The Representative on Freedom of the Media

Comments on the Moldovan Draft Law on State and Official Secrets [1]

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Introduction

The draft Law on State and Official Secrets represents a lost opportunity for the Government of Moldova to improve public accountability and democracy by reducing unnecessary secrecy. The current Law on State Secrets fails to adequately balance the needs for protecting national security with the needs for free access to information in a democratic society though its broad and vaguely defined coverage. The Draft law compounds these problems by broadening the scope of the law, creating a new category of "official secrets" that have nothing to do with national security, extending the duration of secrets unreasonably, and limiting oversight while extending the role of the intelligence service.

The Government should reconsider this draft and step forward with a new proposal to replace the Law on State Secrets after consultation with other government bodies, civil society and media organisations.

Secrecy and its Costs

Every nation rightly sets the protection of national security as a top priority. To realize this, most countries have adopted some form of regulations for the protection of information of key importance to national security. These include exemptions in national constitutions and freedom of information acts, specific laws on state secrets, and penalties for their misuse.

[1] This analysis is based on translations of the draft law on information provided to the author in August 2005.
[2] Homepage: http://www.privacyinternational.org/foi

However, to be effective, these protections must be limited in scope, reasonable, and balanced with the need for public access to information in a free and democratic society. A properly functioning security of information system recognizes that a limited amount of sensitive information needs to be protected and then only for the duration that it is sensitive. Less sensitive information is given lesser protections or none at all.

It is well recognized that excessive secrecy by government bodies is counterproductive for government. The most important consequence is that it undermines public trust, especially when used in abusive ways such as to support political agendas or hide abuses, corruption and mismanagement. If the public only believes that the government is doing something for its own benefit because excessive secrecy has led the public to be uninformed or misinformed about government activities, the credibility and legitimacy of that government is seriously undermined and it will have grave difficulties in gaining public support for any of its activities.

As US Supreme Court Justice Potter Stewart noted in the *Pentagon Papers* case in 1971, "For when everything is classified, then nothing is classified, and the system becomes one to be disregarded by the cynical or the careless, and to be manipulated by those intent on self protection or self-promotion. I should suppose, in short, that the hallmark of a truly effective internal security system would be the maximum possible disclosure, recognizing that secrecy can best be preserved only when credibility is truly maintained."[3]

Excessive classification leads to a weakening of the protections for important information. Even the most secret of files can be leaked when the classification system is not carefully organized. In Hungary, the former secret police file of Prime Minister Peter Medgyessy was leaked in 2002 revealing that he had once worked for a branch of the intelligence services. In April 2003, many of the security files of the UDBA, the former Yugoslavian secret police were published on a web site in Thailand by the Slovene Honorary Consul for New Zealand Dusan Lajovic. The documents were on over one million people including the officials, collaborators, and targets of surveillance.[4] In February 2005, a list of 240,000 names of agents, informers, and victims of the Polish Communist-era secret police was leaked and placed on the Internet.

Excessive classification also prevents government agencies and those outside from learning important information and lessons. In China, excessive secrecy over the SARS virus led to its spread worldwide. The effects of secrecy are still being felt as new avian flu viruses have emerged and there is little knowledge on how to prevent more outbreaks. In South Africa, the secrecy around the decommissioning of its nuclear program prevents other countries from learning its lessons and preventing proliferation, which can impose grave threats to the national security of many nations.[5] The September 11 Commission in the United States found many examples of excessive classification preventing information sharing between government bodies.[6]

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[3] NY Times v. US, 403 US 713 (1971) . For more details, see National Security Archive, The Pentagon Papers Case. http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB48/

[4] REF/RL Balkan Report, 25 April 2003.

