

MASS-MEDIA AS A CIVIL-DEMOCRATIC OVERSIGHT MECHANISM IN ROMANIA

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Abstract

The scope of this article is to contribute to the relatively neglected topic of mass media as an oversight mechanism of the intelligence sector in post-communist settings by focusing on the case of Romania. I use prior research in intelligence studies and build up an analytic framework for the assessment of the effectiveness of mass-media, understood as, on one hand, the ability to generate changes (ranging from adjustments in leadership to thorough democratic reforms) and, on the other hand, to ensure that the operational capacity of intelligence services is not significantly impacted by public disclosures if information related to its specific activity. The framework considers several variables that, according to literature, limit the effectiveness of mass-media in post-communist contexts – namely the authoritarian past (seen as a source of bias against intelligence services in general); access of the media to relevant resources (expertise and information); the independence of the journalists involved; the legal levers at their discretion. I test the framework by describing how these limitations manifest in the Romanian context, and how they impact mass-media performance in three recent scandals of the national intelligence sector.

Keywords

Civil-democratic oversight; democratisation; intelligence agencies; mass media; Romania.

1. MASS-MEDIA AS AN OVERSIGHT MECHANISM

Civil-democratic oversight of intelligence agencies has long been considered an important step towards democratisation, especially relevant in post-authoritarian transitions. The establishment of multiple and complementary mechanisms is considered key to an effective oversight framework (Gill 2016), since no single such mechanism can take on single-handedly the task of governing a sector that is highly opaque and resistant to reform. In most settings, formal oversight mechanisms (e.g. parliamentary, judiciary) are not sufficient, as they become intermediaries in a “double” principal-agent equation: the primary principal is the public, the secondary principal – the public, and the agent – intelligence agencies. The public usually has little to no access to information pertaining to the conduct of oversight. The oversight and all related information are managed/administered by the politicians, themselves in possession of limited information about the activity of the intelligence services (Caceres-Rodriguez and Landon Murray 2019, 146). This prompts the need for additional mechanisms that, to some extent, bypass this chain of oversight and ensure that the public is informed and has a certain (but limited) degree of input in the activity of formal oversight mechanisms and the intelligence sector itself (comprised, after all, of public agencies, not essentially different from any others in the public sector). Intelligence studies literature (e.g., Hillebrand 2015, Gill 2016, Yauri-Miranda 2023) identifies two types of actors performing the role of informal oversight mechanism (legitimately monitoring and calling attention to democratic transgressions of intelligence agencies) - civil society organisations and, the focus of this article, mass-media outlets.

Prior research (Matei 2014, Teirilä and Nykänen 2016) identifies several main functions of mass media as an oversight mechanism: informing the public regarding the activities of the government, establishing a connexion between the government and the citizens, legitimising state institutions, educating the population on the functioning of intelligence agencies and their tasks. These roles ensure the oversight of intelligence agencies takes place, even when formal oversight mechanisms fail or react slowly. To be able to fulfil these functions, as a so called “fourth estate” the mass-media must be more than just an outlet for

the government's official position and must act as a *watchdog*, while at the same time offering whistle-blowers safe and effective ways in which to bring potential transgressions to the public's attention (Gill 2016). Born and Wills (2012) additionally discuss mass media's mission to actively investigate policies and activities (that is, not simply report them) and to encourage public debate. They fulfil a platform-role, allowing citizens, civil society organisations and government representatives to interact, offering them a forum for debate and identifying solutions.

Intelligence studies literature (e.g. Lagasse and Saideman, 2018) identifies two main models of how an oversight mechanism can fulfil its roles, depending on the degree of trust the political establishment has in the agencies belonging to the security sector. The first one is the „police patrol“, indicative of a setting where trust level is low, and the politicians are permanently vigilant of possible transgressions. Oversight mechanisms that function as police patrols, in order to be effective, have to gain access to a significant amount of resources as well as to be able to access sufficient information that would enable them to foresee possible transgressions. The second model is the “fire alarm” where the level of trust is higher – as such, no *a priori*/proactive oversight takes place. This model requires significantly less resources, as the oversight mechanisms activate only after specific transgressions are brought to light. We notice that informal oversight mechanisms, especially the mass media, can only fall under the second model, not necessarily due to the level of trust between intelligence agencies and media institutions, but to the scarcity of expertise and relevant information available - the intelligence agencies are rarely under any legal obligation to volunteer to the mass-media data regarding their activity¹. Mass-media can thus only function as a fire-alarm oversight mechanism, which significantly limits its effectiveness.

