expertise from the entities they must oversee.

To overcome this problem, it is necessary to set up specialised administrations to support the oversight committees, staffed with former employees of the special services who enjoy public trust and have extensive professional experience, as well as other experts with substantial practical experience in the sector. Also, there should be guarantees that such administrative units would be stable in time and would not be subject to dramatic changes in terms of organisational structure and personnel with every change of the ruling majority. In this way Parliament would acquire autonomy in terms of expertise, which enhances the adequacy of parliamentary scrutiny.