[5] See South Africa History Archive, Conference report of "Unlocking South Africa's Nuclear Past", Available at http://www.wits.ac.za/saha/nuclearhistory/

[6] National Commission on Terrorist Attacks Upon the United States, Final Report. http://www.9-11commission.gov/report/index.htm

There are also direct monetary costs. The creation and protection of classified information imposes significant burdens of public authorities. The US Information Security Oversight Office lists the areas where there are direct costs for secrecy:

- Personnel Security
- Physical Security
- Information Security (includes three subcategories: Classification Management, Declassification, and Information Systems Security for Classified Information)
- Professional Education, Training and Awareness
- Security Management and Planning

In the US, the estimated cost of creating and protecting classified information was $7.2 billion in 2004, not including the CIA.[7] Another $1 billion was spent by private businesses under contract to government bodies.

Comments on the Draft Law

Broad Scope of the State Secrets

Article 5 of the Law of State Secrets sets out four broad categories of information that can be classified as state secrets: military; economy, science and technology; foreign policy; and state security. Under each category, there are a number subcategories and most of the sub categories themselves apply to multiple areas. In total, over one hundred different categories of information are covered. The government has developed a detailed list of information to be kept secret which is published. The heads of public bodies create detailed lists of information in their possession which is not published.

Regrettably, instead of taking the opportunity to clarify and narrow the categories to only those that are essential for protecting national security, the draft repeats this approach and even expands the categories in many areas. This includes information outside of the traditional defense and intelligence sphere such as transport, communications, state orders, scientific research, extraction of raw materials, and financial, currency and lending policy.

This problem is compounded by the secrecy of the lists developed by the agency in Article 10(4). This will effectively allow heads of public authorities to classify any information after the fact when it appears that it might be embarrassing or critical.

The Law on State Secrets requires that to be classified as a state secret, it must be found that the information, "may infringe the security of the Republic of Moldova." The draft continues this approach in Article 6(2) where information may be classified if it, "may inflict harm upon state and/or endanger the security of the Republic of Moldova". This standard is clearly too low and presents almost no substantive barrier. For example, the Hungarian Law on State Secrets requires that its access or use would, "without doubt damage or jeopardize the interests of the Republic of Hungary before it can be classified as a state secret. The Peruvian Law on Transparency and Access to Information requires that information can only be

[7] Information Security Oversight Office, 2004 Report on Cost Estimates for Security Classification Activities, May 2005. http://www.archives.gov/isoo/reports/2004-cost-report.html

withheld if it would "cause a threat to the territorial integrity and/or survival of the democratic systems and the intelligence or counterintelligence activities of the [intelligence service]."

Secondly, the extensive list of information to be classified is overly sweeping. The bill should be redrafted to limit the areas that are covered under the act to only those related to national security. For example, the US Executive Order on Classified National Security Information sets out eight areas that are eligible for classification:

> (a) military plans, weapons systems, or operations;
> (b) foreign government information;
> (c) intelligence activities (including special activities), intelligence sources or methods, or cryptology;
> (d) foreign relations or foreign activities of the United States, including confidential sources;
> (e) scientific, technological, or economic matters relating to the national security, which includes defense against transnational terrorism;
> (f) United States Government programs for safeguarding nuclear materials or facilities;
> (g) vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to the national security, which includes defense against transnational terrorism; or
> (h) weapons of mass destruction.[8]

Other countries have taken an even more specific method to ensure oversight. In Estonia, the State Secrets Act sets out specifically each of the types of information that can be classified, under which category they can be classified, and for how long they can be classified.[9] In Sweden, all exemptions to the Freedom of the Press Act are specifically adopted by Parliament as amendments to the Act on Secrecy.[10]

Finally, the process by which the more detailed lists of information by each public body are developed should be subject to public consultation.

Recommendations

- *Reduce list of classified information to only information that the protection of is essential to protect national security.*

- *Require public consultation before publication of the List of Classified Information and the detailed departmental lists.*

Categories of Information Prohibited from being Designated as State Secrets

[8] Executive Order 13,292 on Classified National Security Information, March 28, 2003.
[9] State Secrets Act. RT I 1999, 16, 271 §§ 4-8.
[10] Act on Secrecy of March 20, 1980 as amended.

