

# LEGAL ASPECTS OF CRITICAL INFRASTRUCTURE PROTECTION IN THE REPUBLIC OF MACEDONIA

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**Abstract:** *Global security challenges affected Macedonia and most of the Balkan countries in unique way. New security challenges defy legal absence of designated critical infrastructure and decentralized governmental approach in its protection. Existing decentralized network of governmental authorities in Macedonia will be only effective in its mission if reside on centralized planning and decentralized execution. Regarding the modern terrorists and organized crime modus operandi the centralized planning process needs to coordinate, facilitate and stimulate private corporate security in Macedonia. To prove this article will address the legal background and organizational structure for critical infrastructure protection. Finally, it will propose necessary adjustments of the critical infrastructure protection system in Macedonia.*

**Keywords:** *critical infrastructure protection, terrorism, organized crime, law*

## 1. INTRODUCTION

The collapse of Yugoslavia and the decision for independence in Macedonia among other issues brought the hard question of security in the context of new ideological sphere. Security vacuum created with the political shift was soon replaced with the clear decision i.e. to welcome and incorporate the Euro-Atlantic values. However, this new decision was not that easy to follow. While the independence euphoria spell over the nation founding leaders tasted bitterness of transition. Security, both internal and external, beside other issues (the name issue, border demarcation, struggle for international recognition, political accommodation of the changes) was just one of the hotspots for the old and newborn political elite.

The wave of privatization has entered security sector too. Understood as a function that supervise and manages the close coordination of all functions within the company that are concerned with security, continuity and safety, private security companies supposed to replace former corporate security. In practice, personal security and [physical security](#), and to some extent, crime prevention and detection and fraud deterrence (in later stages), were the only offer that private security companies could have offered.<sup>1</sup> There was nothing correlated with the information security, risk management, not to speak about the compliance and ethic

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<sup>1</sup> See for example: OSA, Agency for security of persons and prosperity, available at <http://www.osa.com.mk/Default.aspx?id=b7909f65-d327-45de-9f65-38ff39d5a65d>

programs, corporate governance, business continuity planning, environment safety and health. Having in mind that the nature of the market and the surrounding environment was not ready for such type of correlation this was quite acceptable. Even more, since there was no real experience in this field on both side (new owners of the corporation and the private security companies) the true value of corporate security has not been understood properly. This and the legal vacuum like in the rest of region have created quite negative image of private security companies.

Operating under the legal darkness for almost nine years private security companies in Macedonia have not avoided “thin red line” from organized crime accusation.<sup>2</sup> Transitioning from police and armed forces trained professionals switched to private security companies, protecting banks, schools, money transfers and important people. As some extreme critics see this “the private security sector became its own political, criminal and social force.”<sup>3</sup> Nevertheless, pursuit for Euro-Atlantic values over the years has helped Macedonian society to heal from the inappropriate transition.

The same is true for government security sector. Harmonization and fulfillment of the Euro-Atlantic standards initially has helped to define the roles between police forces and armed forces. These processes have also urged the establishment of the agencies and other governmental bodies like (Crisis Management Center or Protection and Rescue Directorate) that replaced emptiness and overlapping in the so-called internal security and protection area. The emergence of the new agencies and governmental bodies in this area has also helped to fulfill the legal vacuum in protection of the critical infrastructure in the Republic of Macedonia. Even though there is significant improvement in legal context and decentralization in the roles current security environment as we saw brings threats that require far more than just the nice structure and regulations.

The importance of choosing adequate approach in corporate security and critical infrastructure protection (CIP) in current complex security environment requires comprehensive approach. This could be achieved only if we apply complex system analysis considering patterns that go beyond conventional understanding of the problem. In order to achieve this we should look in to existing legislation, organizational design (i.e. dedicated agencies and existing mechanism) and the strategy for conducting corporate security and protection of the critical infrastructure in the Republic of Macedonia.

## **2. CORPORATE SECURITY’S LEGISLATION AND CRITICAL INFRASTRUCTURE PROTECTION IN THE REPUBLIC OF MACEDONIA**

Nine years of legal vacuum in corporate security in the Republic of Macedonia disappear when the Macedonian Parliament past the law that entrenched the private sector in this field. The “Security of property and personnel Act” (also known as the “Act for Private security agencies”) proclaimed the private security companies’ actions as “public interest actions”.<sup>4</sup> However, this as we have discussed above did not solve all of the problems. Beside

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<sup>2</sup> Cain, Phil, Separating "protection" from "corruption" in Eastern European private security companies, Global Post 23.08.2010, available at: <http://www.balkans.com/open-news.php?uniquenumber=67888>

<sup>3</sup> Ibid.

