Almanac on Security Sector Oversight in the Western Balkans

Serbia

Bosnia and Herzegovina

Croatia

2012

Macedonia

Kosovo

Montenegro

Albania

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a centre for security, development and the rule of law

Belgrade Centre for Security Policy

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Introduction

While official cooperation and exchange between Western Balkan states have significantly improved in the last few years, the transparency of security governance across the region is still weak. Information about which security actor is in charge of which domain, what their competencies are, who controls different actors and what their budgets are is not consistently available in all countries. This lack of transparency impedes national oversight of the security sector and also hinders the confidence building necessary for regional security cooperation. In a post-conflict environment where security issues are still predominantly discussed from collectivist and ethno-nationalist perspectives, greater availability of information and analysis based on thorough research could help prevent the emergence of new security dilemmas.

The second assumption behind this publication is that the civil society has to be empowered to become an active participant of democratic civilian control and oversight, alongside politicians, if security sector reforms are to be sustainable and citizen-oriented. It is expected that participation of citizens and civil society organisations in oversight of security policies contributes considerably to the social legitimisation of security institutions in society. The key question in this phase is not whether the security sector should be reformed or why, but how to accomplish reform in the most efficient and effective way with a participation of all relevant actors, including statutory and on-statutory actors.

This publication aims to provide an independent research-supported overview on the key achievements and weaknesses in the accountability of security sectors of Albania, Bosnia and Herzegovina, Croatia, Kosovo, Macedonia, Montenegro and Serbia and to and what effect this has on the countries' democratic transition. *The Almanac on Security Sector Reform in the Western Balkans* is a key output of a three-year long collaborative research project of seven Western Balkan think-tanks and the Geneva Centre for the Democratic Control of Armed Forces (DCAF), focused on improving the capacity of civil society organisations to map and monitor security sector governance and encourage security sector reform. The partners of this project, which was entitled "Civil Society Capacity Building to Map and Monitor SSR in the Western Balkans" and which ran from early 2009 to early 2012 included: Analytica, Skopje; Belgrade Centre for Security Policy – (BCSP), Belgrade; the Centre for Security Studies (CSS), Sarajevo; the Center for Democracy and Human Rights (CEDEM), Podgorica; the Kosovar Centre for Security Studies (KCSS), Pristina; the Institute for International Relations (IMO), Zagreb; and the Institute for Democracy and Mediation (IDM), Tirana. Additionally, the project was supported by DCAF and funded by the Norwegian Ministry of Foreign Affairs. In addition to in-country research, the main activities of the project were capacity building workshops used for peer education and training of participating civil society organisations (CSOs) in the key issues for oversight over the security sector. The unique component of this project has been an attempt to advance the methodology for mapping and monitoring security sector reform which was originally developed by the Belgrade Centre for Security Policy.[1]

1 For more details see the chapter nine Stojanović, S. 'Security Sector Reform Index: Measuring to Advance Democratisation'.

Western Balkan societies do not have a long tradition of citizen participation in the oversight of security sector governance. As a consequence, traditional security actors have more expertise and credibility than most civil society organisations. We hope to use our collaborative research to contribute to the increased visibility of civil society organisations in security policy communities and to their increased credibility amongst the general public. Therefore, we expect that putting forward empirical evidence will help create an environment for debate based on rational arguments and replicable research. Evidence for this publication was collected by the authors in a systematic manner using clear benchmarks for the success or failure of security sector reform (SSR), which contributes to the credibility of the recommendations made at the end of each chapter.

The goals of this collaborative research project were to:

1. Create a methodological instrument for measuring SSR from the perspective of civil society in transition countries;

2. Generate and share useful knowledge on the state of democratic governance in the security sector;

3. Account for a whole-of-sector approach and the interplay between individual components of the security sector;

4. Enhance civil society's advocacy potential, based on systematized evidence;

5. Increase the capacity and commitment of civil society stakeholders to strengthen democratic oversight over the security sector.

What can you expect from this Almanac?

The Almanac consists of seven case studies, one review chapter and the chapter explaining the methodology developed during this project. It is however important to note that the research carried out by the project partners on different aspects of SSR and based on the methodology for measuring security sector reform is not presented fully in this publication due to a limited number of pages. It was instead decided to introduce the methodology (chapter nine) and illustrate it with grades given for the quality of parliamentary oversight and control, general and financial transparency of security sectors (chapter ten). The *country case studies* (chapters one to seven) were written using the main findings from the mapping and monitoring phase of this project by trying to respond to the following research question: what are key achievements and weaknesses in the accountability of security sectors of Albania, Bosnia and Herzegovina, Croatia, Kosovo, Macedonia, Montenegro and Serbia and what are the repercussions for the country's democratic transition?

The country case studies also provide critical and streamlined analyses of the practice of key legal and institutional mechanisms related to security sector accountability. For

the purpose of this study, accountability of the security sector should be understood as:

- A constituting principle for how democratic states should function, together with other key principles like democratic elections, respect for human rights, the rule of law, division of power between the branches of government, checks and balances, and democratic control and oversight of the security sector.
- A fundamental aspect of accountability is a well-defined and functioning chain of command.
- Another fundamental aspect of accountability is that rules and regulations are there to be respected and that breaches will be sanctioned.
- A third fundamental aspect of accountability is civilian control and oversight over all state security actors, including the armed forces and other "power agencies".
- Accountability presupposes sets of rules, procedures, methods and resources established by law to ensure that control and oversight of the security sector will function in an efficient and effective way while, at the same time, the security sector is fully able to carry out its assigned tasks.

This study distinguishes between vertical and horizontal accountability. *Vertical accountability* is the accountability of a state security institution or agency to the government or a ministry, under whose authority it is placed. *Horizontal accountability* is the accountability to another branch of government or to institutions set up or appointed by another branch of government. In the discussion of the patterns of accountability, special attention was paid to the interaction between different mechanisms for control and oversight, as the interplay between vertical and horizontal accountability has a direct bearing on constitutional checks and balances.

Although state security actors could be accountable for a wide range of issues (see Textbox 'Accountability For'), this study will build on three years of empirical research carried out by authors in the framework of this project which aimed to shed a light on the accountability for the two following components:

1. accountability for legality of work and respect of human rights;
2. accountability for the transparency of resource allocation (budget planning) and its spending (financial transparency, including public procurement)

ACCOUNTABILITY	
Accountability TO	Accountability FOR
• The relevant control mechanisms within the executive • Parliament • Judiciary • Independent state bodies • Public and civil society	• Coherent and effective implementation of national security policy and functioning of national security system • Legality of work and alignment with constitution • Cost-effective and transparent spending/ implementation of state budget • Respect of human rights of citizens and security sector employees

Each country chapter contains a concise introduction to the relevant security sector and the dominant context of reforms. This includes an overview of key security sector actors, focusing on descriptions of different security sector control and oversight mechanisms existing in a country and the interactions among them. Authors were asked to pay specific attention to identifying and explaining the place and functioning of those oversight and control mechanisms that are seen to be unique within the region in terms of their mandate, position, structure, or practice (e.g. Citizens Council for Police Oversight in Montenegro or military ombudsperson in BiH) and the mechanisms which are missing. This was followed by discussion of the emergence and functioning of these mechanisms with reference to the specific national context and legacies which framed SSR. Previously, the project partners had published separate publications focusing on the analysis of the socio-political context within which this reform had been carried out since the fall of Communism in 1989.[2]

The authors were asked to provide streamlined **analysis of the key patterns regarding development and functioning of the democratic accountability mechanisms in their respective country**. The authors tried to describe and explain the current situation regarding the performance of oversight mechanisms and the level of accountability they produce. Special attention was paid to identifying gaps between policy and practice. For that purpose, the authors critically reviewed the research findings collected during the mapping phase of the project under the different mapping criteria[3]. They were also encouraged to identify more specifically, with reference to the generic components of the grading system (i.e. lacking or inadequate legislation, lack of administrative and management capacity, inappropriate value system or under-developed practice), the weakest aspects of reform. However, the authors did not attempt to provide an exhaustive inventory of all findings for all research areas. Rather, the focus remained on producing a coherent analysis that highlights only the **most relevant and notable findings** related to security sector accountability in the state under consideration. Therefore, the editors required from the authors to highlight features of security sector governance, which seem to be persistent over time and any new/different patterns of governance developed in recent years.

2 All partners also published their context analysis publications online. They are available at:
Albania: www.idmalbania.org/context-analysis-chronology-security-sector-reform-albania-1991-2009
BiH: http://css.ba/images/docs/context%20analysis%20of%20security%20sector%20reform%20in%20bih.pdf
Croatia: www.imo.hr/node/1341
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Montenegro: http://www.cedem.me/index.php?IDSP=1408&jezik=lat
Serbia: http://www.ccmr-bg.org/Books/3975/Context+Analysis+of+the+Security+Sector+Reform+in+Serbia+1989-2009.shtm

3 The different criteria analyzed during the mapping phase of the project were: the Legal State, Oversight by Independent State Bodies, Judicial Review, Parliamentary Control and Oversight, Executive Control and Oversight, General Transparency, Financial Transparency and Representativeness.

Different authors chose to present their main findings in different ways:

- Actor by actor (e.g. comparing oversight over different actors e.g. police, military, intelligence, private security actors etc.). This approach was used in the chapters drafted by Analytica on SSR in Macedonia and the Institute for Democracy and Mediation for Albania.
- Comparatively, across all actors (e.g. oversight of security sector budgets is the most problematic area of oversight throughout the observed security sector). This approach was used in the case studies of SSR in Bosnia and Herzegovina by the Centre for Security Studies, in Croatia by the Institute for International Relations, in Montenegro by the Center for Democracy and Human Rights, as well as by the Belgrade Centre for Security Policy and the Kosovar Centre for Security Studies for the study of SSR in Serbia and Kosovo.

The study is based upon primary sources (such as laws, publications from parliament and oversight bodies, government policy papers, and interviews where possible) and secondary sources (such as scholarly books and articles and newspaper articles). Each organization conducted at least one focus group meeting to verify main findings.

