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The use of special investigative measures in the Republic of North Macedonia – legal provisions and human rights aspects

Stosowanie specjalnych środków dochodzeniowych w Republice Macedonii Północnej – przepisy prawne i aspekty praw człowieka

Abstract

The special investigative measures are ante delictum measures, introduced in the Republic of North Macedonia as part of the Law on Amendments to the Law on Criminal Procedure in 2004. The starting hypothesis of this paper refers to the inviolability of the respect of human rights during the implementation of the special investigative measures, which counterpoise a fundament in the aspect of reformed functioning of the security sector, according to the principles of good governance. The variable in relation to the hypothesis is that the arbitrariness and/or abuse of the application of the special investigative measures can undermine the protection of the core values which they are intended to protect. The methodology applied for creating this paper is both qualitative and quantitative, depicting the analysis of the national legislative framework and international standards, the interpretation of guidelines and manuals for the special investigative measures enforcement by the relevant institutions, the comparison, as well as measuring trends in the appliance of the measures.

Keywords: investigations; measures; procedures; security sector reform; human rights

Abstrakt

Szczególnymi czynnościami śledczymi są środki *ante delictum*, wprowadzone w Republice Macedonii Północnej w ramach ustawy o zmianie ustawy o postępowaniu karnym w 2004 roku. Hipoteza wyjściowa niniejszego opracowania dotyczy nienaruszalności poszanowania praw człowieka w trakcie realizacji szczególnych czynności śledczych, stanowiących fundament w aspekcie zreformowanego funkcjonowania sektora bezpieczeństwa zgodnie z zasadami dobrego rządzenia. Dodatkową zmienną w odniesieniu do hipotezy jest to, że arbitralność i/lub nadużycie zastosowania specjalnych środków dochodzeniowych może podważyć ochronę podstawowych wartości, które mają chronić. Metodologia zastosowana przy tworzeniu niniejszego opracowania ma charakter zarówno jakościowy, jak i ilościowy, przedstawiono analizę krajowych ram prawnych i norm międzynarodowych, interpretację wytycznych

i podręczników do wykonywania specjalnych czynności dochodzeniowych przez odpowiednie instytucje, porównanie, a także pomiar trendów w urzędzeniu środków.

Słowa kluczowe: dochodzenia; środki; procedury; reforma sektora bezpieczeństwa; prawa człowieka

Introduction

The special investigative measures are additional measures enforced by the public prosecution in the pre-investigation procedure, introduced in the Republic of North Macedonia, as part of the Law on Amendments to the Law on Criminal Procedure, by which several new institutes were accepted, among which the special investigative measure was the most significant, for its exceptional importance in the efforts to fight organized crime, corruption and terrorism.

A range of research is chronologically starting from 2004 up to today, with utilized research sources from official institutions statements, publications, press-conferences, as well as legal provisions both domestic and international in the domain of the justification and efficiency in appliance of the special investigative measures for the legal outcomes for overcoming institutional crisis.

The starting hypothesis in this paper refers to the inviolability of the respect of human rights during the implementation of the special investigative measures, which counterpoise a fundament in the aspect of reformed functioning of the security sector, according to the principles of good governance.

The research problem consists of scoping the role of the special investigative measures, which are indispensable, yet prone to abuse by the authorized institutions. The problem and the gap of knowledge in this domain are represented by the fact that special investigative measures, by their nature, constitute a deliberate violation of specific human rights and freedoms guaranteed by the Constitution and international legal documents, for the purpose of achieving higher goals: protection of society and citizens from severe forms of crime and an effective and successful fight against it, as well as for the interest of national security, public safety and economic wellbeing of the society. The measures are applied only in situations in which evidence cannot be obtained with conventional methods and required for uninterrupted conduct of criminal proceedings.

