



**INSTITUTE FOR DEMOCRACY AND MEDIATION
CENTER FOR EUROPEAN AND SECURITY AFFAIRS**

2012 MONITORING REPORT

On the activity of the Parliamentary Committee on National Security

Supported by OSI think tank fund Think Tank Fund (Budapest) in the framework of

IDM PARLIAMENTARY INITIATIVE

AUTHORS: ELIRA HRONI AND GJERGJI VURMO

IDM, December 2012



TABLE OF CONTENTS

PCNS MONITORING IN BRIEF	2
Methodology	2
II. Main findings of 2012 monitoring Report.....	3
II.1. Attendance of meetings by PCNS members	4
II.2. Attendance by representatives of line Ministries and other institutions	4
II.3. Involvement of Civil Society and Interest groups PCNS meetings	4
II.4. Quality of Parliamentary Review of Draft Laws in PCNS.....	5
III. Recommendations	9
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””	10
<i>I. KEY INFORMATION ON THE DRAFT-LAW</i>	10
<i>II. DRAFT-LAW REVIEW IN PARLIAMENTARY COMMITTEES</i>	11
<i>III. REVIEW OF THE DRAFT-LAW IN PLENARY SESSION</i>	12



PCNS MONITORING IN BRIEF

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.

Within this framework, 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

This approach represents the main motivation behind this monitoring initiative by IDM' Center for European and Security Affairs (CESA). CESA has been monitoring the activities of PCNS for the second subsequent year.

This monitoring report presents the main findings of the monitoring and assessments on the activity of the Parliamentary Committee of National Security during January-December 2012 and follows the interim report published in September 2012.

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



II. Main findings of 2012 monitoring Report

During 2012, PCNS has organized **32 meetings** in total, where it has reviewed **13 draft-laws, 7 draft-laws for agreement ratifications, and 3 hearing sessions, 1 with the Minister of Interior and 2 with the Minister of Defense. 2 other PCNS' meetings** have been devoted to **determining of the PCNS' activity**, one of which was canceled due to the lack of quorum.

The Monitoring report concludes that the **PCNS' performance** in 2012, **has improved** compared to the same period of 2011.

As regards the quality of parliamentary scrutiny, the opposition MPs has been more active when reviewing draft-laws. Their **engagement in discussion with the representatives of institutions has been more vivid and concrete proposals for changes to draft-laws** were numeric (especially in the second half of the year.)

Nevertheless, it remains a concern that in **no case** of parliamentary review have the **proposals of the opposition been reflected** in Committee's decision-making.

Regardless of the high participation of the PCNS member, **no meeting** takes place under full **participation of the MPs. The number of present deputies** varies during the whole duration of the meeting. **Some irregularities** relate also to the official minutes. **Almost all minutes do not reveal the exact number** of the members present in Committee's meeting.

The participation of the institutions responsible for preparation of the draft-laws has been very high. In many cases, there are **5-10 representatives** at a PCNS meeting. However, **only one representative is active** in the Committee' discussions.

Involvement of the civil society and interest groups has **moderately improved** compared to the previous year. Nevertheless, **only in two cases of draft-law review**, was their representation enabled in PCNS meetings, **based upon their request**. It is concerning, that **none of the opinions expressed** were **either taken into consideration or were part of the discussion or further review** from Committee's member.

The novelty of this year PCNS work has been **the opposition continuous request on exerting control and oversight over the security institutions**. Even though, the request has been issued since the first meeting of the Committee, there has been **a procedural prolongation** of this process. Moreover, despite **the approval of the plan** for exerting the oversight over security institutions from all of the PCNS members, **during 2012 this duty was not able to be fulfilled**.

II.1. Attendance of meetings by PCNS members

Attendance of meetings by PCNS members has been high due also to the considerable number of members within this Committee (24 members from which 13 belong to DP, 11 to SP and 3 are substitute deputies). The presence of members in meetings of the Committee shows several irregularities not only during the meetings but also in official minutes. The number of MPs present in the meeting room varies notably during different moments of the meeting. Moreover, it is observed that the real number of participants in meetings and the one presented in the official minutes do not match.¹ Although the last trend cannot be reflected in the official minutes, the later do not reflect even the real number of members participating in the meeting. In most of the cases, a higher number of participants is recorded, which does not result real during direct monitoring of the meetings.² Furthermore, differently from what is presented in the official minutes, the number of members participating in PCNS meetings has never reached its maximum.³

II.2. Attendance by representatives of line Ministries and other institutions

The representatives of line ministries and other institutions charged with the preparation of draft laws and their reporting to PCNS meetings were present in each meeting of the Committee. Although their contribution is assessed as an important part of Committee' activity and for the development of discussions, it is observed a high number of participants of central institutions to defend the draft laws in the PCNS meetings. In 14 meetings of the Committee about 8-9 participants of institutions were present. However, the number does not reflect their engagement in debates. It is noted that almost in all cases only one representative is engaged in discussions with MPs.

