ON THE BULGARIAN NATIONAL SECURITY SYSTEM AND THE PROBLEMS OF ITS REGULATION

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Quis custodiet ipsos custodes?
Juvenal, „VI-th Satire"

Abstract

A very well known fact is that for centuries spy activities all over the world have been simultaneously blamed and covered with heroic mysticism. As a professional analyst on National security problems, I can clearly understand the reasons behind these contradictory public attitudes and I will briefly give my point of view as a part in this public discussion.

At every occasion, I refer to Juvenal's words I personally interpret as: "Who will watch the watchers?" or even "Who will guard the guardians themselves?" I have put them as a motto in full consciousness that the question has to be the focus point, the most important problem for the security and for the nation, to be solved during the National security system foundation in contemporary Bulgaria.

On the other hand, to those who enjoy using strong expressions against the intelligence activities, I would like to remind what Michel de Montaigne wrote more than 500 years ago: „Likewise, in all governments there are necessary offices, not only abject, but vicious also. Vices there help to make up the seam in our piecing, as poisons are useful for the conservation of health", just with the proviso that the judgments on vices and abject are no more than a personal issue decision.

In fact, there are no possibilities to reach a consensual public attitude to the intelligence activities and their usefulness for the society. What we all definitely need is to find out the right balance and we have to find it right now, because at present we face the needs and the issues of the Bulgarian national security system foundation. For that reason, any compromise within the regulation-settlement process is inadmissible because the lack of thorough legal norms will have unpredictable negative consequences not only for the society and for the state as its paramount organization, but for the individuals as well, e.g. it will be risky for all players on the different National security levels. For the first time in our democratic development, we have the chance, and we are obliged, to implement in our practice the old traditional approach in regulation creation process – the laws have to be constituted in a way not to be changed for at least a 50 years period!

The article aims neither at the past, nor even at the present, but at the future and for that reason no particular activity of the Bulgarian intelligence or police agencies ("security services" and "public order services" respectively according to the legal definition in the Classified Information Protection Act) will be analyzed or be revealed in it. What I will stress on is the experience, the negative one in particular, in Europe and USA in National security area regulation, which in my point of view we have to take in mind and into account.

THE FUNDAMENTAL ISSUES

The reality Bulgaria faces in the second decade of 21-st century is the persistent existence of security and police agencies, which are not part of an integral national security system because the system they belong to does not exist since 1989. The intelligence activities regulations remain inadequate to the democratic governance principles. The Military Intelligence (the Defence Information Service - DIS, under the Minister of the Defence) duties and activities are blanket - very briefly and blurry - formulated in the Law on the Defence and Armed Forces of Republic of Bulgaria. As for the "civil"[1] intelligence – the National Intelligence Service (NIS) even has no such legal basis for its activities, as MI has. Only the State Agency for National Security (SANS)

[1] Almost all staff of which has military ranks!

activities are under the regulation of the State Agency for National Security Act[2] since the beginning of its existence in 2008.

What Bulgaria needs is the foundation of a modern, and as far as possible, democratic integrated national security system with clearly legally defined duties and rights not only of its structural elements, but of the system as a whole, both of which have definitely to be under a strict control.

The first step towards the realization of this goal was made on March 08 2011 when the Bulgarian Parliament voted the fundamental for the Bulgarian national security document. However, the Strategy for the National Security of the Republic of Bulgaria is no more than a non-regulatory framework for all activities in National security field. Thus the fundamental issue – the modern, and the functional as well, regulatory framework for both for the system as a whole and for its integral elements remains the issue of the day. We face a hard and complicated process due to: the president of the Republic and the Council of ministers duties and rights under the Constitutional provisions; the inertia from the past more than 20 years status-quo; the aggressive negative behaviour towards the secret services activities with clear signs of politicking and the laic stress on some of their activities during the past political regime and on present failures. Here I have to mention the very unpleasant fact of the existence of more than a 15 years practice which accordance to the Constitution is at least doubtful. The cumulative effect of all this adds new problems to the common for all democratic states fundamental issues on the command and control over secret services' activities.

No doubt, there is a necessity for the foundation of a system comprising of elements with consistent competence, meaning specialization and common and coordinate functioning in favour of Bulgarian national security. This ultimately has to be done under the democratic principle that the legal activity of the state (agencies) is only the one according to the regulations. The strict regulation of the intelligence activities is peremptory, bearing in mind not only the respect to the civil rights, and broadly speaking – to the Constitution. The intelligence (counterintelligence included) is a very specific foreign policy means as well that handles the foreign policy, but does not conduct and does not determine the foreign policy[3]. For this reason, the legislator – the Parliament has to guarantee that the intelligence services specific duties implementation will be strictly under the law or, put in other words - to prevent the risk of changing the intelligence into a self-dependent structure for both foreign and internal political actions. Of course, this does not mean that its activities have to be in accordance with the target-state internal law, because the nature of intelligence is to act in infringement of such regulations and even of those of third countries when using their territory but not acting against them.

In general, the interests of the Bulgarian civil society is that a two-level regulation framework be adopted - a general act for the National security system and acts for the particular intelligence agencies. No doubt these acts have to report on the specific activities of each agency but in the same time they have to be in accordance with the general principles of system functioning, e.g. with the general act. I hope it is clear that the sole act in the national security field at present - the State Agency for National Security Act has to become in compliance to the general act as well, so it definitely has to be amended and/or supplemented.