<sup>4</sup> Security of property and personnel Act, following the Macedonian Constitution, in article 2 proclaims the private security agencies work as “public interest” (Службен весник на Р.М. бр. 80/99 од 17.12.1999 г.).

mentality and inexperience public also was not ready to accept this radical shift. Thus, regardless of costs and benefits of using private sector in the Republic of Macedonia by the law critical infrastructure is directly protected only by highly decentralized governmental institutions. Private security sector is only indirectly involved through providing physical security for the private commercial enterprises that own specific infrastructure.

There is no legal document in Macedonia that contains summarized list of dedicated critical infrastructure. Instead, the network of laws regarding the CIP gravitate over the, Ministry of Interior,<sup>5</sup> Ministry of Defense,<sup>6</sup> Ministry of Transport and Communication,<sup>7</sup> Directorate for Security of Classified Information<sup>8</sup>, Crisis Management Center<sup>9</sup>, Directorate for and Protection Rescue.<sup>10</sup> Since there is no clear dedicated list of critical infrastructure further legal segmentation follows regarding the anticipated roles and service support for successful CIP. However, all of these documents include acts defining the responsibilities of the government authorities in case of emergencies as well as legislation dealing with issues (such as technical IT security for example).<sup>11</sup>

International legislation further facilitates legal background for CIP in Macedonia. This is understandable since cyber-security and environmental protection are on the security agenda in most of the international organizations to whom Macedonia is party.<sup>12</sup> One could observe this legislative in two directions. First, obligations incorporated from Macedonian's membership of these organizations (or willingness to join). In this context further legislative support comes from the fact that almost all critical infrastructures rely on energy and telecommunications for support. Second, most of the services that provide this support in Macedonia are owned or operated on a commercial basis (foreign private enterprises). Consequently, all bilateral and multilateral agreements in this regards have to be considered. Since these corporations in Macedonia run their security based on Macedonian private security agencies from legal point of view, one should also take into account the Act for security of property and personnel.

<sup>5</sup> "Law on Internal Affairs" (The Official Gazette of R.M no.92/09).

<sup>6</sup> "Law of Defense" (The Official Gazette of R.M no.8/92), and "Law for changes and addition of Law of Defense" (The Official Gazette of R.M no.5/03, 06 and 08).

<sup>7</sup> "Law of Security in railway traffic" ("The Official Gazette of RM", No. 40/07), "Law of transport of dangerous materials" ("The Official Gazette of RM", No. 92/07), "Law of Security in railway system" ("The Official Gazette of RM", No.48/10), The law of public transportation in ground traffic ("The Official Gazette of RM", No.114/09, No. 83/10, No. 140/10), The law of internal sailing ("The Official Gazette of RM", No. 55/07, No.26/09, No. 22/10), The law of electronic communications ("The Official Gazette of RM", No.14/07, No.55/07, No.98/08, No.83/10 No.48/10), The law of air traffic, ("The Official Gazette of RM", No.24/07, No.103/08, No.67/10).

<sup>8</sup> "Law of classified information", ("The Official Gazette of RM", No.9/04).

<sup>9</sup> "Law on Crisis Management" ("The Official Gazette of RM" No. 29/05).

<sup>10</sup> "Law on Rescue and Protection" ("Official Gazette of RM", No. 36/04).

<sup>11</sup> This include data protection, damage to data, fraudulent use of a compute, the handling of electronic signatures, etc. The law of classified information, ("The Official Gazette of RM", No.9/04)

<sup>12</sup> Many international organizations are dealing with this challenge and have taken steps to raise awareness, establish international partnerships, and agree on common rules and practices. European Union (EU), the Forum of Incident Response and Security Teams (FIRST), the G8 Group, NATO, the OECD, the United Nations (UN), and the World Bank Group. See for example: UN Resolution 57/239 of December 2002, where the UN General Assembly outlined elements for creating a global culture of cyber-security, inviting member states and all relevant international organizations to take account of them in their preparations for the summit. In December 2003, UN Resolution 58/199 further emphasized the promotion of a global culture of cyber-security and the protection of critical information infrastructures.

In sum, Macedonian legislation for CIP does not centralize responsibility only in one governmental authority. It consists of both, provisions that directly locate responsibility and the leading role of specific agency (we will also refer to this later), and provisions that imply responsibility (regarding the bilateral business agreements and corporate security). Speaking in terms of Penal code act CIP's regulations have also preventive role. Nevertheless, it could be argued that legal basis for CIP in Macedonia more or less, draws the organizational structure of governmental authorities involved in this process.

