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# **THE RELATIONSHIP BETWEEN THE MILITARY AND THE MEDIA**

## **Legal aspects and experience**

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### **Military and the Media**

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## **INTRODUCTION**

Talking about the military and the media, the first thing that must be taken into consideration is the opposition that arises from their functions, as well as from their traditions, while, at the same time, we should also have in mind the contemporary tendency of putting of the media in the function of warfare, which has been especially developed during World War II when the media existing at the time (radio, printed media, films, film journals, and posters) started to be used in the function of spreading of military propaganda.

First of all we shall examine the basic points of confrontation.

1. The primary function of the military is to ensure the security of the country, which often implies secrecy that is essentially opposed to the function that media have – to inform and provide publicity in the operation of the governmental agencies – one of the basic prerequisites for the functioning of democracy.
2. The military is a single, centralized organization structured according to the principles of seniority and hierarchy and presents a closed system. On the other hand, there are a great number of media, and in principle they are open organizations.
3. The military organization has a millennium tradition and, with the exception of democratic systems, accounted only to its leader or commander. The media are relatively new phenomenon that accounts to a dispersed and not so strictly defined mass of viewers, listeners, or readers.
4. The military tends toward using the media in the function of its own goals, i.e. tends to treat the media as tools that should be put into its function. On the other hand, the media tend toward the emancipation from the domination of the state's structures, and especially from the repressive government machinery.

In addition to these points of confrontation there also exist some points of contact

1. Both actors are necessary for the functioning of the democratic society
2. Both actors have the maintenance of the Status Quo in the society as their final goal
3. Both actors are active in the sphere of politics.

All of the above points out to the conclusion that the relations between the media and the military are far from being ideal, and that, most often, their relationship is one of misunderstanding and hostility, and not of respect and cooperation. Furthermore, even if they establish cooperation, most often it is to the detriment of the public because such cooperation is reduced to propaganda.

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Totalitarian tendencies are not a new phenomenon for the military. It is also very well known that the monopoly on firepower, when left without efficient control by the civil segment could cause destructive blows to society and lead to bloodshed. The merging of the conservative role of the Serbian mainstream media and the military leaders of the Yugoslav People's Army (YPA), in the late eighties, for the purposes of preservation of the communist regime in the former SFRY, pushed both of them in the arms of Milosevic, who used them to mobilize the Serbian society and start the series of secessionist wars that had tragic consequences for the whole region.

The establishment of the interaction between the Macedonian army and the media, and with that the interaction between the army and the public, is an essential part of the stability of the Macedonian society.

This is so out of two reasons:

1. The ruling circles of the Macedonian army are composed of officers who were formed as professionals in the YPA, which belongs to another category of social formations both in terms of organization and ideology. YPA used to be a "State within a State", and had special authorities and parallel healthcare, judicial, and pension systems. It was the most closed institution of all institutions that existed in our formal common state. This legacy became apparent immediately after the establishing of the Macedonian Army, when the new chief of the general staff confronted the Defense Minister about the issues related to the inability of the military personnel to hand over the political control of the army to the Minister.
2. At the moment Macedonia is a post-conflict society that has just got out of an armed conflict that has no winner, and in which both parties of the war still haven't renounced the idea of a rematch. Such trends are especially prominent within the circles of the para-police forces and Albanian hardcore secessionists.

Out of these reasons we should present the legal framework of the operation of Macedonian media and armed forces.

## **EXISTING LEGAL FRAMEWORK AND SUGGESTIONS FOR ITS IMPROVEMENT**

The legal framework that regulates the security system of the Republic of Macedonia consists of the Constitution, the Law on Internal Affairs, Law on Defense, Criminal Code, and the international conventions that have been ratified by the Republic of Macedonia, as well as other general laws and regulations.

The legal framework that regulates the operation of the media consists of the Constitution, Broadcasting Law, Criminal Code, international conventions, and other general laws and regulations.

Constitutional framework:

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Chapter 7 of the Constitution of the Republic of Macedonia, under the title “The Defense of the Republic and States of War and Emergency”, regulates the Defense of the Republic of Macedonia. Article 122 of the Constitution defines the function of the armed forces in the country:

***Article 122***

*The Armed Forces of the Republic of Macedonia protect the territorial integrity and independence of the Republic.*

*The defense of the Republic is regulated by a law adopted by a two-thirds majority vote to the total number of Representatives.*

The Law on Defense and the Law on Internal Affairs elaborate the articles from this chapter of the Constitution in greater detail. In the following text we shall deal only with those articles that are of relevance to the relationship between the media and the armed forces, as well as with the basic provisions that refer to the freedoms of speech, information, and access to information.

