



Policy Paper

Project: *Contributing to the Debate on the Intelligence Services Reform in the Czech*

Republic: *Working Panel on of the Reform Agenda*

Introduction

This paper is the outcome of a project aiming to re-open expert debate on reforming the intelligence services and organizations in the Czech Republic, and proposing a number of recommendations both as concrete steps to be taken in the short term and more general measures and principles in the long term. Given the complexity and hypersensitivity of the issue, the project team did not strive for an ideal overwhelming solution. The ambition was rather to present a synthesis of (often contradictory) points of view and suggestions stemming from the debate on intelligence services reform. The project added-value can be seen in the fact that the project was carried out by a think-tank in an “academic” manner, which represents a first attempt of this kind in the Czech Republic. So far, the issue has only been addressed either by the civil service or directly by decision-makers; think-tanks and academia have been, for the time being, kept out of the main reform agenda. The result was opacity and secrecy of the debate which is, undoubtedly, a consequence of the closed nature of intelligence services themselves towards both each other and the public.

In this project, however, think-tank methodology provided for new input to the debate even though corrections from experienced persons were necessary (see chapter methodology).

Limited capacity to reconcile some antagonistic opinions was the main weakness of the project. In a number of cases, the extent of the contradiction was too great to enable a think-



tank panel to give priority to one solution over another. In these cases, several options are left to the reader's assessment and can be used as background for further political decisions.

In this paper intelligence services are regarded as a tool for risk assessment and security assurance. However, the project did not pay close attention to the ways of shaping of Czech security policy and managing the security system in general. This issue should be studied thoroughly, as well as a fundamental conceptual debate on threats and ways to face them is strongly needed in the Czech Republic. Intelligence services themselves should be part of a more complex network system which reacts/answers to politically selected priorities.

Methodology

The key aspect of the project methodology was based on the Chatham House procedure.¹ An expert panel—composed of former representatives of intelligence services (including former directors), representatives of former intelligence services clients and independent security experts—was gathered.² The panel proceeded with an open chaired discussion. Four sessions were organized. Between the first and third session, working parties prepared their own draft policy papers. Thematic working parties (see below) were identified according to the initial assessment of the state, the main shortages and problems associated with intelligence services in the Czech Republic. This initial assessment was carried out by the experts themselves. This paper is a synthesis of the working parties' documents and it aims at a more knowledgeable general public: academia and policy-makers both in the Czech Republic (a shorter Czech version was presented and disseminated) and other (CEE) countries which may be inspired by the Czech debate and recommendations stipulated in this text. All texts written within this

¹ The most important rule is the absolute confidentiality of the source of information within an open debate amongst a group of chosen experts.

² The panel was composed of the following people: Oldřich Černý, Ivan Gabal, Taťána Holečková, David Koutecký (second half of the project), Jan Ruml, Jan Schneider, Jiří Schneider, Andor Šándor (who does not agree with conclusions concerning military intelligence), Petr Zeman, Karel Zetocha.



project and other relevant sources are available on the project website - http://www.europeum.org/disp_project.php?pid=41.

Identified problems/issues

The thematic working parties reflect the reasoning structure of the analysis which took the form of three areas (clusters) of issues. It is obvious that they cannot be totally separated from each other and they are interconnected; establishing working parties on specific sub-themes was, however, a methodological necessity. The clusters (working parties) were the following: 1) structure and legislative background of the intelligence services, 2) oversight and control, 3) relationship between intelligence services and their clients + the issue of coordination of intelligence (by the Government).

Major challenges were identified in these domains:

1. Insufficient coordination, management, commissioning, assessment and (more generally) use of the intelligence services by the Government and other executive bodies.
2. Absence of feedback from the clients of intelligence services on their products.
3. Weak prerogatives of intelligence services, which do not comply with requirement/assignments to intelligence services and capacities of enemies they are facing.
4. Little efficiency in exploitation of technical and human capital, weak personal preparedness of intelligence services.
5. Poor (or deficient) protection of intelligence services against partisan and political pressures.
6. Non-functioning external control of intelligence services both by the Parliament and other independent (from the Government) bodies.