Materials and methods

The materials reviewed and analyzed in the realm of the specific subject outline the conceptual and the theoretical framework of the research and include the fundamentals of the legal provisions, specifically the Constitution of the Republic of North Macedonia; the Criminal Procedure Code Manual issued by the Ministry of Interior,

the Public Safety Bureau and OSCE from 2012; the Law on Criminal Procedure from November 2010 (Official Gazette of the Republic of Macedonia no. 150 year LXVI); the Law of communication interception (Official Gazette, no. 71 from 19.04.2018); the Law on classified information (Official Gazette of RNM, no. 275 from 27 December 2019); publications created by the relevant domestic institutions in partnership and with the support of international, supranational bodies specialized in the specific matter, such as the Special Investigative Measures – Domestic and international practice by the OSCE Monitor Mission to Skopje and the authors: Ilievski Jovan, de Las Heras Maria and Ruskovska Vilma from 2010; the 2019 DCAF Manual for implementation of measures for interception of communications, by the authors: Spasenka Andonova et al.; the Intelligence sector reform program in the Republic of North Macedonia (2017–2020) Newsletter no. 6 June 2020 and the Intelligence and security sector reforms in the Republic of North Macedonia program (2021–2026) DCAF. Supplementing the listed sources, is the literature published in the effort to further address this complex issue, among which is the Book of commentaries of the Law on Classified information, published by DCAF from 2021 from the authors: prof. Oliver Bakreski, and prof. Alesandra Deanoska Trendafilova, as well as the book Information security and critical infrastructure by prof. Oliver Bakreski and prof. Tanja Milosevska published by the Directorate for security of classified information, 2021 as the latest undertakes in this direction for the systematic findings and their elaboration with the sole purpose to properly apply the special investigative measures in harmony with the suggestions made by the academic experts in the direction of integrated approach toward the optimal practices and the inclusion of a broad debate over their necessity and proportionality of the special investigative measures regarding the democratic postulates of security sector governance transparency and civil oversight.

The methodology applied for this research paper includes qualitative analysis and interpretation of the legal provisions prescribing the specific topic in the Macedonian legislature, as well as comparison to international standards and guidelines, chronological review, as well as deductive description and graphic organogram displays of the process of special investigative measures appliance by the designated institutions. The quantitative analysis applied in this research implies to generalization of the findings and the identification of causal relationships between the fundamentally antagonistic concepts of the respect of fundamental rights and the intrusive character of the special investigative measures.

The research methods applied for the purpose of the research elaborated in this paper are qualitative analysis and interpretation of the legal provisions designated in the Republic of North Macedonia, as a case study that addresses the dilemma for the possibility to enforce special investigative measures for interception of communication without simultaneously violating the constitutional guarantees and ECHR and examining the necessity to enforce the specific measures. The methodology in this paper has the aim to dialectically link the contradictory aspects of the ethical

and legal principles envisioned and the invasive nature of the methods of countering serious forms of organized crime and preventing national security threats.

Legal provisions

Given the prescribed principles of the Constitution, the first generation fundamental rights are constitutionally guaranteed in the Republic of North Macedonia, along with the respect of the rule of law and the democratic principles of transparency, which implies to invulnerability of privacy and parliamentary and civil oversight. Furthermore, these principles are emphasized within the framework of the intelligence and security sector reform program in the Republic of North Macedonia 2021–2026, in direction of strengthening capacities and independence on the approval of special investigative measures by judges. In the specific context of the security sector reforms which took place in the Republic of North Macedonia, as well as the latest phase of the intelligence community reforms in the country, the applicance of the special investigative measure counterpoises a significant and very sensitive realm of the legal and the judicial system, having in mind the political dimension it gains in the Macedonian society (Bakreski, Miloševska, 2021).

At the beginning of December 2004, the Law on amendments to the Law on Criminal Procedure was adopted, which accepted several new institutes, among which the introduction of the special investigative measures can be singled out as the most important. The launch of special investigative measures is of paramount importance, especially in the fight against organized crime, corruption and terrorism, and since 2008 the Basic Public Prosecutor's Office for prosecution of organized crime and corruption has been applying special investigative measures in order to more effectively detect and thus more easily prove crimes in the field of organized crime, corruption and terrorism (Bakreski, Deanoska, 2021).

Special investigative measures are provided in Article 252 of the Law on Criminal Procedure, which emphasizes that these measures are used when they are likely to provide the data and evidence necessary for successful conduct of criminal proceedings, which otherwise can not be collected (Ruskovska et al., 2010).

