



## **MONITORING BRIEF NO 1 / 2012 (PCNS)**

### **On the work of the Parliamentary Committee on National Security**

#### **INTRODUCTION**

The Parliament plays an important role in developments, within the security sector, in terms of shaping the legal institutional structures of the sector, but also as regards its democratic control and oversight. The latter is played more directly through the Parliamentary Committee on National Security (PCNS) which in concrete terms, deals with reviewing of draft-laws and agreement acts in the area of security.

Given the increased focus on control and oversight of this sector in general, and also on the membership in the North Atlantic Treaty Organization (NATO), the role of this Parliamentary Committee gains a particular importance for both national and NATO partners' security.

The importance of the PCNS role is being seen not only related to fulfilling membership obligations from the operational perspective, but also from the perspective of permanent improvement of the legal framework and its harmonization with the Alliance Standards.

Generally, the Albanian political parties have shown consensus on necessary reforms on fulfilling NATO standards. Beyond this perception, it seems that civic and public interest on the PCNS' work remains limited under the justification of restricted nature of national security issues. However, consolidated democracies are gradually overcoming such limitations in the security concepts, allowing thus, a greater public access in the Parliament' activity and, more generally, in the security sector governance.

For the second year, in succession, the Center for European & Security Affairs of the Institute for Democracy and Mediation, prepares the Monitoring Brief on the work of the PCNS. This Brief presents the main findings and assessments on the activity of the Parliamentary Committee on National Security, during January-July and is going to be followed by another complete annual report, which is to be published in January 2013.

#### **METHODOLOGY**

Monitoring of the Committee's activity is conducted by the IDM experts, through direct participation in the PCNS' meetings, as well as by analyzing the official minutes of the meetings, recorded during this period of time. This Monitoring Brief presents the key findings on the PCNS' activity based on the following indicators:

1. Presence in meetings of the PCNS' members;
2. Presence and level of representation from the ministries, charged to prepare the draft-laws to be presented in the Committee;
3. Involvement of the civil society and interest groups in PCNS' meetings;
4. Quality of parliamentary scrutiny of draft-laws and other normative acts.

In addition, this Brief presents an analysis of parliamentary review of one of the draft-laws, which PCNS was responsible for, during January-July 2012 period.

**Authors:** Elira Hroni (Monitoring Expert) and Gjergji Vurmo (Editor in Chief)

## **KEY FINDINGS**

During January – July 2012, PCNS has organized 15 meetings in total, where it reviewed 6 draft-laws<sup>1</sup>, 4 draft-laws for agreement ratifications, and 2 hearing sessions, with the Minister of Interior and the Minister of Defense respectively. 2 other PCNS' meetings have been devoted to determining of the PCNS' activity, one of which was canceled due to the lack of quorum.

### **PARTICIPATION OF PCNS' MEMBERS**

Regardless of the high participation, there were some irregularities during meeting process and preparation of the minutes. More concretely, discrepancies have been observed between the real number of participants in the meetings and what has been recorded in the official document of the meeting<sup>2</sup>. In most of the cases, a higher number of participants is recorded, which does not result real during direct monitoring of the meetings.<sup>3</sup>

### **PARTICIPATION OF RESPONSIBLE INSTITUTIONS**

In every meeting, there has been a full participation of the institutions responsible for preparation of the draft-laws and presenting in the PCNS' meetings. Nevertheless, despite a high number of participation of the representatives from the institutions charged to present the draft-law in the PCNS' meetings, in every occasion, only one participant is active in the Committee discussions. In addition, a low engagement from the PCNS' members in debates was observed as well.

## **HIGHLIGHTS**

The Monitoring Brief concludes that the **PCNS' performance** during the first 7-months of 2012, compared to the same period of 2011, **has improved**.

During January – July 2012, PCNS has organized 15 meetings in total, where it reviewed 6 draft-laws, 4 draft-laws for agreement ratifications, 2 hearing sessions and 2 meetings concerning determining of the PCNS' activity.

There are cases where **the minutes** of the PCNS' meetings **do not give the real number of the members** participating in the meeting.

**Representatives** from the institutions responsible for preparation of draft-laws or other acts have been **present in every PCNS' meeting**. In fact, their participation (in numbers) even though important for debates, is much greater than their engagement in discussions with MPs.

