

## Parliamentary Oversight of the State Agency for National Security

**Stoycho P. Stoychev**

The Parliamentary Oversight Committee for the State Agency for National Security (POCSANS) is by far the first step towards a new type of parliamentary oversight in Bulgaria. Its creation is emblematic for the increasing transformation of the decision making process towards greater transparency and public accountability for the power resources of the state. In reality this is a way of restricting the discretionary powers of the executive, primarily as concerns the national security sector, including the combat of organized crime and high-level institutional corruption. Expanding the oversight mechanisms, however, should not be regarded as sharing powers and, consequently, of sharing, i.e., dodging, responsibility. The effective implementation of security policies remains the main duty of the executive, and the parliamentary control is only the means for ensuring their execution as required by the law. The introduction of this type of oversight mechanisms is no doubt beneficial and should receive full public support. We are yet to see the outcomes of this development.

### **The Parity Principle of Composing Parliamentary Committees**

The parliamentary form of government presupposes the functional dependence of the legislative from the executive power, despite the constitutional provision for the division of powers in Bulgaria. Such dependence compromises the effectiveness of the parliamentary oversight procedures as a means of public control over the executive. The same predicament is reproduced in the parliamentary committees, which are usually composed on a parity principle, thus reflecting the rule of the majority, and, respectively, of the government. Using the parity principle to create parliamentary committees is the way out of this predicament. The parity condition in each committee reduces to the greatest extent the opportunity of the executive to influence its work. We should clarify here that parity is not a univocal term. The equal number of representatives from each

parliamentary group doesn't always mean parity between the ruling party and the opposition. When these committees are composed, it is necessary also to keep account of their internal political balance.

Along with this, the parity principle demands a high degree of consensus and reduction to a minimum of any dramatic opposition on the issues at hand. On the one hand, this is a positive feature of parity, as it guarantees the wide support for the committees' decisions and the absence of political bias in the decisions made. On the other hand, the principle of parity, if fully exploited, could produce a deadlock and hamper the committee's work. The review of the annual activity of the Parliamentary Oversight Committee for the State Agency for National Security for 2010, does not indicate a tendency to end up in a deadlock, but rather a tendency for a consensus-driven decision making. Out of 7 decisions, for which the results of the vote have been made public, 5 are unanimous, and 2 are taken with a majority of 3 to 1. This is enough reason to claim that, at present, the parity principle in composing the parliamentary committees is only to the benefit of all stakeholders. However, the question of the chairmanship of the committee is a different issue.

### **The Chair of the Committee**

The principle of equality of the parliamentary groups in the composition of the Oversight Committee requires not only parity but also a shared ownership of the Committee's agenda. In this regard the introduction of rotational chairing excluding the representative of the largest parliamentary group is a commendable practice. The positive aspects of this principle are as follows: (1) avoiding the possibility for one party to dominate the agenda during the entire parliamentary mandate; (2) reducing the possibility for the respective directors of SANS and the Committee to enter into unregulated relationships and cooperation; (3) reducing the possibility of a weak chairman to dominate the entire mandate of the

Committee; (4) encouraging the Committee members to be more active in the Committee's work.

At the same time, this principle is a huge challenge to the Committee. The main problem with rotational chairmanship is the weak leadership. The short period of each rotation cycle does not allow the chairman to develop and implement a consistent program and respective measures. This may discourage the Committee members to play an active role during their term as chair. One way out of this is the continuity between successive chairs. This will require developing a comprehensive program and strategy for the Committee's activity in the beginning of the parliamentary mandate, which should be approved by all committee members. This will guarantee their commitment to stick to the main priorities in the program when they assume the leadership. Of course, such a program can be updated every year, or more frequently, depending on the specific developments in the sector. Without a consensus decision regarding the long-term priorities of the Committee and a respective work program, the rotation principle is bound to fail.

The lack of such program at present explains the limited role of the Committee with regard to defining the strategic goals for national security. The State Agency for National Security should not be the single author of this strategy, as it is currently the case. The Committee should be able to generate information useful to the executive and the institutions implementing the strategic goals. In this respect, the Oversight Committee for SANS could be helpful with advice or by appointing its own representative in a specialized consultative body, tasked with developing the strategic priorities of SANS. This will also improve the oversight and control functions of the Committee as concerns the overall activity of SANS.

### **Expert and Administrative Capacity**

Perhaps the biggest obstacle to an effective oversight process as concerns SANS is the lack of administrative and expert capacity of the Committee. The Committee can rely on two sources of expert advice in its work. First, hiring external consultants on the basis of service contracts. Yet, budget cuts in the size of parliamentary administration have made this type of services more difficult to obtain. In addition, the level of confidentiality of the information and documentation handled by the Committee inevitably limits the degree of expert involvement of the external consultants.

The second, and so far the main source of expertise is from the leaders, officers, and experts of SANS. But

here we face a paradox with a key influence on the effectiveness of the parliamentary oversight of SANS. In order to implement their control functions, those in charge of the oversight rely on the expertise of those who are subject to oversight. In other words, if SANS had any interest to, say, mislead the Committee, it could do so fairly easily, having in mind also the provision that the Committee can review only documentation and cases already closed. Even the slightest chance for this to happen undermines the reliability and trust in the parliamentary control exercised by the Committee and puts in question its very existence.

Admittedly, creating new structures in times of financial crisis and unreformed state administration is the last thing to consider, yet, in the case with the Committee on SANS this seems the only plausible step ahead. The best decision in the current situation would be to use the expert capacity of the Standing Subcommittee of the Committee on Legal Issues, which is in charge of the oversight and monitoring procedures as defined in art. 346 of the Special Investigative Devices Act and art. 261, para. 6 of the Electronic Media Act. The way to tackle all of the issues described above involves 1) merging the Committee on SANS, the Subcommittee for Oversight of the use of special investigative devices, and the Subcommittee for the oversight of the National Intelligence Service, the National Security Guard and the Military Information Service into a single body, as well as 2) creating a specialized unit as part of the Parliament's administration, involving public officers with experience in the sector of intelligence, to provide expert support to the committee members.