

LEGAL

Warning: Civilian Control over the Armed Forces Still an Unfinished Business

Civilian control over armed forces is a part of the essential preconditions of a democracy. It is clearly outlined as such in the Copenhagen criteria specifying political conditions for EU accession, and therefore it was fully endorsed by Romania on several occasions. However, the recent background of civil-military relations is not a fortunate one. Despite enjoying a history with few to none pure military coups, Romania was unable in 1990 to fully liberate the military from the Ceausescu era power establishment. Even before passing a new Constitution, the first post-Communist Romanian Parliament was careful to pass a law of National Security sealing the archives of Ceausescu's secret service. Despite being made redundant both by reality and by the 1999 law on the former Securitate Archives, the law was never canceled and still allows military institutional actors to resist attempts at being controlled by civilian agencies. The latest scandal concerning the Council for Screening the Securitate Files (CNSAS) is only the last example in a long series. Other examples are the stalling of the prosecution of the military in the 1989 Cluj files, a file completed by the military prosecutors in the early nineties and put on hold by all Governments since then¹², and the attempt in 2001 to reverse a final judgment of the Supreme Court of Justice condemning Generals Victor Stanculescu and Mihai Chitac for the armed 1989 repression of dissent in Timisoara. Less covered by the media, due to its more technical nature, the struggle to demilitarize the Romanian police is far from over as well.

¹² Including the government of Emil Constantinescu, probably due to the presence in the high ranks of command of General Constantin Degeratu, who was Chief of Staff of the Transylvania Army when it shot on the protest demonstrators in December 1989.

The legacy of the Ceausescu's Securitate

The 187/1999 Law on screening the former Securitate files seemed for a while to represent a breakthrough in the net protecting the military from any meaningful civilian control. Like in other former Socialist countries, such as the Czech Republic or East Germany, the Council in charge of enforcing the law should have been made solely by persons with a clear history of opposing the Communist regime and the Securitate. Based on the model of other post-Communist laws, however, the Council was elected as to represent an algorithm of the parliamentary parties, including a handful of dissidents only besides political representatives. This led to the delay of its election on one hand, and it leaves room now to an attempt to replace members in order to fit the new composition of the two Chambers after the 2000 elections.

The recent scandal was provoked precisely by the former anti-Ceausescu opponents who are Members of the Council - the people enjoying most credibility, both in Romania and abroad, such as Mircea Dinescu, Andrei Plesu (also a former Minister of Foreign Affairs) and H.R. Patapievici. They have denounced precisely the subordinate relation of the Council with its military counterparts – secret services and the Army. The patronizing of the Council, which by law is entitled to take the upper hand in all matters concerning the Archives of the former Securitate, by the Romanian Intelligence Service, and the total lack of cooperation from the Army, is jeopardizing not only the ability of the Council to implement the law, but also Romania's credibility as a future NATO member.

The 1999 law clearly specified in Article 20 that:

The College of the Council receives under its management all the documents needed to enforce the rights specified in the current law, which are currently stored by the national security agencies with the exception of those touching national security.

The documents referred to in the first paragraph as well as every other copy of any of them are preserved for study until the takeover by the College at the headquarters of the agencies, members of the Council enjoying unlimited access.

Despite the clear provisions that the Council should enjoy full access even prior to total transfer of the former Securitate archives to its premises, the Army did not put forward any file so far, whilst the Ministry of Internal Affairs and the Service for Foreign Intelligence (SIE) have only selectively provided upon request some information, despite bilateral agreements concluded by the Council with each agency. The main bone of contention lies however with the Romanian Intelligence Service (SRI), the owner of the bulk of the archive. SRI is reluctant to pass the archive to CNSAS, on two grounds: one of them is that CNSAS does not have appropriate storage facilities for the archives (notwithstanding the possibility to transfer the warehouse where the archives are currently stored); the other is that ordinary files are mixed with files including classified information, which may impact

on national safety, and that until their separation SRI prefers to keep the archives in custody.

However, the law specifies that classification of the files is not the sole business of the SRI, and that a joint committee of the two institutions should decide which files are to be classified. Any possible conflicts are to be settled by the Supreme Defense Council, but a citizen who is dissatisfied with the handling of his or her file may also sue in any Court. Equally, CNSAS has the right to sue SRI itself for failure to comply with the requirements of the law, but it has not resorted to this procedure so far.