**Involvement** of the civil society and interest groups in discussions in the PCNS' meetings has been **totally absent**.

There is still **room for improving the quality** of the parliamentary scrutiny. A more active involvement of the MPs is seen mostly during the hearing sessions. Generally, no concrete proposals are being made during reviewing the draft-laws.

Another set of problems has been seen during **exerting control and oversight** over the security institutions by the PCNS. During the monitoring period, in one case, **a procedural procrastination** of this process was noticed, along with an open conflict between the Ministry of Defense and PCNS' members from the opposition.

<sup>1</sup> Out of 6 draft-laws reviewed during this period, PCNS had been a responsible committee only for the draft-law "On one amendment to the Law No. 9861, date 24.01.2008 "On control and oversight of the state border".

<sup>2</sup> As an example, the meeting of 9<sup>th</sup> of May 2012 with the agenda – reviewing of the draft-law "On ratification of the agreement between the Council of Ministers of the Republic of Albania and the Government of the Republic of Croatia, on reciprocal assistance during major disasters and accidents" started with 11 PCNS' members present. During the meeting, the number of the MPs was changing from 14 to 9 members in the meeting hall, whereas the minutes of this meeting was evidencing 22 members, as participating in the meeting.

<sup>3</sup> As an example, on 10<sup>th</sup> of July 2012, the PCNS' meeting on the activity of the Committee, started with 13 members, the total members participating reached up to 17 members, whereas, according to the minutes of this meeting, it was documented that 24 members participated.

**INVOLVEMENT OF THE CIVIL SOCIETY AND INTEREST GROUPS** in discussions in the PCNS' meetings has been totally absent in all of the PCNS' meetings. In this regard, a more proactive approach is needed from the Committee, which should become initiator of inviting and including them in the process. In this context, another issue that calls for attention is publicity of the Parliament's program. Because of the lack of information in the official Parliament website, it is not possible for the public to be informed on the activity of the Parliament. More specifically, the agenda of the Parliamentary Committees' activity becomes public only on the respective day of meetings.<sup>4</sup>

## **PARLIAMENTARY SCRUTINY**

### *Review of draft-laws*

In general, in this period, a greater involvement of the Committee' members has been observed during reviewing of the draft-laws. In many cases, according to the nature of the issues which the draft-law deals with, discussions of the parties, even though remain inside the topic of discussion, are largely filled with political considerations<sup>5</sup>.

Only in one case there has been a comprehensive debate between the parties and representatives presenting the draft-law. Specifically, during reviewing of the draft-law "On some supplements and amendments to the Law No. 9887, date 10.03.2008 "On protection of the personal data"", even though PCNS was not a responsible committee, a long discussion took place between the parties regarding proposed changes, brought with this draft-law. The Committee members asked for detailed explanations on the content and also suggested preparation of a new draft-law, due to the fact that the proposed amendments were to change a large number of provisions. In addition, to better reflect on this draft-law, the PCNS' members deemed necessary their discussions to follow in the next meeting. However, the PCNS' members in the second meeting agreed on the proposed changes without debating further.

During reviewing of other draft-laws, discussions have been limited generally only in questions and answers with the institutions' representatives. There were only 2 cases where some amendments of technical nature were proposed, which happened during reviewing of the draft-law "On some supplements and amendments to the Law No. 7895, date 2.01.1995 "The Penal Code of the Republic of Albania""; and the draft-law "On revocation of the Law No. 9509, date 03.04.2006 "On declaring of the moratorium against the water motorized equipment of the Republic of Albania"".

### *Agreements Review*

In general, review of draft-laws for agreements ratification has been conducted mostly after discussions in the PCNS' meetings, where most of the time is being occupied by other issues

---

<sup>4</sup> According to Article 105 of the Regulation of the Assembly, the web page is one of the means of transparency and information. In concrete terms, it is expressed: "The open activity of the Parliament is achieved through: a) public participation in the legislative process; b) envisaging Parliament' activities in press and visual media; c) publishing of parliamentary documents; d) the Parliament web site; e) internal audio-visual network.

<sup>5</sup> This was particularly observed during review of the draft-law "On an amendment in the Law No.8457, date 11.02.1999, "On information classified "State Secret"", amended; as well as in the draft-law "On revocation of the Law No.9509, date 03.04.2006 "On declaring of the moratorium against the water motorized equipment of the Republic of Albania"".

raised by the members of the PCNS. In 3 meetings organized for reviewing of four draft-laws for agreements ratification, discussions have been limited among two to four PCNS' members.

