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Crafting the Legal Framework for Intelligence in Post-Communist Romania: Pitfalls and
Achievements

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Abstract

“Intelligence is ‘slippery,’ and if the legal framework is not clear and explicit, intelligence agencies will be much more difficult to bring under democratic control.”¹

Safeguarding civil liberties and ensuring accountability and transparency of the intelligence and security institutions, even if protecting national security, are all crucial in a democracy. Accommodating both secrecy (which intelligence communities need in order to function effectively) and transparency (which enables the citizens to know what the government is doing), needs to commence with the creation of a comprehensive legal framework, which not only ensures the intelligence organizations work effectively and are able to adjust to new dynamics, concepts and technologies, but also guarantees intelligence agencies respect the rule of law and human liberties and rights. A legal framework for intelligence delineates the rights, obligations and powers of the intelligence communities, as well as the arrangements for governance and accountability: it provides the intelligence system with guidance as to what it can and cannot do; it indicates who is in charge and who oversees the activity of intelligence; it ensures the intelligence apparatus is responsible before the law in case of abuses; it makes sure that the IC benefits from legal protection if it observes the legally agreed guidance and directions.

Crafting a legal framework for the post-communist intelligence agencies (to equally enforce effectiveness and democratic control) has been even more pressing in an emerging democracy like Romania, whose previous authoritarian regime (known as the “Securitate”) used the intelligence apparatus to oppress the population (routinely infringing individual rights and liberties), and whose newly-created intelligence agencies continued to rely on the authoritarian regime’s intelligence personnel for years after the regime change in 1989. Since 1989, Romania has progressively instituted a legal framework for its intelligence system, covering mandate, coordination, control, oversight, accountability, and transparency. Nevertheless, it has been less than perfect. Today, two decades after the fall of communism, when Romania is both a NATO and EU member, part of national security and intelligence legislation still goes back to the first years of

transition; also, parts of the legislation is unclear, hence conducive to intelligence mischief and transgressions. Yet, paradoxically, the Romanian intelligence agencies are effectively protecting national security (both at national and international levels) and are under democratic control.

This paper assesses the development of the legal framework pertaining to Romania's Intelligence Community (IC), after the demise of the Communist regime in December 1989. It addresses both pitfalls and accomplishments of the transformation of the legal system for intelligence, and concludes with a discussion on where Romania's intelligence system is today in terms of effectiveness and transparency and what remains to be done, from the perspective of the legal framework, to strengthen the IC contribution to democratization.

ⁱ Thomas C. Bruneau and Kenneth R. Dombroski, "Reforming Intelligence: The Challenge of Control in New Democracies", in Thomas C. Bruneau and Scott D. Tollefson ed., *Who Guards the Guardians and How. Democratic Civil-Military Relations*, (Austin: University of Texas Press, 2006), pp. 158