Case Studies of Accountability of Security Sector Reforms in the Western Balkans

Chapter 1 – Albania

Authors: Arjan Dyrmishi, Mariola Qesaraku and Besnik Baka[4]

4 Arjan Dyrmishi is senior researcher at the Institute for Democracy and Mediation (IDM) in Tirana, Albania (http://www.idmalbania.org); Mariola Qesaraku and Besnik Baka are researchers at IDM

Abbreviations and acronyms

CoM	Albanian Government Council of Ministers
CLIPAHR	Albanian Committee on Legal Issues, Public Administration and Human Rights
CEF	Albanian Committee on Economy and Finances
CNS	Albanian Committee of National Security
MIS	Albanian Military Intelligence Service
NATO	North Atlantic Treaty Organization
NSC	Albanian National Security Council
PA	Procurement Advocate
PsA	People's Advocate (Avokati i Popullit)
SSAI	Albanian State Supreme Audit Institution
SIS	Albanian State Intelligence Service
SICMI	Albanian Service of Internal Control

1. Introduction

This chapter analyses the accountability system over the security sector in Albania. The analysis focuses on accountability of the democratically elected institutions that form the mechanism of checks and balances, and accountability of security sector institutions to these democratically elected institutions. The institutions analysed are the executive, parliament, judiciary, the Albanian Armed Forces, law enforcement agencies and the intelligence services.

Since the fall of communism and the transition to democracy, reform of the security sector has been an ongoing process and an important part of Albania's transformation. As a result of the reforms of the last twenty years Albania has been transformed from a Stalinist regime, where the security institutions were used to instil fear in the people, to a democratic system where the security institutions are based on the rule of law and respect for human rights principles. The Armed Forces have been placed under civilian control and participate in international peace operations and other military cooperation, while the police and intelligence services also have achieved standards comparable to other European democracies. The most evident achievement of these reforms is Albania's integration into NATO in 2009.

Improvement of the accountability system of the Albanian security sector, however, has lagged behind one of the main priorities: NATO integration. The conditionality policy of NATO integration did not include security sector reform. With the adoption of a new constitution in 1998 and the adoption of relevant legal framework that provided for the basis of the accountability system, reforms in this area lost momentum. As a result, in some areas the legislation is not in place while in many other areas there are laws, but they are outdated or have so many omissions that implementation is impractical. As a consequence, there has been inadequate development of administrative capacities. Together, this has formed the basis of poor practice and a rather ineffective control and oversight system.

Against this backdrop, this chapter aims to examine the current state of affairs of the accountability system of the Albanian security sector and to develop recommendations for an improved accountability system and more effective control and oversight of security institutions.

Research was conducted by reviewing legislation, official documents such as reports, parliamentary debates, statements, as well as information received by security and oversight institutions, media reports, reports of international organisations, interviews and focus groups.

The next section describes the constitutional and political setting and institutions involved in control and oversight of the security sector as well as their mandates. Following that are three sections dedicated to the control and oversight of the Armed Forces, police and intelligence services by the executive, the legislature, independent oversight bodies, the judiciary and the public. The last section draws some conclusions and recommendations for improving accountability.

2. The constitutional and political setting

According to the 1998 Albanian Constitution, political power is shared among three branches: legislative, executive and judicial. The executive is elected by parliament and the power is shared between the government and president. The government is elected by parliament by absolute majority of all members while the president is elected with at least a three-fifths majority of all members.[5] The legislative process is shared among the government, parliament and president. The government proposes draft laws to parliament, and the president ratifies all laws adopted by parliament with the right of one veto. The head of government is the prime minister, who together with ministers forms the Albanian Council of Ministers (CoM). The decisions adopted by the CoM are the most important normative acts, after laws adopted by parliament.[6]

Despite these balanced constitutional provisions, the executive, and prime minister in particular, have sought to control the legislature and judiciary and over time have emerged as the dominant actors. Through tight control over their parties,[7] prime ministers have controlled ministers and decisions of the CoM. As a result, the role of ministers is mainly limited to implementation and much less in policy choices and decision making.

The dominant position of prime ministers also has affected their relations with the presidents. The constitutional power of the president to appoint or nominate heads of security institutions and of the judiciary has generated conflicts with prime ministers who have viewed these appointments as a means to assert control over these institutions.[8]

Lack of democratic tradition and large political majorities formed after all elections of the last twenty years have favoured strong governments. This has resulted in a political culture with little space for consensus. The majority in parliament typically endorses laws and policies with little debate while the opposition flatly rejects or boy-

5 The objective of winning three-fifths of parliament to elect the president had distorted the Albanian political processes for more than a decade. 2008 constitutional amendments allow for presidential election with absolute majority in the third round in case of failure of the first two in which qualified majority is required. The amendments have sparked mixed reactions and are seen as an attempt of the main political parties to control the presidency.

6 The CoM may not issue regulations for laws related to the judiciary, legislature and some independent institutions.

7 Due to weak party structures in Albania, chairpersons of the political parties have been able to accumulate near absolute power which they exercise formally and/or informally. Party chairs nominate candidates for parliamentary elections, the cabinet ministers and even the speaker of parliament and the presidents.

8 Presidents have the authority to appoint the Chief of Staff of the Albanian Armed Forces, the Director of the State Intelligence Service, the Prosecutor General and all prosecutors, members of the Albanian Constitutional Court and High Court, with the consent of the assembly, and all of the judges on the proposal of the High Council of Justice. In addition, the presidents' power to promulgate laws has proven to be important especially when laws are controversial and approved by thin majorities.

cotts them. Opposition often embraces reactionary means, including hunger strikes or camping in the streets. (BBC, 2010)

This power struggle continues, and the latest constitutional amendment (Law on some amendments to Law 8417 - the Constitution of the Republic of Albania, 1998) has been seen by many as an attempt to increase the influence of the prime minister in their political parties and to corner the powers of the president and parliament and ultimately the judiciary. (Moniquet, 2008)

3. The control and oversight bodies

The institutions which are involved in the control and oversight processes are the executive, legislature and judiciary. In addition to these, parliament has established a set of independent institutions which control implementation of the laws and report to parliament.

3.1. Executive

Table 1: Executive institutions with responsibilities over security sector

President						
	Prime Minister Council of Ministers					
Prosecutor General	Director	Minister of Defence	Minister of Interior	Minister of Finances	Minister of Justice	Minister of Environment
General Prosecution	State Intelligence Service	Armed Forces	State Police	Financial Intelligence Unit	Prisons Police	Forestry Police
Judicial Police		Military Intelligence Service	Republican Guard	General Directo-rate of the Customs	Service of Internal Control in the Prisons System	
		Military Police	Service of Internal Control in the Ministry of Interior	General Tax Directorate		
		Coast Guard	Private Security Companies			

The executive offices, which have commanding, managing and controlling responsibilities over security institutions, are the president, prime minister and CoM, the Minister of Defence, Minister of Interior, Minister of Finances, Minister of Justice, Minister

of Environment and the mayors. The Prosecutor General is "between" the executive and judiciary and has managing and controlling responsibilities over the judicial police (see Table 1).

3.2. Legislature

Parliament is the linchpin of accountability of the Albanian security sector. It has exclusive power to adopt laws, approve budgets and endorse major policy decisions including national security and defence strategies. In addition, it has mechanisms to implement its laws.

Parliament has established three permanent committees, which are in charge of contacts and consultations with executive and security institutions (Rules of Procedures of the Assembly):

- Committee on National Security (CNS), responsible for organisation of the national defence and the Armed Forces, military cooperation, internal affairs, civil emergencies, public order and secret services
- Committee on Economy and Finances (CEF), responsible for the budget and oversight of its execution;
- Committee on Legal Issues, Public Administration and Human Rights (CLIPAHR), responsible for organisation of the judiciary, independent institutions and human rights.

3.3. Independent oversight institutions

In addition to direct oversight of implementation of legislation, policies and budgets, parliament has established several independent institutions which oversee implementation of legislation by the security institutions and report to the assembly (see Table 2 below).

- People's Advocate (PsA) oversees implementation of legislation on human rights;
- State Supreme Audit Institution (SSAI) controls spending of public funds;
- Commissioner for the Protection of Personal Data supervises and monitors protection of personal data;
- High Inspectorate on Declaration and Audit of Assets is an anti-corruption institution responsible for controlling implementation of conflicts of interest legislation;
- Procurement Advocate (PA) controls implementation of public procurement legislation;
- Commissioner on Protection against Discrimination oversees implementation of legislation on protection against discrimination.

Table 2: Permanent committees with control and oversight responsibilities		
Parliament		
Committee on National Security	Committee on Legal Issues, Public Administration and Human Rights	Committee on Economy and Finances
Discusses legislation and budget of security institutions Conducts ex post oversight through reporting of responsible ministers and/or security institutions: • Armed Forces • law enforcement • intelligence agencies	Discusses legislation of security institutions Conducts ex post oversight on the implementation of legislation on human rights by security institutions through reporting of independent institutions: • the People's Advocate, • Commissioner for the Protection of Personal Data, • High Inspectorate on Declaration and Audit of Assets, • Commissioner on Protection against Discrimination.	Discusses budget of security institutions Conducts ex post oversight on implementation of budget and public procurements by security institutions through reporting of independent institutions: • Supreme Audit Institution • Procurement Advocate

3.4. Judiciary

The judiciary oversees the security sector by reviewing the constitutionality of laws and policies that parliament adopts and by ruling on the legality of executive branch implementation of laws. The judiciary is composed of a three level court system: the Courts of First Instance, the Courts of Appeal, and the High Court. The Constitutional Court, formally outside the judiciary and independent of all branches of government, interprets and guarantees compliance with the Constitution of Albania.

4. Control and oversight of armed forces

This section analyses the control and oversight of the Armed Forces. It starts with an introduction to the progress and failures of reform in the last twenty years and continues with an analysis of the performance of each of the bodies with control and oversight powers.

4.1. Background

Albanian defence reform cannot be understood outside the context of the communist legacy. With the advent of democracy in 1991, a new concept of defence had to be defined and a legal framework for civilian control of the Armed Forces had to be drafted from scratch. Despite ups and downs, defence reforms have been the most successful reforms in the public sector. There were many recent accomplishments,

such as the establishment of new institutions and structures. Military restructuring and promotion, however, remained highly dependent on political preferences. Institution building was done in a way that political forces controlled the defence sector by bringing in their own personnel and purging others (Qesaraku and Baka, 2011, p.9). Politicised reforms weakened efforts to democratise and professionalise the security sector. With the collapse of pyramid schemes in 1997 resulting in riots, the weaknesses of the Armed Forces became obvious. The following period was characterised by restoring the rule of law and trust in public institutions, and proceeding with reforms in the framework of NATO and EU integration.

The adoption of the 1998 Constitution (replacing the Law on Main Constitutional Dispositions, 1991) enshrined legislation on civilian control of the Armed Forces (Constitution of Albania, Art.12.2). This was the basis for the adoption of important new reforms. As will be seen in the following section, the legal framework still lacks a clear and precise definition of responsibilities among the president, prime minister, the Minister of Defence and the Chief of the General Staff of the Armed Forces. This has led to overlap and has negatively affected the effectiveness of the control and oversight institutions.

