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**МБИКЌЫРЈА ПАРЛАМЕНТАРЕ Е ПЃРГЈИМИТ ТЃ
КОМУНИМЕВЕ НЃ РЕПУБЛИКЃН Е МАКЕДОНИЃ СЃ
ВЕРИУТ - СФИДАТ ЈУРИДИКЕ ДНЕ ПРАКТИКЕ**

**ПАРЛАМЕНТАРНИОТ НАДЗОР НА
ПРИСЛУШУВАЊЕТО НА КОМУНИКАЦИИТЕ ВО
РЕПУБЛИКА СЕВЕРНА МАКЕДОНИЈА – ПРАВНИ И
ПРАКТИЧНИ ПРЕДИЗВИЦИ**

**PARLIAMENTARY OVERSIGHT OF
THE INTERCEPTION OF COMMUNICATIONS
IN THE R.N. MACEDONIA - LEGAL AND PRACTICAL
CHALLENGES**

Abstract

Oversight of the intelligence and security agencies can take different forms. Parliamentary oversight, as one of the oversight forms, vary considerably across states, and may be influenced by constitutional order, legal system and political culture, even from the history. However, it is particularly important oversight form, as it can help ensure agencies' independence from the executive and provide legitimacy for their actions, as well as maintain public confidence. Oversight of the interception of communication should be conducted in continuity

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through an established practice and by supervisory bodies free from political influences.

It seems that parliamentary oversight of the interception of communication in the R.N. Macedonia didn't meet the expectations and MP's didn't show strong enough will to cope with the challenges faced as members of the oversight committees.

In this paper the current situation with the parliamentary oversight of the interception of communications is elaborated from two viewpoints: legal solutions contained in a reformed legal framework, on the one hand, and the challenges identified in the practical implementation of the legal provisions, on the other hand. Basically, the conclusion is that some of notified challenges are the result of inconsistent and insufficiently precise legal provisions. The other are result of absent of a political will for fully implementation of the reform priorities.

***Keywords:** parliamentary oversight, interception of communications, legal framework, practical challenges*

INTRODUCTION

The security and intelligence system and the interception of communications system in the R.N. Macedonia were reformed through 2018 and 2019, by the adoption of reform legal framework with several laws in this package. The changes were imposed on the massive illegal wiretapping that the general public became aware of in 2015. As a result of this, a Senior Experts' Group on Systemic Rule of Law Issues, established by the European Commission and led by Reinhard Priebe, prepared a report establishing the factual situation in this sphere. The Experts' Group identified, among other, abuse of the surveillance mechanism by the then Administration for Safety and Counter-intelligence and recommend appropriate solutions in the areas where shortcomings were detected. The experts has concluded that parliamentary oversight of the interception of communications has been formally established through parliamentary committees, which still do not conduct supervision over the Administration for Safety and Counter-intelligence, nor do they gather statistical data on interception of communications. As reasons for the inefficient oversight have been also pointed out the lack of technical knowledge and a long procedure for issuing security certificates for oversight committee members, as well as the continuous

boycott of the committees, caused by the boycott of the work of the Parliament by the then opposition.

The reformed interception of communications system overcomes certain disputable elements that previously at certain times completely paralyzed the work of the parliamentary oversight bodies. This primarily relates to the engagement of national and international technical experts who would participate in oversight as part of the parliamentary Committee on oversight of the implementation of special investigative measures - interception of communication (Committee); issuing of security certificates in a procedure no longer than 30 days; as well as the legal provisions according to which parliamentary Committee conducts oversight without any prior announcement, if necessary, and at least once in three months, even in the event of a lack of a majority of votes. However, this is just one aspect of the new legislation, and it should be considered as positive change. The other aspect is the fact that these positive legislative steps are too slowly being realized in practice. This is something that is elaborated below in this paper, through prism of almost four year application of the new concept for interception of communications.

On the other hand, the promoted new oversight body - Civilian Control Council was expected to be an important corrector of the entities involved in the process of interception of communications. However, after its establishment, this Council did not initiate any essential activities. There are several reasons for that. The main reason is the fact that the legal status of the Council is not precisely regulated by the new Law. This situation is an indicator that the efforts for acting in accordance with the reform laws did not create any major developments from what was the practice thus far.