The following taxonomy of special investigative measures can be carried out:

1. monitoring and recording of telephone and other electronic communications;
2. monitoring and recording in a home, closed or enclosed space belonging to a home or business premises marked as private or in a vehicle and entrance in those premises in order to create conditions for interception of communications;
3. secret surveillance and recording of persons and objects with technical means outside the home or business premises marked as private;
4. secret inspection and search of a computer system;
5. automatic, or with other means search and comparison of personal data;
6. insight into realized telephone and other electronic communications;

7. simulated purchase of items;
8. simulated giving and receiving bribes;
9. controlled delivery and transport of persons and objects;
10. using persons with concealed identities to monitor and collect information or data;
11. opening a simulated bank account and
12. simulated registration of legal entities or use of existing legal entities for data collection.

According to article 256 from the Law for criminal procedure, authorized instance which orders special investigative measures (referred to in Article 252 items 1, 2, 3, 4 and 5 of this Law upon a reasoned request of the public prosecutor shall be determined by the judge of the preliminary procedure with a written order). The measures referred to in Article 252 items 6, 7, 8, 9, 10, 11 and 12 of the same Law are determined by a public prosecutor with a written order.

The order determining one or more special investigative measures contains:

- legal name of the crime;
- the person or objects to whom the measures will be applied;
- the technical means to be applied;
- the scope and place of implementation of the measures;
- the knowledge and evidence on which the grounds for suspicion and reasoning are based on the reasons why the data or evidence cannot be collected in any other way;
- the body to execute the order and
- the duration of the measure.

The order for monitoring and recording of the communications referred to in Article 252 of this Law should also contain the type of telecommunication system, telephone number or other data for identification of the telecommunication connection.

Special investigative measures can be imposed when there is a reasonable suspicion that the following crimes have been committed:

- unauthorized production and distribution of narcotic drugs, psychotropic substances and precursors;
- extortion;
- blackmail;
- money laundering and other criminal income;
- smuggling;
- customs fraud;
- abuse of official position and authority;
- embezzlement in the service;
- fraud in the service;
- taking advantage in the service;
- receiving a bribe;

- giving a bribe;
- illegal mediation;
- illegal influence on witnesses;
- criminal association;
- terrorist organization;
- terrorism;
- crimes against the state;
- crimes against humanity and international law, as well as
- crimes committed through the means of electronic communication.

An order for application of special investigative measures may refer to a person who:

- committed a crime from the above listed;
- takes action to commit such a crime or
- prepares the commission of such a crime when the preparation is punishable under the provisions of the Criminal Code.

The order may also apply to a person who receives or forwards shipments from the suspect or the suspect uses his/her means of communication. If during the application of the measure, communications of persons not covered by the order are monitored and recorded, the public prosecutor is obliged to single them out and inform the judge of the previous procedure, and separate only the parts that refer to the criminal act for which the order has been issued.

The person whose communication is intercepted and monitored has the right to challenge the authenticity of the collected data and the legality of the procedure for interception of her/his communications, in procedure determined by the Law on Criminal Procedure of the Republic of North Macedonia.

Special investigative measures can last up to four months, with a possibility for extension of the measures referred to in Chapter XIX, Article 252 of the Criminal Procedure Law, items (abovementioned) 1, 2, 3 and 4 of the Criminal procedure law for a maximum of four months may be approved by the judge of the preliminary procedure, upon a reasoned written request of the public prosecutor. The judge of the preliminary procedure decides on the request for implementation of the special investigative measure no later than 48 hours from the submission of the request.

The measures referred to in Chapter XIX, Article 252 items 9, 10, 11 and 12 of the Criminal Procedure Law may be continued until the achievement of the purpose for which the measure is enforced, and at the latest until the completion of the investigation. The issued order for the special investigative measure, with the anonymous copy of the order for the needs of OTA and the anonymous copy of the order for the needs of supervision and control is immediately submitted by the judge of the preliminary procedure of the competent public prosecutor, who immediately submits them to the OTA.

In situations of criminal offenses for which a prison sentence of at least four years is prescribed, and for which there is a reasonable suspicion that were

committed by an organized group, gang or other criminal association, the judge of the preliminary procedure may extend the deadline for a maximum of six months, upon a written request of the public prosecutor, and based on an assessment of the usefulness of the collected data by applying the measure and on a reasonable expectation that the measure can still obtain data of interest for the procedure.