Article 7 of the draft Law sets out six categories of information that cannot be classified as a state secret. These include violations of constitutional, human and citizens' rights, condition of the environment, natural disasters and calamities, statistical information on socio-economic issues such as living standards and education, illegal actions by officials and public authorities and information under international treaties that cannot be classified.

While this section is based on Article 12 in the Law on State Secrets, it does not specifically include several categories including information on trade and justice, inactivity of public authorities and officials, and a general prohibition if classification "negatively affects the implementation of the governmental and industrial programmes for social, economic and cultural development, or includes competition of entities." All of these are important areas and it is not clear why they have been removed.

In addition, the areas that are covered in both acts are significantly narrower than are found in other nations' laws.

- The Russian Federation Law on State Secrets and the CIS Interparliamentary Assembly Model Law on State Secrets[11] prohibit the classification of information about the health of leaders, "privileges, compensations and benefits granted by the State to individuals, officials, and also to enterprises, institutions, and organizations", and gold and foreign currency reserves. Recently, President Putin has declassified information on platinum and diamond production and reserves.

- Under the Romanian Law on Protection of Information, information cannot be made a state secret, "for the purpose of hiding law infringements, administrative errors, limitation of access to information of public interest, illegal restriction of exercising the rights of any person or harming other legitimate interests." It also prohibits the classification of basic scientific information with no connection to national security.[12]

- The Law of Georgia On State Secrets prohibits the classification of international agreements and treaties, most normative acts, and non-military maps.

- The US Executive Order on Classified National Security Information prohibits the classification of information to, "conceal violations of law, inefficiency, or administrative error, prevent embarrassment to a person, organization or agency, retain competition, or prevent or delay the release of information that does not require protection in the interest of national security information."

Recommendation

- *The categories of information that cannot be classified as a State Secret should be expanded.*

Public Interest Releases

[11] Model Law On State Secrets. Adopted at the twenty-first plenary session of the CIS Interparliamentary Assembly (decision № 21-10 of 16 June 2003).

[12] Law no. 182 of April 12th, 2002 on the protection of classified information. Published in the Official Gazette, Part I no. 248 of April 12th 2002.

The law should also recognize that there are instances when information that is properly classified should be released because there is a strong public interest in its disclosure. The draft should include provisions in those cases to prohibit punishment of the individual who made the release.

This provision is already recognized in Moldovan and international law. The Law on Access to Information and the draft Law on Information include protections for when a person releases information when it is in the public interest to release the information. Article 7(5) of the Law on Access to Information states:

> No one can be punished for the fact that he or she made public information with limited access, if releasing this information does not damage or cannot damage legitimate interests related to national security, or if the public interest for knowing the information is larger than the damage that can result from its dissemination.

The Council of Europe Civil Law Convention on Corruption, which was signed by Moldova in 1999 and brought into force in 2004, also recognizes that employees who disclose information about corruption should not be subject to sanctions.[13]

The Law on State Secrets and the draft Law on State and Official Secrets do not include this important provision. This section is especially important in light of the application of the law to information generated and held by private bodies such as civil society organisations and the media (see below for analysis of that section).

Recommendation

- *The public interest whistle-blower protection provision from the Law on Access to Information should be incorporated.*

Tiers of State Secrets Undefined

The Law on State Secrets and the draft Law on State and Official Secrets both set up three tiers of state secrets: Special Importance, Highly Confidential, and Secret, that are to be protected. This is consistent with international practices and is necessary to ensure that information that is more sensitive is better protected than less sensitive information.

However, both the existing law and the draft fail to adequately define the criteria necessary to apply the categories, which leads to confusion and unnecessary over-classification. While other countries set standards for classification in their laws, the draft only generally states that, "The classification level of state classified information should correspond to the degree of harm it may inflict upon the security of the Republic of Moldova" which provides little guidance.