The general act has to unify to the possible extent the common administrative matters both for the system as a whole and for its integral parts as well, aiming to disencumber particular agencies' acts of "deadwood", such as HR, financing and salaries, disciplinary and pecuniary

[2] Preceded by: The Act for the National Security Service of the Ministry of Interior (1994); the sections for the National Security Service and for the Protection of the Means of Communication Directorate of the Ministry of Interior in the Ministry of Interior Act (1997) and the section for the „Security: Military Police and Military Counterintelligence" in the Law on the Defence and Armed Forces of Republic of Bulgaria.

[3] See: Stefanov, G. Foreign Policy. Diplomacy. Questions of Theory and Practice (in Bulgarian: Vanshna politika. Diplomaziya, Vaprosi na teoriyata I praktikata), Sofia 1994.

liabilities etc. It also has to prevent any possible functional duplication by strictly defining the "area of activities" of every structure. Moreover, it has to define thoroughly and to state clearly and unequivocally the authorized person to assign the tasks to the intelligence services and to sanction their potentially sensitive actions or activities. All mentioned above in my point of view is a conditio sine qua non for the realization of Bulgarian civil society interests in the national security field. However, it is an indispensable and essential action for the agencies as well because the strict legal frame will bail out to certain degree the intelligence officers not to be sacrificed for illegal actions ordered by politicians[4], and that it will not be a negative shift on the agencies for illegal acts of their staff-members, regardless of their rank.

The general act not only has to give legitimacy to the particular intelligence agencies, but to define their competency, while the acts for the particular agencies have to tune up their activities according to their specific tasks and duties.

THE COUNCIL OF THE SECURITY TO THE COUNCIL OF MINISTERS CASE

Ex injuria jus non oritur (Unjust acts cannot create law)

I have put this principle of international law as a motto to remind that the organization of the future Bulgarian national security system has to be in accordance with the provisions of the Constitution. It might look strange to remind such a basic principle, but the practice since 1998 in my point of view is in contradiction to the Judgements of the Constitutional court of Republic of Bulgaria (CCRB) and being in this sense non-constitutional, has to be changed. According to Judgment N 5/1994 of the CCRB "The Council of ministers cannot create independent, outside of the corresponding ministries, administrative structures with competences in the public order, the national security, and the budget implementation. The importance of the activities in these areas demands their being carried out only by specified in the Constitution or by created of the Parliament authorities. **As the Council of ministers has no special authority for that, it cannot authorize other structures with its own authorities under the Constitution"[5].** The constitutional provision in the national security area is clear: "Art. 105.(2).**The Council of Ministers shall ensure** the public order and **national security** and shall exercise overall guidance over the state administration and the Armed Forces."[6] In my opinion, the reading of these constitutional quotations leads unconditionally to the fact that the existence since 1998 of the Council of the security to the Council of the ministers (CSCM) is not in accordance with the CCRB's Judgment and thus is non-constitutional. Besides this, there are some strange things in the existence of CSCM:

- its members are the prime-minister and a part of the ministers that can be read as some kind of superstructure to the government;
- according to the CSCM regulations, it "assists the prime-minister", but in the same time the prime-minister acts as a member and head of CSCM;
- its members (with rights to vote the decisions) are not only the mentioned representatives of the executive power, but executives inferior to them and they have equal rights to vote the decisions they in principle have to follow;
- the President of the Republic, who according to the Constitution is the supreme commander-in-chief of the Armed forces, has the rights to take personally part in the CSCM sessions, but nothing more that that.

[4] According to the former director of the French DGSE, adm. Pierre Lacoste.

[5] Constitutional Court of the Republic of Bulgaria. Judgment N 5 of July 07 1994 on Constutional Case N 3 of 1994 (in Bulgarian: Reshenie № 5 ot 07 yuli 1994 г. po constituzionno delo № 3 ot 1994), Promulgated SG, N 58/1994.

[6] Constitution of the Republic of Bulgaria. Promulgated SG 56/13 Jul 1991, Amended SG 85/26 Sep 2003, SG 18/25 Feb 2005, SG 27/31 Mar 2006, SG 78/26 Sep 2006 - Constitutional Court Judgment NO.7/2006 , SG 12/6 FEB 2007

In my point of view since the existing regulations mentioned above and the practice under them are in contradiction to the Constitution, they undoubtedly have to be avoided in the future regulations of the Bulgarian national security system.

THE LEGISLATION PROCESS

The need for a thorough regulation of the public interests in the National security matters is a consequence of the intelligence agencies' specific nature:

1. Functional purpose – realization/defence of the national interests.
2. Immense potential for influencing personal and/or public opinion and affect/destruct the situation both inside and outside the country and enormous sensitive information and means to acquire such information.
3. Act in infringement of foreign countries' internal law, and of the international law as well, which is risky for national foreign relations.
4. Have to act under political decision only and under the national legal procedures, e.g. under clear and unequivocal regulations (both duties and rights), which provide the opportunity to follow every step in the implementation, incl. its accordance to the legal and financial regulations, and a clear personification of wrong decisions.

Which are the problems the society and the legislators are facing?