As a result of this, the current situation with parliamentary oversight of the interception of communication in the R.N. Macedonia is far from successful. It seems that the reforms didn't meet the expectations and MP's didn't show strong enough will to cope with the challenges faced as members of the oversight committees. The reasons for that are complex. In this paper, the current situation is elaborated from two viewpoints: legal solutions contained in a reformed legal framework, as one point, as well as, the real challenges identified in the practical implementation of the legal provisions, as second point. We will see that some of notified challenges are the result of inconsistent and insufficiently precise legal provisions, but the other are result of absent of a political will for fully implementation of the reform priorities.

1. THE IMPORTANCE OF PARLIAMENTARY OVERSIGHT OVER SECURITY AND INTELLIGENCE AGENCIES

Intelligence oversight can be seen as having a number of functions: ensuring that intelligence agencies do not break the law or abuse the rights of individuals at home or abroad; ensuring that agencies are managed effectively, and that money is spent appropriately and efficiently; and helping to provide legitimacy for the work of the agencies and the use of intelligence gathered by them.² Oversight of the interception of communications, as a tool for collecting evidence and information for criminal investigation or for security and defense of the state, can also take a different forms. Parliamentary oversight of the interception of communications is particularly important form of oversight as it can maintain public confidence and can provide legitimacy for the agencies and their actions. This oversight should provide an insight into the sensitive work of intelligence and security agencies. Although parliamentary scrutiny of interception of communications is not the only form of accountability, it is certainly the most legitimate and democratically. Scrutiny by the legislature is generally viewed as central, since it provides democratic legitimacy and accountability because typically ensures that, at a minimum, legislation concerning the agencies and their activities has been subject to parliamentary debate, that they are placed within an existing constitutional framework, and that the agencies are subject to the law.³ This is a difficult task, a process full of challenges and expected risks that can determine the success of the supervisory actions. In this process some typical risks could be expected as leak of information. Another risk is that parliamentarians might attempt to manipulate the oversight for political or other interests. Although it is quite difficult to believe that the Parliament can really adequately control the security services, however, it should be expected and sought from it to fulfill this obligation at least on a basic level.⁴ However, we should not

² Bochel, H. and Defty, A. (2017) A Parliamentary Oversight of Intelligence Agencies: Lessons from Westminster, p. 105, retrieved from: https://www.jstor.org/stable/pdf/j.ctt1sq5v42.9.pdf?refreqid=excelsior%3A838adf60e19c33292efd13113c1886de&ab_segments=&origin=

³ Ibid.

⁴ Karovska Andonovska, B. (2016) Preconditions for effective parliamentary oversight of interception of communication in Republic of Macedonia, Contemporary Macedonian Defence, No. 30, Vol. 16

eliminated effective oversight *a priori* as an unattainable goal that could not be achieved.

Parliamentary oversight methods vary considerably across states, and may be influenced by constitutional order, legal system and political culture, even from the history. It is very important to establish the oversight as a practice because ‘secret’ security and intelligence services are one of the last bastions of ‘closed government.’⁵ Moreover, parliamentary oversight is important because interception of communications is effective, but still most intrusive investigative measure which penetrates deeply into the privacy of individuals.

Basic international standards for effective oversight require transparency of competent bodies for interception of communications which should be subjected to oversight at all stages of interception of communications. Gaining the trust of intelligence agencies can be a significant task for legislative oversight bodies. Oversight should be independent, and competent bodies should be able to obtain access to relevant information. It is clear that the oversight should be lead in accordance to the necessary secrecy. Effective and independent oversight of course presumes adequate resources for implementation of the supervision.⁶ In the same time, it is undoubtedly one of the preconditions for creation of security environment with full respect of fundamental human rights. Trust and cooperation is required for this process to work. The parliamentary oversight bodies are expected to act as true correctors of the security services. Oversight should be conducted in continuity through an established practice and by supervisory bodies free from political influences and personal interests. Legislative oversight should involve individuals who are not involved in the process of tasking the intelligence agencies, and who are not the immediate consumers of their work. Legislative oversight is also important in maintaining public confidence in the agencies, including by demonstrating more open and accessible oversight than through internal or executive mechanisms, and reassuring the public that the agencies or the government are not abusing their powers.