A better approach adopted in many other nations gives more detail on the levels of harm that much be reached for each of the categories. The Romanian Law on Protection of Information

[13] Council of Europe, Civil Law Convention on Corruption, ETS No 174. http://conventions.coe.int/treaty/en/Treaties/Html/174.htm

uses the same three categories as the Moldovan law. It sets out what is necessary for classification under each category.

> - top secret of special importance - information whose unauthorized disclosure is liable to bring prejudice of special gravity to national security;
>
> - top secret - information whose unauthorized disclosure is of a nature to produce serious damage to national security;
>
> - secret - information whose unauthorized disclosure is of a nature to produce damage to national security;

The Polish Classified Information Protection Act sets strong criteria for its two levels of state secrets:

> "top secret"--where an unauthorised disclosure thereof might cause a grave threat to the independence of the Republic of Poland (or to) the inviolability of its territory or its international relations, or carry a threat of irreversible or heavy injuries to national defence interests, to the security of the state and citizens or to other important state interests, or expose those interests to great danger; (and)
>
> "secret"--where an unauthorised disclosure thereof might cause a threat to the international position of the state, to national defence interests, security interests of the state and citizens, or other important interests of the state, or expose those interests to a substantial damage.[14]

The US Executive Order requires "exceptionally grave damage to the national security" for a "Top Secret" classification and "serious damage" for a "Secret" classification. In addition, the person or organisation that issues the classification must also "identify or describe" the threat to allow for more informed review of the order by higher authorities.

Recommendation

- *The levels of protection and harm should be defined in the legislation for each of the three categories of classification.*

Expanded Duration of Secrets

Related to the above commentary on the diffuse nature of the categories of classification, the draft unnecessarily extends the time that information can be held as a state secret for classification from the existing law.

The Law on State Secrets sets a maximum classification period for the "Of Special Importance" and "Strictly Confidential" categories at twenty-five years and ten years for Secret information. These time frames are already too long. Typically, government officials in most countries apply the maximum length as a default under the perception that it is better

[14] Classified Information Protection Act of 22 January 1999.

to be overly careful. The end result is the over-classification of information and the monetary and social costs of unnecessary protection are significant.

Article 13 of the draft law makes this situation worse by extending the durations to thirty years for "Of Special Importance" and "Strictly Confidential" and fifteen years for Secret.

The current international trend is to set shorter limits on the maximum duration of classified information to between fifteen and twenty years. In Georgia, the Law on State Secrets sets the duration for information categorized as "Of Extraordinary Importance" at 20 years, Top Secret for ten years, and Secret information can only be withheld for five years.[15] The Law on Protection of State Secrets of the Republic of Kazakhstan defines as state secrets as having a limit of twenty years unless there are urgent reasons such as defensive capability.

In the US, the Executive Order on Classification sets a default for information to be classified for ten years unless the person who issues the classification can identify an earlier date or event that would cause it to be available earlier or makes a specific determination that it is sensitive to near a later date. Since its adoption, fifty percent of all information is set for declassification in 10 years or less.[16]

Other laws set different times depending on the specific type of information. The Estonian State Secrets Act sets out the maximum classification duration for each category of information so for example risk analysis and the stockpile of weapons held by defence and security agencies are only classified for ten years while other information such as intelligence budgets and surveillance are eligible for withholding for longer periods.[17]

Recommendation

- *The duration of the categories should be reduced and set accordingly to their sensitivity.*
    - *Of Special Importance – 15 years*
    - *Strictly Confidential – 10 years*
    - *Secret – 5 years*

Automatic Declassification of Older Documents

It should be obvious that nearly all records over twenty years old have little sensitivity and should be made public. Many were written long before modern recognition of the importance of making information public and are largely over-classified. This is especially true of Cold War-era documents. The release of these documents will free up valuable resources that are currently being used for their protection and allow government authorities to just focus on keeping important information secret.