There is no doubt about the need for the existence of special agencies defending the national interests. However, the four points mentioned above reveal also the great risk for the society and the state in potential situation of the abuse of power, of misuse of the unique resources of the intelligence. The history of the intelligence' services worldwide gives numerous examples for such attempts anytime and anywhere, even in the former Soviet-block countries which I will discuss in connection with the control over the intelligence.

The briefly described specifics of the intelligence that have to determine the public interests in the strict control over these activities, put definite requirements to the legislator. There is no place for even the smallest compromises and for imperfect regulations both as a philosophy and as legal techniques. The opposite approach in fact generates inadmissible and unpredictable risks for each level of the national security players – individuals, society, and state. Because a corner stone of the legal state is the principle "Dura lex, sed lex" (the law is harsh, but it is the law - e.g. the regulations have to be followed) the inadmissible status-quo – intelligence agencies without any legal regulations - will be safer for the nation to its opposite situation - agencies with incomplete, imperfect, fragmentary or ambiguous regulations.

Having in mind all mentioned, the standard legislative procedure, comprising all its three stages, has to be followed strictly. This will guarantee that the potential snake-in-the grass during the process will be avoided. What I mean is:

I. First, the leading stage has to be the clear political aims' formulation. The responsibility lies on politicians only (the political consensus is highly advisable) and any involvement of secret agencies' representative in the process is definitely inadmissible. **The politicians have to set unequivocally each secret agency's competences and "code of behaviour" and especially:**

1.1. Each agency's long-term responsibilities within the National security system as a competent authority with the aim to prevent any potential operation overlap and any real one as well.

1.2. The political primacy over the "operative reasons".

1.3. The operational competency of each agency.

1.4. The definitely prohibited activities for each agency (for the civil society and for the state interests this regulation is more important even than the definition of the agencies' operation competency).

1.5. The executive power member who will have the rights to issue executive orders for every intelligence agency's operation.

1.6. The reporting on the execution of the executive order (incl. documents' character, details, terms, deadlines).

1.7. The character of the personal liability for the political decision and for the activities taken on each stage of its implementation.

II. The next stage is **the "professional interpretation" of the essence of the intelligence activities** (definition of all activities, means, modus operandi etc.) **that has to be legally formulated in the acts.** No doubt, its realization fully depends on the way the political aims are formulated and has to de done by the agencies themselves.

In connection with this the clear, thoroughly and unified definition (both professional and legal) of all activities, operations' means and modus operandi of each one of the intelligence agencies is of a critical importance for the democratic society. This panoply has been open-source information for years - even detailed information for particular secret operations is publicly available from time to time not only in the Internet, but at the second-hand booksellers at "Slaveykov" square in Sofia as well. One can also easily find detailed description of these "secret" activities, actions, means and modus operandi in dictionaries and glossaries of terms (even Bulgarian) and in foreign legal acts. Therefore, "reasons" against the unification and the legal (e.g. non-secret) definition of the basic terms concerning the activities of the intelligence agencies with motives such as "secrecy", "tradition" or "specific of terms and expressions" (very often vague even for the part of their staff-members) are a dangerous nonsense for democracy. Furthermore, such approach can prove a concealed lack of good will for changing the comfort status-quo as well as professional deficiency.

III. The third stage is very different from the foregoing two in its nature – it aims at the standard legal-technique tasks. Nevertheless, **simultaneously, on this stage some critical issues for the democratic society and broadly speaking – for the state - are obligatory to be solved. The legislator has to prevent:**

1.1. Any "shift in regulations" from the acts to the Rules and Regulations on their implementation of any of the above-mentioned critical for the society issues, related to the intelligence' activities.

1.2. Any possibility for the intelligence agency's chairperson to act under "operative reasons" or to act without written sanction (executive order) of the authority under the act.

1.3. The risk of encapsulation of the intelligence agencies and especially in the field of sensitive operations they carry out and their operating statements.

1.4. Any activity that is not related to their competency under the act.

In general, the legislative process has to follow the simple schedule: political defining of each intelligence agency's long-term responsibility and operational competence within the National security system; professional and legal defining of the character, the means and the modus operandi that are needed for solving the politically defined goals; drafting the bills on the above mentioned basis.

THE INTELLIGENCE ACTIVITIES SND THE DEFINITION ISSUES

In Bulgaria, the definition issues related to the intelligence activities have aggravated since 1989 because of an unreasonably broadened reading of terms as "intelligence" and "special" and

their implementation to activities, in fact not related to intelligence at all[7]. Certainly, such approach was to some extent an act of specific professional complexes and deficiencies, but along with politicking rhetoric and the "tactical silence" kept on the professionals' part, its cumulative effect is widespread within the society's laic negativism towards everything related to "intelligence". This situation needs to be changed and the best way for this is the unification and thorough legal defining of all intelligence activities in the general act on the National security system – it will be senseless to define similar or equal activities in several special acts.