In this context we must take into consideration Article 16 of the Constitution that has the following wording:

*The freedom of personal conviction, conscience, thought and public expression of thought is guaranteed.*

*The freedom of speech, public address, public information and the establishment of institutions for public information is guaranteed.*

*Free access to information and the freedom of reception and transmission of information are guaranteed.*

*The right of reply via the mass media is guaranteed.*

*The right to a correction in the mass media is guaranteed.*

*The right to protect a source of information in the mass media is guaranteed.*

*Censorship is prohibited.*

This Article regulates the system of public information and public debate in the society and ensures the transparency of the public functions, including the Defense. It is understandable that such setting of the

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constitutional provisions does not provide a legal framework that will protect the legitimate interests of Defense, especially the confidentiality of data that is of special importance for the Defense. On the other hand, the European Convention on Human Rights, which has a higher rank than the law, functions as an integral part of the Macedonian judicial system and provides the framework for the additional regulation of these legitimate interests in the specific Defense-related laws.

Article 10 of the European Convention on Human Rights provides the international guarantees of the freedom of expression and information, but, in contrast to Article 16 of the Macedonian Constitution, in the second paragraph it sets the limitations of that freedom in cases when it can violate some other legitimate interest of the society, be it public or private.

Article 10

### **Freedom of expression**

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

The second paragraph of article 10 of the European Convention on Human Rights entitles the national legislators to develop these principles within the relevant laws.

In addition, within the frames of the European institutions there functions the European Court of Human Rights in Strasbourg, which has the jurisdiction over all countries - members that have ratified the Convention. Thus, its legal practice becomes a legal resource in the countries –members of the Council of Europe.

The Law on Defense does not contain any reference to the manner of information of the public by the army, and instead has several articles that may be interesting for the journalist and the media. Those are the articles dealing with the confidentiality of data and access to different facilities.

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### **Article 138**

*Protection of secret data encompasses measures, activities and procedures undertaken for protection of the secrecy of data, information and documents from the area of defense.*

*Citizens, trade companies, public institutions and services of special importance for the defense, the units of local self-management and agencies of the Government responsible to keep and protect the secret data of the defense and perform the measures determined for protection of secret data.*

*Criteria and measures for protection of the secrecy of data of importance for the defense are issued by a Government regulation.*

### **Article 139**

*The members of the Armed Forces are obligated to keep and protect the secret data of importance for the Armed Forces and perform the measures determined for their protection.*

*Criteria for determining the secret data for the Armed Forces, which have to be kept secret and measures for their protection are regulated by a List of Regulations issued by the Minister of Defense.*

### **Article 140**

*For the purpose of protecting the security of the Republic in the areas which are arranged for the requirements of the defense according to the Defense Plan or their arrangement is planned, movement and residing may be restricted.*

*A decision on determination of the areas from paragraph 1 of this article is made by the Government.*

This means that in practice a model for overcoming of conflicts between the transparency of the work of public administration and the defense structures' legitimate interest in withholding of confidential data already exists. It is the so-called tripartite test that is applied by the European Court of Human Rights. According to that method the medium is put in a situation where it has to whether the public interests prevail over the damage caused by the disclosure of certain documents.

For instance, the weekly magazine "FOKUS", in 1996/97 used to publish a series of documents coming from intelligence sources that carried the "military secret" designation. What was common for all those documents was the fact that they were either files on incompetent officers – heads of different garrisons or files on financial embezzlements in the procurement of equipment for the Army.

It is in the public interest for the commanding officers to be competent to perform their duties, just as it is in the public interest to disclose information on how are the taxpayers' money spent if it is done illegally or

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in such manner that somebody abuses his/her power to gain profit. In other words: A document that shows how the Defense Minister pours money in his father-in-law's firm may even be designated as "God's secret", but it would still be in the domain of the public interest.

