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POLICY BRIEF

Strengthening Oversight of Intelligence in Albania, Kosovo, and North Macedonia

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By the Centre for European Security Studies
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Introduction

Establishing democratic oversight of the intelligence community in developing democracies such as Albania, Kosovo, and North Macedonia is highly challenging, yet of vital importance. In any given state, intelligence services tend to have unparalleled powers to collect, analyse, disseminate, manage, and classify information. This makes the potential might of these services incomparable to that of other government agencies, and constitutes a very powerful tool in the hands of authoritarian leaders. Given the power of these services and the high potential for abuse, it becomes even more imperative to establish effective and efficient oversight mechanisms.

In Albania, Kosovo, and North Macedonia, there are three main obstacles preventing the full materialisation of democratic oversight of intelligence. First, there is a persistent lack of domestic commitment toward democratic governance and an underdeveloped culture of accountability and oversight.

Key points:

A lack of domestic commitment toward democratic governance and an underdeveloped culture of accountability and oversight in Albania, Kosovo, and North Macedonia hamper effective oversight of intelligence.

In all three countries, the legislative framework for intelligence oversight is either incomplete, outdated, unperformed or a combination thereof.

Deficiencies in institutional capacities and human resources within oversight bodies add to the current flawed state of intelligence oversight in all three countries.

Most political structures, at all levels, are either not genuinely interested in or apathetic towards strengthening effective oversight of intelligence. Second, a sound and unequivocal legislative framework, which would provide the foundation for effective and efficient intelligence oversight, is lacking. In the three countries, intelligence legislation is either incomplete, outdated, unperformed or a combination thereof. Third, there is insufficient institutional and human capacity within oversight bodies to adequately hold the intelligence agencies to account.

This policy brief discusses the state of play pertaining to oversight of the intelligence services in Albania, Kosovo, and North Macedonia. It outlines the development of oversight procedures in this area; assesses the persistent challenges that hamstringing sound oversight; and offers recommendations. It is the outcome of a collaborative effort among a group of civil servants and civil society actors from Albania, Kosovo, and North Macedonia in the framework of the DECOS project (see box 2). This ad hoc working group convened regularly online between November 2020 and January 2021. Through a series of online debates, written contributions and group assignments, the following working group participants offered their views and provided information on the status of intelligence oversight: Shpat Balaj, Elena Dogazanska, Erion Habilaj, Mirsada Hallunaj, Aleksandra Jovevska Gjorgjevikj, Gordan Kalajdziev, Anita Mladenoska Ristovska, Lulzim Peci, Alfonc Rakaj, Vlora Rechica, Haxhi Xhemajli and Blend Zyrapi. The editors are grateful for their contributions.

About DECOS

The 'Developing Capacity, Cooperation and Culture in Overseeing the Security Sectors of Albania, Kosovo and North Macedonia' project (2019-22) seeks to empower democratic institutions and actors in their function of democratic oversight of security. It does so by increasing capacities, enhancing cooperation, and fostering a culture of oversight of the security sectors of Albania, Kosovo, and North Macedonia. DECOS consists of a capacity building and a research component that are directed at democratic oversight actors – parliaments, independent institutions, and advisory bodies; and civil society organisations – in Albania, Kosovo, and North Macedonia.

Because of the Covid-19 pandemic, most DECOS research, training and coaching activities are currently taking place online through interactive regional working groups that include lectures, training sessions and opportunities for debate and exchange of views and experiences.

The Centre for European Security Studies (CESS) collaborates in DECOS with the Albanian Institute for Political Studies (IPS), the Institute for Democracy and Mediation (IDM) from Albania, the Kosovar Institute for Policy Research and Development (KIPRED), and the Institute for Democracy 'Societas Civilis' Skopje (IDSCS) from North Macedonia. DECOS is funded by the Netherlands Ministry of Foreign Affairs.

Good governance and a culture of oversight

The lack of domestic commitment toward democratic governance to bring about sustainable reform processes and establish effective democratic oversight of the intelligence services is a shared challenge in all three DECOS countries.

With the risk of generalising, it seems that only when outside pressure is applied – more concretely from the European Union (EU) and/or the North Atlantic Treaty Organisation (NATO) – political elites in Albania, Kosovo, and North Macedonia show willingness to strengthen democratic oversight of intelligence. Without such pressure, there is no intrinsic sense of urgency and no interest in strengthening oversight. This has led to weak systems of governance and oversight, in which intelligence services operate mostly in the shadows, largely unchecked and susceptible to politicisation and abuse for personal and political gain. International experiences have shown that it is almost impossible to initiate meaningful reform when national political elites do not show an intrinsic willingness to change. Therefore, a combination of external incentives and broad local initiative, ownership and interest is needed. Only then will reform processes have fundamental traction and sustainability.