Besides these complementary reasons, the main argument for the proposed changes is that the status-quo is controversial to the democratic society's interests because it works against the basic principles of democracy. I mean that even at present we face the violence of the well-known constitutional principle of the English law: "Everything which is not forbidden is allowed", very much applied to the Bulgarian intelligence agencies' activities. **This traditional for the "communism-era" authorities' absurd reading of the English and the Roman law principles have never taken into account that this is an essential freedom of the ordinary citizen only[8] and only in criminal procedures context.** On the contrary, the normal democratic reading is that what is **applicable to public authorities is the converse principle: "Everything which is not allowed is forbidden", e.g. their actions are limited to the powers explicitly granted to them by law.** I am sure it is needless to explain how dangerous for the democracy could be this persistent practice and especially when it concerns the activities of authorities with immense destructive potential. Even our experience in Bulgaria shows that the status-quo is dangerous for the individuals, society and authorities, but in the same time it might be highly possible - very convenient in particular situations for someone. Therefore, my opinion is that the situation is inadmissible.

It is clear that the strict legal definition of all intelligence actions is the crucial point for the public control over highly sensitive authority's activities such as intelligence. However, it is also clear that this cannot be reached without the interpretation of the essence and the sense of the intelligence professional slang in use[9]. For this reason, the eventual exclusion of the intelligence activities' strict legal definition from the act(s) would be for the society at least as dangerous as the contingent exclusion of the governing principles (political primacy over the "operative reasons" or the operation competency of agencies; definitively prohibited activities; the authority that will issue executive orders for every operation, etc.). The result of such approach will be some kind of "legalization" of any implementation in practice of legally unclear and undetermined intelligence activities of all kinds, even the most sensitive in their character. Such "permission" under the law of undetermined activities and actions of authorities is undoubtedly inadmissible even more than the status-quo is.

In general, two approaches exist for defining the term "intelligence" as a group of activities, carried out by state agencies with special authorisation. The common points between them, concerning the nature of "intelligence" are:

1. It is a special means for defending the national interests (security), lying in the "grey zone" between diplomacy and war[10].

[7] In my opinion the fact that The National Security Service implements some intelligence and/or police activities as an integral part of its VIP-protection duties, could not be a reason to qualify this service not as intelligence nor as a police agency, e.g. to have competences, which are typical for the intelligence and police structures.

[8] In addition, for this reason it is among the main principles in the French Declaration of the Rights of Man and of the Citizen of 1789.

[9] Even in the State Agency for National Security Act, art.20, par.1, the character and the sense of some of the so-called "operative activities" is not clearly legally defined and in fact is replaced with cloud professional slang.

[10] Vassilev-Changov, M. Secret Operations. Intelligence. National Security. (in Bugarian: Sekretni operazii. Razuznavane. Nazionalna Sigurnost), Sofia, 2009, p. 25

2. The intelligence activities are carried out by state agencies with a special authorization in the information segment of the National security system[11].

3. The intelligence' mission is to reduce to the possible extent the information uncertainty in governing the state[12] or, simply to say – its goals are to create strategic superiority over the objects of surveillance and influence[13].

Traditionally, a stress on the "information nature" of the intelligence exists as a collection, analysis (and dissemination) of information[14]. An apology of this approach was expressed by the former Bulgarian MI director ret. general Vassil Zikulov in his memoirs: „In fact the CIA is not an intelligence agency, because the intelligence is no more than a part of its activities"[15]! In my opinion, what gen. Zikulov "omits" is the fact that being in the mentioned "grey zone" the intelligence unavoidably uses typical for both diplomacy and war means in its activities. Furthermore – because of its unique position, the authorities all over the world have entrusted the intelligence for centuries with "non-information-related" duties, under strict regulations in the US for more than 50 years[16]. What is curious in this case is that during the years gen. Zikulov ruled over the MI (at that time – the Intelligence directorate of the Ministry of defence - IDMD) the service had duties to carry out "non-information-related" activities. According to his memoirs IDMD under secret regulations, but not by law had "to organise and to carry out, when necessary, and under the directions of the Bulgarian communist party Central committee, of the State council and the Council of ministers of Peoples Republic of Bulgaria, **some special actions on the territory of the states-object of intelligence activities"**[17]! The undefined formula "special actions" – for the IDMD (for the State security committee the expression was "other tasks")[18] no doubts proves their "non-information" nature.

The intelligence activities of non-information nature in my opinion refer to two type covert actions (syn. secret or clandestine operations) – for influence (politicians' decisions, public opinion, parties, trade unions, media, etc.) and for intervention (direct negative impact on the