4.2. Executive control and oversight

The main executive authorities involved in the control of the Armed Forces are the president, the prime minister and the Minister of Defence. As mentioned above, the constitution established a more balanced system of competences within the executive. The relations between the president and the prime minister, however, have been continuously tense.

The president is the commander-in-chief of the Armed Forces (Constitution of Albania, Art.168.2). In peacetime, the president exercises command of the Armed Forces through the prime minister and Minister of Defence while in wartime he/she has direct command authority. The president's powers include the appointment and dismissal of the Chief of the General Staff, upon proposal of the prime minister, as well as the appointment and dismissal of the commanders of the army, navy, and air force, upon the proposal of the Minister of Defence.[9] The process of appointments, however, has not been opened to parliamentary scrutiny. The process has remained a matter of exclusive appointment between the presidents, the Minister of Defence and prime ministers. As a result many of the candidates proposed for Chief of General Staff have been debated hotly, with accusations that other higher ranking candidates within the military have been passed over.

9 In times of war, the President appoints and dismisses the Commander of the Armed Forces upon proposal of the Prime Minister.

The president is also the head of the Albanian National Security Council (NSC), an advisory body (Constitution of Albania, Art.168),[10] whose role it is to provide the president with opinions on issues of defence policy, arms control and security matters. The president has no authority to initiate laws and as head of the NSC can only issue recommendations. The president, therefore, cannot exercise powers since as the head of the executive branch it is the prime minister who undertakes policy and legal initiatives. Additionally, the president has no administrative capacities except for a limited number of advisers. Taking into consideration his or her limited peacetime military authority, the president has had little influence on the activities of the Armed Forces. As a result of the complex and often antagonistic relationship over control of the security sector institutions, the NSC has remained dysfunctional. Since 1998, the NSC, despite nominally being the highest institution on national security matters, has held only a few meetings (Dyrmishi, 2009). Successive prime ministers have worked through parliament to adopt legislation which has circumvented the powers allocated to the president both by the constitution and by the first wave of legislation, adopted in the years following ratification of the constitution (Dyrmishi, 2009).

The prime minister and CoM approve the army organisational structure[11], propose to parliament and the president the defence policies and budget, and coordinate the activity of institutions dealing with defence. This coordination role, however, has been performed deficiently by the prime minister. Plans to improve coordination of different ministries, though discussed, have not been implemented. Also, power struggles between prime ministers and presidents have had a knock-on effect on the overall balance and functioning of powers in defence. One illustration of this was the establishment of the Committee of National Security Policies (CNSP) by the prime minister in 2005, which basically has the same advisory role and approves documents. This committee does not have a constitutional basis and its establishment represents a duplication of structures, showing the discrepancy between constitutional provisions and political practice in Albania (Pietz and Remillard, 2009).

The Minister of Defence is a civilian and represents the highest official, during peacetime, of all military and civilian personnel of the Armed Forces.[12] This minister is responsible to parliament, the president and the prime minister in implementing defence policies. The Minister of Defence has the authority to propose defence policies, budgets, military appointments (except for the rank of general), and military attachés. The General Chief of Staff is responsible not only to the president and prime minister but also to the Minister of Defence.

10 This article stipulates that this advisory body is composed of: Speaker of the Assembly, Prime Minister, Minister of Foreign Affairs, Minister of Defence, Minister of Public Order, Minister of Local Government and Decentralisation, Minister of Finance, Minister of Transport and Telecommunication, Chief of General Staff, Director of State Intelligence Service and General Police Director.
11 The prime minister nominates candidates for the post of Chief of General Staff.
12 The minister is responsible to parliament, the president and prime minister for implementing defence policies.

4.3. Parliamentary control and oversight

Parliament is the most important oversight institution in the military establishment.[13] In order to ensure transparency and accountability of the military the Parliamentary Committee on National Security (CNS)[14] discusses and approves the draft budget of the Armed Forces, can oversee implementation of the defence budget, check implementation of policies, ask for explanations from the Minister of Defence and accordingly make recommendations.[15]

In practice parliament has played a marginal role in overseeing the Armed Forces including effective scrutiny of defence budgets. Budget approval tends to be formal and therefore MPs are not able or willing to include substantial changes.[16] Debate is general rather than related to the budget. Especially MPs of the majority avoid criticising the government's proposals, a practice which with time has led to identification of the party with the state itself.

Moreover, parliament, while overseeing the Armed Forces, has not relied on multiple sources of expertise, information and analysis since there are insufficient resources. As a result, when performing oversight, parliament has used data from the executive and military, which are the precise institutions that parliament must oversee and make accountable (Gumi, 2003).

Another cause for poor parliamentary performance is that their specialised support structures have been generally weak. Traditionally, performance of parliament relied on individual knowledge of MPs. In general, parliamentarians have limited knowledge of defence issues and lack expertise to oversee complex activities of government. The same is true for the Parliamentary Committee on National Security which has only three personnel, two specialised in security matters and one lawyer, plus an assistant to the chairman. Considering the workload and activities this committee should perform, staff is insufficient. There is the Service of Parliamentary Research and the Legal Service producing policy reviews and recommendation for MPs and committees, but it has been of only modest use. Frequent turnover of expert personnel due to political changes and politicisation of its administration has not allowed parliamentary personnel to increase their expertise and to create a stable institutional memory. In practice, this has had negative consequences as the opposition members of parliament do not

13 While the executive has responsibility for overall management and control of the security sector as well as the formulation and implementation of security policies at all levels, the task of the parliament is to adopt laws, endorse policies and approve the budget.
14 The Committee on Legal Affairs, Public Administration and Human Rights and the Committee on Economy and Finance are also part of the oversight mechanism but for the purpose of this assessment the focus will be on the Parliamentary Committee for National Security.
15 This role of parliament is also recognised by the Law on the Powers and Command Authority and Strategic Direction of the Armed Forces
16 This can be concluded from the discussion of the budget of the MoD, MoI and the NIS for the year 2009 in the Committee on National Security, held on 25 November 2008. Minutes of this discussion are held by the authors.

trust the expertise of the administrators and rely mainly on party experts.[17] These deficiencies also are aggravated because of the specificities of the sector which very often considers classified information.

4.4. Independent oversight bodies

As discussed in the introductory section, there are several independent bodies that perform control and oversight in Albania. This section, however, will focus only on oversight of Armed Forces by the People's Advocate and the State Supreme Audit Institution (SAI).

4.4.1. People's Advocate

The People's Advocate's (PsA) task is the control and oversight of the respect of human rights by the Armed Forces.[18] The PsA is responsible for ensuring respect for human rights within the Armed Forces as well as by the Armed Forces when they interact with the wider public domestically or in international missions.

Reports of the People's Advocate show that inspections, visits, and thematic oversight of all command and military bases have been conducted. The People's Advocate, as a result of these activities, has issued recommendations. The main issues dealt with were problems such as improving treatment of military personnel, as well as improving conditions of military detentions. The People's Advocate has emphasised in the last report of 2010 that the Albanian Ministry of Defence, the Chief of General Staff and other structures have acted upon his recommendations and have taken measures without much delay. It is interesting to note that in 2009 the People's Advocate received seventy-eight complaints and twenty-six of them were solved in favour of the plaintiffs. The high number of complaints since 2000 and the rate of resolved cases show the increased trust of citizens and of institutions in the PsA. The yearly reports show that many complaints concern rights detailed in the Law on the Status of the Armed Forces of the Republic of Albania (2004), which deals with treatment of Armed Forces personnel. The violated rights regarded proper housing, ranking, dismissal from work, salary of personnel deployed to Afghanistan, etc. On all these matters, the People's Advocate has issued recommendations to the respective structures. According to the People's Advocate, however, the Advocate's office needs more specialised personnel with more capacities and more financial resources to properly fulfil its oversight mandate over Armed Forces.[19]

17 In an interview, Mr. Ilir Gjoni, Deputy Chairman of the CNS and opposition MP, stated that not only the number of experts is limited as there are only one or two available and their practical function consists mainly in helping preparing the meetings but the opposition MPs would not trust their expertise.
18 The PsA is nominated and elected by the parliament by three-fifths of all members for a five year period with the right of re-election. The PsA may be discharged from duty only by the Parliament with three-fifths of all its members on grounds of a reasoned complaint filed by not less than one-third of its members.
19 For instance, the institution is composed mainly of lawyers while experts from other fields are needed to better conduct inspections and to process various complaints.

4.4.2. Supreme State Audit Institution

The constitution also established the Supreme State Audit Institution (SSAI) with an oversight role for economic and financial matters (Constitution of Albania, Art.162). The law on SSAI does not specifically refer to security institutions, but no institution is excluded from its jurisdiction (Law on State Supreme Audit Institution, 1997). In order to ensure protection of classified information, the law stipulates clear provisions that activities of control are exercised by personnel who have been vetted and cleared with Personnel Security Clearances.

In the first years, this institution was perceived as highly politicised. Since 2004, when political parties agreed to appoint a candidate of the opposition as chairman of the SSAI, the SSAI has become more and more professional and considered impartial. The increased trust of government in this independent institution can be seen by the implementation of SSAI recommendations issued each year on the report.[20] One of the limitations of these reports is that they do not dedicate a separate section on financial irregularities in the security sector that accounts for its peculiarities. Although the SSAI has the right to access all budget lines it does not access the so called 'black budget' of security institutions. Therefore the financial oversight of the Ministry of Defence on procurements which are considered state secrets is more complicated.

One problem facing the SSAI is personnel shortages. Staff have been reduced from one hundred sixty in 2009 to one hundred fifty-four in 2010. Quality and expertise has not been an issue. The main concerns are not only the insufficient number of personnel, but improvement of the institution's human resources and management systems (SSAI Strategic Development Plan).

4.5. Judicial control and oversight

The military justice system is essential for ensuring that the Armed Forces abide by rule of law principles. Until recently, military justice was performed by military courts. Military first-instance and appellate courts were in the regular system. These courts tried members of the Armed Forces, prisoners of war, etc. for crimes under the Military Criminal Code. With the 2008 reform (Law on the Organisation of Judicial Power, 2008) regulating courts, military courts were abolished and Albania has adopted a system with military personnel tried by civilian courts.

As elsewhere in the judiciary, political pressure and corruption have undermined effectiveness and justice, even in cases involving the military.

20 The Chairman of the SSAI reports twice a year to the parliament on issues such as budget execution and violations of laws.

Box 1: The Gerdec case

The most prominent example of alleged political pressure on the judiciary is the protracted Gerdec case, in which after three years, the court has finally issued a verdict. The March 2008 Gerdec explosion of the military depot caused the death of twenty-six civilians. The case involved military and civilian personnel including the Minister of Defence, the Chief of the General Staff of the Armed Forces and other representatives of the army.