Many countries have begun the process of bulk declassification of older historical records. In Bulgaria, the Prime Minister by executive order in 1994 decreed that the secret police files of the communist-era were to be all declassified. In Poland, the Classified Information

[15] Law of Georgia on State Secrets, No. 455-Is, 29 October 1996.
[16] Information Security Oversight Office, Annual Report 2003.
[17] State Secrets Act. RT I 1999, 16, 271.

Protection Act required that all pre-1990 records be reviewed and those found to be not necessary to continue to keep secret were automatically released within 36 months. In Hungary, the Act on State and Official Secrets required the review and declassification of all records from before 1980 within one year of its enactment.

The 1995 US Executive Order requires that all information 25 years and older that has permanent historical value be declassified by December 2006 unless it was specifically exempted and is subject to outside review. It changed the burden so that its costs the agency to not declassify information by making it justify why it should not be declassified rather than why it should be. It also set up a parallel system of oversight. Between 1995 and 2001, over 950 million pages were declassified, 100 million pages in 2001 alone.[18]

A number of countries have adopted specialized laws where there is sensitive information that is of strong interest to the public. Following the transition to democracy, most Central and Eastern European countries adopted laws to address the files of the former secret police forces. These files are made available to individuals to see what it being held on them.[19] The most advanced law on access is in Germany. Since 1991, a law allows for access to the files of the Stasi, East Germany's former security service, by individuals and researchers. There have been two million requests from individuals for access to the files and three million requests for background checks since the archives became available. Researchers and the media have used the archives 15,000 times.

Recommendation

- *All records from the pre-democratic era should be reviewed and released.*

Classifying Private Information

Article 15 of the draft law allows for the heads of public authorities at their own initiative to classify as state secrets information in the possession of companies and citizens. A contract is created to allow for compensation to the owner of the lost value. If the owner of the information refuses to sign the contract, the terms can be imposed on the owner, including an obligation to follow the provisions of the law regarding the protection and release of the information.

This provision is not found in any of the laws of members of the European Union and countries in South East Europe. It is only found in CIS states such as Russia, Uzbekistan and Kazakhstan. It is often used in those countries against media and independent researchers who are revealing information critical to government bodies.[20]

Recommendation

[18] Information Security Oversight Office 2001 Report to the President, September 2002.
[19] See Hungary. Act XXIII of 1994 on the Screening of Holders of Some Important Positions, Holders of Positions of Public Trust and Opinion-Leading Public Figures, and on the Office of History. http://www.th.hu/html/en/torv.html; Lithuania, Law on Registering, Confession, Entry into Records and Protection of Persons who Have Admitted to Secret Collaboration with Special Services of the Former USSR. No. VIII-1436. November 23, 1999. As amended by June 13, 2000. No. VIII-1726. http://www3.lrs.lt/cgi-bin/getfmt?c1=w&c2=123807
[20] See Bellona, The Nikitin Case. http://www.bellona.no/imaker?id=15049&sub=1

- *This provision should be removed. In its place, the draft should include a specific provision that information held by persons who have not received information as a condition of government employment are not subject to the law.*

New "Official Secrets" Category

One of the largest problems in the draft is the creation of a new category of information designated as "official secrets" which are not related to national security. Official secrets are defined as "state protected information in the public authorities field of activity, the disclosure or loss of which may inflict damage upon public authorities and/or state and to which access is limited in work interests." The information to be classified is determined by the heads of public authorities without any public input.

Unlike the section of state secrets, there appears to be very little limit to what is covered by this category except what is defined as "work interests". It would appear to be a catchall that would allow the withholding of all information held by government bodies for a minimum of five years and seriously undermine public access to information. Ironically, given the lack of standards, information in this category has less accountability than the State Secret information.