[11] Ibid., p. 24.
[12] Ibid., p. 25.
[13] Hristov, P. Intelligence Defence of the Constitutional Order. Historical Retrospections. Organizational and Public Control Problems. (in Bulgarian: Razuznavatelna zashtita na konstituzionniya red. Istoricheska retrospekziya. Problemi na organizatsiyata i obshtesveniya kontrol), Varna, 2003, p. 17.
[14] Compare: "The Intelligence Cycle". CIA. Office of Public Affairs. A Consumer's Guide to Intelligence; Laqueur, W. A World of Secrets: The Uses and Limits of Intelligence. N.Y., 1985, p. 8; Commission on the Organization of the Executive Branch of the Government (The Hoover Commission), "Intelligence Activities," (An Interim Report to Congress Prepared by a Team Under the Leadership of Gen. Mark Clark). June 1955, p. 26; Commission on the Roles and Capabilities of the United States Intelligence Community, Preparing for the 21-th Century: An Appraisal of US Intelligence (The "Brown-Aspin Report"). Wash., 1996, p. 5; Joint Chiefs of Staff. Department of Defence. Dictionary of Military and Associated Terms. Joint Publication 1-02, April 2001, p. 208; Kirkpatrick, Jr. L. "Intelligence" in: Jentelson, B., T. Paterson. Encyclopaedia of US Foreign Relations, Volume 2. N.Y., 1997, p. 365
[15] Zikulov, V. The Bulgarian Military Intelligence and the Cold War (in Bulgarian: Voennoto razuznavane na Bulgaria i Studenata voyna), Sofia 2005, p. 96.
[16] With US-NSC Directives and Executive orders of the US presidents, well known by the literature and the Internet. The US president sanction on covert actions under the 1991 Intelligence Authorization Act is the Presidential finding. He also has the duty to inform the legislative power is under the Hughes-Ryan Act (1974) and the DCI – under the Intelligence Oversight Act (1980).
[17] Zikulov, V. Op. Cit., pp. 341-345.
[18] See: Krastev, G. The Bulgarian Intelligence Services. Creation, Development, perspectives (in Bulgarian: Razuznzvatelnite sluzhbi na Bulgaria. Vaznikvane, razvitie, perspektivi). Sofia, 2006, pp. 109-100; Dimitrova, A. Assassination Department. The Secret History of Secret Service 7 (in Bulgarian: Otdel za ubiystva. Taynata istoriya na sekretna sluzhba 7), Sofia, 2010; For the Soviet prototypes, see: Sudoplatov, P. Kremlin and Lubyanka. Secret Operations 1930-1950 (in Bulgarian: Kremal i Lubyanka. Sekretni operazii 1930-1950). Sofia, 2001, p. 344; Andrew, C., O. Gordievsky. KGB – a view from inside or the Secret History of its operations abroad from Lenin to Gorbatchov (in Bulgarian: KGB pogled otvatre ili taynata istoriya na negovite chuzhdestranni operazii ot Lenin do Gorbachov). Sofia, 1992, p. 303.

situation in foreign states, aiming at crisis generation)[19]. Former CIA director Stansfield Turner puts it more cogently: "Covert action is the term that describes our efforts to influence the course of events in a foreign country without our role being known. The ultimate principle is that these activities have to be carried out in a way that the role of the government will not be apparent or acknowledged publicly, or in case of failure will permit the government to deny it plausibly[20]. That is why I shall call these activities "secret operations" despite the fact that their result is usually publicly overt (intelligence information function in fact is based on at least in 90% on open-source information).

It is needless to say that it is of vital importance for the intelligence agencies to develop self-defence units, e.g. counterintelligence as a substantial part of their activity as well.

Bearing in mind this, my proposals for the basic definitions are as follows:

1. *Intelligence:* broad spectrum of special activities, comprised of information gathering, analysis, dissemination of information, secret operations, and counterintelligence, carried out by state agencies in favour of national security interests under special legal authorisation.

2. *Information activities of the intelligence:* information gathering based on open-sources, human intelligence, technical intelligence, and information exchange; analysis and dissemination of information.

3. *Secret operations:* special executive activities aimed at influencing the behaviour of different by character and status objects in foreign countries or at aggravation of the situation in foreign countries in favour of the national interests, carried out in a way that the role of the government will not be apparent or acknowledged publicly, or in case of failure will permit the government to deny it plausibly[21]. Under any condition, they could not aim at influencing the political processes, the public opinion, or the media in the Republic of Bulgaria. The term "secret operations" does not include armed conflict with armed forces, espionage, and counterespionage.

4. *Secret operations for influencing:* clandestine activities aimed at manipulation of the policy-makers or/and the public opinion in foreign countries in favour of the national interests.

5. *Intrusive secret operations:* clandestine activities aimed at aggravating the situation leading to evoking destructive processes or crisis in foreign countries in favour the national interests[22].

6. *Counterintelligence:* spectrum of activities of countering all foreign intelligence activities aimed at the thwart or at the use for its own national security purposes.

7. *Agent (secret agent):* a person who have voluntarily agreed to act for or by the authority of an intelligence agency.

8. *Espionage (human intelligence, HUMINT):* information (intelligence) gathering by means of interpersonal contact.

9. *Counterespionage:* spectrum of activities of countering foreign espionage activities only.

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[19] Covert actions - broad spectrum of activities that may include covert actions such as: Propaganda (dissemination of specific information); Political/Economic Action (influence on the political or economic workings of a foreign nation); Paramilitary Operations (trainment and equipment of personnel to attack an adversary or to conduct intelligence operations); Lethal Actions (use of covert lethal force against enemies who pose a threat).

[20] Marchetti, V., J. Marks. The CIA and the Cult of Intelligence. New York, 1974, pp. 379-398; Oseth, J. Regulating U.S. Intelligence Operations: A Study in Definition of the National Interest. Lexington, 1985, p.27-28; National Security Council Directive – NSC 10/2, 18.6.1948; National Security Council Directive on Covert Operations – NSC 5412/12.3.1954, U.S. Department of State. Foreign Relations 1964-1968, Vol. XXVI; National Security Council Directive on Covert Operations - NSC 40/1970, U.S. Department of State. Foreign Relations 1964-1968, Vol. XXVI; "United States Intelligence Activities" – Executive Orders of the President: 11905/1976; 12036/1978 and 12333/1981.

[21] See also: Vassilev-Changov, M., Op. Cit., p. 44.

