

CEAS ANALYSIS

of the Law on Amendments of the Law on the Security Intelligence Agency



Belgrade, July 2014.

*CEAS is supported by the Rockefeller Brother's Fund
The views and analysis in this report do not necessarily represent the views of the Rockefeller
Brother's Fund*



The Center for Euro-Atlantic Studies (CEAS) welcomes the adoption of the Law on Amendments to the Law on the Security Intelligence Agency (BIA); the Law was published in the „Official Gazette of RS,” no.66/2014 on June 29, 2014, and it entered into force on the day of publication). The law to a large extent aligns the provisions referring to the invasion of privacy of correspondences and other means of communication with the guarantees of inviolability upheld within the Constitution of Serbia. CEAS believes that this is a positive step forward in the process of security system reform in Serbia.

We believe that it is positive that these amendments to the Law on the BIA introduce a judicial review of the actions of the security services, as, after all, it is established in the Constitution of Serbia as well as within this judicial review, that the mechanisms through which control is established should be clear and well-defined.

We consider it positive that the proposal of the Ombudsman to regulate, as an accompanying measure, secret surveillance and recording of places, spaces, and objects was accepted, and that for this type of measure a court decision must now be obtained. We agree with the Ombudsman that despite the fact that through this special measure the privacy of communication is not violated in its full scope, attention must nevertheless be paid to ensure that such special measures do not interfere with the rights of citizens' privacy and the right to life in general. Such rights are guaranteed by Article 9 of the European Convention on Human Rights and Fundamental Freedoms, and, keeping in mind that this European Convention has been ratified by Serbia, it is also an integral part of our positive legal system.

We also welcome the recognition of the criticism made by the Commissioner for Information of Public Importance and Personal Data Protection related to the Draft Law. The Law was to enable special measures to be enacted if there is reasonable ground that actions directed against the constitutional order are being made or prepared, instead of only those actions directed against the security of the Republic of Serbia. This is contrary to Article 41, paragraph 2 of the Constitution of the Republic of Serbia, which allows deviations from secrecy of communication only for the purpose of criminal proceedings and the protection of security of the Republic of Serbia, but is now, through Article 2 of the Law on Amendments to the Law on the BIA, regulated in accordance with the Constitution.

On the other hand, the decision under Article 15b of the Law on Amendments to the Law on the BIA is debatable, as it provides for the authority of the Director of the Agency to apply the tool of special

measures in case he/she learns that the monitored person changed the means or location of communication. However, the Director is obligated to inform the Court of this decision, that is, to submit a request for subsequent expansion of the application of special measures, within 48 hours. We consider the deadline in which the Court must make a decision as being too long, as it is also 48 hours. We believe that in both cases – the Director of the Agency, as well as the Court, should act immediately and without delay in order to reduce the possibility of excessive dispositions, broad discretion powers, and abuse. We do not see the necessity of leaving an unduly long period for implementation of such urgent action, especially if we take into account today's technological possibilities of rapid communication and exchange of information.

Also unclear is the provision within the same Article which provides that if the Court subsequently rejects the Director's request for the application of special measures, the collected material must be destroyed. What remains unclear is whether in this case the unfoundedly monitored citizen is informed of this, or whether he/she in fact will never (unless, unprovoked, requesting a procedure) find out that he/she was subject to measures by the BIA. Equally vague and imprecise is the prescribed protocol for destroying the collected material. Paragraphs 3 and 4 of Article 15b of the Law prescribe only that in the case of rejection of the request, the collected material must be destroyed in the presence of a judge and a report be made. It is not clear in which way the infringed material is to be destroyed, who drafts the report, what does the report contain, where it is later archived, who can have access to it later, etc.