### **3. ORGANIZATIONAL DESIGN FOR CRITICAL INFRASTRUCTURE PROTECTION IN THE REPUBLIC OF MACEDONIA**

Ministry of Interior (MOI), Ministry of Defense (MOD), Ministry of Transport and Communication (MOTC), Crisis Management Center (CMC), Directorate for Security of Classified Information<sup>13</sup> (DSCI) and Protection and Rescue Directorate (PRD) build the list of governmental authorities directly involved in Macedonian CIP. There is no single leading governmental authority in Macedonia in this process. Which government authority will lead the overall process in CIP process (i.e. control and coordination) is situation-dependable.

MOI covers most of the CIP in ordinary situation. Although it is not stipulated by the law,<sup>14</sup> virtually MOI is leading governmental authority for CIP in Macedonia during ordinary-peace time situation. Operating under the MOI, Directorate for Security and Counter-intelligence covers not just most of the organized crime and terrorism issues, but also other issues regarding the CIP. As a result of the recent crime trend regarding the money transport issue, as additional implied task for MOI is to provide security for money transport even for the private corporation.<sup>15</sup> The two most important agencies that fully support the MOI's role in CIP in Macedonia are Protection and Rescue Directorate and Ministry of Transport and Communication.

Protection and Rescue Directorate has indirect but important deterrent role in CIP. PRD is leading body for protection and rescue in environmental disaster situation or other emergencies. These are situations that by the law could not be considered as a crisis, national emergencies or war situations. The Natural disaster threat assessment Act contains in-depth analysis of current risks that should be taken in to account for effective CIP.<sup>16</sup> This document also contains the list of private enterprises and none-governmental organizations that have specific role in providing support for protection and rescue. All of them are coordinated by PRD. Since this institution takes the lead in specific situation during ordinary peace-time law-enforcement issues still resides as MOI competence. Therefore, according to the Methodology for assessment and planning for the protection and security PRD prepares specific plans that contain specific tasks and duties for each of the involved government institutions state authority, local authority and private enterprises. In most of this situation MOI's assistance is necessary.

Leading governmental institution for transport CIP is Ministry of Transport and Communications. In defining the transport critical infrastructure in Macedonia MOTC

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<sup>13</sup> See more: Славески С. и Шанев Р., "Пристапот до информациите: помеѓу транспарентноста и заштитата на националниот интерес", во Современа македонска одбрана, број 14, декември 2006.

<sup>14</sup> Art. 5 from "Law on Internal Affairs" (The Official Gazette of R.M no.92/09).

<sup>15</sup> Stargoski, D, 2010, 450.000 Euros stolen from vehicle of Stopanska Banka Bitola, A1, available at: <http://www.a1.com.mk/vesti/default.aspx?VestID=118410>

<sup>16</sup> Natural disaster threats assessment Act, (The Official Gazette of R.M no.117/07)

follows NATO's definition.<sup>17</sup> Beside railway, and all ground transport infrastructure MOTC is leading governmental agency in air and water transport CIP too. MOTC approach in defining transport CIP goes beyond the transport infrastructure of goods and people. It also recognizes energy transport infrastructure (gas and gasoline) and telecommunication and internet infrastructure. MOTC practice this responsibility in coordinated support manner. MOI and MOD provide main assistance and enable MOTC successfully to coordinate transport CIP. However, information CIP and coordination for transport CIP with private sector is also highly involved in MOTC planning of transport CIP.

Protection of the information is crucial part of the overall CIP in Macedonia. Leading governmental agency for information protection (including critical information) is Directorate for Security of Classified Information.<sup>18</sup> MOI's Directorate for Security and Counter-intelligence is in close relation with the DSCI and provide crucial data and efforts<sup>19</sup> for successful information protection.<sup>20</sup> As specific part of the overall defense, Ministry of Defense and Intelligence Agency play pivotal role in information protection too. All of the military information protection is run by Military Service for Security and Intelligence. Inside the MOD Army of the Republic of Macedonia plan and conduct information operation (IO). DSCI also has close coordination with these MOD's bodies that support DSCI objectives. Macedonian Intelligence Agency is in close relation with MOI's Directorate for security and counter-intelligence and thus contributes to the overall information protection. Ministry of transport and communication also has significant role in information protection. MOTC manages telecommunication and internet provider sector and has crucial role for coordination with the private corporate that run telecommunications and internet. In the context of the industry information protection DSCI coordinate all of the activities within the industry sector. These activities are vigorously coordinated with private sector involved in industry sector in Macedonia.