When locally-driven political will and commitment to establish sound governance and democratic oversight of intelligence are largely absent, intelligence agencies run the risk of becoming susceptible to political interference. Therefore, a de facto distancing from political influence must be ensured, whereby staff within intelligence agencies are professional and operate autonomously, prioritising the interests of citizens and the state and not those of their political leaders. Especially in sensitive and secretive policy areas, such as intelligence, non-partisan oversight is essential to determine the lawfulness and legality of intelligence operations carried out in the name of taxpayers.

There are underlying dynamics compounding this, such as an underdeveloped culture of accountability and oversight. In **Albania**, the intelligence agencies are heavily influenced by their communist past; the mentality of some of their staff (mostly officials that were educated during the communist regime) is still focused on protecting secret information to safeguard the agency and maintain its position. In **North Macedonia** and **Kosovo**, both part of the former Yugoslavia, the historical context is different, and the decentralised socialist system left less influential marks on the intelligence agencies. North Macedonia's intelligence capacity was developed in the 1990s and was affected by a decade of state capture in the 2010s. In Kosovo, it was only in the late 2000s that an intelligence agency was established. Regardless of these different development paths, all three countries lack a culture of accountability and oversight. As a result, intelligence agencies and politicians have a habit of overclassifying information and budgets, creating high potential for misuse of resources and corruption. Oversight actors, on the other hand, do not boldly assert their right to know by demanding full transparency. Active scrutiny and oversight would put pressure on intelligence agencies to comply with the principles of transparency and accountability. However, this is not being observed to a sufficient degree in any of the three countries.

It is necessary to create opportunities for a new culture to thrive within the intelligence agencies. Secrecy might have worked in the past, but it does not serve the public interest and, in fact, reduces trust in the intelligence services. Realisation that a low level of trust will ultimately lead to irreversible legitimacy problems could bring about a sense of urgency among implementers and overseers to establish democratic governance of the intelligence services.

A promising development is that a new generation of politicians and civil servants is becoming increasingly dominant within the system. Evidently, this does not automatically mean that all of them are enlightened democrats who will instantly establish sound systems of intelligence oversight. Such an endeavour takes time, energy, perseverance, and a lot of patience. What it does entail, however, is that there is higher potential for change now than there was 10-20 years ago, both within the executive and legislative branches of all three countries. Also promising is the development of other oversight actors such as the ombudsman institutions and the audit offices; they are slowly becoming more professional in performing their oversight duties. Finally, civil society organisations (CSOs) in all three countries have become quite vocal and are increasingly and pro-actively demanding their rightful place in decision-making and oversight.

Legislation

At the core of the work of intelligence services in a democracy lies the debate between secrecy and transparency. Depending on societal developments, it tends to balance one way or the other. In times of crisis or instability, more secrecy might be acceptable to society, whilst in times of peace and stability, more transparency might be desired. In essence, the legislative framework is there to settle this debate and lay down the rules, notwithstanding the state of play in any given country. It defines the roles and duties of the intelligence services, the executive, parliament and the public, and hence sets out the framework for oversight of intelligence. Thus, the legislative framework must be clear and up to date. And when this is the case, such framework needs to be applied in practice.

In all three countries, providing for a legislative framework that meets these two elementary requirements remains a challenge. In **Albania**, the current legislation regulating oversight of intelligence was adopted in 1999 and consists of 26 articles. Initiatives to draft a new and updated law were undertaken in 2015, but failed to materialise, leaving Albania with an outdated legislative framework. Not only does the 1999 law not reflect current times, but it also leaves room for ambiguity, which, in turn, leaves the door open for abuse, mainly on the part of the institutions. The law on information, another important piece of legislation for intelligence oversight, is a striking example in this regard. This law, amongst others, deals with the classification of documents but it does not provide sufficient guidelines for the categorisation or classification of documents. As a result, a disproportionate number of documents end up being labelled as confidential.

Furthermore, in Albania, there is still no specific parliamentary (sub-)committee that deals with intelligence oversight, despite several debates on the issue. Currently, intelligence oversight falls under the purview of the portfolio of the Committee on National Security and Defence. However, in practice, the committee limits itself to adopting intelligence-related legislation, and does not play an active role in scrutinising and overseeing the intelligence services. In sum, Albania's oversight of intelligence agencies is hampered by both an outdated legislative framework and parliament's inability to oversee the implementation of the laws pertaining to the intelligence agencies.