¹ Lagasse and Saideman develop a third model - „community policing” - which requires a high level of trust between the oversight institutions and the intelligence sector, as well as a high level of transparency from the part of intelligence agencies. This model is rarely applicable to formal oversight mechanism, much less to informal ones.

Despite this, research on the effectiveness of mass media as an overseer is scarce – e.g., Bakir (2016) identifies the press’ ability to “actually oversee” intelligence agencies as a research gap – and even more so in post-authoritarian states. This is applicable to the Romanian context, which is complicated by several factors. Firstly, the Romanian intelligence framework is relatively opaque, most of the activity of the intelligence agencies being classified, with little information ever reaching the public. Secondly, most of the media outlets manifest a strong bias against intelligence agencies, which are still seen as a continuation of the former “Securitate”, the intelligence agency of the former communist regime. Thirdly, a large part of the Romanian mass media is politicized and often used as a weapon in partisan politics, affecting its reliability and ability to react (Gross 2008).

The questions I depart from are: "can the Romanian mass-media, for all its shortcomings, function effectively as an oversight mechanism for the intelligence sector?" and "what are the factors that determine the degree of effectiveness?". For the purposes of this undertaking, I define effectiveness as the ability of media outlets to, on one hand, contribute to the democratisation of the intelligence sector (ranging from legislative changes, internal reforms or, at least, changes in leadership), and on the other hand, ensure that the operational capacity of intelligence services is not significantly impacted by public disclosures of information related to specific activity. As we have seen, the balance between rigorous oversight and obstruction is key for any and all oversight mechanisms.

In answering the question, I identify a set of factors that have been shown to impact the performance of mass-media, and I explain how they manifest in the Romanian context. I thus focus on i. the authoritarian past (seen as a source of bias against intelligence services in general); ii. access of the media to relevant resources (expertise and information); iii. the level of politicisation of the scandal, which impacts the independence of the journalists involved; iv. the availability of legal levers that allow mass-media to fulfil their role.

I then explain how these factors determine effectiveness by referring to three “intelligence scandals”, that were triggered by data disclosed by/through the media, regarding alleged undemocratic conduct from the part of the Romanian

intelligence services. I use Prezelj and Ristevska's (2023, 143) definition of the concept of "intelligence scandal", namely a "symptomatic type of political scandal that sheds light on the covert, irregular, dysfunctional, illegal, or at least dubious activity of an intelligence service for the wider public". According to the authors, the scandal is not only meant to expose wrongdoing, but also to reinforce the primacy of democratic values and trigger changes for the intelligence sector.

The first scandal refers to the cooperation protocols between the Romanian Intelligence Service (SRI) and key judicial institutions; the protocols were widely regarded as undemocratically expanding the prerogatives of the agency into the field of criminal investigations. The second – to the accusations of illegal links of the SRI leadership with politicians targeted by criminal investigations. The third case (and the most recent) refers to the unofficial draft security legislation (including new legislative frameworks for SRI and the Romanian Foreign Intelligence Service - SIE) leaked into the media in 2022 before reaching the Parliament. The documents were seen as problematic, both procedurally, as intelligence agencies seemed to have had a considerable input in the drafting process, and substantively - the provisions in the proposed legislation would have greatly increased the powers of intelligence agencies, while eroding the already weak democratic oversight mechanisms in force at the moment.