The process might take much longer until the case passes through all appeals. Even the OSCE representative in Albania (Gazeta Panorama, 2011) emphasised the Gerdec case was not conducted in accordance with fair trial principles.

5. Control and oversight of police

This section focuses on the oversight of the Albanian State Police by examining the role of the oversight institutions such as the Executive, the Parliament as well the independent oversight bodies.

5.1. Background

In the last twenty years, the Albanian police have been subject to reforms focused on consolidation of democratic values and accountability. The 2007-2013 Police Strategy established foundations for community policing in Albania (Ministry of Interior, n.d.) and reorganised police structures based on the community policing model, addressing the past gap between police and the public. Transparency and accountability were key features of this reform. The legal framework, institutional capacities and transparency mechanisms related to oversight of police have seen steady progress. The implementation of the legal framework, however, related to oversight of police activity is problematic and lacking concrete results. In the general structure of the police oversight bodies, the governmental bodies and the parliament are the key actors of control of this important institution.

5.2. Executive control and oversight

Executive control of the police is conducted by the CoM and the Albanian Minister of Interior. The CoM appoints the director of the state police upon the proposal of the minister. Considering that the CoM exercises direct competences over the police, it is unsurprising that there have been no disputes between the police and other government bodies. Although the Minister of Interior does not enjoy operational competences over police activity, he is responsible for defining reforms, policies, strategies, orders and performance of the police (Law on the State Police, 2007).

Table 3: Division of Labour for Civilian Control of State Police		
Minister of Interior	Council of Ministers	Parliament
• Issues orders & directives • Reports annually at request of state police director • Monitors state police performance • Defines strategic objectives	• Approves symbols of state police • Approves total number of payment scheme of state police	• Approves budget of police • Adopts related legislation
Proposes to CoM number of state police personnel	Appoints state police director	Controls performance of state police through parliamentary committees
Proposes to CoM director of state police	Approves rules and procedures related to working relations, training, career	
Approves rules & procedures, decides on activity and special procedures in state police	Approves state police discipline regulation	
Approves rules for overall intelligence activity of state police	Approves police payment scheme	
Takes decisions on organisation, functioning and criteria for utilising special operational structures		

The most frequent mechanism the Minister of Interior uses to control police is demanding annual reports of the General Director of the Police. Nevertheless, the law does allow limitations on information shared with the executive control bodies, such as sensitive and classified information concerning witnesses and justice collaborators (Ibid.). The main instrument of control of the Minister of Interior over the State Police is the Albanian Service of Internal Control (SICMI). The SICMI oversees police activity and functioning in accordance with the Law on Internal Control (Law on the Internal Inspection Service, 2008). The SICMI is structurally independent from the police and directly subordinated and reporting to the minister.

Distinctive from other oversight bodies,[21] the SICMI functions independently. Provisions concerning disciplinary procedures and its competences are laid down in the Law on State Police (Law on State Police, 2007). The SICMI has a revised legal framework and an independent budget and resources. The SICMI's performance has been generally positive, focusing on tackling illegal actions, corruption and criminal acts in the police (SICMI, 2010). Recently, however, a decrease in the activity of the SICMI has been observed.

21 Other security sector institutions lack provisions for the establishment of distinct control mechanisms by the Executive in their organic laws (according to the Law on Council of Ministers the minister issues the regulations which provide for the establishment of competences, tasks and authority of control and inspection units).

Executive financial control of the police is conducted by the Albanian Ministry of Finances. Internal Audit, a structure within the Ministry of Finances, conducts an annual control of the budget. The financial reports provide information on accomplishments of budget provisions and allocation of money in the police. Financial oversight, however, seems incomplete as the Ministry of Finance mostly monitors budget spending, and starts financial inspections only in cases when big losses are identified, while other minor cases are treated by internal audit activity in the police. The Albanian Directorate of Public Financial Inspection (within the Ministry of Finances) conducts investigations upon request of the President, Prime Minister, High State Control, Minister of Finances and the General Prosecution. So far the reports of the Ministry of Finance have not produced any major action against breaches and budget mismanagement of police.

5.3. Parliamentary control and oversight

The Albanian Parliament enjoys extensive powers over the police through the process of adopting new laws, policies and the budget revision as well as oversight in the implementation phase. In general, parliamentary oversight of police is limited due to Parliament's inability to properly check draft legislation and ensure the structure of oversight is complementary and coherent, avoiding overlaps in competencies. Regarding the ex-ante role, the most recent parliament adopted twenty-four laws related to police. Nevertheless, problems concerning quality of laws can be identified as the majority were passed without consulting MPs.

Parliamentary oversight of police is conducted by three permanent committees that, in different stages, perform ex ante or/and ex post control and oversight. The Committee on National Security (CNS) discusses and approves the draft police budget before it is voted on by parliament. During the autumn budget approval process, the Minister of Interior is invited by the CNS to give his/her views on the budget. In 2010, the CNS was not involved in the budget planning process.[22] Also recently, control over budget spending and protection of human rights has not been on the CNS agenda. Based on information provided by parliament, since 2009 CNS has conducted only three meetings related to police.[23]

The Committee on Legal Issues, Public Administration and Human Rights (CLIPAHR) is responsible for oversight related to human rights violations in the state police. Since March 2010, this committee has not looked into how the police follow and implement laws related to police activity. The Committee on Economy and Finances (CEF) is also involved in police oversight since it has final say on draft laws on the budget.

22 This can be concluded from the discussion of the budget of MoD, MoI and NIS for 2010 in the CNS, date 23 November, 2009. Minutes of this discussion are held by the authors

23 Those meetings were namely: (1) 30 January 2011: Questioning of the high officials of the state police on activity of the state police during criminal actions occurred in January; (2) 21 February 2011: Questioning of the director of the state police on the activity of the state police during the criminal actions occurred in January; and (3) 21 June 2011: On the participation of the state police in peacekeeping and humanitarian missions.

Despite providing a thorough institutional framework, the performance of these committees is questionable since no information exists as to whether these three committees have tried to coordinate to better address human rights protection and monitor financial procedures.

5.4. Independent oversight institutions

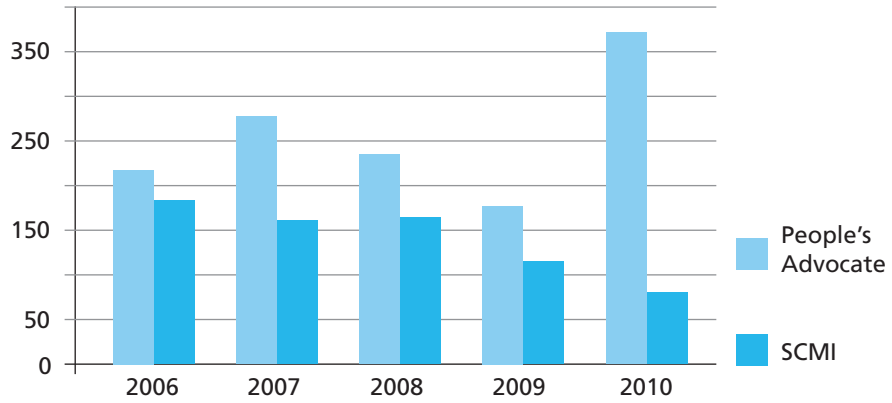
Independent oversight bodies are mainly involved in control and oversight of laws guaranteeing fundamental rights and freedoms and controlling budgetary spending and procurement by police. This activity is conducted by the People's Advocate (PsA) while budgetary oversight is conducted by the Albanian High State Control. Another important independent oversight body of the police is the Data Protection Commissioner, who controls processing of personal data from police structures. Although still lacking necessary resources, this commissioner has signed agreements to cooperate with the general directorate of the police and has drafted guidelines and regulations on the protection of personal data by the police (Dyrmishi, 2011).

As opposed to other security sector institutions, legislation on the police provides provisions on human rights protection. The People's Advocate has been very important in controlling and monitoring implementation of the law related to human rights violations. Despite the People's Advocate not enjoying decision-making powers related to police activity, he/she can transfer relevant information to parliament, the Albanian Ministry of Justice or the general prosecutor for further investigation and remedy. For this purpose, the People's Advocate established the Unit on Torture Prevention in 2008, which exclusively deals with allegations of violations from law enforcement officials. In the last six years, complaints submitted to the People's Advocate have increased, suggesting the consolidation of capacities and expertise of this institution dealing with human rights breaches by police. Although most complaints were considered admissible, only, a few resulted in disciplinary measures. In addition, a large number of complaints were not processed due to insufficient resources. Cuts in annual budgets appointed by the Ministry of Finances have reduced the resources of this important institution (Nushi, 2010).

Comparing the activity of the People's Advocate with activity of the SICMI we can identify a gap in complaints submitted and breaches identified. As shown in the graph below (Graph 1), the oversight role of the PsA regarding violations of police officials has been strengthened, while the SICMI has reported a steady decrease in the number of complaints received for violations of law.

Due to the crucial role played by the People's Advocate regarding human rights violations by police and other executive bodies during recent years, conflicts between government and the People's Advocate have occurred, which might have weakened this institution. Some government actions such as reduction of the budget and human

resources of the People´s Advocate as well as delays in appointing its head[24] have had negative effects.



Graph 1: Comparing cases reported by the People´s Advocate (PsA) and the SICMI on alleged police violations, 2006-2010

A fundamental role of independent financial oversight is played by the State Supreme Audit Institution (SSAI) which is an independent institution established by the constitution to control spending of public funds. The SSAI releases an annual report detailing issues and potential abuses. Despite breaches and problems related to police spending each year, no actions have been taken to punish or prevent future misuse of resources. Concerning the relationship between the executive branch and independent oversight bodies, support of the executive leans towards institutions it controls and which are likely to produce immediate political benefits for the government. The government is less willing to support institutions independent from the executive which they feel have negatively affected their work.

5.5. Judicial control and oversight

The principle of independence of the judiciary and equality before the law is enshrined in the constitution and reflected in the legal framework. Access to justice has been improved by the Law on Legal Aid (2008) which provides free assistance in civil, criminal, and administrative proceedings to different categories of persons. In reality, there are obstacles to the full independence of judges (European Commission, 2010).

The police are fully under the jurisdiction of the courts and cases involving police are brought before courts, with no exceptions. Based on the Code of Penal Procedures, every citizen can file a legal charge, supported by a legal representative granted by the state, claiming a breach of civil rights by security sector structures or individuals.