[22] Detailed classification of secret operations of intelligence I proposed in: Ibid., pp.58-138.

ON THE CONTROL OVER THE INTELLIGENCE ACTIVITIES

The public interests related to the intelligence agencies might be defined as an example of the unity of opposites - how the services can execute the functions, they are created for, without any risk for the democracy in the country? The extreme approach towards solving this latent contradictory issue is very risky. Why?

Being specific authorities, the intelligence agencies are part of the society and their activities are social in nature. The fact that they are extremely encapsulated does not mean they have immunity to the processes within the society. That is why the bureaucratic tendencies in public life do not bypass these structures and because of their specifics, they generally have a unique impact: the encapsulation grows, the professionalism goes down, and the risk of their transformation into vast, inefficient, and self-sufficient bureaucracies appears[23]. The result in some cases is shifting the stress in their activities towards law infringement. In every country have been attempts for reaching political advantages[24] from both – the disclosure of the offences and the attempts to prevent such disclosures in illegal ways (banning publication, public discrediting in media, law-suits), that in fact further lower their public image. Furthermore, the clash with reality erodes the work atmosphere and causes their young staff-members to lose motivation[25].

There are many publications for illegal activities of high-ranked personnel or for misuse of intelligence agencies in many countries, such as:

- Illegal eavesdropping, surveillance etc.
- Illegal collection of files containing large amounts of compromising and potentially embarrassing information about people, especially politicians (in Italy - the "Dossier SIFAR" – 157 000 according to Beolchini commission[26] and the famous "J.E.Hoover's files" - the motive for senator F. Church to call the former FBI director "the main blackmailer in American history, who used his secrets files to impose his mind of a political extremist"[27]);
- Manipulation of information (including the: reporting "white", "grey" and "black" disinformation; information overflow; compilation of fake information - "paper-mill", etc.) which aims at influencing the political decisions in favour of cast political goals or corporative interests[28] in both the Western and the Soviet block countries[29].

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[23] The late first director of the French DGSE Pierre Marion confesses: "The agencies turned to rabble amateurs which act by their own wish. French interests that have to be defended have been shifted to the own interests of the agents who not only served to different lobbies, but in many cases have acted one against the other". See also: Marion, P. Le pouvoir sans visage. Paris, 1988; Marion, P. La mission impossible. À la tête des services secrets. Paris, 1991. Schmidt-Eenboom, E., Jo Angerer. Die schmutzigen Geschäfte der Wirtschaftsspione. Düsseldorf, New York, 1994. Morris West concludes that "Every intelligence service spend huge amount of money to provide its own existence and much less to gather information for the defence of the country from enemies, spies and terrorists".

[24] Especially the oppositionists that use the same methods when comes into power, See: Woodward, B. Veil. The Secret Wars of the CIA 1981-1987; Kessler, R. The Bureau: The Secret History of the FBI. 2003; Trento, J. The Secret History of the CIA; Corson, W. The Armies of Ignorance: The Rise of American Intelligence Empire. New York, 1977, p. 359; Kessler, R. Inside the CIA. New York, 1991.

[25] The former associate deputy FBI director O. Revell confessed that his idealism diminished when he saw the realities within the Organization, meaning the system, Cit. in: Kessler, R. The Bureau…, and P. Wright wrote that he have been entered Alice's Wonderland where the simple but unpleasant truth disappear on someone's will, Wright, P. Spycatcher. The Candid Autobiography of a Senior Intelligence Officer, 1985.

[26] See for ex.: De Luttis, G. Storia dei servizi segreti italiana, 1984.

[27] Cit. in: Moynihan, D.P. Secrecy: The American Experience http://en.wikipedia.org/wiki/Daniel_Patrick_Moynihan - cite_note-34#cite_note-34.

[28] According to M. Goodman "The secret services deny the publication of information not because there are risky for the national interest, but because they are risky for private interests". Interview for the Bulgarian newspaper "Monitor", July 05 2003, pp.12-13.

- Activities against decisions of political authorities with the usage of "grey" and "black" disinformation[30] and even by initiating vetoed operations[31].
- Activities for the deterioration of the situation in their homeland and/or against the democratically elected authorities by the implementation of the strategy of tension, assassination and coup d'état attempts[32].

The intelligence agencies possess information monopoly backed with special skills, knowledge, and equipment and of powerful potential for influencing and intrusion. Furthermore, for the essence of the intrusive secret operations and the specific modus operandi of their implementation in many cases the executive power could fall into a situation to be forced to abandon the policy limits that have been eager to preserve, granting the covert operators instead the latitude to conduct the operation as they saw fit, in order to succeed… they appear to have assumed the unauthorized role of de-facto policymakers, acting as if key decisions rested with them rather than with the nation's elected leaders[33]. It is just a month after president J.F.Kennedy assassination in Dallas, Tx., his predecessor Harry Truman wrote for "The Washington post": "For some time I have been disturbed by the way CIA has been diverted from its original assignment. It has become an operational and at times a policy-making arm of the Government. This has led to trouble and may have compounded our difficulties in several explosive areas… I never had any thought that when I set up the CIA that it would be injected into peacetime cloak and dagger operations…We have grown up as a nation, respected for our free institutions and for our ability to maintain a free and open society. There is something about the way the CIA has been functioning that is casting a shadow over our historic position and I feel that we need to correct it"[34].