The framework I propose has several limitations. Firstly, it is often difficult to rigorously isolate the effect of one single oversight mechanism, since, in democratic settings, several such mechanisms act at once. Regarding mass-media, Peter Gill notices that "formal intelligence oversight mechanisms are often relatively weak, and it is often some combination of civil society organisations and the media that brings abuses to public attention" (Gill 2016). It is important to bear in mind that in all three analysed cases, the mass media has had a mostly complementary role, acting as trigger for other oversight mechanisms (parliamentary and judiciary, as well as executive and internal) and as a catalyst for continued public pressure. Secondly, the political and personal motivations of the actors involved in the scandals I refer to are beyond the scope of this study, as the framework I use is only applicable to the effectiveness and the functioning as mass-media as an oversight mechanism. Thirdly, since data

on the internal mechanisms and processes of the intelligence services are scarce at best, it is impossible to offer an account of the changes each of the analysed scandal may have generated within the intelligence agencies, nor to account for the factors that contributed to these changes. As such, the study is based on a qualitative review of the data that became public during and in the aftermath of the scandals, derived from news articles and press releases issued by the institutions involved.

2. LIMITS OF MASS-MEDIA AS AN OVERSIGHT MECHANISM

2.1 Historical legacy as a source of bias

According to Caparini (2007), mass media in Eastern European transitions and its ability to function as an oversight mechanism is heavily impacted by the authoritarian heritage. This can generate two different and opposing effects. The first one can be described as an absence of a critical scepticism regarding the actions of the government and its agencies. This attitude becomes especially problematic when journalists refrain from targeting sensitive or opaque areas such as defence, security, or corruption. The unwillingness to analyse these topics in depth can also derive from a particular interpretation a “civic duty” or “patriotism” that surpasses work ethics and the journalist’s mission to accurately inform the public. Mass media becomes a willing accomplice that does little to highlight the government’s wrongdoings. This effect – a passive mass media – is potentiated by a common feature of post authoritarian settings: the absence of clear and predictable legislative frameworks that stipulate what kind of information journalists are entitled to use and how they are supposed to use it in the exercise of their mission. This oftentimes translates as rules regarding classified information, which allow state institutions, especially intelligence agencies, to classify most aspects pertaining to their activity. Secrecy becomes the rule, rather than an exception.

Much more common in post-communist settings, including the Romanian context, is mass media's bias and "hypervigilance" regarding the actions of intelligence agencies, which are not trusted and are seen as a continuation of their authoritarian predecessors. In these cases, the mass-media closely monitor the activity of the intelligence sector, transforming alleged abuses into full blown scandals, oftentimes without offering the public enough information. This conduct contributes to further lowering the level of trust and perpetuates the biases and preconceptions regarding the activity of defence or security agencies. Furthermore, the intelligence agencies themselves become reluctant to disclose data about their activity and begin regarding the media as an adversary - "sensationalist" and incapable of responsibly addressing national security intelligence (Matei 2009).

2.2 Access to expertise and information

In order to be able to accomplish their mandate, mass media, as oversight actors, must have sufficient expertise and access to relevant information (Caparini 2007, 19). Expertise enables them to ask the "right questions" - a crucial aspect, as most intelligence agencies will not volunteer more information than they must. This already is a significant obstacle in the case of formal oversight mechanisms and can have a cancelling effect in the case of informal mechanisms such as the mass media and civil society organisations involved in scrutinising the intelligence sector. Insufficient expertise of the overseers is a problem for consolidated democracies and even more so for new ones. Omand and Phythian (2018, 215) quote writer and former MI6 operative John Le Carre: *„one thing that won't have changed in the 50-odd years since I left the secret world, and never will, is the gullibility of the uninitiated when faced with real-life spies. In a flash, all rational standards of human judgement fall away”*.

Another key factor determining the effectiveness of mass media as an oversight mechanism is the access to sufficient relevant information. This is especially difficult when it comes to the intelligence sector, as most of its activity is secret

and the overseers are usually only able to use information provided by the intelligence agencies themselves.

This is a problem faced by all types of civil democratic oversight mechanisms. Caparini quotes Mary Sturtevant, former member of the US Senate Select Committee on Intelligence: *„because of the classified nature of the programs review, we are especially reliant on information provided by the very Community we hope to oversee. We lack alternative sources of information and points of view on intelligence budget requests, as there are few constituents with legitimate access to intelligence programs who wish to bring information forward to the Committees”* (Caparini 2007, 19). Horn (2011, 116) assesses that no form external formal oversight (be it parliamentary, executive or judicial) is possible unless the controlled agency cooperates in good faith - not just by being compliant with the rules, but also by documenting in reporting its own transgressions. Phythian (Omand and Phythian, 2018) notices that the oversight of the intelligence sector is an unfair competition in which the policymakers are oftentimes at a disadvantage. The lack of relevant information becomes an even greater problem for informal oversight mechanism such as the mass media, as intelligence agencies are usually under no legal obligation to provide to them details of their activity.