II.3. Involvement of Civil Society and Interest groups in PCNS meetings

Involvement of civil society and interest groups' representatives has improved compared to 2011 but it still remains low. Improvement is mostly noted in the approach of committee members towards accepting civil society involvement rather than in a real engagement and establishment of continuous and fruitful collaboration. Based also on the Parliaments' Rules of Procedure⁴ which implies no obstacle for the involvement of interest groups, committee' members are open towards participation in meetings of representatives from civil society.

¹ For instance in the meeting of May 8, 2012 on review of the draft law "On ratifying the agreement between the Council of Ministers of the Republic of Albania and the Government of the Republic of Croatia for reciprocal assistance in case of natural disasters and large-scale accidents" the meeting started with 11 present members. During the meeting the number of present members varied from 14 to 9. Meanwhile official minutes for this date, report 22 members present in the meeting.

² For instance, on July 10 2012 during the meeting on the Activity of the Committee the meeting starts with 13 members and the total number of presented members was 17 at its end. Meanwhile according to the official minutes of this meeting there were 24 members present. The same situation is noted also in the meetings of 04.12.2012, 05.12.2012; 06.12.2012; 18.12.2012

³ See official minutes dt. 05.06.2012; 10.07.2012; 20.09.2012; 23.10.2012; 29.10.2012; 05.12.2012

⁴ According to article 35 of Rules of Procedure "*The Committee meetings are in principle held open*" meaning that all interest groups, media representatives and visitors interested are allowed to participate (Article 35 of Rules of Procedure)



More concretely, during 2012, upon request of civil society representatives the committee enabled their participation in two occasions. Interest groups presented their suggestions on the draft law “On some changes and amendments to the Law No.9157, date 04.12.2003, “On interception of telecommunications” and on the draft law “On intelligence Defense Agency”.⁵

Despite this positive trend, involvement remains at formal level since none of the reflections and discussions of civil society representatives were included into any debate or were subject of any further review by the MPs. Therefore, concrete measures shall be taken not only to formally include them in the parliamentary sessions but also to reflect their comments and suggestions during parliamentary reviews.

II.4. Quality of Parliamentary Review of Draft Laws in PCNS

Review of draft laws

Overall, during the monitoring period, a higher engagement of MPs during review of draft laws was observed. Opposition MPs appear to be more engaged in discussions with representatives of institutions as well as during review of draft laws. The involvement of the majority MPs has been limited to 1-2 MPs who mainly contradicted the opposition’s points of view and, provided no substantial contribution to the debate.

A characteristic of parliamentary review of draft laws remains the political connotation added to discussions by all parts. The second half of the year has proven especially clashing with PCNS meetings characterized by long debates on other issues such as exercising oversight control over security institutions. This debate has taken substantial time during discussions for reviewing draft laws.

During the whole 2012, out of 13 reviewed draft laws only 3 of them were followed by 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.

⁵ Upon request by Institute for Democracy and Mediation the inclusion of interest groups in drafting of two draft laws has been initiated. Proposals have been officially sent to the members of the committee. In the meeting of 21.11.2012, IDM representative presented concrete arguments on the initiative under review followed by a written document containing respective suggestions. It is worth noting that there has been no discussion and reaction on the mentioned input.



INSTITUTE FOR DEMOCRACY AND MEDIATION CENTER FOR EUROPEAN & SECURITY AFFAIRS

Opposition MPs have played an active role reflected in proposed changes during review of draft laws especially during the meetings of the second half of the year. Review of draft law “On some amendments and additions to the law no.9157, date 04.12.2003, “On interception of telecommunications” changed” was debated by PCNS members in four meetings. Long discussions took place among opposition MPs and representatives of institutions. During the review of this draft law 2 amendments were proposed: one by the opposition representatives and one by the rapporteur on the draft law. None of the proposed amendments was approved voting the draft law as reviewed by the Committee of Legal issues, Public Administration and Human Rights.

The draft law “On Defense Intelligence Agency” was reviewed during four meetings of the Committee. The approval of this draft law was characterized by long discussions among opposition MPs and representatives of the Ministry of Defense. Opposition has continued with its critics on the content of articles proposing many amendments during detailed review of the draft law. None of the proposals of the opposition was considered and the draft law was passed based only on the review made by the Committee of Legal issues, Public Administration and Human Rights.