If a crisis occurs, than by the law, situation rapidly changes.<sup>21</sup> During the crisis the Prime minister designate the leading person from the standing Steering committee accordingly.<sup>22</sup> Since 2009 Macedonia is 11th country that has established National Platform for Disaster Risk Reduction (NPDRR) under the Hyogo framework for action.<sup>23</sup> From security point of view basis for NPDRR comes from National Conception for Defense and Security (2003) and National Security Strategy of The Republic of Macedonia (2008). As a nationally owned and led forum of all risk reduction stakeholders NPDRR provides coordination, analysis and proposals for actions' priority. It requires concentrated activity, through the coordination and active involvement processes of the competent authorities. NPDRR covers competent crisis management state institutions, scientific and academic institutions, NGOs, the Red Cross as well as the business community. Thus NPDRR is crucial in Macedonian CIP since it identify, assess and monitor disaster risks and enhance early warning coordination. Responsible for preparation planning and organizing all of the activities

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<sup>17</sup> NATO Parliamentary Assembly, (2007), The Protection Of Critical Infrastructures, 162 CDS 07 E rev. 1, Annul Session, available at: <http://www.nato-pa.int/default.asp?SHORTCUT=1165>

<sup>18</sup> Art. 4 from the Law of classified information, ("The Official Gazette of RM", No.9/04)

<sup>19</sup> See more: Slaveski S., "Security of information - preconditionation for membership of the Republic of Macedonia to NATO", in Macedonia in NATO, MoD, Skopje, 2003, pp. 171-177.

<sup>20</sup> Art. 50 from the Law of classified information, ("The Official Gazette of RM", No.9/04)

<sup>21</sup> "Law on Crisis Management" ("The Official Gazette of RM" No. 29/05)

<sup>22</sup> See Art.13 and Art. 14 from the "Law on Crisis Management" ("The Official Gazette of RM" No. 29/05)

<sup>23</sup> United Nations, (2005) International Strategy For Disaster Reduction (UN ISDR), Brought under Hyogo framework for action, available at <http://www.unbrussels.org/agencies/unisdr.html>

necessary for crisis is Crisis Management Center (CMC). It maintains close relationships with MOI, DSCI, PRD and MOTC.

During the national emergencies and war, Macedonian armed forces will take the lead. Armed forces are also responsible for providing protection for designated military and defense infrastructure even in peace time. However, Armed forces' role in CIP is also crucial during crisis or during the international military operations. During crisis Army of the Republic of Macedonia declares units that should support civil crisis management. International military operations have also brought relatively new role of the armed forces in the context of the CIP. This basically includes infrastructure that is used for conducting military operations abroad.<sup>24</sup>

From all of the above it will not be that difficult to conclude that the organizational structure for CIP in Macedonia is highly decentralized and cross-governmental agencies (institutions) based. This network of institutions is consists of the institutions of the legislative, executive, and judiciary powers, infrastructure facilities of energy supply companies, information and communication technologies, infrastructure facilities that ensure the provision of vital goods, transport and traffic infrastructures. Facts that current security threats posed by organized crime and international terrorism are also network oriented raises serious concerns in choosing the right strategy for CIP.

#### 4. WAY AHEAD

Regardless of notion that CIP is not an isolated policy area but fits in the broader framework of counter-terrorism and civil protection policies, Macedonia needs an overall cross-institutional analysis which will determine current critical infrastructure. Good starting point is to look in what NATO or most of the NATO's and EU's members consider as critical infrastructure.<sup>25</sup> This will be in compliance with the Macedonian political elite's efforts and will also expand harmonization process not just in the security, but in overall social areas.

Accepting the NATO based approach in CIP strategy Macedonia needs to reconsider relationships with private security corporate in the context of CIP. NATO accepts the presumption that no critical infrastructure can be 100% secured. This means that the efforts in CIP need to focus on early warning, prevention, perpetrators (terrorists or criminals) mistakes and reducing the consequences. All of this includes and considers corporate security.<sup>26</sup> Therefore, the designated corporate security should not be avoided in CIP planning, management and execution.

No matter how expensive it might be, Macedonia needs centralized approach in managing the planning process in CIP. In fact, Macedonia needs to fulfill the gap between theory and

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<sup>24</sup> Art. 199-202 from "The Law of service in the Army of Republic of Macedonia", ("The Official Gazette of RM" No. 36/10)

<sup>25</sup> Like for example: European Program for the Protection of Critical Infrastructure (EPCIP) and the Critical Infrastructure Warning Information Network (EUCIWIN). EPCIP refers to the doctrine or specific programs created as a result of the European Commission's directive EU COM(2006) 786 more on this see in: Gustenau, Gustav, Concept of Homeland Security in EU: a Challenge for Austrian EU presidency, in Brimmer, Esther, Transforming Homeland Security Center for Transatlantic Relations, Washington D.C.2006 p. 74.