The expertise and informational resources available to mass media depend to a large extent on the openness of the intelligence services, namely to their willingness to make parts of their activity open to public scrutiny. Diaz-Fernandez and Arcos (2021, 1) stress the importance of openness for intelligence agencies operating in modern democracies. The development of the current institutionalisation of openness took several separate phases, each prompted by “systemic crises” that uncovered the “tension and imbalance” between the need for secrecy - an integral part of intelligence work - and the need for transparency and accountability - a feature of any democracy (Diaz-Fernandez and Arcos 2021). The current phase¹ was set off after 9-11, when intelligence agencies were

¹ According to the authors (2) the first phase took place in the first three decades of the Cold War but I'm when the narrative of national security allowed intelligence agencies to hide - oftentimes unwarrantedly - the larger part of their activity under a veil of secrecy.

increasingly forced to account for the nature and extent of their activities. This resulted in an increased demand for transparency and democratic control. According to the authors, this equivalates with the Cold War “secret state” being replaced by a “protector state”, a shift which determined the intelligence agencies to devise new strategies for interaction with the public. The authors propose a theoretical framework to explain why these openness strategies are adopted - two main drives are identified. Firstly, intelligence agencies need to generate and maintain a good reputation. This requires the organisation to be responsive to social expectations. Secondly, they need to generate legitimacy (Diaz-Fernandez and Arcos 2021, 1), which reflects the attitudes and beliefs of different stakeholders regarding the role of the organisation within the intelligence community.

According to Diaz-Fernandez and Arcos (2021, 14), a “certain aura of mystery” is of course crucial for an agency dealing with “espionage and secret operations”. However, this must be offset by transparency, which functions as a catalyst that transforms legitimacy and reputation into influence and resources – “going public with certain aspects of their activity can be as important in a democratic society as keeping it secret”. (Diaz-Fernandez and Arcos 2021).

In Romania, the first steps towards a relative openness of the sector (also signifying a break from the image of the communist “Securitate”) were taken by the SRI – seemingly the only one of the Romanian intelligence services concerned with garnering public support - through the establishment of the "Petitions - Audiences" and "Press Relations" Offices. Against this background, in 1993, SRI began to outline a public profile which, according to internal assessments, produced some positive effects - "the necessity of the existence and

During this time parliamentary oversight committees managed however to highlight the dysfunctional aspects of the system and signals the need to establish more and better suited oversight mechanisms for the intelligence sector. The second crisis covers the time period between the 70s and the fall of the Berlin Wall – the intelligence sector has been subjected to several “normalisation” measures, such as initiatives for declassifying documents, consolidating parliamentary oversight committees and including intelligence studies as an academic discipline. During this second phase, for intelligence agencies public relations had become as important as agent recruiting and intelligence production.

functioning of the institution was no longer denied, and it began to be perceived as indispensable to the democratic evolution of society" (Diculescu 2015, 123-124). However, criticisms regarding the lack of transparency, political bias of the institution, exceeding legal powers, as well as suspicions and accusations associating intelligence structures with the phrase "political police" (which were fuelled by subsequent scandals involving SRI) continued.

Watts (2016) argues that, in order to cover this deficit of image/trust, the Romanian intelligence agencies have been continuously concerned with the dimension of "outreach" (e.g. SRI is active even in the academic sphere, through the activity of the "Mihai Viteazu" National Intelligence University, organizing conferences, and publishing specialized publications) and attempting to incrementally increase transparency in their activity.

2.3 Independence of journalists

The acquisition of media outlets by businessmen with close ties to politics, transform journalists into "political tools", further contributing to a "crisis of legitimacy" in Romania (Gross 2008). This has a direct effect on the media as an oversight mechanism, rendering them ineffective and compromising their reputation.