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. This occurred during reviewing of the draft-law “On some additions 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””.

Long debates and contradictions have been noted also during the review of the draft-budget for the Ministry of Interior, Ministry of Defense, and State Informative Service.⁶ On both draft-budgets for 2013 opposition MPs estimated as not serious the material provided to them claiming that it did not fulfill the criteria of reporting and detailing the budget allocated for these institutions as well as lack of information on how the 2012 budget was implemented.

Review of Agreements

In general, review of draft-laws for agreements ratification has been conducted with little discussion in the PCNS’ meetings, where most of the time is being occupied by other issues raised by the members of the PCNS. In 6 meetings organized for reviewing of 7 draft-laws for agreements ratification, discussions have been limited among two to four PCNS’ members, and in some cases there was no discussion on the content of the agreement.

Hearing sessions

⁶ Two meetings organized by PCNS for “Approval in principle of the State Intelligence Service” and “Approval article by article of the budget of the State Intelligence Agency” and the one on Yearly report of NIA took place under closed doors.



INSTITUTE FOR DEMOCRACY AND MEDIATION CENTER FOR EUROPEAN & SECURITY AFFAIRS

Hearing sessions are particularly characterized by a larger participation in debate of the deputies, but at the same time, by high political tones. Conducting hearing sessions with responsible persons of security sector institutions constitutes one of the forms for exercising parliamentary oversight functions. 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 Greece⁷, as well as with the Minister of Defense.

It is worth noting that 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 two sessions with the Minister of Defense about "Peacetime Stationing Plan of the Albanian Armed Forces"⁸ and on "Enforcement of law for processing and administration of Armed Forces property, achievements and problematic".

Parliamentary Oversight of PCNS

Based on Articles 18, 36 and 102/3 of the Regulation of the Assembly⁹, 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

⁷ 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.

⁸ 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.

⁹ 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.



INSTITUTE FOR DEMOCRACY AND MEDIATION
CENTER FOR EUROPEAN & SECURITY AFFAIRS

objectives on exerting of the oversight function over MoD and MoI, was submitted to the Parliament on 14th 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 on hearing sessions and oversight over these institutions (approved in the meeting of 18th of May 2012) had no justifiable rationale. After that, after 2 meetings, in the meeting of 5th 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 despite planning and approval by all the members of the Committee, during 2012 no oversight in the Ministry of Defense took place.



III. Recommendations

In view of the findings of this monitoring report during the period January-December 2012 as well as analyzing the progress since 2011 the recommendations provided below aim to encourage concrete steps towards consolidation of the role and contribution of PCNS in security sector developments:

- Encouraging involvement of non-state sector interest groups in parliamentary review and in PCNS' activities shall not be only formally addressed by PCNS. Establishing of continuous cooperation to enable real and substantial inclusion of interest groups generates conditions for improvement and transparency of the legislative process;
- 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.
- Strengthening of the oversight role of PCNS still needs to be improved and further consolidated. It remains crucial to clarify the modalities of practical enforcement of oversight functions exercised by the Parliament.
- Rigorous implementation of the rules for parliamentary review in the committee including serious participation of MPs in PCNS meetings and keeping in order of official parliamentary documents.
- Improving the quality of debates by serious engagement of MPs as well as by minimizing extreme politicization of discussions.

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””

I. KEY INFORMATION ON THE DRAFT-LAW

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

¹⁰ This Law has No. 60/2012, date 24.05.2012 and is published in the Official Gazette No.70, 22 June 2012, page 3315



INSTITUTE FOR DEMOCRACY AND MEDIATION
CENTER FOR EUROPEAN & SECURITY AFFAIRS

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 27th February 2012. This draft-law was reviewed by the Committee on National Security on 18th of May 2012 and is the only one, for which the PCNS has been a “responsible committee” for the monitoring period.

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 sessions¹¹. 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 9th April - 27th 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 30th April – 08 June, as well as in the calendar of work 30th April – 18th 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 16th of May 2012 and of the National Security Committee on 18th of May 2012. Further, the draft-law was put again in the calendar of work 21st May – 8th June 2012, being reviewed by the Committee of Foreign Policy, on 22nd of May and became part of the plenary session agenda of 24th 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 24th of May 2012.

II. 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 delineation¹² 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

¹¹ 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.

¹² 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.



INSTITUTE FOR DEMOCRACY AND MEDIATION
CENTER FOR EUROPEAN & SECURITY AFFAIRS

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 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.

III. 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.