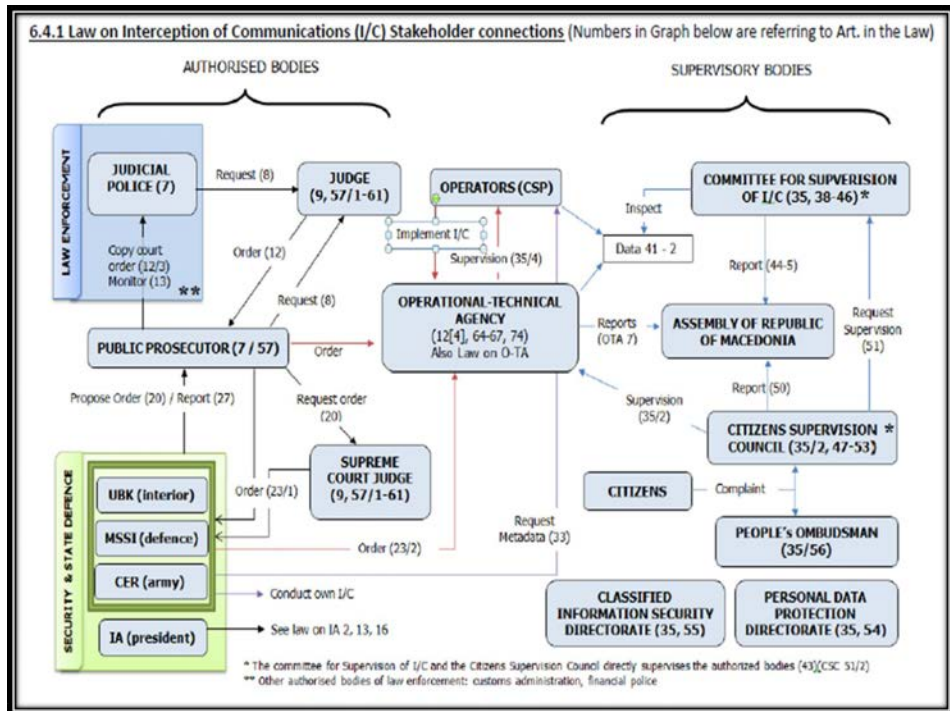
The definition of the legislature designating the procedure for interception of communications, the manner of processing, storage and use of data, metadata and evidence obtained by interception of communications and control of the legality of interception of communications, is regulated with the Law on Interception of Communications („Official Gazette of the Republic of Macedonia” No. 71/2018).

The Law on Interception of Communications regulates:

- the procedure for conducting a special investigative measure: monitoring and recording of telephone and other electronic communications;
- the conditions and the procedure for implementation of the measures for interception of communications in order to protect the interests of the security and defense of the state, including the metadata;
- supervision and control over the implementation of the measures for interception of communications and
- Obligations for the Operational – Technical Agency (OTA).

The Operational Technical Agency is established as an independent state body with the capacity of a legal entity with competence designated in a special law, Law on Operative Technical Agency. The Operative Technical Agency is a technical service of all legally authorized bodies for interception of communications (Public Prosecutor’s Office, Ministry of Interior – Public Security Bureau and Agency for National Security, Ministry of Defense, Ministry of Finance – Customs Administration and Financial Administration police). The agency is established in order to activate and maintain conditions for interception of communications for both criminal investigations and for the national security needs. The Agency simultaneously is in charge of performing operational and technical coordination between the telecommunication service providers and the bodies that are authorized to intercept the communications. Telecommunication service providers are obliged to provide the Agency with autonomous and exceptional access to the data on the intercepted communications. OTA is managed by a director, who is appointed and dismissed by the Assembly of the Republic of North Macedonia. Its establishment in 2018 is aimed at preventing any abuse of the measure of interception of electronic communications of citizens by the authorized bodies for interception of communications or operators. Only the electronic forms of communications between the citizens are in its domain of protection. OTA does not have the technical ability to access the content of the intercepted communication.

Figure 1. Diagram of the Law of Communication interception



Source: European University Skopje, Security System of the Republic of North Macedonia. Internal lectures (2021).