Lunguleac-Bardasuc and al. (2021, 122) note that mass media in Romania lacks "valuable content", which is replaced by "accidents and other sensational news". Despite the media landscape being fragmented (consisting of a few large media companies and several independent outlets), it manages to "publish enormous quantities of information". In most cases, however, the content does not go beyond press releases and official points of view. Journalists usually lack the resources or expertise to adequately document their work or to conduct in-depth investigations. These deficiencies are "dangerous since they give the public the illusion that they are well informed" (Lunguleac-Bardasuc and al. 2021).

The authors identify several causes of the overall ineffective media landscape, of which, relevant to our topic are: "the undersized human resource, which led to the impossibility of specialization (amateur journalists are practicing both

journalism and marketing, sales or editing); [...] the influence of political forces on mass-media, either directly performed, or by sizing the advertising budgets they allot to the various political players; [...] the lack of alternative funding resources leads to censoring the information provided” (Lunguleac-Bardasuc and al. 2021).

Indeed, other authors note after 1990, the level of dependency of the media on political parties has decreased constantly. However, this paved the path for a "form of political press that belongs to politician-businessmen, who use it for their own purposes; a situation in which in the culture of the media owners, the political and media functions overlap rather than proceed in parallel to one another." (Gross, 2008).

2.4 Legal levers

The lack of resources (information and expertise) at the discretion of the mass media can be compensated by coherent legal frameworks that, on one hand allow greater access to information regarding the activity of intelligence services, and on the other hand provide a safe and controlled framework for whistle-blowers to disclose information about unlawful conduct. The latter is especially important and has proven to pose significant challenges for both new and old democracies alike (Macdonald and al. 2020, 4). The first challenge is drawing a clear distinction between “leaker” and “whistle-blower” especially since in the last several years, leaking information about intelligence services to the media is viewed by politicians and intelligence professionals as a “significant counterintelligence problem, greater than conventional spies”. According to Macdonald and al. (2020, 3), in recent literature, the only relevant distinction between the two categories refers to the channels through which the whistle-blower decides to disclose the classified information - legitimate channels are considered those that are explicitly provided by the law.

However, in most settings these channels are absent as there is no coherent legislation that would protect whistle-blowers in intelligence agencies, or the applicable legal provisions are ambiguous and do not offer enough protection

guarantees. The most advanced protect whistle-blower protection conditions have implemented in the “Five Eyes” intelligence community (the USA, Great Britain, Canada, Australia in New Zealand) - “clearly the most mature coordinated and researched international intelligence community”. However not even for these states the legislation (which seems effective on paper) does not offer certainties regarding the procedure or the levers that whistle-blowers can use. For example, in the US, the risk of criminal legal action or retaliation against whistle-blowers remains high (especially after the cases of Snowden or Manning), while in New Zealand the legislative framework, despite being in force since 2002, has never been activated. Without an explicit effort by intelligence communities to achieve more transparency there is a risk that whistle-blowers will bypass legal channels and approach mass media outlets, which at least offers the guarantee that their efforts will at least produce some effects. (Macdonald and al. 2020, 6).

In the case of Romania, citizens and the mass media are entitled, under Law 544/2001, to request public interest information from any public authority, including intelligence services. However, the Law (Article 14) explicitly excludes from its scope “a) information in the field of national defence, security, and public order, if they belong to the categories of classified information, according to the law; b) information regarding deliberations of the authorities, as well as those concerning the economic and political interests of Romania, if they belong to the category of classified information, according to the law”. The broad description of these categories, in addition to the lack of control over how intelligence services classify information, makes the provisions of Law 544 ineffective in securing mass media’s access to relevant information.

Furthermore, Romania has only recently regulated the protection of whistle-blowers – through Law No. 361/2022 on the protection of whistle-blowers in the public interest. The legislative act transposes Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 and applies to “violations of the law, which have occurred, or which are likely to occur, within authorities, public institutions, other legal entities of public law, as well as within legal entities of private law” (Article 1.1). The Law sets up internal and external reporting channels for persons who have obtained relevant information in the

exercise of their profession. However, the new legislative framework set some limits to the scope especially when it comes to defence and national security. Consequently, the provisions do not apply “to reports regarding breaches of public procurement rules in defence and national security areas, which may fall under the scope of Article 346 of the Treaty on the Functioning of the European Union”¹. Furthermore, the law exempts from its scope several other areas such as the protection of classified information, lawyer-client privilege, confidentiality of medical information, secrecy of judicial deliberations, and criminal procedure rules (Article 1.4).