24 Since 2009, a new People's Advocate has not been appointed.

Due to lack of concise information of the court proceedings related to police officers, it is difficult to assess the current situation. Referring to other sources, however, different shortcomings are revealed. In 2009, out of two hundred seventy-three disciplinary breaches of police officers, twenty-one were sent for criminal proceedings while forty-one officers were dismissed from police ranks. However, an increase in the number of complaints to the People's Advocate related to police activity has not been reflected in the number of disciplinary measures and punishments by courts, which reveals a problematic remedy system regarding judicial oversight of the exercise of law enforcement.

Another indicator revealing limitations in judicial oversight of the police are results from the Albanian Service of Internal Control (SICMI). The number of officers, charged with arbitrary acts is high, while the number punished is low. This suggests the courts have difficulties in punishing such cases. Furthermore, the court infrastructure remains inadequate. This is reflected in the performance of courts processing human rights cases related to alleged human rights violations by the security sector officials. Political pressure, intimidation, widespread corruption, and limited resources have prevented the judiciary from functioning independently and efficiently. In addition, enforcement of court decisions is weak, in particular in cases where state institutions are defendants (Ibid.).

5.6. Public oversight

Generally, public oversight of police has improved recently thanks to new mechanisms to increase transparency of public institutions. In 1999, Albania adopted the key Law on the Right to Information on Official Documents, which was designed to increase public oversight of state institutions. Major inconsistencies, however, can be identified, starting with incomplete legal provisions to poor application and implementation process. Concerning the police, there are no provisions of transparency in its organic law or regulations. Referring to the Law on the Right to Information on Official Documents, however, the state police have established functional information offices in charge of publishing or providing information on demand, to the public and interested actors. Despite established mechanisms and procedures to increase transparency practices and values, the implementation and institutional practices are not properly functional.

On the other hand, public oversight of police by civil society organisations remains insignificant. Contributions of civil society to consultations, policy making, decision making and oversight of the state police are limited. Mostly activity of non-governmental organisations is restricted to monitoring of the activity of state police. In this regard, there is a gap between the activity of public institutions and civil society.

Regarding media scrutiny of the state police, two problems can be identified: first the control of the media by the government and business groups, and second, the media's lack of competence and expertise to administer and deal with security issues (Arbana, 2003). Furthermore, lawsuits against journalists for voicing legitimate criticism have

become a common trend (Freedom House, 2003). In a few cases, efforts to conduct investigative journalism by independent media outlets have been silenced by the government through the use of financial pressure on media owners.

6. Control and oversight of intelligence services

This section analyses oversight of the intelligence and security services. It does so by examining the two main services – the State Intelligence Service (SIS) and the Military Intelligence Service (MIS)[25] – and the authorities having control and oversight competences. These authorities are the executive branch, parliament, independent state institutions and the judiciary.

6.1. Background

Making intelligence services accountable to democratically elected bodies was one of the first issues addressed in the early days of transition.[26] This concern stemmed from the fear the intelligence services might become an obstacle to democratisation. Once this concern withered, intelligence oversight was not pursued with the same diligence. Further developments of the intelligence oversight system have mainly resulted from various internal political crises and power games of different actors within the system, or due to the influence of external factors, mainly EU and NATO integration. Despite the rather chaotic development of reforms during the last twenty years, one positive achievement is an oversight system which can serve as a basis for further reforms.

6.2. Executive control and oversight

The main executive authorities involved in the control of intelligence services are the president, prime minister and Minister of Defence (see Table 4). Formally, the executive has established full control over intelligence services, both political and financial or administrative. Effectiveness of control, however, varies depending on the legal framework and the administrative position of each of the two services.[27] The SIS and the MIS perform nearly the same task but two rather different forms of executive control have emerged.[28]

25 Although the intelligence community comprises other services also, the reason for analysing only the SIS and the MIS is because they are the larger and more established services and the only ones that perform both foreign and domestic intelligence activities.
26 The communist era intelligence apparatus was disbanded and intelligence services were regulated by law as early as July 1991, nearly three months after the first multiparty elections.
27 The SIS is an autonomous agency which depends administratively upon the prime minister, though the MIS depends administratively upon the Minister of Defence.
28 As it will be seen later on, these different executive control regimes also affect the effectiveness of other oversight bodies.

Table 4: Competences of executive authorities over the intelligence services		
	State Intelligence Service	**Military Intelligence Service**
President	• Appoints the Director and the Deputy Director • Dismisses the Director and the Deputy Director	
Prime Minister	• Proposes legislation to the parliament • Proposes the budget to the parliament • Approves organisation structure and human resources • Sets policy guidelines • Defines international cooperation • Nominates the Director and the Deputy Director • Appoints the Inspector General • Authorises use of special funds • Initiates financial inspections	• Proposes legislation to the parliament • Proposes the budget to the parliament • Appoints the Director • Approves organisation structure and human resources
Minister of Defence		• Proposes legislation to the Council of Ministers • Proposes the budget to the Council of Ministers • Sets policy guidelines • Defines international cooperation • Nominates the Director and the Deputy Director • Reports once a year to the president and the prime minister

In order to insulate the SIS from the political processes, it has been placed outside of government and functions as an autonomous agency. This is ensured through shared responsibilities of the prime minister and president in appointing the SIS director as well as in the dual reporting line. Further, the law obliges the SIS to report directly to parliament with no prior clearance of the report by the prime minister or president. In the long term, this mechanism has contributed to preserving the SIS from further politicisation, but it has had some negative effects. Firstly, it has negatively influenced relations between the prime minister and president since the latter has the final say on the appointment and dismissal of the directors of SIS.[29] Secondly, given the prime minister and government are the main recipients of intelligence, such relations have negatively influenced SIS performance. The closeness of the SIS to the president is not beneficial to the system as the president has very limited competences for using

29 All four Albanian prime ministers who have served since 1997 have requested the dismissal of the Director of the SIS on several occasions in different moments during their term. In all but one occasion their requests have been turned down by the presidents (even though in some cases the presidents came from the same political party as the prime ministers).

intelligence, while the National Security Council is dysfunctional and does not play a substantial role in intelligence (Dyrmishi, 2009). Thirdly, it has encouraged the prime minister and government to empower military intelligence to circumvent the SIS. Unlike the SIS, the MIS is administratively placed within the Ministry of Defence and the Minister of Defence and prime minister have direct responsibility for its control. This position allows closer government control.

6.3. Parliamentary control and oversight

Albania has a constitutional, legal and institutional framework allowing parliament to control and oversee intelligence services. Analysis of the legal framework and the practice, however, reveals a fragmented picture concerning (1) completeness of legislation, (2) implementation and (3) resources and institutional capacities:

(1) The legal framework includes ex ante and ex post procedures and mechanisms for control of intelligence services by parliament. Ex ante control is performed through adoption of legislation and the budget of intelligence services and ex post oversight is performed through control of implementation of laws and budgetary spending. The Albanian Constitution provides that laws and budgets are approved by parliament, and indeed such procedure has never been breached. For the ex post oversight too, the constitution lays down provisions for the executive branch to be held accountable to parliament on the implementation of laws and budgets. The legislation on intelligence services lays down provisions for this. Both the Law on the State Intelligence Service and the Law on the Military Intelligence Service lay down the obligation of the Director of SIS and the Minister of Defence to report to parliament at least annually (Law on Military Intelligence Service 2003, Art.18 and Law on State Intelligence Service 1998, Art.7). Except for this clause on yearly reporting, however, the laws lack provisions to regulate interaction of parliament with intelligence services in case parliament needs to further investigate. In order to address this problem, the CNS has proposed a law,[30] but it has been pending for nearly two years and the initiative was not pursued by parliament.[31]

(2) By formally adopting laws and budgets, parliament controls equally the SIS and the MIS. Laws and budgets are scrutinised by the permanent committees and debated in plenary session. Parliament's input and its ability to shape legislation, however, has been weak and the executive's proposals are adopted with very little modification.

30 OSCE Presence Recommendations on Bill on Parliamentary Oversight of Intelligence and Security Services, Accessed March 2011, http://www.osce.org/sq/albania/71375.
31 The draft law proposed the establishment of the intelligence committee with the mandate to oversee: a) the lawfulness (and proportionality) of the activities, whether or not agreed procedures are followed (investigation of complaints by individuals may be included), verify that proper democratic control is exercised by the executive and that individual human rights are not unlawfully breached; b) the proper use and accounting of financial resources; c) investigate how the intelligence is collected, used and protected, thus acting as a mechanism to either reassure the wider population or to investigate shortcoming or abuses; d) make recommendations about the effectiveness, priorities and remit of the services and the discharge of democratic control by the government over the services.

The most obvious evidence of parliament's weakness is a failure to include parliamentary control provisions in legislation on intelligence, including laws that have been recently adopted such as on interception of telecommunications (Law on Interception of Telecommunications, 2003), or the legislation on the smaller intelligence and security services (see Box 2). (Dyrmishi, 2001)

Box 2: Control and oversight of smaller intelligence services by parliament

Besides the SIS and the MIS, in the last few years several smaller intelligence services which collect mainly domestic intelligence have been reformed and strengthened, leading to a fragmentation of the intelligence system. The trend for such fragmentation of the intelligence services system dates to the early reform of the communist era intelligence apparatus. Given that during the communist regime the intelligence service was a highly centralised structure, the fragmentation into several services to be placed under different ministries was deemed to provide better control.

Largely underdeveloped for many years, mainly due to lack of focus and resources, these services were strengthened during the second half of the last decade, mainly in the framework of the fight against organised crime and to a lesser extent against terrorism.

Placed under the ministry of finances, ministry of interior and the ministry of justice, the status of these services are a hybrid between agencies established by organic law and internal departments within the structure of the respective ministries. Due to this peculiarity and lack of clear legal provisions to regulate their accountability, these services have remained below the radar of parliamentary oversight.

Regarding ex post oversight, one of the main failures has been the inability to implement the provision obliging the MIS to report yearly to parliament. Inexplicably, neither the minister of defence nor the director of MIS have been asked to report to parliament.[32] Other mechanisms such as interpellations, hearings on particular intelligence issues or inspections of the intelligence services are yet to become part of parliament's tools.

(3) The Committee on National Security (CNS) is the main body responsible for control and oversight of intelligence services which is also entitled to maintain direct contacts with the services. Apart from the CNS, the Committee on the Legal Issues, Public Administration and Human Rights and the Committee on Economy and Finance indirectly control implementation of laws on fundamental rights and the budget through the report of the independent oversight bodies. Performance of committees is mostly dependent on expertise of MPs while administrative structures have been traditionally weak (Berberi, 2003). Each permanent committee has a support unit with advisers, but

32 One explanation for this may be found in the fact that the MIS capabilities and resources have been expanded only in the last few years while the Parliament has been focusing of the SIS only. In September 2011, the Committee on National Security requested for the first time from the Minister of Defence to report on the activity of the MIS.

these units are not always fully staffed and there is high turnover of personnel, which has weakened institutional memory and expertise. Turnover also has allowed recruitment of staff based on political affiliations and sympathies, making the opposition reluctant to rely on their support and expertise.