The diagram depicted in Figure 1 illustrates the engaged stakeholders in the process of authorizing and implementing the special investigative measures, as well as the bodies responsible for oversight. During the implementation of the special investigative measure, the competent public prosecutor continuously monitors the actions taken in connection with the implementation of the order and inspects all data, documents and other materials collected during the implementation of the order.

The request for interception of communications is submitted to the investigative judge in a written form and contains data on:

1. the body that submits the request for interception of communications;
2. data on the natural person or on the responsible person in the legal subject whose communications are requested to be subject to interception;
3. reasonable doubt of a committed criminal act;
4. description of the criminal act;
5. the reasons for inability to collect the data and the evidence in another way;
6. the type of communications for which interception is requested;
7. the type of the possible technical means that will be applied and the possible locations of the means for interception of communications;

8. the manner and the scope of implementation of measures and
9. the time interval for which interception of communications is requested.

With the reforms of the communications monitoring system from 2018, a new Law on Interception of Communications was adopted and the Law on Electronic Communications was amended thus depriving the former Security and Counterintelligence Directorate of direct access to citizens' telecommunications traffic and its role as an intermediary in interception of communications – a request that was part of the European Commission Urgent Reform Priorities of 2015.

It is important to emphasize, that with the new Law for communications interception, as designated, there is a clear distinction between the special investigative measures which are implemented for the purpose of the criminal procedure, and the special investigative measures for the needs for the security and defense, where interception of communications for the purpose of protecting security and defense are legally defined by surveillance and recording of telephone and other electronic communications, including also monitoring and recording indoor and outdoor.

The notion of national security in our country is legally defined for the first time in the Law for coordination of the security-intelligence community (Official Gazette of RNM, No. 108 of 28. 5.2019). The concept of national security refers to state values: territory, sovereignty, foreign policy interests and the national economy that are protected from armed attacks from outside, armed insurgencies from within, and intelligence subversive activities by internal and external actors. Article 8 of the European Convention of human rights explicitly mentions the term “national security” as one of the legitimate grounds for the application of special investigative measures and the restriction of fundamental rights and freedoms protected by paragraph 1 of the same article in the interest of national security.

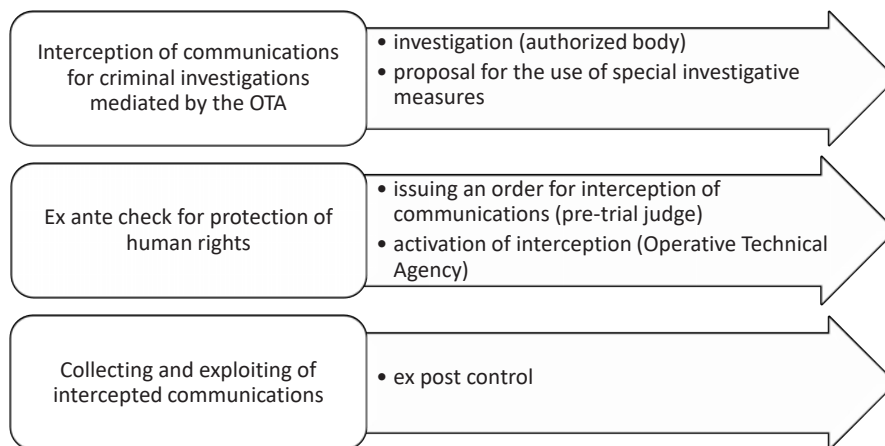
The measures for interception of communications in order to protect the interests of the security and defense of the state are:

1. monitoring and recording of telephone and other electronic communications;
2. supervision and technical recording of the interior of facilities, closed premises and objects, the entry into those facilities, as well as closed premises and objects, in order to create conditions for implementation of the measure(s);
3. monitoring and observation with light recording of persons in open space and in public places and
4. monitoring and surveillance with sound recording of the content of communications of persons in open space and in public places.

Above illustrated Figure 2 – Interception of communications for criminal investigations mediated by OTA is the graphic elaboration of the *ex ante* or a priori check for the protection of human rights as a guiding principle and the *ex post* control which is a guarantor for the ethical and proportional dimension of the enforced measures as a subsequent phase of the investigation process in the fight against organized crime. Below displayed Figure 3 for the Interception of communications for defense and security needs mediated by OTA gives technical explanations for the

needs of the security and defense protection. According to the general provisions in the Rulebook on the manner of operators' activities in the implementation of the communication interception measures and the method for exercising expertise oversight from OTA, a mediation device (LEIMD) is an intermediary technical equipment and appropriate software support that enables the activation of the measure of monitoring and recording of telephone and other electronic communications.