### Hearing sessions

Since the first session of the PCNS, socialist MPs demanded a number of hearing sessions with the Minister of Interior and the Commander in command of the Republic Guard, concerning the structure and way of functioning of the Republic Guard; with the Minister of Foreign Affairs concerning the security in our embassies and issues of the sea border with Greece<sup>6</sup>, as well as with the Minister of Defense. Opposition's requests are only partially fulfilled and not according their required subjects. Thus, during this period, one hearing session was held with the Minister of Interior, about measures in combating organized crime, and one session with the Minister of Defense about "Peacetime Stationing Plan of the Albanian Armed Forces"<sup>7</sup>.

Hearing sessions are particularly characterized by a large participation in debate of the deputies, but at the same time, by high political tones. An especially conflictual debate was conducted during the hearing session with the Minister of Defense, because of prohibition of PCNS' control in the Ministry of Defense.

### Parliamentary Oversight of PCNS

Based on Articles 18, 36 and 102/3 of the Regulation of the Assembly<sup>8</sup>, session VI of Legislature XVIII, started with the request of oversight and of establishing institutional relations with the security institutions of the country. Exerting the function of oversight over these institutions, specifically, the Ministry of Defense (MoD) and the Ministry of Interior (MoI), through working groups for controlling of legislation implementation and their activity, has been a continuous part of discussions in almost all the PCNS' meetings and was characterized by a climate of tension in the Committee. The reason for that has been procrastination of proceeding with the opposition requests on exerting the function of oversight as well as differences in opinions concerning modalities of how to execute this function. Specifically, the opposition deputies' request, with clearly defined objectives on exerting of the oversight function over MoD and MoI, was submitted to the Parliament on 14<sup>th</sup> of February 2012. Discussions related to these requests have continued in all meetings of the Committee, occupying a considerable part of the PCNS' working time during session VI. Permanent postponement of endorsement of the plan

---

<sup>6</sup> The meeting concerning reporting on the security of our embassies was postponed, because of the debate whether it should be conducted openly, or restricted. As for the second issue, it was not proceeded at all.

<sup>7</sup> The deputies from the opposition in the object of their request have required oversight of this Plan and not a hearing session with the Minister of Defense.

<sup>8</sup> According to the Article 18 on the **Competencies of the Permanent Committees**: "The permanent committees of the Parliament, based on their pertinence, review draft-laws, draft-decisions and other issues that are presented in the Parliament, conduct studies on the effectiveness of laws in force, attend law implementation and control the activity of the Ministries and other central institutions, by accordingly proposing measures to the Parliament or the Council of Ministers. Additionally, they propose for approval in the Parliament, draft-laws, draft-declarations, or draft-resolutions. **The Article 36 on Public Hearing Sessions**: 1. The Committee can organize public hearing sessions with members of the Council of Ministers, high representative of state or public institutions, experts, representatives of the civil society, representatives of the interest groups, as well as other interested groupings. The committee is obliged to do the hearing session based on the definitions given in this Article, when one third of all committee members ask for that in a motivated way and in writing. 2. In preparing of the public hearing session, the chairman, in cooperation with the deputy chairman and the secretary of committee, presents to the invitees issues on which the information is required. **Article 102/3**: The permanent committees, in their respective areas of responsibility, can do controls, or ask for documents which they consider necessary for reviewing of a specific issue. In this case, the Speaker of the Parliament should be informed in writings by the chairman of the committee. With the conclusion of control, the committees prepare a report, which should be sent to the Speaker of the Parliament and publicized, including also minority opinions.



on hearing sessions and oversight over these institutions (endorsed in the meeting of 18<sup>th</sup> of May 2012) had no justifiable rationale. After that, after 2 meetings, in the meeting of 5<sup>th</sup> of June 2012, it was decided that time table for oversight process were to be included in two periods, 10 July - 30 July and 01 September - 31 October (2012). Nevertheless, during this first period, none of the controls were managed to be executed in the Ministry of Defense.