Since March 28, 2001, CNSAS has received upon request from SRI, 2,069 files, of which 1,450 files were of persons under Securitate surveillance and 552 files were of Securitate informants. A few other files include persons who were subjected to criminal prosecution as a means to hide political repression, and some documentary files. However, many of these files were incomplete or the queries regarding them returned the wrong answers. This affected seriously the credibility of CNSAS and also suggested that SRI was guarding not the national security, but the Securitate's dark past.

In the investigation on the media, for instance, CNSAS did not have direct access, but received only files selected by the SRI. The newspaper which had asked for the screening is heavily campaigning against CNSAS' inability to produce an accurate picture of the collaboration of Romanian journalists with the Securitate, and the CNSAS itself is reluctant to publish results as there are strong suspicions that SRI had passed along only selected files¹³. Other files, such as those related to the Iron Guard, were wrongly classified years ago as touching national security, despite the Guard being outlawed since January 1941.

Equally, SRI first passed to CNSAS only one file on Radio Free Europe, then three more after intense pressure, whilst there is evidence there are many other files related to the topic. The same goes for the files on the clergy, SRI having passed to CNSAS only two files on Patriarch Teoctist, whilst a private writer enjoying a good relationship with SRI had already published data based on the consultation of eight files on the same topic¹⁴. None of these files touches the interests of nowadays politicians or businessmen with alleged ties to the former Securitate, but access to them has nevertheless been seriously hindered.

In view of Romania's accession to NATO, it is however clear that covering up for the Securitate can no longer be the game of secret services in Romania. These agencies must become fully accountable to civilian agencies such as the CNSAS and must be prepared to open everything to future NATO allies.

¹³ The notorious infiltration of the Romanian media by the Securitate has made the object of many foreign analyses. One of the best is Richard Hall's dissertation, summarized in the 1998 Patrick O'Neill's book *Post-communism and the Media in Eastern Europe*. London: Frank Cass. Mr Hall has meanwhile been employed by the Romanian desk of the Central Intelligence Agency. His paper examines the impact of Securitate ties to publishers in the current Romanian media.

¹⁴ Mihai Pelin.

Even in the more limited framework of the Partnership for Peace, the sharing of information among allies is the first step towards integration of the military in a joint force. Gaining credibility for Romania's secret services in the eyes of future allies is of primary concern, and this should override the concern to control the CNSAS even before it started to function properly. The various proposals to change the 187 Law are transparent attempts by a handful of MPs to protect the former Securitate informal networks of influence, and as such have a high potential of hindering the Government's efforts to obtain an invitation for joining NATO, at the Prague summit. On the other hand, CNSAS itself has lost ground due to a poor communication strategy. CNSAS complains of lack of transparency from SRI, but it was unable itself to create an accessible and user-friendly system for citizens to consult their files.

In light of the above considerations, there are obvious recommendations to be made:

1. **CNSAS should publicize all the procedures for a citizen to consult his or her file** and the status of requests to SRI (if the procedure remains as lengthy as it currently is) better than it has done so far. Despite being a new institution, CNSAS invested more in protecting alleged secrets in order to reassure SRI, than in promoting transparency, its real mission. The Council still does not have even a web site, the simplest and cheapest way of publicizing the basic conditions for citizens to request access to their files¹⁵. For making the public opinion its ally, CNSAS must solve its own failures while more self-assertively tackling the relationship with the military agencies. CNSAS should seriously consider the possibility of suing if no other way to enforce the law works, and it should do so before the pro-Securitate lobby in the Parliament is able to halt the whole process of screening the files by modifications of the law or other obstruction strategies. CNSAS should also actively pursue a strategy of recuperating the Communist Party's files from the Army, as most of these include files on 'voluntary agents', the Party's equivalents of Securitate informants. It is only by accident that the military had obtained control over the Communist Party's archives in 1990, and passing it under civilian control is long due. No other country in the world has entrusted the archives of a political party to the military, except for Latin American military dictatorships for limited periods of time.
2. SRI should get rid of all the legacy of the former Securitate and pass it over to CNSAS with everything related to it. This would on one hand boost its credibility in the eyes of NATO agencies, and on the other it would let it free to reorganize, as the agency is not yet competitive enough to meet NATO standards. There is nothing to gain for SRI if it continues to feature in the public opinion as the heir of the Securitate. No secret is important enough to be denied to CNSAS,

¹⁵ According to Transparency International Romania.

considering that in light of the new anti-terror campaign Romania will be required to share top-secret intelligence on terror groups and their connections with Romanian institutions or groups. Compared to that, the stake of files of Radio Free Europe is not worth jeopardizing SRI's credibility.