Another problem revealed by analysis of parliamentary documents and also interviews is that there is no practical cooperation among the three parliamentary committees.

6.4. Independent oversight institutions

The most relevant bodies involved in intelligence oversight are the People's Advocate (PsA) and the State Supreme Audit Institution (SSAI).

The People's Advocate's mandate includes control of implementation of laws on fundamental rights and freedoms by intelligence services (Constitution of Albania, Art.60-63). The PsA institution has authority to access classified information, conduct inspections of premises of intelligence services and to call on intelligence officials for questioning (Law on the People's Advocate 1999, Art.18-20). The number of complaints and the scope of cases dealt with by PsA, however, have been limited. From 2001 to 2009 only sixty-five complaints have been administered by PsA. These were mainly labour disputes between intelligence officers and the SIS (People's Advocate of Albania, 2001-2009). The MIS or other intelligence services have not been part of PsA oversight activity.

As the highest institution for control of the spending of public funds the SSAI has the authority to control implementation of the budget by intelligence services (Constitution of Albania, Art.162-165). SSAI reports include findings and recommendations on the SIS budget spending but specific data on the MIS are aggregated in the section dedicated to the audit of the Ministry of Defence. One main issue regarding control of spending of the budget by intelligence services is the audit of the funds used for classified procurements or covert operations. According to the law, the SSAI should report findings on this activity to the Committee on Economy and Finances (CEF) behind closed doors (Law on the State Supreme Audit Institution 1997, Art.22), but this has not been done due to lack of CEF resources to cover the full range of activities.

The other independent oversight bodies have restricted mandates for control of the intelligence services. For example,the Commissioner for Personal Data Protection may be excluded from controlling the intelligence services on national security grounds while the Procurement Advocate is barred from access to classified procurements.

6.5. Judicial control and oversight

The judiciary controls intelligence services through the courts, but the number of cases involving the intelligence services has been minimal. Only once, in 1999, was the Constitutional Court called to interpret compliance with the constitution of the law

on State Intelligence Service. (Constitutional Court, Decision No.61, 1999) Most other cases involving intelligence services have been labour disputes between SIS officers and the SIS. One interesting exception is described below.

Box 3: The Hoxhas vs. the SIS

The only high profile case involving the State Intelligence Service is the Remzi Hoxha case. Hoxha's family has sued the SIS accusing it for abducting, torturing and murdering their relative in 1995. The trial has been going on for many years with no verdict.

6.6. Public oversight

Due to disagreements over activity of intelligence services and their control the most vocal actor to publicly discuss intelligence services have been the opposition political parties. The media tends to thoroughly cover such issues but is generally limited to simply relay and comment on political parties' positions and statements. More recently, think tanks have become involved in providing analysis and assessments of legislation on intelligence services and their oversight is becoming a key knowledge base and reference for different actors such as media or other civil society or international organisations.[33]

7. Conclusion

Albania has the legal framework regarding the democratic oversight of the security institutions and the mechanisms are basically in place in order to hold these institutions accountable. Although further improvements are needed in legislation, the full implementation of the existing laws and policies remains the major problem.

7.1. Armed forces

There is a discrepancy between formal processes and laws and actual practice. Parliamentary control and oversight has been deficient due to many factors such as lack of resources and expertise, particularly on defence issues. Parliamentarians also lack the will to hold government accountable due to political interests.

Dominance of the executive over parliament has undermined democratic accountability of the Armed Forces. In addition, the power struggle between prime ministers and presidents has had negative consequences for the National Security Council which has remained dysfunctional.

33 The Institute for Democracy and Mediation has become a major reference through research and publications on intelligence services reform and use of special methods of investigation by the intelligence services.

Trust has increased in the independent institutions such as the People's Advocate and the Supreme State Audit Institution. This can be noticed in the increased number of complaints to the People's Advocate but also by the increase in recommendations issued by the SAI that are later implemented by security sector actors. Both these institutions need more resources to improve performance.

7.2. Police

Generally speaking, oversight of police is conducted by the CoM overshadowing parliament, which approves the legal framework but is not heavily engaged in the drafting of laws. Parliament rarely opposes and never has refused draft laws submitted by the CoM. In addition, activity of parliamentary committees regarding drafting of the laws and monitoring police faces additional challenges. These include limits on properly checking draft legislation, lack of capacity and expertise of parliamentary staff, etc.

There are independent oversight mechanisms related to the police, but their performance was revised in the implementation phase. Governmental bodies tend to support institutions under their competences which are likely to produce immediate political benefit for the government. This is reflected in government attempts to weaken the role of the People's Advocate through extended delays in the appointment of the head of this important independent institution, and reducing its annual budget and human resources.

Although the legislation on police contains clear references to human rights protection and provides mechanisms for protecting those rights, the internal oversight and judicial oversight is limited in providing complete remedy of police breaches and violations. Furthermore, public oversight of the police by civil society organisations is lacking.

7.3. Intelligence services

Although Albania is considered to have moved already from the first to the second generation of reforms, legislation on intelligence services still has important gaps. Standardised legislation and procedures for ensuring equal control of all intelligence services are still lacking. This allows the executive to have broad discretion and opportunity to politicise intelligence. The division of labour among the main executive's officials is not fully regulated leading to personalised decision making and power struggles.

Parliament formally oversees intelligence services through approval of the budget, but it does this only as a formality as the ruling majority tends to automatically endorse draft budgets proposed by the executive. Parliament may scrutinise the intelligence services but this is performed only partially as the State Intelligence Service reports annually to parliament. Lack of legislation does not allow the permanent Committee on

National Security to perform any activity other than hearing the report.

Independent institutions are an important oversight tool, but their performance is poor and their oversight of intelligence services has been partial and superficial.

Public oversight is also weak as the media, which has the largest capacities and resources, has not been able to conduct investigative journalism and scrutinise the legality of the activity of intelligence services.

8. Recommendations

8.1. Armed Forces

- Legislation related to the Armed Forces should be revised in order to provide clear roles for the president, prime minister and Minister of Defence to establish a more balanced distribution of powers.
- The causes for Parliament's poor performance of its oversight role should be addressed. Causes include weak administrative capacities, politisation, and lack of independent and internal expertise.
- A clarification of roles and competences of the National Security Council under the president and the Committee on National Security Policies under the prime minister is needed, since they have overlapping competences.
- The People's Advocate institution should improve its administrative capacities and financial resources in order to better exercise its oversight role on security sector institutions.
- The Supreme State Audit Institution should dedicate a separate section in its report to the audit conducted on the Armed Forces and Ministry of Defence.

8.2. Police

- The CoM should play a more active role in fulfilling legal and institutional obligations related to parliament and the oversight of the police.
- Parliament should be more active in oversight of the police through strengthening all mechanisms such as committees, hearings with the police director etc and consultations during the drafting process.
- Although committees to oversee the police are in place (CNS, CLIPAHR, CEF), their activity should go beyond formal meetings and discussions by tackling concrete issues and problems in the police.
- The role of the People's Advocate regarding capacities and competences as an independent oversight body should be strengthened.

- The executive and parliament should support the role of civil society in police oversight.
- Civil society organisations should increase their capacities and expertise in the field.

8.3. Intelligence services

- The legal framework on intelligence services should be revised in order to provide for more precise roles for the president and prime minister.
- Executive control mechanisms should be made one-size-fits-all in order to facilitate control and avoid gaps.
- Parliament should establish a bipartisan agenda in intelligence oversight. One practical step should be the election of the chairman of the Committee on National Security from among opposition MPs. This will enhance the opposition's institutional power.
- The People's Advocate should expand its activity in order to cover all intelligence services and focus more on the relations between the intelligence services and the public rather than on labour disputes within intelligence organisations.
- The parliamentary Committee on Economy and Finances should ensure that the State Supreme Audit Institution controls spending of secret funds by intelligence services and reports to the committee.

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Chapter 2 – Bosnia and Herzegovina

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Abbreviations and acronyms

BiH	Bosnia and Herzegovina
CoM BiH	Council of Ministers of Bosnia and Herzegovina
EU	European Union
FBiH	Federation of Bosnia and Herzegovina
NATO	North Atlantic Treaty Organization
OHR	Office of the High Representative
OSA BiH	Intelligence – Security Agency of Bosnia and Herzegovina
OSCE	Organization for Security and Co-operation in Europe
PIC	Peace Implementation Council
SIPA BiH	State Investigation and Protection Agency of Bosnia and Herzegovina
SSR	Security sector reform
USA	United States of America

1. Introduction

Among the basic conditions for successful state management in a post conflict setting is the establishment of democratic civilian control and oversight over the security sector as well as its integration and consolidation. This is a difficult and sensitive task, since the security sector includes institutions directly involved in the realisation of the state's most basic function: guaranteeing national security. As a result, the security sector reform process is a significant part of the overall political, economic, social and institutional transformation of state structures. Successful transformation is reflected in the application of quality oriented democratic oversight of the whole security sector community, consisting of both state and non-state actors engaged in the process of maintaining national security.

Bosnia and Herzegovina, like other countries in the Western Balkans region, lacks adequate methods and instruments to provide credible analysis of the extent and the manner in which reforms of the security sector should be carried out. This paper intends to give a civil society perspective of the overall progress that Bosnia and Herzegovina has achieved on its path to building and transforming its security sector.

With this aim in mind, the authors will first define the specific context in which security sector reform has been conducted in Bosnia and Herzegovina, reviewing external and internal actors who have played a significant role in shaping and defining the scope of reforms. Secondly, this paper will demonstrate the most significant achievements that have, in an institutional view, characterised security sector reform in Bosnia and Herzegovina's transitional setting. Finally, the paper will analyse key examples of the development and function of democratic responsibility mechanisms. Overall, the chapter aims to explain how and why certain security sector actors have failed to provide national and individual security in Bosnia and Herzegovina, with a particular focus on the level of accountability of the security sector. Finally, the paper will offer recommendations on how the functioning of the overall security sector could be improved. These recommendations will aim to advance Bosnia and Herzegovina's rapid integration into Euro-Atlantic security sector structures.