The panel concluded that it is not in its capacity to assess/measure efficiency of intelligence services (it cannot be done on the basis of open sources).

Axiomatic approaches

During the discussions, two major approaches towards future reform of intelligence services took shapes: 1) more sceptical experienced intelligence service representatives and partisans of gradual/partial improvements without major ambitions for structural changes, 2) more reform oriented experts aiming at a more systematic and ideal set-up of the intelligence system. These two mutually opposite opinions are quite pronounced, which is not a good sign for future debates and reform implementation – it is obvious that they will always be extremely difficult. On the other hand, opinion clashes within the panel are evidence of the sufficient extent of representation in the panel.

Differences in approaches towards intelligence services reform (often without conceptual attitude) represent a fundamental methodology problem. The result is apparent: the shape of the intelligence system is justifiable only by tradition, heretofore development, customary practices (path-dependency) and defence of particular interests. The intelligence system is often addressed from “the middle” without an overwhelming view. Reform attempts related to the intelligence system set-up have so far failed because of one particular reason: they aimed to solve all the problems at once in order to establish a complex and ideal legislative plan and concept. Such a complex series of measure are difficult to be agreed on due to the 1) absence of broader public debate and, 2) lack of a conceptual approach towards intelligence services, and 3) contradictory (particular) interests, including persisting tendencies to misuse intelligence services for internal political fights.

There is no conceptual debate in the Czech Republic which would lead to the assessment of the intelligence services as one of the efficient tools for enhancing country’s security. Such a debate cannot be initiated by the services themselves. They should be involved in this debate,



though. Control of intelligence services is also a key factor for efficient management by the executive branch and their communication with the general public. Control and oversight are necessary for trustworthiness of the whole security system and are deep concerns for all parts of the system. The government needs to possess management, coordination and also control mechanisms in order to be able to check functioning efficiency (and task fulfilment) of elements of state administration. Control of the intelligence services, however, is an internally contradictory discipline: in general, control is principally based on independence from the controlled body. On the other hand, intelligence services are not under the public's supervision. On the contrary, classification is a key presumption for their efficient work. The structure of control bodies (their number, powers and personal set-up) should be a compromise between two major requirements: 1) the least possible number of bodies/people according to the principle of "need to know", and 2) the greatest possible representation for legitimacy. Existence of a huge number of narrowly focused control bodies prevents undesirable concentration of information. Nonetheless, this huge number can impede efficient control of the system. Existing incoherence of control mechanisms cannot be seen as a satisfactory state. As far as the personal composition of the control organs, there are contradictory requirements: expertise on the one hand and integrity/independence on the other (e.g. former intelligence officers have sufficient expertise but they lack independence). This contradiction is reflected in recommendations stemming from this text.

Proposals for measures in middle and long-term

The generally shared opinion of the panel is that radical organizational changes are in the short-term politically impassable and justifiable.³ The goal is to improve and optimise the existing set-up through minimal organization changes. In the case of political consensus, gradual steps to be taken can be the following:



- Government coordinator post for intelligence services is established. He or she is given enough executive powers for dealing with burning issues. The coordinator is appointed by the Prime Minister or by the Government and is subordinated to the former. His or her work related to the intelligence services is controlled by an external body so that the risk of abusing the services or influencing them in favour of particular or partisan interests is reduced ad minimum.
- Bezpečnostní informační služba (BIS, Security Information Service)⁴ is a detached state body responsible to the PM. It has its own budget. Through contracts some of its logistics can be provided by the Ministry of Interior (subordination of BIS to the interior minister would be logical but such a solution is neither optimal nor politically realistic under current circumstances).
- Úřad pro zahraniční styky a informace (ÚZSI, Office for Foreign Relations and Information)⁵ is a detached state body responsible to the PM. Ministry of Interior continues to provide its budget (through its budget chapter), some logistics and evidence property matters (enables organizational coverage). Relations between the Foreign Ministry, the Interior Ministry and ÚZSI are regulated in Government approved agreements. ÚZSI is given clear (lawful) conditions for operating within the territory of the Czech Republic.
- Military Intelligence (MI) remains an organic part of Ministry of Defence. Tasks assigned to MI are related mainly to military issues and MI is supposed to serve above