Finally, we believe that the relevant amendments of the existing Law are insufficient to fully democratize surveillance that is carried out by the BIA in accordance with its jurisdiction as the competent authority. A new Law on the Security Intelligence Agency is needed not only from the aspect for the application of special methods and means of operation through which interference of Constitutionally guaranteed rights and freedoms of citizens is made, but also in terms of the necessary redefining of the scope and objectives of the security services of the Republic of Serbia in order to achieve the necessary balance between the principle of legality and the principle of efficiency and to, we believe, largely eliminate the possibilities of potential abuses of power.

CEAS has, in March 2014, analyzed the 14 recommendations that the Ombudsman Saša Janković and the Commissioner for Information of Public Importance and Personal Data Protection Rodoljub Šabić presented in July 2012 regarding the protection of constitutionally guaranteed and related human

rights. We presented a plan for improving the state of the security system in Serbia called „Total Makeover,“ in which we supported and analyzed the recommendation that is measure 4: Unifying the currently overlapping technical capabilities of the police and other various agencies into a single national agency that would provide the technical services necessary for intercepting communication and other signals to all authorized users is required.

Formation of one, national, independent agency that would, as a provider, provide the technical services necessary to intercept communications and other signals to all authorized users would reduce the possibility of illegal conduct.

ABOUT CENTER FOR EURO-ATLANTIC STUDIES

The Center for Euro-Atlantic Studies (CEAS) is an independent, atheist, socio-liberal, policy research think tank, driven by ideology and values. It was established in 2007 by a small group of like-minded colleagues who shared an awareness of the inter-conditionality between global and regional trends, foreign policy orientation of the country, security and defense sector reform, and transitional justice in Serbia. With these linkages in mind, CEAS was established with the following mission:

- To accelerate the process of Serbian EU integration and to strengthen its capacities to confront global challenges through collective international action, resulting in full and active membership of the EU;
- To strengthen the cooperation with NATO and advocate for full and active Serbian membership in the Alliance;
- To promote regional cooperation and raise public awareness of its significance;
- To impose a robust architecture of democratic oversight of the security system;
- To support the development of transitional justice mechanisms, their enforcement in Serbia and the Western Balkans, and the exchange of positive experiences; to emphasize the importance of mechanisms of transitional justice for successful security sector reform in post-conflict societies in transition towards democracy.

To accomplish its mission, CEAS is targeting Serbian policy makers and the Serbian general public, as well as international organizations, governments and other actors dealing with Serbia and the region of Western Balkans, or dealing with the issues that CEAS covers, through the promotion and advocacy of innovative, applicable and practical policies aimed at:

- Keeping up with the trends and developments in socio-liberal studies and practice, and at strengthening of socio-liberal democracy in Serbia;
- Adopting the principle of precedence of individual over collective rights, without disregard for the rights which individuals can only achieve through collective action;
- Strengthening the secular state principle and promoting an atheistic understanding of the world;
- Contributing to the erection and preservation of a more open, safe, prosperous and cooperative international order, founded on the principles of smart globalization and equitable sustainable development.

With its high quality research and devoted work CEAS generates accurate and recognized analyses primarily in the fields of foreign, security and defense policies with recommendations based on its core values, with specific focus on:

- Acceleration of the processes of Serbian EU integration and strengthening of its capacities for confronting global challenges through collective international action, resulting in full and active Serbian membership of the EU;
- Strengthening cooperation with NATO and advocacy for full and active Serbian membership in the Alliance;
- Promotion of the significance of regional cooperation;
- Imposition of the robust architecture of democratic oversight of the security system;
- Supporting development of transitional justice mechanisms, their enforcement in Serbia and the Western Balkans, and the exchange of positive experiences; emphasizing the importance of mechanisms of transitional justice for successful security sector reform in post-conflict societies in transition towards democracy;
- Promotion of humanitarian and security norm Responsibility to Protect arguing that the state carries the primary responsibility for the protection of populations from genocide, war crimes, crimes against humanity and ethnic cleansing, that international community has a responsibility to assist states in fulfilling this responsibility and that the international community should use appropriate diplomatic, humanitarian and other peaceful means to protect populations from these crimes if a state fails to protect its populations or is in fact the perpetrator of crimes;
- Promotion of Open Government Policy, aiming to secure concrete commitments from governments to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance.