This is further compounded by allowing the detailed lists of information to be classified that are defined by the heads of the public authorities to be included as a separate chapter in the classified Lists of information so the public will not even be able to see what areas have been included in this category.

This section is inconsistent with the guarantees in Article 34 of the Constitution on the public right of access to information, legislation such as the Law on Access to Information, and international treaties on access to information such as the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) which Moldova signed in June 1998 and ratified in August 1999. As a matter of law, the existing Law on Access to Information contains adequate provisions to ensure that sensitive information that needs to be protected is exempted from public release. It is unnecessary to include this provision in a law on protection of much more sensitive information and is likely to lead to a significant reduction in public access to information.

Recommendation

- *This section should be removed.*

Oversight

The Law of State Secrets created an Interdepartmental Commission for State Secrets, a collective body that "coordinates the activity of the state administrative bodies". It among other things draws up the list of state secrets, reviews requests for declassification, and approves transfers of classified information to other countries. Under Article 29, the Ministry

of National Security is responsible for inter-departmental control. This approach is continued in the draft with additional powers given to the Security and Information Service. The draft bill appears to consolidate the authority for state secrets policy and enforcement in the Security and Intelligence Service while reducing the role of the President and the Parliament.

There is a growing recognition that a key means to ensure that classification policy is kept balanced is to have an independent body to develop policy, review decisions and monitor progress. In the United States, the Information Security Oversight Office, a division of the National Archives, has extensive powers.[21] Its functions include:

> **Implementing Directives, Instruction and Regulations:** ISOO develops, coordinates and issues implementing directives and instructions regarding Executive Order 12958, as amended, and Executive Order 12829, as amended, that are binding on executive branch agencies. ISOO also reviews and approves the implementing regulations issued by the agencies.
>
> **Liaison, Inspections and General Oversight:** ISOO's analysts maintain continuous liaison with their agency counterparts on all matters relating to the Government-wide security classification program and the National Industrial Security Program. ISOO also conducts on-site inspections and special classified document reviews to monitor agency compliance with the Order.
>
> **Security Education and Training:** In addition to monitoring each agency's security education and training program, ISOO develops and disseminates security education materials for Government and industry.
>
> **Complaints, Appeals and Suggestions:** ISOO receives and takes action on complaints, appeals, and suggestions from persons inside or outside the executive branch regarding any aspect of the administration of Executive Order 12958, as amended, and Executive Order 12829, as amended.
>
> **Statistical Collection, Analysis and Reporting:** Each year ISOO gathers relevant statistical data regarding each agency's security classification program. ISOO analyzes these data and reports them, along with other relevant information, in its Annual Report to the President.
>
> **Spokesperson for the Government's Security Classification Program:** The Director of ISOO serves as the Government's spokesperson to Congress, the media, special interest groups, professional organizations, and the public on matters related to the security classification program.
>
> **Special Studies and Projects:** ISOO conducts special studies on identified or potential problem areas and develops remedial approaches for program improvement. ISOO also develops and issues standardized security forms designed to promote uniform implementation of the program and to reduce costs by eliminating duplication.

[21] The Information Security Oversight Office (ISOO). http://www.archives.gov/isoo/

Policy Changes: ISOO recommends policy changes to the President through the National Security Council. As appropriate, ISOO convenes and chairs interagency meetings to discuss matters, including possible policy changes, pertaining to the security classification program.

In Bulgaria, the Law for the Protection of Classified Information created the State Commission for the Security of Information (SCSI), a new state body responsible to the Council of Ministers and National Assembly.[22] The SCSI has been given extensive powers over control of classified information. In Hungary, under the Secrecy Act of 1995, the Parliamentary Commissioner for Data Protection and Freedom of Information is entitled to change the classification of state secrets.[23]