## **RECOMMENDATIONS**

In view of the findings of the Monitoring Brief, during the period January-July 2012, and analyzing the progress, in continuation, since 2011, some recommendations are provided, in order to encourage concrete steps, aiming further consolidation of the role and contribution of the PCNS related to developments in the area of security:

- Encouraging the involvement of interest groups from non-state sectors in parliamentary review and PCNS activity should become part of a more consolidated and better coordinated approach of the Parliamentary Committee on National Security.
- Support of PCNS with the adequate expertise should be further enhanced and consolidated. Despite that, different domestic research institutions and think-tanks constitute a complementary opportunity in this context, which PCNS should consider in order to explore all the possible cooperation areas.
- In the process of strengthening of the oversight role by the Parliament and more specifically by the PCNS, there is still much space for further improvements and consolidation, whereas equally essential remains clarification of modalities in carrying out the control in practice.
- Strict abidance to formal procedures of parliamentary review in the Committee, including participation of the PCNS members as well as regularity of meeting' official minutes.



**INSTITUTE FOR DEMOCRACY AND MEDIATION  
CENTER FOR EUROPEAN & SECURITY AFFAIRS (CESA)**

PARLIAMENTARY REVIEW OF THE DRAFT-LAW "FOR AN AMENDMENT IN THE LAW No. 9861, DATE 24.01.2008 "ON CONTROLLING AND OVERSEEING OF THE STATE BORDER""

**KEY INFORMATION FOR THE DRAFT-LAW**

<b>Draft-law under review</b> <sup>9</sup>	Draft-law "For an amendment in the Law no. 9861, date 24.01.2008 "On controlling and overseeing of the state border""
<b>Legal Initiative</b>	Initiative of the Parliamentary Group of Socialist Party, submitted to the Parliament on 27 <sup>th</sup> February 2012, planned on the three-weekly calendar of the Parliament work 9 <sup>th</sup> April - 27 <sup>th</sup> April.  The draft-law is envisioned in the Parliament Working Program from 30 April to 8 June and on the three-weekly calendar of the Parliament work 30 <sup>th</sup> April – 18 <sup>th</sup> May and 21 <sup>st</sup> May – 8 <sup>th</sup> June.
<b>Committees where the draft-law was reviewed</b>	<ul style="list-style-type: none"><li>- The Committee for Legal Issues, Public Administration &amp; Human Rights, date 16<sup>th</sup> of May 2012, time 09:10 (for opinion);</li><li>- The Committee on National Security date 18<sup>th</sup> of May 2012, time 10:00 (responsible);</li><li>- The Committee for Foreign Policy, date 22<sup>nd</sup> of May 2012 (for opinion);</li><li>- Plenary session, date 24<sup>th</sup> of May 2012, Session VI of Legislature XVIII</li></ul>
<b>Documents analyzed</b>	<ul style="list-style-type: none"><li>- Parliamentary Document of the Committee for Legal Issues, Public Administration &amp; Human Rights, date 16.05.2012</li><li>- Parliamentary Document of the Committee on National Security, date 18.05.2012</li><li>- Parliamentary Document of the Committee for Foreign Policy, date 22.05.2012.</li><li>- The minutes of the Plenary Session, date 24.05.2012</li><li>- Official Gazette, No.70, date 22.06.2012</li><li>- The Regulation of the Assembly of the Republic of Albania</li></ul>
<b>Draft-law Goal</b>	Clear definition of the border of territorial sea and internal waters, in order to avoid consequences deriving from the lack of that definition in the Law No.9861, date 24.01.2008 "On controlling and overseeing of the state borders"

The draft-law "For an amendment in the Law No.9861, date 24.01.2008 "On controlling and overseeing of the state borders"", constitutes an initiative of the Parliamentary Group of Socialist Party, which was submitted to the Parliament on 27<sup>th</sup> February 2012. This draft-law was reviewed by the Committee on National Security on 18<sup>th</sup> of May 2012 and is the only one, for which the PCNS has been a "responsible committee" for the monitoring period.

<sup>9</sup> This Law has No. 60/2012, date 24.05.2012. Official Gazette No.70, 22 June 2012, pp 3315.