⁵ See: Barber, S. (2017) Can parliamentary oversight of security and intelligence be considered more open government than accountability? retrieved from: <https://journals.sfu.ca/ipmr/index.php/ipmr/article/viewFile/325/286>

⁶ See: Ten standards for oversight and transparency of national intelligence services (2015) University of Amsterdam, Institute for Information Law, available at: <http://www.ivir.nl/publicaties/download/1591>

2. LEGAL FRAMEWORK FOR PARLIAMENTARY OVERSIGHT OF THE INTERCEPTION OF COMMUNICATION IN R.N. MACEDONIA

The reform package in the field of interception of communications in the R.N. Macedonia contains two new laws, directly related to interception of communications, and several other laws indirectly related to this area. Law on Interception of Communications,⁷ is *lex specialis* in this field and regulates the procedure for interception of communications in criminal investigations; the conditions and procedure for interception of communications in the interest of security and defense; and the issues regarding oversight and control in this field; as well as the obligations of Operational Technical Agency (OTA) and the operators in the process of interception of communications. The second law directly related to this field is the Law on Operational-Technical Agency,⁸ which establish an independent state body that provide technical connectivity between operators and bodies authorized for interception of communications. In order to harmonize certain provisions with the novelties, amendments and supplements to the Law on Electronic Communications, the Law on Criminal Procedure, and the Law on Classified Information, was also adopted. However, parliamentary oversight provisions can be found not only in the Law of Interception of Communications, but also in several other laws as the Law on National Security Agency, the Law on Parliament, the Law on Intelligence Agency, as well in several bylaws.

The new model for interception of communications was largely copied from the legislation of the R. Croatia. However, if we compare the legislation in Macedonia and Croatia, significant content differences are noticeable, especially in the area of oversight.

There are some positive changes in the new Macedonian legislative, particularly those which overcomes certain disputable elements that previously have made more difficult oversight in the interception of communications. This primarily refers to above mentioned engagement of national and international technical experts. Namely, the oversight Committee not later than 50 days after its formation, elect two experts for ongoing support, and within six months prepares a list of experts who may be accredited on a case-by case basis. During

⁷ Law on Interception of Communications, Official Gazette, No. 71/18, 108/19

⁸ Law on Operational Technical Agency, Official Gazette, No. 71/18, 98/19

oversight, the Committee can also request expert assistance by any state institution and body that is not subject of oversight, including the Agency for Electronic Communications, the Directorate for Security of Classified Information and the Directorate for Personal Data Protection, on issues in their field of competence. The provisions that regulate technical expertise are very important, especially if we have in mind that the lack of expert support was a huge problem in previous oversight system. We should also have in mind that it could not be expected from the MP's as committee members to have knowledge in field of telecommunications. Hence, these provisions are to be welcomed, but unfortunately are still not completely implemented in practice. This indicates that some positive legislative steps are too slowly being realized. These facts from the practice, once again confirm the thesis that "even when the legal basis for parliamentary oversight is impeccable and the parliament has enough resources and expertise to deal with security issues, effective parliamentary oversight of the security sector can't be complete if it does not have political will."⁹

The next positive change in reformed legislation is shortening the security checking procedure for the members of this Committee. The procedure should not be longer than 30 days. Shortening the procedure is very important because previously with each new member of the Committee a problem with the security check was imposed. Namely, according to previous legislative, the security check could last six months, and for more complex cases up to one year. There have been cases when because of this reason the Committee could not be constituted. However, although the legislation in this part was changed, some members of the Committee have not yet received a security certificate. This also indicates that some positive legislative steps are too slowly being realized in practice.

One more positive change in reformed legislation is Article 44 paragraph 1 of Law of Interception of Communications according to which the parliamentary Committee conducts oversight without any prior announcement, if necessary, and at least once in three months, even in situation of a lack of a majority. This is also very important, because we also remember previous obstacles in oversight, especially regards the majority. The functioning of the former oversight parliamentary committee had been blocked for a long time due to a condition

⁹ Bakreski, O. (2008) Control of the Security Sector, Faculty of Philosophy - Skopje, p. 162

in the previous Law on Interception of Communications which requires majority in performing supervision. Hence, these new provisions are undoubtedly directed to provide preconditions for an effective oversight and to eliminate obstacles in these fields.