<sup>26</sup> We learned that with the process of privatization Macedonia introduced private sector in critical infrastructure. This as we saw, is true especially in energy sector (power plant) and communication and internet provider sector. All of these companies higher private security companies for physical security. This means that they will play crucial role in achievement of specific standards to necessary CIP criteria.

practice. This will also help to analyze and further improve existing legislative, organizational structure, mechanisms and methodology in CIP approach. Recent fatality of terrorist attacks and its aftermath consequences overrun the costs of preventive approach to protect critical infrastructure.

In order to be effective in this centralized planning process Macedonian government needs to coordinate, facilitate and stimulate all the authorities (especially private corporate) that directly or indirectly build security network in CIP. In terms of coordination recent practice shows that many governments in fact have established cross-sector advisory boards for CIP.<sup>27</sup> Since centralized planning is not new in Macedonian security tradition existing platforms of this kind (like for crisis management) could serve as well designed base for CIP.<sup>28</sup> The goal of facilitation should be support of the specific elements of the security network (especially private corporate) and enable them to work efficiently by creating a network-friendly environment.<sup>29</sup> Stimulation of the network is crucial. Sometimes private companies will have specific concerns with participating in the CIP network.<sup>30</sup> From all of the above it would not be hard to conclude that Macedonia is on a right way in CIP. Nevertheless, specific challenges should be address immediately before it is too late.

## 5. CONCLUSION

The global security has changed. New complex threats posed by modern terrorism and organized crime has urged many states to reconsider their national security strategies. These changes require states not only to concentrate on defense against immediate dangers or criminal prosecution after the fact, but to focus on preventive security measures as well. In this regards societies have become more complex and vulnerable. Consequently the spectrum of possible causes of interruption and crises has become broader and more diffuse. In this regards numerous states and organizations have highlighted the role of critical infrastructure protection in their respective national security strategies. Introducing the Euro-Atlantic values and struggling with the last processes of transition Macedonia is persistently focus on critical infrastructure protection. Even though there is no list of

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<sup>27</sup> For example: The National Infrastructure Advisory Council in the United States; the Critical Infrastructure Advisory Council (CIAC) in Australia; or the Association of Italian Experts for Critical Infrastructures (AIIC).

<sup>28</sup> Former security was actually organized in similar manner. It was based on central planning and central execution. Central planning is crucial for private sector involvement in this process. Existing Steering committee for crisis management is good background to expand on. However, for steering the networks indirectly one must have a good knowledge about the structures and tasks of very different networks in CIP. The most difficult part probably consists of monitoring all the different networks.

<sup>29</sup> Governments can promote the networks, advise them (e.g., by creating general frameworks for interaction or by developing model agreements), and sometimes they even have to grant exemptions for networks from laws that impede private collaboration. An example for such a case is the exemption for Information Sharing and Analysis Centers (ISACs) from the Freedom of Information Act (FOIA) in the United States. See more at:

<http://www.computerworld.com/action/article.do?command=viewArticleBasic&articleId=72962>

<sup>30</sup> It would be legitimate for them to avoid this relations because they can easy be a target if are correlated with the government. However, Governments can provide the networks with financial incentives, with exclusive information, or with administrative support to make the networks more attractive and lower the costs of participation. For a discussion on incentives for private engagement in networks see: Gal-Or, E., Ghose, A. (2005)., *The Economic Incentives for Sharing Security Information*. In: *Information System Research 16 (2)*, pp. 186–208.

designated critical infrastructure, Macedonian legislative and organizational structure analysis pointed that critical infrastructure protection is decentralized, government-run and network organized. Protection of institutions of the legislative, executive, and judiciary powers, infrastructure facilities of energy supply companies, information and communication technologies, infrastructure facilities that ensure the provision of vital goods, transport and traffic infrastructures build this network of critical infrastructures. Macedonia does not have clearly defined leading governmental institution for critical infrastructure protection. However, experiences with the steering committee in crisis management sector promise that Macedonia could easily build effective centralized planning for decentralized critical infrastructure protection. Macedonian Euro-Atlantic aspiration will not just support this but will also complement in coordination, facilitation and stimulation of the private sector especially, the private corporate security in the context of critical infrastructure protection. Although Macedonia is on a right path, challenges in critical infrastructure protection require Macedonian authorities' immediate consideration before it is too late and we face 2011 Moscow scenario.

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