Figure 2. Interception of communications for criminal investigations mediated by OTA



Source: European University Skopje, Security System of the Republic of North Macedonia. Internal lectures (2021).

Communication interception equipment (LEMF) is the means of interception of communications to which the content of the intercepted communication and the information related to the intercepted communication is transmitted from the technical equipment of the operators through the OTA to the workstations owned by the authorized bodies.

The authorized bodies for implementation of measures for interception of communications in order to protect the interests of the security and defense of the state are: the National Security Agency and the Military Security and Intelligence Service. In the part of the frequency spectrum of radio waves of high, very high and ultra-high frequencies (HF, VHF and UHF), the authorized body for implementation of the measure for interception of communication is the Center for electronic reconnaissance of the Army of the Republic of Macedonia which is designated for the needs of the defense.

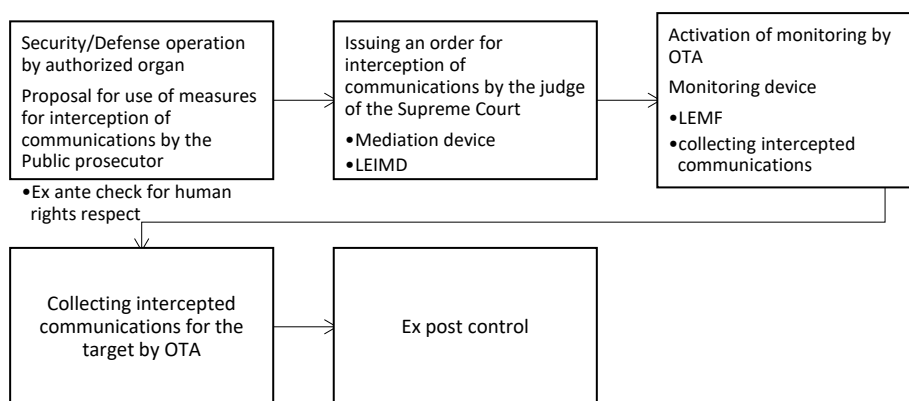
A request for issuing an order for implementation of a measure for interception of communications for security and defense, is submitted by the Public Prosecutor of the Republic of Macedonia at the proposal of the Minister of Interior or a person

authorized by her/him or at the proposal of the Minister of Defense or a person authorized by her/him.

The request is decided by the judge of the Supreme Court no later than 48 hours from the submission of the request. The judge of the Supreme Court submits the order with the anonymous copies to the public prosecutor of the Republic of North Macedonia, who submits the order to the authorized person in the body on whose proposal s/he submitted the request to the judge of the Supreme Court.

The specifications of the communications' monitoring devices for the purpose of security and defense are electronic, mechanical or other technical means by which the contents of any communication can be found out or recorded and are stored in the Agency for national security.

Figure 3. Interception of communications for defense and security needs mediated by OTA



Source: European University Skopje, Security System of the Republic of North Macedonia. Internal lectures (2021).

Oversight of the implementation of the special investigative measures – standards and principles

Supervision over the measures for interception of communications implemented by the authorized bodies for implementation of the special investigative measures for combating organized crime and the authorized bodies for implementation of the measures for interception of communications for protection of the interests of security and defense of the state, as well as supervision over the operators and OTA are the following institutions:

- The Parliament of the Republic of Macedonia, through its Commission for oversight over the implementation of the special investigative measure for interception of communications;
- Council for Civil Control;

- Directorate for Security of Classified Information;
- Directorate for Personal Data Protection and
- Ombudsman.

According to the Annual report on the work of the Operative Technical Agency OTA, adopted unanimously by the Parliamentary Commission for supervision of the implementation of the measures for interception of communications, there are 471 new activations of the measure for interception of communications in 2021. For the needs of the Ministry of Interior, there are 292 activations, 12 for the needs of the Public Prosecutor's Office, and there are 342 extensions of the measure for interception of communications, of which 172 are extensions for the needs of the Ministry of Interior, according to the Macedonian news agency.