Kosovo, being the youngest of the three states, has had the advantage of being able to integrate lessons learned and develop a new legislative framework. At first glance, in Kosovo there is a clear division of roles, and the actors involved have clear mandates that have been incorporated in the legislative framework. The key problem here is the actual implementation of such mandates, which is not as effective as it should be. For example, when it comes to financial oversight of the Kosovo Intelligence Agency (KIA), there seems to be a discrepancy between the role and mandate of the National Audit Office as laid down in the Constitution and the law on the intelligence services. The Constitution stipulates that the Auditor-General of Kosovo audits: (1) the economic activity of public institutions and other state legal persons; and (2) the use and safeguarding of public funds by central and local authorities. This implies that the mandate includes the KIA. However, the law on the intelligence services lays the responsibility of financial audits with the Inspector General of KIA, who reports to the Prime Minister and the KIA Director. Ergo, one could argue that there is only an internal audit and not an external audit. It also implies that parliament does not play a role here. Auditing is a key factor in budgetary oversight and hence one of the main instruments for parliaments to ensure proper and efficient usage of public resources. Even though the budgets of intelligence services and subsequent budgetary oversight are done somewhat differently given the specificities attached to intelligence agencies, non-involvement of parliament is not desirable. The audit office, as per its constitutional mandate, should play a key role here.

In **North Macedonia**, after the shift of power in 2017, and with EU encouragement, the country embarked on an extensive reform process of the intelligence services. Part of this process involved changing existing laws and adopting new ones. The ongoing reform has, amongst others, led to the establishment of a Citizens Supervision Council, which participates in the oversight of the newly-established Operational Technical Agency (OTA), which is responsible for monitoring communications. The communications section of the former intelligence agency played a key role in a major wire-tapping scandal under the previous government. There are still some shortcomings in the legal framework relating to this council, highlighting the fact that the reform process is still 'under construction'. Legal ambiguities regarding its funding prevent the Citizens Supervision Council from receiving the necessary financial resources to adequately do its work, even though such funding has been allocated. As a result, the Council's allocated budget remained unused for the first two years of its existence. Furthermore, its mandate and responsibilities are not specified clearly enough for the Council to go beyond the monitoring of the work of OTA. Hence, the question remains as to whether the Council can meet its objective of properly determining whether abuse is taking place in the monitoring of citizens' communications.

Capacities

For oversight of intelligence to be effective, it is pivotal that human resources and institutional capacities are up to the task. Regarding human capacities, members of parliament (MPs) and support staff need to acquire the necessary expertise, skills, and knowledge to be able to understand the technical and secretive realm of intelligence activities. When it comes to highly specialised areas of intelligence oversight, such as the surveillance of electronic communications of citizens, it is important to strengthen in-house knowledge within parliaments and/or hire external IT experts to grasp all technical facets.

Regarding institutional capacities, parliaments should, first and foremost, be able to operate autonomously from the executive, by having specialised intelligence oversight committees complementary to general committees that are responsible for their own budgets and recruitment processes. Furthermore, it is necessary to enable other oversight actors to support parliaments in their oversight work. In this framework, it is necessary to ensure full financial and operational independence of the audit offices, which should include the right to determine their own budgets and recruitment processes, all of which should be constitutionally guaranteed. Other democratic watchdogs, such as the media and CSOs, also face challenges. These actors are still being kept at arms-length by the intelligence agencies. Public information on intelligence agencies is scarce, which makes the practice of inclusive accountability – parliament involving other oversight actors in the process – very difficult. In all three countries, there are still many capacity shortcomings to address to make intelligence oversight more effective.

In **Albania**, parliamentary oversight of intelligence is being exercised by the Committee on National Security and Defence, even though legislation and rules of procedure allow parliament to establish a specialised committee on intelligence. Often, general security-related committees with broad mandates are not well suited to oversee the intelligence services properly, as they lack the time, resources, and specialised knowledge to focus on the intelligence agencies. Another problem, related to human resources, is that the Committee on National Security and Defence does not have enough staff to optimally support MPs in conducting their work. For oversight to function effectively, it is vital that parliamentarians in committees are supported on process and content by enough qualified staff members. Whereas parliamentarians participate in committees only during one or two terms, staff tend to remain much longer and are thus the institutional memory of parliament, possessing invaluable knowledge and experience within their committees. Hence the importance of developing and maintaining a professional staff apparatus within parliamentary committees. For oversight of intelligence in Albania to function more effectively, it would be advisable to establish a specialised committee and to recruit extra staff.

In **Kosovo**, there is a specialised oversight committee in place, the Committee on the Oversight of KIA. Support staff within the committee also seems to be up to standard. However, the institutional procedure whereby the KIA oversees vetting of parliamentarians joining the specialised oversight committees should be revised. Abiding to EU guidelines, the vetting process should be maintained, but it should be exercised by a separate body, autonomous from the KIA.

Another issue relates to the Inspector General (IG) within the KIA, which was established as an extra oversight layer with the aim of ensuring checks and balances within the institution. However, the current IG had been a candidate MP for the very political party which was in power at the time of his appointment. While legally legitimate, given that he resigned from the party just before his appointment, the process is contrary to the principles of good governance – one of the last decisions of the then prime minister right before the celebration of early elections was to appoint a person close to his political party to a key position in the security sector.