1.1. Background

Bosnia and Herzegovina faced a terrible four-year war that has had immense consequences on its political, economic and social landscape as well as on its security system. The collapse of the former communist system led to the disintegration of the security sector of the former Yugoslavia along national lines. Subsequently these national groups were, from 1992-1995, fighting against each other. After the war ended with the ratification of the Dayton Peace Agreement[35], the best possible solution had been achieved, given the difficult circumstances. The international community expected

35 The General Framework Agreement on Peace in Bosnia and Herzegovina (commonly referred to as the Dayton Agreement, or Peace Agreement) ended almost four years of war in the country.

that with its assistance, in the foreseeable future, the state could be normalised and obvious divisions could be overcome. The same approach could also be seen in the security sector, which was not treated separately within the agreement. The international community assumed responsibilities concerning gradual normalisation of relations and building mutually representative institutions. Statements such as "Bosnia would not exist today as a state but for international support" (Bose, 2002) perhaps have best summarised the context of the beginning of security sector reform in Bosnia and Herzegovina. As emphasised in this chapter, the role of the international community, embodied by the High Representative in Bosnia and Herzegovina, has played a key role in shaping democratic reforms in the security sector.

The security sector reform process in Bosnia and Herzegovina was unique in many ways compared to other countries in the region. First of all, the international community played a very strong role in this process. This also had an impact on security sector provisions in the constitution, which is also unique to Bosnia and Herzegovina. The constitution was drafted as part of the General Framework Agreement for Peace in Bosnia and Herzegovina, signed in 1995. Its prime aim was to end the conflict. As a consequence, the drafters of the constitution chose to establish a very basic state structure, leaving most state competencies – including security – to the two entities, the Federation of Bosnia and Herzegovina and the Republika Srpska. During the process of reform, the establishment of national security agencies has meant entity level institutions had to be abolished. The transfer of competencies from these entities to the national level has been completed successfully, with the exception of the police, which are decentralised. This same observation can be made of the judicial system. The constitution gives little guidance on the security sector. It does not recognise security as a public good and fails to give any detailed provisions. The constitution only mentions the Standing Committee for Military Matters, an advisory body to the Presidency of Bosnia and Herzegovina.

It soon became clear that constitutional provisions on the security sector would need to be changed if the country wanted to integrate into Euro-Atlantic security structures. One article of the constitution allowed the national level of Bosnia and Herzegovina to assume competencies of the two entities in areas where the entities reached consensus and agreement (Constitution of BiH, Art.III.5.a), enabling the parliaments of the two entities to transfer the authority of the security sector to the state level. As a consequence, the security sector is now centralised and fully in the competence of the state level authorities, with the exception of police, which are still under jurisdiction of the entities.

Defense reform in Bosnia and Herzegovina is among the most successful conducted after the war (Vetschera and Damian, 2006). After establishing peace, Bosnia and Herzegovina had three completely separate armies, which until recently, had been in conflict with one another. Today, the Armed Forces of Bosnia and Herzegovina is a unified professional army under a single chain of command and subordinate to civilian authorities, with the Presidency of Bosnia and Herzegovina as its supreme commander (Law on Defence, Article 11). A similar transformation occurred with the intelligence sector, resulting in a unique intelligence security structure. These examples indicate

the dedication to security sector reform in Bosnia and Herzegovina both from the national authorities and the international community. The transfer of competencies from the entity to state-level was not a voluntary process, particularly in the reform of the military. Significant pressure from the international community resulted in the adoption of legislation necessary for defence reform, as well as the formation of the unique national military force. A similar situation also occurred with intelligence reform, as well as during the reform of the tax and customs system. Except in the case of the police, the transfer of competences in matters of defense and security from the entities to the national government has continued. This enabled a more robust democratic control over this sector by establishing parliamentary committees for oversight over the security sector, as well as other forms of democratic control. To aid in this effort, two parliamentary committees were established during 2003 and 2004, the Joint Committee for Defense and Security and the Joint Security and Intelligence Committee on Supervision of the work of Intelligence and Security Agency of Bosnia and Herzegovina. Finally, during this period, two new ministries were established in the Council of Ministers of Bosnia and Herzegovina: the Ministry of Defense and Ministry of Security. These each have security competences.

Other institutions have been established to compensate for constitutional shortfalls. The establishment of the Border Police Bosnia and Herzegovina in 2001 (first called the State Border Service) has addressed the problem of protection and control of international borders, which was formerly under the entity level and cantonal Ministries of Internal Affairs. After the establishment of the state Court and the Prosecutor's Office in 2001, the need to establish a national police agency became apparent. This led to the establishment of the State Investigation and Protection Agency (SIPA Bosnia and Herzegovina) in 2002. The integration of the tax and customs system, achieved after the establishment of the national Indirect Taxation Authority, has significantly contributed to an improved oversight of indirect taxes as well as over national expenditures.

Police reform in Bosnia and Herzegovina was conducted in several stages. The most recent took place in 2008 and culminated in the adoption of two major pieces of legislation governing coordination between agencies and providing independent oversight. These are, respectively, the Law on Directorate for Coordination of the Law Enforcement Organisations and Agencies for Support of the Police Structure in Bosnia and Herzegovina and the Law on Independent and Supervisory Bodies of Police Structure of Bosnia and Herzegovina. The recent adoption of these two Laws completed the legislative framework for democratic oversight of national police agencies. As for entity and cantonal police forces, legal regulation and oversight bodies had been established previously, during an earlier phase of reform. The structure of police forces in Bosnia and Herzegovina is very complicated. In addition to the national police services, there are thirteen other police agencies; there are two entity level police forces (one in the Federation of Bosnia and Herzegovina and the other in Republika Srpska), and a police force in Brčko District. Furthermore, the Federation of Bosnia and Herzegovina is further devolved into additional ten cantonal police agencies, resulting in

fourteen police agencies in Bosnia and Herzegovina. Legal reforms of the security sector were shaped by political conflicts among the three major ethnic groups and their political elite, who have conflicting opinions on national security principles and the scope of reforms. As a result, the current security system is not based on a coherent system of democratic values. Due to political disagreements, the law fails to attribute competences and jurisdiction over security actors clearly. Recurrent discussions over the need for and the scope of reforms also threaten the efficiency of the security sector. For example, these political disagreements have led to cuts in resources allocated for reform, a particularly troubling tactic amidst the potential economic crisis that Bosnia and Herzegovina is facing.

Security sector reform in Bosnia and Herzegovina is a complex process. The existence of multiple interrelated factors complicates attempts to provide clear insight into all achievements and progress. The methodology used for this research,[36] developed in cooperation with our regional partners, is aimed at offering answers based on empirical inquiry, to present an all inclusive approach to oversight, monitoring and measurability of the security sector in Bosnia and Herzegovina. By using primary and secondary sources and by applying new evaluation criteria, we will give insight to the degree to which security sector reform in Bosnia and Herzegovina has been achieved.

An idea that both characterises the difficulty of this research and represents an approach the authors have used in an attempt to overcome these difficulties is best reflected in the statement the "security sector reform is the art of possible" (Nathan, 2006). The attitudes of certain security actors towards monitoring by civil society created problems during the research. These problems were compounded by objective circumstances, such as inadequate data on court cases, as well as by subjective circumstances, such as an unwillingness of the Intelligence-Security Agency of Bosnia and Herzegovina to cooperate. Despite these limitations, this chapter represents a pioneering attempt at research in Bosnia and Herzegovina on security sector governance. Its purpose is to provide readers a critical analysis and to inspire other academics and professionals to expand research in this domain.

1.2. Patterns of democratic accountability of the security sector

Democratic oversight of the security sector and accountability of these institutions represents a condition of democracy. With the intention of meeting this condition in Bosnia and Herzegovina, all significant measures of control – including parliamentary control, executive control, judicial control and control by independent state bodies such as the ombudsmen or state audit office – have been established and are functioning. The following chart summarises the major security sector actors and overlapping mechanisms for oversight:

36 See the chapter by Sonja Stojanovic 'SSR Index – Measuring to Advance Democratisation' in this Almanah for more details on the methodology.

Table 1: Mapping the security sector

	State level	Entity/cantonal level
State actors authorised to use force	• Armed forces Bosnia and Herzegovina • State Investigation and Protection Agency – SIPA Bosnia and Herzegovina • Border police Bosnia and Herzegovina • Intelligence – Security Agency Bosnia and Herzegovina • Directorate for Coordination of Police Bodies Bosnia and Herzegovina • Service for Foreigners' Affairs Bosnia and Herzegovina • Court police	• Police of Republika Srpska • Police of the Federation of Bosnia and Herzegovina • Cantonal police departments • Brčko District Police • Court police of entity/cantons/Brčko District
Executive power	• Presidency of Bosnia and Herzegovina • Council of Ministers Bosnia and Herzegovina • Ministry of Defence Bosnia and Herzegovina • Ministry of Security Bosnia and Herzegovina	• Presidents of Entities • Entity/cantonal governments • Ministries of internal affairs of Entities/cantons
Parliamentary oversight	• Joint Committee for Defence and Security • Joint Committee for Oversight over the Work of Intelligence – Security Agency of Bosnia and Herzegovina	• Security Committee of the Parliament of Federation of Bosnia and Herzegovina • Security Committee of National Assembly Republika Srpska
Independent bodies for oversight	See Table 2	
Judiciary	• Court of Bosnia and Herzegovina • Prosecutor Office of Bosnia and Herzegovina • High Judicial and Prosecutorial Council of Bosnia and Herzegovina	• Cantonal/District Courts • Brčko District Court
Civil society	• Non-governmental organisations • Media	• Non-governmental organisations • Media
Non-state actors authorised to use force	• Competences over PSC are on the entity	• Private Security Companies
International Community	• Office of the High Representative (OHR) • NATO, EU (EUFOR, EUPM), OSCE, UN	

An institution that best exemplifies the role of civilian democratic control is the Parliamentary Assembly of Bosnia and Herzegovina and its competent committees. Provisions of the Dayton Peace Agreement allocated all competences for parliamentary control over the security sector to entity parliaments. With the reform processes and establishment of state-level security institutions it became necessary to establish parliamentary bodies for oversight over the work of security institutions at the state level. As mentioned previously, two committees were established within the Parliamentary Assembly of Bosnia and Herzegovina: the Joint Committee for Defence and Security and the Joint Security and Intelligence Committee on Supervision of the Work of the Intelligence and Security Agency (OSA). The Joint Committee for Defence and Security, established in 2003, was assigned, among other tasks, to monitor implementation of the security and defence policy of Bosnia and Herzegovina.[37] The Joint Committee for Supervision of the Work of the OSA was established in April 2004, assigned to, inter alia, oversee the legality of the work of the OSA, give opinions on appointment of directors, scrutinise reports of the Chair of the Council of Ministers on his oversight competences, etc.[38] Both committees are very active in asserting democratic control.[39] Along with these two state-level committees, there are still entity level committees dealing with oversight and control over the work of entity police forces. In Republika Srpska, there is the Safety Board of the People's Assembly, while in the parliament of the Federation of Bosnia and Herzegovina there is the Committee for Security. The Committee for Security and Oversight over the Police Forces at the Assembly of Brčko District is in charge of democratic oversight over the Police of Brčko District. In addition, a special law on parliamentary control is currently being drafted, aimed at organising this domain in a more comprehensive manner.[40]

2. Internal oversight in security sector bodies & governing ministries

2.1. Executive

Executive control over the security sector is regulated by laws and regulation, which establish control over the functioning of institutions, respect for human rights, and control of budgetary expenditures. Apart from these bodies within the security institutions, each ministry has inspectorates or departments in charge of monitoring the work of these institutions.