The secrecy and the specific modus operandi of the intelligence activities generates among their staff-members the concept that the regulations are for "the other people" and do not concern the intelligence officers[35]. As time goes, this attitude becomes an integral part of the way of thinking of most of them in every time and in every country. During the "Church Committee" hearings[36], in 1975 the former head of the CIA's counterintelligence staff J. J. Angleton unofficially stated, "It is incredible to think that the secret intelligence of the Government will conform to all government directions"[37]. This is an example of the dangerous for the democratic society way of thinking, which unfortunately is not typical only for the CIA or for 1975. But the history of the intelligence is also abundant with examples of law infringement intelligence' actions and failures undertaken of servile heads of agencies in convenience to politicians' will.

For the mentioned, Juvenal's words "Who will guard the guardians themselves?" remain a problem even of the present. It is obvious that **the effective control over the intelligence without risks for its activities is an extremely hard problem for the democratic state to solve.** In my point of view, it can never be done completely. We have to render the account of the

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[29] See: for the US the former DNI R. Gates for his predecessor's W. Colby practice, in: The Washington Post, March 15, 1995, A4; for Italy – De Lutiis, G. Op. Cit.; for the former East Germany – Wolf,. M. Super-spy. The autobiography of the communism super-spy (in Bulgarian: Supershpionin. Avtobiografia na supeshpionina na komunizma), Sofia, 1998, p. 72 and for Bulgaria – Zikulov, V., Op. Cit., p. 116.

[30] Misleading the government in crisis: the Bay of Pigs, the Cuban crisis, Iran 1979 and 1980.

[31] „Iran-Contras". See: Woodward, B. Veil. The Secret Wars of the CIA -1981-1987.

[32] On the: "silent coup d'état attempts" in Italy, see: De Lutiis, G. Op. Cit.; the assassination plots against gen. Charles de Gaulle, see: Molchanov, N. The General de Gaulle (in Russian: Molchanov, N. General de Gaulle), Moscow, 1980.

[33] See: Vanderbroucke, L. The Confession of Allan Dulles: New Evidence on the Bay of Pigs. Diplomatic History (Fall 1984), p. 371.

[34] Truman, H.S. Limit CIA Role to Intelligence. The Washington Post. December 22, 1963, p. A 11.

[35] See: Wolf, M., Op. Cit., p. 319.

[36] United States Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities.

[37] Cit. in: Polmar, N., T. Allen. Spy Book: Encyclopedia of Espionage, 1996.

realities – **the full control over the intelligence is a very dangerous fiction** even by the simple fact that such control will put to an end to the reliable activities it is created for[38].

On the other hand, the questions about the effectiveness of intelligence activities and especially the one for the prevention of any possible law infringement remain. The right reading of the last mentioned is **how to prevent the agencies' behaviour to become independent from the democratic society and from the state authorities** (as services are their special means) **and especially because their enormous potential for influence.** The different main intelligence activities generate different risks for the society, but this is a problem of just a technical nature. The main question is whether the infringement act is deliberate or not and how to minimize the risks in cases of:

1. Illegal use of the intelligence agencies' power from the politicians for their political purposes. This is an independent risk with a high danger for the society. The amenability under the law of those who have the rights to direct the agencies, which means to control their activities, will be in my view the most natural and simplest preventive approach.

2. Misleading the user (the government) trough the information (the final intelligence). In fact, it is to some extent unavoidable even because of the sole reason that in every case the information transfer is a kind of manipulation[39]:

2.1. Accidentally-committed fallacies - could be a result of personal and professional prejudice or of lack of professionalism during the work with information data on different stages of the information cycle, or of technical problems:

- in crude intelligence reporting: pre-emptive ("to-please the boss") or retarded (due to wrong evaluation of importance, distrust to informer, etc.) reporting; changes in the accent; omission of important details; "boomerang"; information overflow, etc.
- in analysis: misuse of language; misusing analogies; fallacy of mistaking correlation for cause; hypotheses contrary to fact; oversimplification; "intelligence-to-please" syndrome; unwillingness to think "outside of the box"; "mirror-imaging", wrong interpretation of TECHINT, etc.

As far as the main problem is connected to the executives' professionalism, the preventive measures have to aim at investments in HR and overall resources of the agencies. In general, the fallacies due to technical problems such as the information overflow cannot be overcome on the analysis-stage.

2.2. Fallacies, deliberately used to persuade, convince or deceive. Proofs for such practice for example were given by Senator D.P. Moynihan (for US), gen. V. Zikulov (for Bulgaria), M. Wolf (for the ex-East Germany), and unnamed MI6 officer (for the UK)[40]. The unanimous source described the principle model of such fallacies: "We informed the State secretary that we do not know things, we in fact knew. We pretended to know things we in reality did not know. The intelligence officer can easy manipulate the politicians. Undoubtedly, the system for a control over him does not exist. Every intelligence department decides the kind of information to be reported to the politicians and they hardly ever get the complete and correct data… We decided to whom the information and the data volume to be reported".

It is true, a fully effective protective system against such fallacies does not, and cannot exist. The measures that could have a preventive effect are mainly the strict regulations in the acts of

[38] "Non of the secret services could ever be democratic one nor, in spite of politicians will, could ever be overt for permanent control" – Wolf,. M., Op. Cit., p. 25.