Other countries have created specialized commissions for certain information or purposes. In France, a 1998 law on classification of national security information[24] created the Commission consultative du secret de la défense nationale (CCSDN), which gives advice on the declassification and release of national security information in court cases. The advice is published in the Official Journal.[25] In Romania, Czech Republic, Germany, and many other CEE countries, specialized bodies have also been created to oversee the processing and eventual release of information relating to the archives of the former secret police. In Germany, since 1991, the German Federal Commission for the Records of the State Security Services of the Former GDR (the Gauck Authority) has a staff of 3,000 piecing together shredded documents and making files available.[26] In Romania, the 1999 Law on the Access to the Personal File and the Disclosure of the Securitate as a Political Police created the National Council for the Search of Security Archives (CNSAS) to overseee the archives of the Securitate and facilitate Romanian citizens' access to their Securitate files. It also allows public access to the files of those aspiring for public office and other information relating to the activities of the Securitate. [27]

Political and Public Oversight

A properly functioning system of classification requires regular oversight by Parliament and other external bodies representing the interests of the public as their representatives. The draft law appears to reduce the level of external oversight from the already low levels in the current legislation.

In Article 28 of the Law on State Secrets, the Parliament specifically authorized a Parliamentary committee to oversee the observance of the law and expenditures and required state administrative bodies to provide information to the committees. In the draft law,

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[22] Law for the Protection of the Classified Information. Prom. SG. 45/30 Apr 2002, corr. SG. 5/17 Jan 2003
[23] Hungary, Act LXV of 1995 on State Secrets and Official Secrets.
[24] Loi no 98-567 du 8 juillet 1998 instituant une Commission consultative du secret de la défense nationale, http://www.legifrance.gouv.fr/WAspad/UnTexteDeJorf?numjo=DEFX9700140L See Rapport 2001 de la Commission consultative du secret de la défense nationale, http://www.ladocumentationfrancaise.fr/brp/notices/014000754.shtml
[25] For a copy of decisions, see http://www.reseauvoltaire.net/rubrique387.html
[26] Web Site: http://www.bstu.de/home.htm
[27] Homepage: http://www.cnsas.ro/indexeng.html. Law No. 189/7 December 1999 on the access to the personal file and the disclosure of the Securitate as a political police, http://www.cnsas.ro/legeng.htm. See Ioana Borza, Decommunization in Romania: A Case Study of the State Security Files Access Law http://www.polito.ubbcluj.ro/EAST/East6/borza.htm

provisions relating to the Parliament have been eliminated. The role of the President has also been transferred to the Government while many of the government's activities have been shifted to the Security and Information Service. This concentration of power in the government and SIS is concerning. If anything, Parliament should be given a more significant role in oversight including holding regular meetings on current developments and policy.

Another important issue missing is any public accountability of secrecy. In the United States, the Information Security Oversight Office collects statistics on the classification and declassification of information each year and presents a public document on the amount of classification and its estimated costs. The document provides an important role in public debate over the system.

Recommendations

- *Create independent body to coordinate and oversee secrets policy outside intelligence service.*
- *Increase role of Parliament in oversight.*
- *Statistics on the amount of information classified and declassified and costs should be published annually by the independent oversight body.*

Conclusion and Recommendations

The draft bill does not significantly improve the existing problems of excessive secrecy in Moldova. In many areas, the bill will exasperate those problems through the broadening of the categories of information eligible for classification, the lack of standards, the creation of the new category of "official secrets" and the consolidation under the Security and Intelligence Service of oversight.

The Government should withdraw this draft and commence discussion with experts, civil society organisations, the media and the public on problems with the current system and means of improving those problems though a modification or replacement of the existing Law on State Secrets.

Recommended changes:

- Reduce application of state secrets to only those things essential to the protection of national security.
- Expand categories of information prohibited from classification
- Better define categories of State Secrets
- Reduce duration for State Secrets
- Create declassification of records from pre-democratic era.

- Eliminate category of “Official Secrets”.

- Eliminate application of law to information generated or held by private organizations and individuals.

- Create independent commission to oversee classification system.

- Increase role of Parliament in oversight.