The Commission for supervision over the implementation of communication interception measures is organizationally designated with four members, their deputies and a chairman. The Commission is considering questions concerning:

- oversight of the implementation of the measures for interception of communications;
- determining the legality of the implementation of the measures for interception of communications by the authorized bodies (OTA);
- determining the effectiveness of the implementation of special investigative measures;
- preparation of report on the performed supervision;
- establishment of international cooperation on issues related to such oversight and other issues related to the authorized authorities (OTA) for the implementation of interception measures.

The Commission submits an annual report to the Assembly of the Republic of Macedonia for the previous calendar year, no later than the end of February in the current year.

In order to perform expert supervision over the work of the operators, the director of OTA, in accordance with the law and the provisions of the Rulebook on the manner of operators' conduct in implementation of the communication interception for the special investigative measures and the expertise oversight methods by OTA, appoints a Commission for expert supervision composed of a president and two members and their deputies from the ranks of the employees.

The basic principles for implementation of the measures for interception of communications are defined in Article 3 of the Law on interception of communications and include respect for fundamental human rights and freedoms established by the Constitution, law and international agreements ratified in accordance with the Constitution of the Republic of North Macedonia and prohibition on interception of communications in accordance with the same law without a court order.

Regarding the respect of fundamental rights, the Constitutional court acts in accordance of complaints and allegations by submitters for the legal and technical aspect of the measures regarding the guarantee of the human rights of the citizens

and assessment of constitutionality and legality of the initiation of special investigative measures. Within its authority is the subject of assessment of the individual acts and actions of the public authorities over the citizens in consideration of violation of any of the stated constitutional rights.

When it comes to the purposes of proper training of (future) judges and public prosecutors by the Academy for judges and public prosecutors of the Republic of North Macedonia, according to the objectives of the Intelligence and Security sector reform program in the Republic of North Macedonia 2021–2026, there are numerous activities for judicial practitioners for building capacities and continuing the process of democratic reforms within the security sector in North Macedonia in theory and practice in advancing in the supervision of the special investigative measures by learning and retention methods.

The reform strategy aims to ensure that intelligence and security services in North Macedonia function effectively under active democratic control and oversight and fight serious and organised crime and curb corruption in line with good practice of accountability and respect for human rights.

Chronologically, the security sector reforms have a two decade duration and during the reforms in the legislation in the sphere of the security sector in the Republic of North Macedonia, there were continuous communications in forms of advisory with expert groups from the European union regarding the external oversight bodies overseeing the implementation and conduct of the special investigative measure communication interception by the Ministry of the Interior, the Financial Police Directorate, the Customs Administration and the Ministry of Defense for improving the quality of the oversight by the Commission for supervision over the implementation of the special investigative measure for interception of communications. In this context, it is significant to emphasize the establishment of the Special Public Prosecutor's Office stemming from the Przino Agreement in 2015; an agreement signed between the leaders of the four largest political parties to resolve the political crisis in North Macedonia. The Special Public Prosecutor's Office was established by the Law on Public Prosecution to prosecute crimes related to and arising from the content of illegal interception of communications, colloquially known as 'bombs', conducted by the former Office of Security and Counterintelligence, which had direct access to equipment that technically enabled direct and free implementation of the measures, without a court order.

The Special Public Prosecutor's office filed charges for approximately twenty cases, but it ceased to exist in June 2020 due to controversy and due to the special public prosecutor with the leading position being arrested for abuse of official position and powers in the investigation. Namely, the Operative Technical Agency was established as a result of the reforms in the security sector in the Republic of North Macedonia to ensure that these measures will not be abused for lucrative and political purposes.

In recent events, within the framework of the reform process of the security sector in the Republic of North Macedonia, in 2021 the Directorate for Security of classified information contributed in the work of the interinstitutional working group led by Operative-Technical Agency (OTA) in partnership with the Ministry of Justice for the realization of the project “Digitalization of the process of issuing court orders for the implementation of the special investigative measures monitoring and recording of telephone and other electronic communications” with which a unified effort is undertaken to improve the procedure transparency.