3. THE ROMANIAN MASS-MEDIA IN ACTION

The first example of mass-media involvement in a scandal pertaining to the activity of intelligence agencies is the “collusion scandal” involving high-level SRI officials, especially first Deputy Director Florian Coldea, and their links to politicians. On the 13th of January 2015 Elena Udrea, then a member of the parliament, launched a series of public attacks against the Romanian intelligence service and its leadership accusing them of involvement in politics, and infringing the freedom of the press. In several mass-media interviews, Udrea provided details regarding the involvement of high-level SRI officials in politics and in the activity of media outlets in addition to forming personal relationships with politicians that were targeted by criminal investigations and influencing the judicial system.

¹ “1. The provisions of the Treaties shall not preclude the application of the following rules: (a) no Member State shall be obliged to supply information the disclosure of which it considers contrary to the essential interests of its security; (b) any Member State may take such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production of or trade in arms, munitions and war material; such measures shall not adversely affect the conditions of competition in the internal market regarding products which are not intended for specifically military purposes” (available at <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12012E/TXT>).

The allegations were rejected by the anti-corruption prosecutors who concluded that none of the accusations had any merit, and that, besides the statements of Elena Udrea, no relevant evidence had been presented. The SRI launched their own internal investigation that also showed no wrongdoing. Subsequently, the Parliamentary Joint Committee for the Oversight of SRI held a hearing on the matter – the meeting consisted in an interview with Florian Coldea who also presented the result of the SRI internal investigation. The committee’s conclusion reflected the findings of the prosecutors, showing *“no evidence of relations or interactions that are legally unjustifiable or professionally objectionable between representatives of the institution and businessmen or former beneficiaries of the information provided by the institution”* (Camera Deputaților 2015). None of the proceedings had any visible impact on the leadership of SRI, as the agency itself issued press releases stating that the institution is under attack.

Soon after the 2016 elections, SRI was once again targeted by allegations of collusion. This time, businessman Sebastian Ghiță (who was under criminal investigation at the time) launched similar accusations against Coldea, through a series of pre-recorded videos that were broadcast by his own TV channel, RTV. Ghița claimed that he had used to meet with Coldea regularly, that he had paid for his vacations in Seychelles and that he provided him with fake invoices (Hotnews 2017). SRI once again announced that *“[...] a comprehensive and thorough investigation was conducted into all the claims recently made in the media and the relevant aspects were analyzed [...]”. In the conclusion of the report, presented during a meeting of the SRI Executive Bureau, the special commission stated that no elements constituting violations of the law or current internal regulations were found in the activities of Mr. Coldea, who was subjected to scrutiny. Following the presentation of the report, the Executive Bureau decided to reinstate General-Lieutenant Florian Coldea to his position”*. However, the same press release stated that *“the Deputy Director-General requested the Director of SRI, Mr. Eduard Hellvoig, to be relieved of his duties and made available to the needs of the institution [...]”. The Deputy Director presented reasons related to military dignity and honor, as well as the significant risk of serious disruption to the institution's activities”* (SRI 2017). Coldea’s request was surprising, since he had not been charged with any wrongdoing.

Assessing the performance of the media in this particular case, we notice that that effectiveness was relatively low: the media managed to perturb the activity of the intelligence institution targeted without having a significant impact – the dismissal of the first Deputy Director of the SRI was the conclusion of the scandal in the public space, without a real drive for a reforming the system or introducing safeguards against collusion between intelligence agencies and politicians or the business sector. There are three variables that can explain this result. Firstly, the data that triggered the scandal were provided by actors with clear personal and political agendas, through dependent media outlets – the scandal had, to begin with, a strong political undertone. Secondly, follow-up information (the results of the internal investigations conducted by the SRI) have been disclosed by the intelligence agency itself. No additional data were uncovered as a result of media investigations and civil society involvement was low. Thirdly, the relative passiveness of other formal oversight mechanism - in this case, the Parliamentary Committee and the judiciary, limited the impact of the scandal and prevented the public debate becoming one about the possibility of reforming or improving the system.