3. The Government should push all military agencies to pass the Securitate files to CNSAS, prior to the adoption of a law of classified information. Under the new Freedom of Information Act, which has just been promulgated by the President end October, any NGO or private citizen can now sue the Army or any Government agency that denies access to information. The Courts are compelled by law to give emergency treatment to any such law suit, and the judge is allowed to decide if the information required is indeed of concern to 'national security' and can decide to de-classify it. The law will be enacted starting with January 1st and human rights groups are certain to instrument at least one high profile public law suit to make certain that the law will be enforced. All the more grounds for military agencies to protect real secrets with an impact on current national security, by getting rid of the Securitate's legacy.

Concluding remarks

The recent scandal regarding the Securitate's files is only the top of the iceberg in the still not fully solved matter of civilian control over the military. Less spectacular, but running even deeper is the problem of demilitarization of Internal Affairs, object of repeated demands and interventions of the European Commission, and which now reached the deadline, as Romania is negotiating the Home Affairs and Justice *acquis*.

For instance, military judges and prosecutors perform in a system of justice, which is parallel to the civilian one. Through their military status, the executive controls their judicial functions. In accordance with the law¹⁶, only active military officers may be appointed to serve as military judges. They have military grades and enjoy all rights of military status, including promotion in accordance with the military grading rules. If military judges violate military rules, they are subject to the disciplinary statutes of the military. The Ministry of Defence pays military judges, and their salaries are higher than the salaries of their civilian counterparts. Both the Ministry of Justice and the Ministry of Defence conduct the selection and training of military judges. Thus, military judges have a dual status: members of the judiciary, and members of the military. The dual status clearly hampers the independence and impartiality of the military judges. Moreover, some observers see the pay disparity between the civilian and military judges as a reward for reliably serving the Government's interests. The low number of indictments and convictions in

¹⁶ Law 54/1993 on the Military Courts and Military Prosecutors' Offices.

police abuse cases (in comparison with the number of allegations)¹⁷ raises suspicions that granting the military jurisdiction over police abuse has had a devastating effect on the protection of individual rights. With regard to this issue, the Council of Europe has stated that "*Although many assurances were given that the police were under civilian control, the problem remains that complaints against police officers can be brought only before military prosecutors who alone can decide to bring charges. Given the apparent reluctance to bring charges in a number of cases, as stated above, this situation, too, gives rise to legitimate concern.*"¹⁸ The 2000 US State Department's report on Romania also criticized the military jurisdiction on allegations of police mistreatment.¹⁹

The matter is addressed by the draft of the statute of policemen, which has been lingering for months in the Parliament. The draft represents a progress from the current situation, as it does prompt at least formal demilitarisation, leaving in place, however, a strict hierarchical structure going upscale to the Minister. Human rights groups²⁰ are critical towards the draft on grounds of its failing to subordinate local police to local governments. However, some positive steps, such as the passing of the population registers under civilian management, were attempted recently. In view of its stated objective of finalising the challenging Home and Justice Affairs negotiations sometimes next year, the Government must follow more decisively on this path.

¹⁷ See 1993-2000 APADOR-CH reports; www.apador.org

¹⁸ Frederick Konig, rapporteur for the Committee of the Political Affairs of the Council of Europe, "Preliminary Draft Report on the Application by the Republic of Romania for membership of the Council of Europe", Doc.AS/pol(44)62, Strasbourg, 7 May 1993, p.9. The same issue was raised in the 1995 Report on Romania, adopted in May 1995 by the Committee on Legal Affairs and Human Rights of the Council of Europe.

¹⁹ US Department of State, Country Reports on Human Rights Practices-2000, Romania; February 2001.

²⁰ Such as the Romanian Helsinki Committee- APADOR-CH.