Aside from these positive changes in legislation, it can be noticed that the competences of the Committee are pretty limited. This can really bring into question the quality of supervision. Namely, the Committee and the accredited technical experts, during oversight can only compare the logs for the time and date of start and the end of interception of communications, which is data that can be received from the competent bodies (operators, OTA and security and intelligence bodies). OTA and the security and intelligence bodies can also make available the anonymized court order, and from OTA also the logs on the total number of implemented measures for interception of communications. However, by accessing only this data, the Committee and technical experts do not have insight into the data on the identity of the persons, telephone numbers, e-mail addresses, etc. Hence, the Committee and technical experts cannot compare the data from the issued court order with the actually activated interception of communications regarding the specific person, telephone number or e-mail address. This actually means that the Committee as an oversight body cannot determine whether a certain person or communication means was illegally intercepted. Compared with the legislation in R. Croatia, which was used as the model for our legislation, the National Security Council, as one of the bodies used by the Croatian Parliament to perform supervision over security-intelligence agencies, has significantly wider competences. This Council can request from the Supreme Court of Croatia and security intelligence agencies a report on the implemented measures for covert collection of data and measures undertaken against persons. Moreover, this Council can interview directors and employees of security agencies regarding the legality of specific measures that were implemented, and discuss the legality of the financial and material work of the security-intelligence agencies. According to Croatian legislation, direct oversight means actually oversight of the legality of work over security-intelligence agencies, of the realization of the prescribed goals and scope of work, of the implementation of measures for covert collection of data, of financial means, as well as the coordination and cooperation between security-intelligence agencies and appropriate services in other countries. In addition, according to Article 108 of the Security

and Intelligence System Act of the Republic of Croatia¹⁰, in the framework of an expert oversight, a competence for oversight bodies to request from security agencies data on the identity of the agency's sources is provided. This is actually provided when it is necessary for the oversight goals in a specific case.

There is one more change in Macedonian legislation regard oversight of the interception of communications. The reformed legislation promotes new oversight body, named Council for Civilian Control. This Council can perform civilian oversight of the legality of the measures for interception of communications and OTA. The Council is composed of experts and representatives of the non-governmental sector. The members of Council are appointed by the Parliament, on the basis of a public announcement. The Council could acting on own initiative or on a complaint submitted by citizens. However, the fact that legislation does not specifically provide for the legal status and conditions for work of this body, on the very beginning has been eliminated the possibilities for effective functioning of this body. According to legal provisions, the work premises of the Council are provided by the Parliament and the financial means by the state's budget. However, these provisions were considered as not enough clear.¹¹ Because of these reason, three years after its establishing, the status of this Council still remains unclear or simply remains *status quo*. Moreover, the competences of the Council are debatable question. The Council does not have the possibility of acting independently after receiving a complaint by a citizen. Instead, the Council must submit a request to the parliamentary Committee in order to conduct oversight and inform the Council regarding that in 15 days' time. With this, the Council is in a marginalized position which brings into question the justification for its existence. The position of the Council is additionally marginalized by the fact that even the oversight that the Council can perform according to Article 51 paragraph 2 line 2 of Law on Interception of Communications, should be announced in advance and only related to

¹⁰ Security and Intelligence System Act of the Republic of Croatia, available at: <https://www.uvns.hr/UserDocsImages/dokumenti/nacionalna-sigurnost/ZAKON-O-SIGURNOSNO-OBAVJESTAJNOM-SUSTAVU-RH-NN-79-2006.Pdf>

¹¹ Xhaferi: There is no legal basis for spending funds for the Civil Oversight Council, published in the Macedonian Information Agency, available at: <https://mia.mk/feri-nema-zakonska-osnova-za-troshe-e-sredstva-za-The-Council-for-civil-supervision/>

comparing anonymized orders in the last three months. Such limitations of oversight are not provided regarding any other oversight body. Comparatively, the competences of the oversight body titled the Council for the Civilian Oversight of Security and Intelligence Agencies in R. Croatia are not limited only on the oversight of the legality of measures for interception. This body also performs oversight of the work of security intelligence agencies, monitors and supervises the measures for covert collection of data, collects information and data related to its competences, etc. In addition, this body can have insight into reports and other documents of the security intelligence agencies, can interview the management staff and other officials of the agencies, and can acts on requests by state bodies and other legal entities.