The second scandal I refer to is related to the classified “cooperation protocols” signed between the SRI and key institutions of the national justice system, such as the Superior Magistracy Council (CSM), the High Court of Cassation and Justice (ICCJ), the General Prosecutor’s Office. The protocols have been signed and were in force over the course of 12 years (Mediafax 2018). They subject has been brought to the public attention in March 2018, after a series of hearings held by the Joint Parliamentary Committee for the Oversight of the SRI. The information was echoed by the mass-media who then started a campaign for declassifying the protocols – which were seen as an example of an intelligence agency unaccountably expanding their prerogatives into the sphere of criminal investigation. This interference was considered a breach of the separation of powers principle.

The most problematic of the protocols (Cooperation Protocol between the Romanian Intelligence Service, the Prosecutor's Office of the High Court of Cassation and Justice, and the High Court of Cassation and Justice for fulfilling their responsibilities in the field of national security”) has been declassified in

June 2018, and was eventually deemed unconstitutional by the Romanian Constitutional Court.

In 2017, SRI leadership declared that the agency lacked functional cooperation procedures that would allow them to accomplish their mandate: *“Today we have no protocols. How are we supposed to defend the national interest of Romania [...]? We are creating or risking to create a vulnerability not just for our national security but also our allies’. Swept by the wave of rhetoric, we risk losing sight of important issues. The vulnerability can be exploited and somebody will do it if we don’t address it.”* (Mediafax 2018).

The effectiveness of the media in this case can be assessed as medium, as it contributed (alongside other oversight mechanisms – especially the judiciary/the Constitutional Court) to the declassification and the cancellation of the protocols. However, it affected the operational capacity of the SRI, as no alternative framework for cooperation between the intelligence agency and the judiciary has been set up. We notice that, despite the same biases against intelligence services and the limited legal levers provided to the mass-media, the resources used in the media campaign (in the form of expertise) were relatively high, as civil society organisations and judiciary institutions contributed substantially to the debate. The degree of politicisation of the scandal was also lower than in the previous case –despite several actors having political agendas, the debate, which remained argument driven.

The third scandal and the most recent, is the public debate around the future national security legislation that would update the legal framework in which all intelligence agencies function. The draft laws have been leaked in June 2022, and published by G4Media¹, an online news platform. According the authorities’ first reactions, the documents had been drafted by the Presidential Administration and the Government’s General Secretariat, with input from stakeholder institutions, including the intelligence services (Umbrela Strategică

¹ G4Media is an independent online news portal, functioning as a non-profit organisation. It was founded by several journalists specialized in domestic and foreign politics, economy, justice and investigative journalism. They cover extensively the intelligence sector.

2022). While the documents had not entered the legislative procedure, the proposed amendments were seen as an attack against democracy, as they “significantly increase” the mandate of the intelligence services, “grant immunity to SRI and SIE officers, make it almost impossible to dismiss the heads of the two services, and force citizens to collaborate with the secret services upon request” (Pantazi 2022). The draft laws have also been criticised by former intelligence professionals, such as former head of SIE, Silviu Predoiu: *“I do not see any concert with rectifying some of our mistakes form the last 30 years in our relation to the ones we are called to protect. We ask ourselves why we see this hostility. We complain that the population is hostile to us, that they do not understand the national security needs. They do not understand them because they are uneducated, because we do not know how to explain them, or because they do not trust us? [...] Promoting a legislative package such as this one was a perfect opportunity to help citizens understand and take that first step towards bringing them closed to us”* (Antoniou 2022).

The public reaction was prompt, as both the media and the civil society activated and covered the subject extensively. Petitions and protests were organised, requesting a real public debate on the proposed legislation and that the democratic principles of intelligence democratic oversight are upheld (Starea Democrației 2022). The public opposition managed to block further development of the new legislation, as the speaker of the Chamber of Deputies issued a statement assuring that any legislation that will reach the Parliament will be taken subjected to real scrutiny and debate. For the moment, the state of the unofficial draft laws and the timeframe in which they will be proposed remain unclear, as no further official statements on the subject have been issued in the last months.