The legal solution in the Law on Defense that defines what is and what is not a military secret is not really a fortunate one since the Law does not provide a list of documents that may carry the "military secret" designation (for example, the Law on Internal Affairs provides such a list). This fact provides for wide opportunities for covering up of possible illegal actions of individuals, hidden behind the so-called interests of the society. Therefore the first recommendation would be to amend the sections of the law that refer to the confidentiality of data and documents, in the sense of the exact specifying of the types of documents that might fall in the category of military secrets. To allow for this problem to be solved on the level of an internal rulebook of the Ministry, i.e., to regulate this issue with a secondary legislation act would be not only frivolous but also very dangerous.

The second recommendation refers to the introduction of legal provisions for regular information of the public through the media – This means that, firstly, the Ministry officials cannot organise press conferences by inviting only selected media, and secondly, if an official discloses a certain information to one medium, he/she is obligated to disclose the same information to any medium that shall ask for it.

There is a great hole in the Macedonian legislation. The access to the information held by government's agencies is not regulated at all. The lack of such law also means the lack of a procedure that would allow the citizens and the media access to documents held by the Ministry of Defense or by the Army. Therefore, the next recommended step is the adoption of a Law on access to information.

These would be the bases of the legal framework. Now let us see what has been the practice of the interaction between the media and the military structures in the past.

## **PRACTICE**

The Ministry of Defense is one of the rare ministries of the Macedonian Government that has its spokesperson almost from its very establishment. The previous experience of the ministry's relations with the public point out to the fact that this function works more or less well, despite the fact that the persons that used to hold that position haven't always been selected wisely. The spokesperson is usually appointed by the Minister, and so far this function has been predominantly performed by persons that come from outside, mostly due to their political affiliation. This is no deviation from the Macedonian standard, but is essentially a very bad mechanism because it provides neither continuity nor a standard. On one hand it is understandable that a Ministry coming from one political party would replace the spokesperson that is coming from another party because it is clear that nobody would like to have a person that is not

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trustworthy on such sensitive position, i.e., somebody who might present a great danger for the work of the Ministry by informing his party about the sensitive operations that are taking place in the Ministry. How unpleasant it could be, and to what extent it might influence the work of the ministry is clearly illustrated in the following example: In the midst of the Macedonian crisis, at the time when the wide coalition Government was formed, the Ministry of Defense belonged to SDSM, and one of the first moves of the new minister was to replace the spokesperson, Georgi Trendafilov. The Minister's attempt to minimise the potential damage of "spying" that could have been caused by Trendafilov resulted in a collapse of the visibility of the efforts made by the Ministry of Defense. Namely, the audience was already used to Trendafilov, both in terms of his appearance and style of work. Trendafilov performed his working tasks correctly and professionally, but had one crucial fault – he was a member of another political party. The message that the new Minister had sent to the public by replacing Trendafilov could be, and in fact was, interpreted as: it is not important who is working and how? The most important thing is that he is one of us! In another world, we are and we are not in coalition with VMRO-DPMNE at the same time. This proved to be fatal for the people's perception of the Ministry of Defense.

This imposes the following question – Why do the Ministries rely on political spokespersons – most often worn-out or politically ambitious journalists – instead of starting the process of creation of such personnel and their engagement as professional incumbents in the relevant ministries?

The second problem of the concept of information is the centralised dissemination of information. Namely, no one can obtain information from the lower rank officials or officers without previous approval from the centre, and the Minister and his spokesperson are the only persons authorised to give such information.

This causes rather silly problems, when spokespersons deal with virtually all issues: from a common traffic accident to negotiations with NATO, and the journalists have to wait for the official version until the centre processes their request.

There is a simple solution to this problem – all mid-ranked officials should be provided with basic training in public relations, and the ministries should adopt internal rules for public relations. These internal rules can clearly define which types of information may be disclosed by local officials or officers in the presentation of the official version of an event to the media. Such solution would also reduce the number of anonymous sources quoted by the media.

The Ministers should understand that the people below them in hierarchy talk and would continue to talk. The decentralisation of the information process might improve the effects on the public, but it would also decentralise the responsibility, which would be borne by the person who disclosed the information. This should solve the problem with the anonymous sources that would have to think twice what they can and what they cannot tell to the public. The journalists already prefer official statements to anonymous ones, because it gives credibility to their reports.

The Army appointed its own spokesperson during the crisis, and that was an excellent transitional solution. Lieutenant colonel Markovski succeeded in imposing himself to the public through the professionalism of

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his work. There had been a lack of certain, more sophisticated methods of development of the public opinion, although it cannot be imputed to Markovski.