[39] Vassilev-Changov, M., Op. Cit., p. 70. See also: Tarkalanov, Y. The intelligence Analysis (in Bulgarian: Razuznavatelniyat Analiz), Sofia, 2003; Pavlovich, P. History and Culture of Ancient Arabia (in Bulgarian: Istoria I kultura na Drevna Arabiya), Sofia, 2001 , p. 12.

[40] Moynihan, D.P., Op. Cit.; Zikulov, V., Op. Cit., p. 77; Wolf, M., Op. Cit., p. 116; The Irish Times, April 1980.

thorough follow up of every stage of the information cycle (incl. the information flow timeline in/within the agency's structures; personalization of everyone who worked on/with the information report/documents on each stage; the given directions, consultations made; the reporting etc.), regardless of the source of intelligence.

3. Main risks connected to the secret operations:

3.1. Planning and carrying out in a way that the role of the government will be apparent publicly, or that in case of failure will not permit the government to deny it plausibly. The causes could be lack of professionalism or aforethought (irrespective of the motivation that could vary from the reply to the decision for carrying out the operation; to act against the head of agency; or to discredit the state authority').

3.2. The secret operations have their "own life", e.g. they are carried out without connection with the overall government policy as a result of the attempts of heads of intelligence agencies to implement their own political program without considering weather it's accordance with the governmental one[41]. In general, they are carried out without the written permission (possibly without the knowledge) of the authority that has the rights to do that under the law. From technological point of view, it happens under the conditions of prevailing of the "operative reasons" and even of the "personal decision" over the political decisions and directions. The extreme case in connection with this is to carry out vetoed secret operations.

3.3. Carrying out secret operations that aim at influencing the political processes, the public opinion or the media in the homeland is generally caused by the attempts for the realization of personal or/and corporative interests (political or economic).

3.4. Secret operations could be carried out under a political decision or by intelligence agencies' initiative, not because of the necessity for them, but because they are often the convenient way "to do something". The risk in such cases is in the simple fact that it is not clever to take a plunge with unpredictable consequences.

3.5. The use of criminals for intrusive secret operations conduct is very risky. As it is pointed out in the Interim report of "Curch committee" in 1975: "this fact gives them (the criminals) the power to blackmail the government and to avoid prosecution, for past or future crimes"[42].

The secret operation's nature and specifics call for analysis of its lawfulness and of the balance "political/operative reasons" for its execution. It is obvious that when the Bulgarian intelligence agency carries such operations out its activities have to be in accordance to the Bulgarian law regulations, and the indispensable condition for this is the existence of such regulations. In connection with this, what we definitely need is the legal definition of all secret operations and of the clear command and control regulations and especially:

- the rights for executive orders issue and the personal responsibilities in connection with this on political and executive levels;
- who and how has to be informed about the operations which is under way;
- the reporting of every action on every stage of the operation;
- the analysis of wrong decisions;
- the rights for verification and for auditing the whole process and its integral parts.

The balance "political/operative reasons" for carrying secret operations out is a function of the place that different institutions have within the national security system under the Constitution. According to the Bulgarian Constitution, the government is responsible for the

[41] See: Johnson, L. Secret Agencies: U.S. Intelligence in a Hostile World, 1998.

[42] U.S. Senate. Alleged Assassination Plots Involving Foreign Leaders. An Interim Report of the Select Committee to Study Governmental Operations With Respect to Intelligence Activities. United States Senate. Together with Additional, Supplemental and Separate Views. Wash. 1975, p. 259.

security and the president is the supreme commander-in-chief of the Armed forces[43]. For this no intelligence officer, irrespective to his rank, has to be allowed to undertake the decision for secret operations, as is the decision for persona non grata declaration in diplomacy, which is always under a political decision. The eventual opposite practice will be inadmissible and extremely dangerous dependence of the democratically elected authorities on the decision to structures inferior to them without political responsibilities in the most sensitive area of the national security. Related to the decision for conducting a secret operation is the question of the adequacy of the political reasons concerning their object(s), the means, and the moment to be carried out.

The historical examples prove that the best political decision is not in any case the best decision in fact. In principle, it has be a result of a thorough analysis of the professionals' arguments on the concurrent alternative hypotheses and a kind of SWOT-analysis. In connection with this, two general rules have to be followed:

- the risk always has to correspond to the significance of the goals;
- only the authorities with competences under the Constitution have the rights to define the secret operations' goals.

The unconditional conclusion for me in connection with the above mentioned is that all activities of the Bulgarian intelligence services have to be regulated under the law. This is moreover obligatory for the secret operations because every action of the authorities and especially the high risky ones have to be unambiguously clearly defined in duties and rights, e.g. in command-control sense. Since any abuse of power connected to all these activities endangers the security of the individuals, the society and the state, it has to be incriminated as a qualified crime. Undoubtedly, this will be the best and sole defence of the public interest.

[43] Constitutional Court of the Republic of Bulgaria. Judgment N 23 of September, 25 1998 on Constutional Case N 14 of 1998 (in Bulgarian: Reshenie № 23 ot 25 septemvri 1998 г. po constituzionno delo № 14 ot 1998), promulgated in SG, N 113/1998.