In **North Macedonia**, the process of establishing financial and functional independence of parliament is in the making, but it should be more prioritised. Only when parliament can operate completely independently from the executive will it be capable of exercising bold oversight. In general terms, parliament needs to review audit reports more regularly. Furthermore, it is necessary to ensure full financial and operational independence of the Supreme Audit Institute, which should be constitutionally guaranteed, to enable it to perform its legally determined mandate. With regards to intelligence oversight, most arrangements seem to be in place within the North Macedonian parliament. Following a decade of state capture, during which the omnipotent intelligence services were used for political and personal purposes, after 2017 many reforms began to be implemented. Amongst others, the powerful intelligence service was disbanded and broken down into two different agencies. Also, parliamentary oversight of intelligence has been strengthened. There are currently three different committees in charge of overseeing the security sector as a whole (including intelligence). Moreover, support staff seems to be sufficient on a quantitative level. However, there are doubts about the level of specialised knowledge and expertise available amongst staff in the security-related committees. Another challenge lies in the functioning of the Citizens Supervision Council. A lack of adequate training for members has led to many functional and technical problems that have hindered the functioning of the Council from the outset. In addition, there is a lack of technical means and resources, including a shortage of technical IT experts, for the Council to effectively implement its mandate.

Recommendations

The DECOS working group has formulated a series of recommendations to overcome the obstacles in terms of democratic commitment, legislation and capacities that are hindering the oversight of intelligence in Albania, Kosovo, and North Macedonia. Some of these are country-specific, while others refer to common challenges in all three countries.

Lack of commitment toward democratic governance:

All countries:

- Increase the formal and professional autonomy of staff within the intelligence services and diminish their political dependency. As a rule of thumb, staff should prioritise the interests of citizens and the state and not those of their political leaders.
- Awareness-raising and capacity-building about the risks of over-classifying state documents and the correlation with transparency and accountability are necessary for young and promising professionals within intelligence agencies and within oversight institutions.
- Create an understanding (through training and awareness-raising) among intelligence service staff as well as oversight actors of the fact that the work of intelligence and of democratic oversight actors are of national importance and go well beyond political views and interests.

Legislation:

Albania:

- Prioritise the adoption of the draft law on intelligence services. While the current legislation suits both the intelligence agency and other proponents beyond it, it does not serve the public of Albania, as it prevents public democratic oversight.

Kosovo:

- The National Audit Office should apply its legal powers, as laid out in the Constitution, to oversee the KIA's budget, in order to guarantee an external auditing process in addition to the existing internal one. The subsequent audit reports should be discussed by the relevant parliamentary committee(s).

North Macedonia:

- The legal framework for overseeing intelligence services is not sufficient, particularly when it comes to the budget and the mandates of the members of the Citizens Supervision Council. Legislation should be amended and implemented as soon as possible to enable the Council to effectively perform its tasks and duties.

Capacities:

Albania:

- Establish a (sub-)committee on oversight of intelligence to provide for specialised scrutiny.
- Increase staff capacities within the relevant parliamentary committee(s) through targeted capacity-building activities aimed at improving their knowledge, skills, tools, and techniques.

Kosovo:

- The procedure whereby KIA itself is in charge of vetting the MPs of the specialised KIA Committee in the Assembly should be reversed, and should be implemented by an independent body, separate and autonomous from KIA.
- Be mindful of upholding the political neutrality of the Inspector General position within KIA, by avoiding partisan appointments in the future.

North Macedonia:

- Members of the Citizens Supervision Council need training on the technical aspects of the monitoring of communications of citizens, in order for them to better exercise oversight of OTA. Furthermore, the lack of technical means and resources, including technical IT experts, should be addressed to enable the Council to effectively implement its mandate.
- Ensure full financial and operational independence of the Supreme Audit Institute, which should be constitutionally guaranteed. This would contribute to a more optimal financial oversight of intelligence.



CESS

The Centre for European Security Studies (CESS) is an independent institute for research and training, based in Groningen, the Netherlands. CESS seeks to advance security, development, democracy and human rights by helping governments and civil society face their respective challenges. CESS is an international, multidisciplinary and inclusive institute. Its work is part of the European quest for stability and prosperity, both within and outside Europe. CESS encourages informed debate, empowers individuals, fosters mutual understanding on matters of governance, and promotes democratic structures and processes.



DECOS

The DECOS project seeks to empower democratic institutions and civil society actors in their function of oversight of security. It does so by increasing capacities, enhancing cooperation, and fostering a culture of oversight of the security sectors of Albania, Kosovo, and North Macedonia.

In the DECOS project CESS works with:

- The Albanian Institute for Political Studies
- The Institute for Democracy and Mediation, Albania
- The Kosovar Institute for Policy Research and Development
- The Institute for Democracy 'Societas Civilis', North Macedonia



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