3. HOW TO ENSURE EFFECTIVE PARLIAMENTARY OVERSIGHT - CHALLENGES IN PRACTICE

Parliamentary oversight in the security and intelligence sectors in the R.N. Macedonia is distributed between three parliamentary committees. Apart of the above mentioned specialized Committee on oversight of the implementation of special investigative measures - interception of communication, there are Committee on Defense and Security and Committee for oversight of the National Security Agency and the Intelligence Agency. This distribution of parliamentary oversight indicates ineffective and inefficient committees, *inter alia* due to the fact that some MPs are members of more than one of these committees. Overlaps of competencies in practice are quite possible and expected. This is just one of the challenges that MP's as members of parliamentary oversight committees' face in practice.

However, just one of these bodies, actually Committee on oversight of the implementation of special investigative measures – interception of communication, reviews issues in regard with: oversight of the implementation of measures for interception of communication; consideration of the lawfulness of the implementation of measures for interception of communications carried out by authorized bodies (OTA); consideration of the effectiveness of the implementation of the special investigative measures; produces annual reports on the oversight; etc.¹² Although the Croatian system for interception of

¹² https://www.sobranie.mk/-ns_article-committee-on-oversight-of-the-implementation-of-the-special-investigation-measure-interception-of-th.nsp

communications was the model used to establish the bases of the system in R.N. Macedonia, the Law on Interception of Communications is still restrictive regard the competences of parliamentary oversight Committee, and many legal solutions from the Croatian system are not contained in our legislation. It is disturbing that these are mechanisms which absence significantly affects the effectiveness of parliamentary oversight. As was mentioned above, the Committee and technical experts cannot compare the data from the issued court order with the activated interception of communications regarding the specific person, telephone number or e-mail address, and thus cannot determine whether a certain person or communication means was illegally intercepted. Hence, the possibility for supplementing Article 42 of the Law of interception of communications should be considered, by providing an authorization for the Committee and technical experts, or only of the technical experts, with the possibility to access court orders that have not been anonymized. Law of interception of communications should be also supplemented enabling the Committee a wider array of competences that it can take. It should be considered the possibility for meeting and interviews of the management staff and other employees from the security and intelligence agencies and OTA, in cases when additional information is needed regarding the legality of application of specific measures. It should be also considered the possibility for inviting the management staff and other employees from these institutions to meeting the Committee where they can answer questions posed by the Committee members, including technical experts.

In addition to the aforementioned, it is necessary to create appropriate by-laws regulating the methodology for realization of field visits and providing for the consequences if the committees fail to submit or are late in submitting reports to the Parliament, the deadlines in which competent bodies must submit the requested information, as well as the consequences of the late submission thereof. Additionally, mechanisms need to be created in order to raise awareness of committee members on the importance of parliamentary oversight over interception of communications. Moreover, creation of the appropriate mechanisms to free the members from political influence during oversight, is more that important.

Apart of above mention, probable the most challenging in practical implementation is the engagement of the technical experts for ongoing support of the parliamentary oversight Committee. According

to Article 37 of the Law on Interception of Communications, the parliamentary oversight Committee, in the legal time framework and after public announcement, elected two experts. However, the elected experts are still not engaged in the Committee. Regarding this, there is almost the same interpretation as in the case of the Civil Oversight Council's status. The problem is allegedly the unclear legal basis or unclear legal provisions. This actually means that we still cannot expect effective oversight or any substantial changes in practice from what it was before the reforms. The explanation of the parliamentary speaker for this situation is that there is not clear legal basis for the methodology of their engagement in parliamentary Committee. This actually means that the situation with the elected experts will remain *status quo* until amending of the legal provisions. Hence, if this is a final position, then the amendment of the legal provisions in this part is more than necessary, it is actually urgent. This situation additionally contributes to the low trust of the citizens in the Parliament, which already "has deeply compromised popular legitimacy, diminishing its credibility when conducting parliamentary oversight of the intelligence services."¹³

The issuing of security certificates for the members of the committees is the next practical challenge. As was mentioned in previous chapter, there are still several members of the oversight committees that have not yet received a security certificate, nor have been notified in any way regarding their request for obtaining such a certificate.