Beside the national prescribed mechanisms for oversight and control, the international standards which the Republic of North Macedonia abides are the recommendations by the Council of Europe, which creates and upgrades its standards for oversight and law enforcement of special investigative measures, as well as oversight of the powers of law enforcement agencies, through its bodies: the Venice Commission, the Parliamentary Assembly of the Council of Europe and the Commissariat for Human Rights of the Council of Europe. Specifically, the Venice Commission of the Council of Europe has an important role in securing the democratic control over the security services and their lawfulness in conduct.

Results

The results produced by this research paper are intended to enrich the theoretical and academic repository with objective findings for the empirical conditions and material environment regarding the specific object of scoping and to depict the activities undertaken by the relevant institutions involved in the conduct of special investigative measures for the purposes of combating serious forms of organized crime and protection of the constitutional prescriptions regarding national security and defense.

Based on the displayed legislative arrangements which explicitly imply the dimension of the respect of human rights during the imposed special investigative measures, and the position of the oversight mechanisms designated by the national laws in harmony with the EU legislature regarding this specific topic, it is evident that on a normative and theoretical level, there are significant efforts to contour the special investigative measures, by drawing a clear line between the objective need, and the subjective abuse of power and political maneuvering.

Discussion and findings

With the application of the special investigative measures by the authorized institutions for criminal prosecution difficulties in detection and prosecution of organized and serious crime are significantly overcome or reduced, which also enables the authorized institutions to impose a proactive role in the previous procedure. The introduction of special investigative measures for evidence-gathering techniques counterpoises a coercive response to the growing threats of serious forms of crime.

The application of these measures in the fight against organized crime and tackling issues that threaten national and global security meant a departure from some traditionally protected human rights, especially the right to privacy in all its aspects (confidentiality of communication, protection of personal data, privacy of the home, etc.).

In this direction, it is important to emphasize that European countries, as well as the Republic of North Macedonia as an EU accession candidate since 2005, require their judicial and security services to obtain court orders before using special investigative measures or other methods of gathering information that are considered particularly intrusive in regarding the right to privacy. Through the approval of the special investigative measures, judges and prosecutors act as guarantors of the rule of law and balance the interests of ensuring public safety, on the one hand, and the protection of human rights and freedoms, on the other.

Conclusion

As highlighted in the research problem, which consists of scoping the role of the special investigative measures through the prism of invulnerability of the human rights, where they are attributed as an indispensable instrument for combating serious forms of organized crime and countering threats and risk for the national security and defense, yet prone to abuse by the authorized institutions, it is necessary to underline the findings as a sort of an answer. Namely, within the context of the national normative and legal contouring within the voluminous security sector reform framework, respectively, with the efforts of the country to harmonize the domestic legislation with the legislation of the European Union, there have been significant changes in that direction, first of all in the systemic laws, such as the Law on Criminal Procedure. Also, the Republic of North Macedonia continuously makes efforts for jurisprudential and normative adjustments to the European Convention on Human Rights and the European Court of human rights definitions.

To highlight this claim, the European Convention on Human Rights (ECHR) through Article 8 guarantees the right to respect for privacy and states that everyone has the right to respect for her/his private and family life, home and correspondence. Public authorities must not interfere in the exercise of this right, unless it is in accordance with the law and if it is necessary in a democratic society in the interest of national security, public security or economic well-being of the country, to prevent riots or crime, or to protect the collective rights and freedoms.

Additionally, as guiding points of particular importance for the normative regulation, practical implementation and valorization of the findings of the implementation of these measures were the conclusions of the Resolution of the XVI Congress of the International Criminal Law Association (XVIth International Congress of Penal Law, Budapest, 5–11, September, 1999, Section III, p. 10) (Cuesta, 2009).

The Resolution recommends that special investigative measures (invasive methods and techniques) can be used in these circumstances:

- The application of the measures is legally regulated – principle of legality.
- There are no other milder measures to achieve the same goal – the principle of subsidiarity.
- The measures are applied only for serious crimes – principle of proportionality; and
- Prior consent has been obtained from the court, i.e., their application is realized under its supervision – principle of judicial approval of invasive measures.

Finally, for the institutions authorized to implement measures for interception of communications, in order to preserve the legality and morality of the measures and the appropriate internal and external mechanisms for oversight, imperatives counterpoise the integrity of the institutions and the authorized persons, the sufficiency of political will and operative transparency in the process.

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