However, the same proposal applies in this situation, too. Every officer ranking higher than a major should pass basic training in public relations, and the army should adopt a document on its media policy that would once again define the principles and levels of information of the public.

General recommendation for this section is that there is no law that can imply total openness of the army structures in providing the information. That is impossible even from the security reasons, but preparing firm and quality open policy papers, accompanied with law on access to information and decentralization of the informational system together with massive basic level PR training program will eliminate the problem of transparency in the Army

## **THE JOURNALISTS**

Here I would like to point out to an incident that is probably very well known. A female journalist by the name of Cizbanovska, making her field report, fired a shell on one of the Albanian populated villages in the Lipkovo region. The Macedonian Journalist Association reacted to this "act of stupidity" and demanded that the officer who allowed her to fire a weapon should be held responsible. I do not know what happened next, but I do know that her act had been contrary to the Geneva conventions that demand from the journalists to behave like civilians and that they should be treated like civilians.

The problem is not as simple as it appears to be on the first glance. Such incidents make journalists part of one of the sides waging war and turn them into legitimate targets. BY acting in such manner they put in danger the lives of their colleagues working out in the field.

The epilogue: Cizbanovska is now an employee of the Counterintelligence Agency. I have no further comments.

Despite the fact of common mistrust, Macedonian journalists and military units on the field had a relatively good cooperation. Sometimes the military banned the access to certain point of the conflict on the ground to the domestic journalists and photographers on a "safety" basis.

The last minister of interior used to make round trips in the conflict areas dragging the journalists around him. This was very dangerous practice because he himself drew fire from the insurgents, and he had put in danger couple of the journalists.

Macedonian media community was given access to the points of armed clashes, but neither the security forces nor their newsrooms (i.e. Media) provided them with security gear. The Association of the journalists itself managed to get international help from IFJ and other donors for basic security equipment (helmets and bullet-proof vests) for their members.

Additional problem was that almost none of the journalists were risk ensured.

Yet in principle both sides respected the Geneva Convention that addresses journalists as non-combatant.

There is almost no case where journalists were primary target.

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However the politicians appealed on the "patriotic" sense of the journalists, and VMRO officials addressed couple of the media as a nest of traitors - A1 for instance. This is very dangerous tactics, it was practically opened call for lynch. Government and security forces have to bear in mind that even in the security crises all regulation including constitution and international conventions a still valid, and this kind of labelling the mainstream media is a practical censorship. Putting the pressure and label of traitor has only one thing behind - security treat should produce self-censorship and chilling effects.

There is also an interesting fact that Macedonian crisis officially started when a journalist of A1 television Snezana Lupevska was captured by NLA. Latter one that fact was heavily use by some groups that if she didn't went to Tanushevci, nothing would happen. Even this is very stupid thesis it is amazing how widely was accepted by certain social groups. The only reason for this was creating as much possible stories in order to pull off the responsibility of the government for start of the crisis.

All pre-crisis reporting of the media was focused on the presence of the armed groups of people in certain regions of Macedonia, which was, of course denied from the official sources. This policy of putting the problem under the carpet later resulted with the mistrust of the public to the information that was disseminated by State and Army officials.

## **FURTHER DEVELOPMEN OF INTERNATIONAL LAWS**

Another incident is also important and raises huge questions even from the aspects of international law. The NLA fighters on the hills around Tetovo entered and used the house that was serving as repeaters centre for local radio and TV station, as well as for some of the national wide media. NLA was using it as a sniper nest. Macedonian security powers knocked down the house with concentrated artillery fire. That left a Tetovo valley almost with no live media broadcast in the middle of the fights, leaving the people with virtually no source of information. It was pure luck that this lack of information didn't produce mass hysteria and a new hype of violence.

Bearing in mind NATO bombardment of the RTS during the Kosovo crisis and NATO knock down of the transmitters in Serbia, the question rise it self. Are the media facilities legitimate targets? If they are, then no media worker can be safe from the military actions, which endangers whole process of information of the public. Lack of informational infrastructure on it's destruction in the war, beside the fact that might and is used often for propaganda can lead in depriving the civilians from information that can save their lives. Having this in mind the Media community in the world protested on this issue. But there is a real need media infrastructure to be protected by the international war laws. This battle is yet to be fought.

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