Finally, because of the unregulated status, almost three years after its establishing, the Civilian Control Council has not started adequately functioning. The Council cannot dispose of its approved budget funds and because of this the basic work conditions have not been provided (technical means, archive, security safe, registration of an e-mail address, fees for the members, etc.). Moreover, security certificates for some of the members of the Council are just one more unsolved question. Amendments to Law of Interception of Communications were proposed in the Parliament regarding certain norms related to the Council, but it's having not been adopted. These are the reasons why the seven-member Council was left with only four members. Three of the appointed members, including the President of the Council, resigned. Having in mind all above mentioned, it is clear that the status of the

¹³ Lembovska, M., Stefanovski, I., Stojanovski, A. (2021) Rethinking the democratic oversight of the security and intelligence services in Northern Macedonia, Eurothink - Center for European Strategies, Skopje, p. 11

Civilian Control Council should be appropriately regulated. One of the possible solutions for the Council is to receive the status of a working or expert body in the Parliament, such a status has the Council in R. Croatia. The option for a different placement can also be considered. For example, the Council can be appointed by Parliament, but could act outside of the Parliament. There are also such examples in practice. However, selected solution should be adequate with the actual political and other circumstances in the R.N. Macedonia in order to be fully implemented in practice. In parallel to regulating the status of the Council, a review must be made of all the limitations regarding its competences. Because the legal solutions from R. Croatia were copied as a model during the reform of the security-intelligence sector in R.N. Macedonia, they should be taken into account as the starting basis for redefining the legal competences of the Macedonian Civilian Control Council. In this sense, the Council should act directly on received complaints from citizens, as well as to act unannounced and without the existing time limitation regarding the comparing of court orders. Additionally, the Council should have the right to inspect all the data available to the Committee. For this purpose and if the Council has a need for this, support from the accredited technical experts, should be also provided for the Council. In perspective, in a wider context and based on the example of the R. Croatia, the possibilities for Council to oversight the work of Agency for National Security and the Intelligence Agency, independently or in parallel to the other competent parliamentary Committee, should be reviewed.

3. CONCLUSION

From what is stated in this paper, we can basically conclude that some of the noticed challenges in parliamentary oversight of the interception of communications are result of inconsistent and insufficiently precise legal provisions. The other are result of absent of a political will for fully implementation of the reform priorities. Although the Croatian system for interception of communications was the model used as a basis in establishing the system in R.N. Macedonia, still the Macedonian Law on Interception of Communications is restrictive when prescribing the competences of the parliamentary oversight Committee and Council for Civilian Oversight. Several important legal solutions from the Croatian system are not contained in Macedonian legislation.

It is disturbing, because these are mechanisms that can contribute to efficient oversight and can also contribute in increasing the trust of citizens in the work of the parliamentary Committee and the security services. Moreover, it is clear that legislation is not sufficient to achieve the aim of oversight if there is lack of provisions for liability in a case of ineffective parliamentary oversight; as well as if there is lack of established methodology for oversight and adequate bylaws which will precisely regulate some open issues. Hence, it would be purposeful in perspective to consider the possibility of reduction the number of parliamentary oversight committees because on that way we will avoid the risk of some issue to coincide with the responsibilities of now present three committies. It would be also purposeful in perspective to consider the possibility of unifying in a single Law the provisions of the oversight that are currently contained in several different laws and in bylaws. This will help to overcome certain now present challenges. However, this still will not in itself make oversight effective if there is no political will to do so. Hence, it is clear that appropriate implementation of the laws in practice is something that institutions should strive for. This is why we cannot consider the reform process as completed, especially bearing in mind the weakness already seen in the practical implementation of certain legal solutions. This is especially regards engagement of the elected technical experts. Their *status quo* situation need to be resolved as soon as possible, because technical experts support is one of the precondition for quality evidence-based oversight.

Experience thus far has showed that political influences over the parliamentary oversight bodies and particularly over security and intelligence services, seriously determine their work. The current situation leads to the conclusion that oversight, as a powerful tool that should provide accountability of the security services, cannot be efficient if there is lack of political will, political culture and level of awareness on the need for oversight as established practice. The fact that the specialized parliamentary Committee can now conducts oversight without any prior announcement, when it is necessary, and at least once in three months, even without a majority, should be an additional mechanism to ensure the effectiveness of oversight. However, for the successful oversight members of Parliament, as members of oversight committees, must set aside the narrow party and daily political interests.

All above mentioned is also relevant for Civilian Control Council. It is really disappointing that even after three years since it's establishing, the Council has not started adequately functioning.

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