³ Most panelists think that last year's Government proposed reform does not solve above-mentioned problems of the intelligence system. Minority opinion expressed in the panel stressed the fact that radical organizational changes of intelligence services were already duly justified in the past.

⁴ Civil counter-intelligence service

⁵ Civil intelligence service



all the Army of the Czech Republic. A considerable option would be MI's incorporation into Army structures and its direct subordination to the Chief of Staff.⁶

- Operation areas of ÚZSI and the intelligence wing of MI should be defined in order to create a complementary process rather than competition. Intelligence services coordinator assures coordination at strategic level. MI does not primarily focus on foreign non-military intelligence via HUMINT (Human intelligence), even though threats are difficult to be distinguished as military or non-military. In some areas where the distinction is almost impossible (trade with military material, components of Weapons of Mass Destruction, dual-use commodities), there has to be an agreement between the services (an obvious role for the coordinator in such issues). Any diminishing of the powers of MI intelligence has to be preceded by assessments of real capacities of MI in order to avoid loss of important existing information sources. MI's role as a natural partner of military services of allied countries has to be taken into account, too.
- There should be only one place where technical means for collecting information via SIGINT (Signals intelligence) are gathered (today, ÚZSI and MI run SIGINT separately). Due to high financial and personal costs of SIGINT, its unification within one unit is needed under Czech circumstances. Besides costly technique, high qualifications of operators and specific database are required.⁷ There are, however, fundamental obstacles, to the unification of SIGINT units of different services. First of all, differences (depending on which particular service and unit is concerned) in status of employees and their benefits must be solved. Furthermore, a smooth flow of information acquired through SIGINT out to all services has to be assured. Similarly, a monopoly of one service over SIGINT has to be excluded (task of the coordinator).

⁶ This is unrealistic (according to a minority view within the panel).

⁷ It is important to figure out whether this will be a special service according to law or just a service organisation. Its placement must be dealt with, too.



Reorganisation of SIGINT cannot be carried out until proper preparation is done – it means a rather long-term horizon for such a measure.⁸ Precipitated displacement of technical units would cause more troubles than benefits. Large investments into SIGINT modernisation are necessary, too.

- Counter-intelligence section within MI is organisationally clearly marked. Its tasks are well defined as are its powers well distinguished from the intelligence part (assurance of control of intelligence means within the Czech Republic).
- Existing 601st Group of Special Forces is separated from MI (and consequently subordinated elsewhere). Information and force elements are thus separated from each other.

Summary of concrete short-term and middle-term measures requiring legislation:

1. Define responsibilities of individual Government ministers with regards to intelligence services. BIS is explicitly under responsibility of the Prime Minister, or the Government (amending laws on intelligence services and BIS needed).
2. Establish Government coordinator for intelligence services, with sufficient executive powers which are formally defined. The coordinator is subordinated to the Prime Minister. His or her actions towards intelligence services is controlled by an external control body in order to minimise the risk of influencing the intelligence services for particular partisan interests or even abusing the services. External control is also necessary for protection of the coordinator.

⁸ According to a minority view, the nature and imminence of threats require no delay for SIGINT unification.