Programs and Donors

CEAS is carrying out its mission through various projects within its five permanent programs:

- I Comprehensive monitoring of contemporary international relations and foreign policy of Serbia
- II Advocacy for full-fledged active membership of Serbia in the EU and NATO
- III Advocacy for comprehensive Security Sector Reform in Serbia
- IV Advocacy for development of the discourse of Energy Security in Serbia
- V Liberalism, Human Rights, Responsibility to Protect, Transitional Justice and Open governance in the globalized world

CEAS programs have so far been supported by the European Commission Directorate General Enlargement, the European Commission through Europe for Citizens Program, Balkan Trust for Democracy, the Fridrich Nauman Foundation, Fund for an Open Society- Serbia, the National Endowment for Democracy, NATO Public Diplomacy Division, the Rockefeller Brothers Fund and the Royal Norwegian Embassy in Belgrade.

The above listed donors have thus far supported the following CEAS projects:

- Balkan Trust for Democracy: How the EU Can Best Employ its Leverage to Compel Sustainable Reform; Responses to local, regional and global security threats.
- European Commission: Advocacy for Open Government: Civil society agenda setting and monitoring of action plans (European Commission Directorate General Enlargement), Enlargement and Citizenship: Looking into the future (Europe for Citizens program).
- Fridrich Nauman Foundation: Support for Serbian EU integration – Lobbying for the Stabilization and Association Process agreement.
- Fund for an Open Society: Serbia and the EU: What do we have in common in the areas of security and defense and how to make the most of it – continued advocacy of security sector reform in Serbia through intensive use of Serbia's EU accession process resources; End oblivion - Legal and media support to families of civilians and soldiers killed under mysterious circumstances.
- National Endowment for Democracy: Now is the Time: Advocacy of the Continuation of the Comprehensive Security Sector Reform in Serbia; Promoting Comprehensive Security Sector Reform; Erection of NGO and expert groups focused on the process of EU integration in Bosnia and Herzegovina and Serbia; Strengthening debate skills and promoting democratic values among youth.
- NATO Public Diplomacy Division: 30 Young Experts on NATO; Conference: "Let's talk about NATO"; NATO, Serbia and the Western Balkans – Conference on NATO's new Strategic Concept.
- Rockefeller Brothers Fund: Serbian Security Sector Reform and Integration
- Royal Norwegian Embassy in Belgrade: Regulated Private Security Sector – Safer life of citizens.

Membership in International Organizations

CEAS has also developed its membership of several international coalitions and organizations:

- The International Coalition for the Responsibility to Protect – ICRtoP. The coalition brings together non-governmental organizations from all over the world to collectively strengthen normative consensus for the doctrine of Responsibility to Protect (RtoP), with the aim of better understanding the norm, pushing for strengthened capacities of the international community to prevent and halt genocide, war crimes, ethnic cleansing and crimes against humanity and mobilize the non-governmental sector to push for action to save lives in RtoP country-specific situations. CEAS is the first civil society organization from the region of South-Eastern Europe to have full membership in this coalition.
- The Policy Association for an Open Society – PASOS, an international association of think-tanks from Europe and Central Asia which supports the erection and functioning of an open society, especially in relation to issues of political and economic transition, democratization and human rights, opening up of the economy and good public governance, sustainable development and international cooperation. CEAS is a full-fledged member.
- The REKOM coalition which suggests that governments (or states) establish REKOM, an independent, inter-state Regional Commission for the Establishment of Facts on all the victims of war crimes and other heavy human rights violations undertaken on the territory of the former SFRY in the period 1991-2001.
- The Atlantic Community, the first online foreign policy think tank, and is primarily focused on issues affecting transatlantic relations, with numerous special features, sections, and events that promote debate and cooperative solutions to transatlantic issues and provide members with access to policy makers.