We notice that, in this particular case, mass media’s effectiveness was high – the impact was clear and significant, as the draft laws have been blocked and the objections of the public have been made clear. At the same time, the activity of the intelligence services has not been perturbed - partly since the public reaction was not directed only towards them, but also towards the executive authorities. The high effectiveness in this case was determined by several factors. Firstly, the bias against the intelligence sector manifested (unsurprisingly) as hyper-

vigilance activating both private citizens and civil society, not unlike the previous two scandals. The information that triggered the scandal was not disclosed through legal channels, but as an information leak, first published by an independent investigative media outlet – no clear political or personal agenda was attributed to the disclosure itself, nor to the ensuing media campaign. This contributed to significantly increasing the expertise available to journalists – several NGOs specialised in legislative analysis, constitutionality and human rights pooled their resources in working out the arguments against the proposed legislative amendments. Even though the first reaction of the authorities was to condemn the disclosure, no legal action has been taken against the author of the leak. Again, we notice that the oversight mechanisms were passive – especially the legislative, who made no inquiries into how the new laws had been drafted.

In all three cases, the bias against intelligence services, while not directly responsible for the difference in outcomes, acted as a backdrop that generated mass media's "hypervigilance" and could be channelled for momentum. Journalists will generally not hesitate to cover stories of possible wrongdoings of the intelligence services, as the public responds emotionally to it. Another component of our framework that has not generated variability are the legal levers provided to the mass media – none of the relatively few such instruments have been activated in any of our three examples. Resources on the other hand, had a determinative effect – the expertise provided by other actors, especially civil society organisations or other oversight mechanisms, enabled journalists to ask the "right questions" about the cooperation protocols and the new draft laws on security. Another determinant factor has been the independence of journalists engaged in covering the scandals. The lack of a clear political or personal stake of media owners in the scandal (that is, the politicisation of the scandal) legitimised the journalistic act and allowed a greater degree of independence for the journalist involved. This contributed to a greater involvement from the part of the civil society and other actors who could provide further expertise. We can sum up the three cases in the following table:

	Collusion	Protocols	New security legislation
Effectiveness	Low	Medium	High
Bias	High	High	High
Resources/ Politicisation	Low High	Medium Medium	Medium Low
Legal levers	Low	Low	Low

4. CONCLUSIONS

The purpose of this article was to contribute to the relatively scarce research of informal oversight mechanisms in Eastern Europe's new democracies and to establish if the national mass media, for all its faults, can function as a motor for reform and democratisation. Despite Romania no being a typical post-communist transition, its media landscape manifests several common characteristics that can be observed in other post-authoritarian settings (partially free and politicized press, bias against intelligence services, and limited expertise pertaining to their activities). The limited data presented suggests that the Romanian mass media is able to fulfil, at least partially, its roles as an oversight mechanism, but in certain conditions.

The data presented in this article seem to suggest that mass media performed better when personal or political agendas were not the primary cause of the journalistic undertakings and when they managed to activate and use the resources (primarily expertise) of other formal or informal oversight mechanisms and actors. Mass media's effectiveness thus becomes a function of, on one hand, the degree of politicisation of the scandal and the independence of the journalists involved, and, on the other hand, the access to relevant expertise. The other factors highlighted by prior research seem to play a less significant role, since all three scandals I refer to have occurred on the same background of strong bias against intelligence services and under the same legal framework that does not empower mass-media outlets to better perform their role.

Future research is necessary for a better understanding of the factors that determine the effectiveness of mass media and how they interact with each other. The inquiry would benefit from a wider scale comparison between different post-communist contexts, especially by taking into consideration countries where the mass-media present higher levels of independence or expertise and more legal levers they can use (e.g. Estonia, Lithuania, Slovakia). Furthermore, a more in-depth analysis of the scandals affecting the Romanian intelligence sector may uncover more interconnections between politicians, state institutions and mass media.

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