3. Determine fixed terms of intelligence services directors (3-5 years) with a possibility to be re-appointed only once. Another question to be tackled is their employment after leaving the function.
4. Stress military orientation of Military Intelligence in order to avoid overlapping with civil services. Remove the word „security“ from § 5 paragraph 3, letter a) law number 153/1994 Sb. (this was added to the law as late as 2005). The first part of the definition of MI would then read as follows: Military Intelligence provides information originating abroad which is necessary for the defence of the Czech Republic.
5. Amend § 16 of the current law number 289/2005 Sb. on MI related to paper shredding concerning agents' accounting. Today's wording is problematic given the Czech constitution.
6. Set-up parliamentary control over ÚZSI. Such a control would be defined in the same way as stipulated in the law on MI. Both would be subjected (in the meantime) to one commission of the Lower Chamber. Definition of the control has to be included in the new law on ÚZSI, which would make the service a body on its own subordinated to the Prime Minister, and clearly define conditions of its activity within the Czech Republic.
7. Initiate preparatory work for SIGINT unification, including increase in investments for modernisation.

Long-term recommendation:

- Strengthen analytic activities of intelligence services and promote their cooperation with other analytic bodies within the state administration (especially when more complex threats are treated). Create a good milieu for deeper strategic analyses. Two bodies could be established for this purpose:



- a) One independent body (established and financed by the Government) working with classified information and conducting risk and threat assessments as background for operational activity (both offensive and defensive). This body would be chaired and managed by the intelligence services coordinator.⁹
 - b) A second body would be set-up in academia (there is a possibility of an institution financed and managed by the Czech Academy of Sciences, which would give it independence both from the executive and the Parliament). This body would use open sources and soft background papers coming from the administration and intelligence services. It would contribute to a better definition of threats and shaping a pro-active security policy.
- On all accounts, academic research on security threats and risks should be enhanced as well as the use of its outcomes for analytic activities of intelligence services. General improvement in the quality of security discourse is necessary, too.
 - Adequate personal policy is needed – which would assure working social conditions necessary for professionalism and loyalty of members of the intelligence services and minimising the information leakage risk.
 - More cooperation between the intelligence services and universities is necessary for recruiting more skilled employees. The question of former intelligence service employees must be dealt with, too.
 - Establishment (legislatively) of a more important control model allowing for looking into open dossiers and financial projects of the services. An acceptable option in this

⁹ Minority view: this body is not necessarily a great analytic organ but rather a kind of cell (or core unit) capable of involving/mobilising experts from intelligence services in case of risks becoming more imminent and serious.



regard would be the two degree control of the intelligence services (a combination of German, British, Dutch and Canadian models):

- a) One parliamentary committee for control of all Czech intelligence services (7 members maximum). It would have the same powers as the current commissions do, plus additional powers towards a newly established outer control body. The committee members would have sufficient clearance of the NBÚ (National Security Authority). This control organ would focus mainly on the budget and annual reports of the services. Unwritten rule would stipulate that parliamentary opposition would have majority and chair the committee. If not all appointed members of the committee have clearance at the moment of nomination, the outer control body (see below) would take over activity until the clearances are delivered. This body's mission would consist of general and overwhelming control.

- b) Outer control body (3-5 members in maximum). Members are proposed and appointed (after the Lower Chamber's committee approval) by the Prime Minister for fixed term. Member of the body (Czech citizens entitled to vote and at least 40 years old) could not have other constitutional functions. The control body has significant powers (e.g. access to open dossiers in case of "scandals" or control of financial resources) towards all intelligence services including NBÚ. It starts inquiry on its own or on the parliamentary committee's impulse.¹⁰ Inquiries' outcomes would be a matter of a report submitted to the Parliament and the Government. Candidates for membership would have to have received clearance at the appointment. A problem to be solved: administrative covering of the body allowing for adequate security assurance and information security. There is an inspiring example – in the United Kingdom, the control committee office is a part of the Government



office. The outer control body's mission would consist of pointed and in-depth control.

- Kick-off the methodical debate on models of the intelligence system set-up in the Czech Republic. The debated models should be assessed from the perspective of the current situation.

¹⁰ Or other institutions (needs to be clarified).