Permanent review postponement of this draft-law and the fact of not being planned for review in the Parliament' work have been one of constant concerns of the opposition members not only in PCNS, but also during the plenary sessions<sup>10</sup>. Review of this draft-law in plenary session happened after about 3 months of its first submission in Parliament, which is in conflict with the Article 69 (paragraph 3) of the Regulation of the Assembly for the distribution of the draft-laws: *"Draft-laws, presented by the deputies, should be put in the agenda of the plenary session, not later than 8 weeks from the date of submission"*. This draft-law was put first in the agenda of calendar of the Parliament work 9<sup>th</sup> April - 27<sup>th</sup> April. Due to the fact that this draft-law did not become part of parliamentary review of this calendar, it was put again in the Working Program 30<sup>th</sup> April – 08 June, as well as in the calendar of work 30<sup>th</sup> April – 18<sup>th</sup> of May 2012. As a consequence of postponements of its review, during this period the draft-law passed only into procedures of the Committee for Legal Issues, Public Administration & Human Rights on 16<sup>th</sup> of May 2012 and of the National Security Committee on 18<sup>th</sup> of May 2012. Further, the draft-law was put again in the calendar of work 21<sup>st</sup> May – 8<sup>th</sup> June 2012, being reviewed by the Committee of Foreign Policy, on 22<sup>nd</sup> of May and became part of the plenary session agenda of 24<sup>th</sup> May 2012.

Delay in reviewing of this draft-law has caused exceeding of the time limits for submitting of the permanent committees reports (Article 29 of the Regulation of the Assembly). Thus, the report of this draft-law review has been finished two days before the plenary session of 24<sup>th</sup> of May 2012.

### **DRAFT-LAW REVIEW IN PARLIAMENTARY COMMITTEES**

Content of the Law No.9861, date 24.01.2008 "On controlling and overseeing of the state borders""", according to the claims presented from the amendments' initiators, has caused an unprecedented situation, by leaving the country with undefined sea borders and without the demarcation line of the territorial waters, which coordinates were defined by the previous law that was revoked. This legal vacuum has caused "grave" consequences for the territorial integrity of the country, also due to the lack of agreements on border delineation<sup>11</sup> with neighbor countries. Proposed changes, aimed precisely reinstatement of definition of coordinates of our country's territorial waters, as they were defined in the Article 3 of the Law 8771 of the year 2001 "On State Borders in the Republic of Albania".

Discussions in the Committee on National Security meeting did not treat the proposed changes in the actual law, as they were focused more on debating over implications caused by this situation. Lack of detailed debate in PCNS on proposed amendments, happened due to the fact that both, the opposition and majority PCNS members shared the same opinion on the need of improving of the law on delineation of sea borders of the Republic of Albania, beyond political considerations of the opposition claims regarding concerns caused by the actual law in force.

Major issues, raised by the initiators of amendments and corresponding explanations, were exhausted in the previous meeting of the Legal Committee, where reporter was the Deputy Chairman of the PCNS. In this committee, the Minister of Interior, in the most part of his discussion, made a more detailed description of the situation, giving answers to the claims raised

---

<sup>10</sup> Discussion of Mr. Ilir Gjoni, PCNS' meeting, date 03.04.2012, page 7, 22; speech of Mr. Erion Braçe, plenary session, date 26.04.2012, page 4.

<sup>11</sup> Issue presented in the report following the initiative for the draft-law of a group of deputies from the Parliamentary Group of the Socialist Party.



by the opposition members on potential implications of the lack of border delineation. In addition, some technical changes were proposed, after all the participants, in principal, shared their opinion on the need for corresponding changes. Meanwhile, in the Committee of Foreign Affairs a shorter debate was conducted on this draft-law. It was important in this meeting restatement, from aspects of legal techniques, of the changes approved in two previous committee meetings.

***REVIEW OF THE DRAFT-LAW IN PLENARY SESSION***

Draft-law review in plenary session went through a regular procedural process with reporters' briefs from the three permanent committees. No debate or discussion was further conducted during this draft-law review, among the MPs.

The only problem observed, during monitoring of the minutes of the plenary session on reviewing of this draft-law, is related to regularity of the voting process. Article 56 of the Parliament Regulation "on quorum verification", provides that: *1. Before every voting, the chairman of the plenary session verifies the number of the deputies present in the meeting hall*". According to the minutes of this session, 125 deputies were verified to be present in the hall in the moment of voting for the Law "For an amendment in the Law no. 9861, date 24.01.2008 "On controlling and overseeing of the state border"". However, during "in-principal" voting, it resulted: – 127 "pro" votes via electronic voting and 128 "pro" votes during its voting in general. The number of "pro" votes in both cases is higher than the number of MPs present.