The executive has set up a number of internal oversight mechanisms that work alongside the different security sectors. These internal control bodies are usually called

37 http://parlament.ba/komisija/1/0/32.html, accessed on 7 May 2010.
38 http://parlament.ba/komisija/1/0/33.html , accessed on 7 May 2010.
39 For more information please see http://www.parlament.ba/sadrzaj/komisije/zajednicke_komisije/odbrana/izvjestaji_o_radu/Default.aspx?id=30426&langTag=bs-BA , accessed on 4 June 2011.
40 For more details on proposition of the law see http://www.parlament.ba/sadrzaj/zakonodavstvo/u_proceduri/default.aspx?id=27028&langTag=bs-BA accessed on 5 June 2011.

inspectorates or internal control and they are responsible for ensuring that security actors follow the law and respect human rights. In addition, finance sections and departments operating within the ministries are in charge of overseeing and controlling budgetary expenditures.

2.2. Judiciary

The judiciary and security institutions are connected through several mechanisms of control. Pursuant to the Criminal Procedure Code and the Criminal Code, courts are competent to authorise law enforcement bodies to launch special enquiries. Given the potential impact that the work of intelligence agencies can have in violating the human rights of the people it investigates, the Law on the Intelligence and Security Agency specifies that the Court of Bosnia and Herzegovina has the primary role in authorising enquires by the intelligence agencies and overseeing that these enquiries are in line with the relevant legislation. Courts play a major role in assessing legality of the use of force by police and situations of abuse of the rights of detainees.

2.3. Independent state bodies

With the aim of achieving adequate protection of human rights for citizens and employees in the security sector, several state level and entity level institutions have been established. Primarily, there are independent oversight bodies such as the Human Rights Ombudsman of Bosnia and Herzegovina, dealing with the protection of human rights of citizens. Additionally, the Parliamentary – Military Commissioner was established with the purpose of strengthening the rule of law and protecting the human rights and freedoms of soldiers and cadets in the Armed Forces of Bosnia and Herzegovina and other employees of the Ministry of Defence. The Law on the Parliamentary Military Commissioner (Official Gazette of BiH, 49/09) stipulates that the commissioner cooperate with the Ministry of Defence of Bosnia and Herzegovina, the General Inspectorate within MoD Bosnia and Herzegovina, the Armed Forces, Bosnia and Herzegovina and the Human Rights Ombudsman of Bosnia and Herzegovina. The Military Commissioner is legally responsible for the investigation of specific issues as instructed by the Parliamentary Assembly of Bosnia and Herzegovina and the Joint Committee for Defence and Security. In order to control the work of state level police, the Parliamentary Assembly has established two independent bodies: the Independent Board of the Parliamentary Assembly of Bosnia and Herzegovina and the Public Complaint Board. Apart from these two state-level police boards, there are also the entity-level Independent Police Board of the Federation of Bosnia and Herzegovina and the Independent Police Board of Republika Srpska, as well as the Independent Police Board of Brčko District. The Parliamentary Assembly of Bosnia and Herzegovina has established the Personal Data Protection Agency, while the Anti-corruption Agency was established to fight corruption. Even though a law on the Anti-corruption Agency was adopted in late 2009, the agency's director was not appointed until mid-2011 (Official Gazette of BiH, 62/11). Despite this setback, it is expected that the agency will be operational in the near future.

Several different agencies share competences regarding the oversight of security institutions' budgets as set out in the constitution, which provides that the budgets for government institutions, including for security institutions, are proposed by the presidency at the recommendation of the Council of Ministers and then adopted by parliament.

The legislative framework significantly improved in 2008 with the adoption of the Law on Internal Audit of Institutions in Bosnia and Herzegovina (Official Gazette of BiH, 27/08) and the Law on Fiscal Council in Bosnia and Herzegovina (Official Gazette of BiH, 63/08), providing legislation to improve transparency of the budget. Drafts and updated and final versions of the budget are now made available to the public. Three audit institutions in Bosnia and Herzegovina are in charge of the oversight of budgetary expenditures. They are the State Audit Office, in charge of auditing state level institutions, plus the Audit Office of Federation of Bosnia and Herzegovina and the Audit Office of Republika Srpska, in charge of entity institutions.

The Public Procurement Agency is in charge of ensuring that all state bodies follow the Law on Public Procurement. This agency is an independent administrative organisation which responds to the Council of Ministers and reports annually to parliament. Security institutions are treated separately in the provisions of the Law on Public Procurement. The law states agreements in the defence domain regarding the production or trade of weapons, military equipment and allocated materials are exempt from regular procedure, as are agreements referring to state secrets. These agreements must be followed by special security measures accordingly to relevant laws, and other regulations and administrative provisions.

3. Key achievements and weaknesses

3.1. Parliamentary oversight

The establishment of state-level parliamentary security sector oversight committees could be considered the most significant milestone in the country's quest to achieve democratic control over this sector. With significant support from international institutions,[41] these committees were empowered to carry out their oversight functions as set out in the relevant laws. The laws provide a number of mechanisms to parliamentary committees for overseeing the security sector. Their work is largely transparent and the public is adequately informed on their activities. Additionally, they have achieved concrete cooperation with the non-governmental sector in their work. This cooperation is provided by organising seminars and roundtables with representatives of non-governmental organisations and media, and is visible in their annual reports.[42]

41 Support for the Committees was provided by OSCE, DCAF, USAID, UNDP and other international organisations, as well as bilateral aid programmes of various countries.
42 Annual reports of theJoint Committee for Defence and Security and the Joint Security and Intelligence Committee on Supervision of the Work of the Intelligence and Security Agency of Bosnia and Herzegovina are availabe at www.parlament.ba.

The work of committees in the Parliamentary Assembly of Bosnia and Herzegovina is satisfactory, but minor deficiencies still exist and are often evident in the committees' annual reports.[43] One such deficiency is weak cooperation between committees and executive bodies, which in turn causes executive bodies to not respond to requests coming from the parliamentary committees. This lack of cooperation is evident in the relationship of the Joint Committee on Supervision of the Work of the OSA with the Council of Ministers Bosnia and Herzegovina. According to reports of this Committee, CoM Bosnia and Herzegovina has failed to fulfil its legal duty of delivering annual reports on the work of the OSA for the last three years. In these reports, it is also stated that during the same period, CoM failed to deliver information from the Chair of CoM concerning the conclusion of an agreement of the OSA with foreign countries' agencies and institutions and with international organisations. Failure to fulfil its legal obligations seems to stem from weak coordination and lack of willingness for better cooperation between legislative and executive bodies. On a positive note, the efforts by the Committee finally yielded results, and the Council of Ministers of Bosnia and Herzegovina has delivered the annual report for 2009.

There are also weaknesses in administrative and logistical capacities of committees' secretariats. In general, the needs of committees are greater than the support currently offered by their secretariats. It is clear that more expert and financial support needs to be provided to the committees in order to improve their work. This especially relates to entity level committees, where secretariats hire only one expert per committee.

The effectiveness of parliamentary oversight also has faced very political and practical problems. In 2011, delays in the nomination of new members of Parliamentary Committees meant that the committees were unable to convene.[44]

3.2. Executive control

Control over institutions and personnel, protection of human rights, and control over budgetary expenditures all fall under the competence of the executive branch. This control is exercised during the overall performance of duties, and is an integral part of the work of the security institutions. An analysis of the primary laws of the security actors in Bosnia and Herzegovina, as well as internal rules of procedures of the institutions, shows that laws and regulations governing executive oversight appear to be in line with democratic principles.

Departments for internal control over human rights protection have been established in all security institutions. These departments handle claims of human rights abuses from citizens or security sector employees. According to official data obtained during

43 Annual reports of Parliamentary Committees are available at www.parlament.ba.
44 This instance occured in the course of implementation of 2010 election results, when new committee members were not appointed until mid 2011 due to political obstructions, while in the interim no one exercised parliamentary control over security sector actors.

this research, these departments adhere to legally prescribed procedures, adequately process appeals from citizens and security sector employees, and administer punishment under legally assigned processes.

Analysis of the data, however, reveals discrepancies. There are very few appeals, compared to the number one would expect based on the number of citizens and employees. This either suggests individuals are not sufficiently aware of their right to appeal, or difficult relations exist between the designated departments for claims during the appeals overview. Although all necessary laws and regulations have been adopted, and all proscribed departments have been established, there is a need to increase the administrative capacities of internal oversight departments. Their performance is affected by lack of office space, along with the fact that certain organisational parts of the department, such as the Sector for Material-Financial Dealings, are not located within the building of the Ministry of Internal Affairs of Federation of Bosnia and Herzegovina (Ministry of Interior Affairs, written correspondence, 15 November, 2010).

3.3. Judicial control

The role of the judiciary in control and oversight of the use of force and special investigative measures is important to ensure basic respect for human rights. As explained above, the police must go through the Prosecutor's Office to request court approval before launching special investigative measures. These measures can be used in instances where it would not be possible to obtain evidence in any other way, or when the acquisition of evidence by other means would pose significant obstacles. These measures are often used in cases which involve charges of: crimes against the integrity of Bosnia and Herzegovina, crimes against humanity and values protected by international law, acts of terrorism and crimes where the perpetrator can be charged with three or more years of penalty (Criminal Procedure Code, Art.116-117). The Intelligence-Security Agency Bosnia and Herzegovina can make requests directly to the courts. Evidence collected by the agency without prior court permission must be destroyed immediately. Furthermore, the director is required to notify the president of the board of the agency and the head inspector, and ensure a procedure against the individual or persons who violated the law (Law on Intelligence-Security Agency, Art.79).

Past experience shows people who are being investigated are not always informed of the objective and the results of the investigation, as required by the Law on Criminal Procedure and the Law on Intelligence-Security Agency. Our analysis finds little evidence that this part of the legal regulation is being fully implemented, nor that it is implemented as intended by the law. Moreover, no register is available which could collectively show the approvals for the implementation of the special investigative measures neither from the courts nor from the prosecutors. Thus, this information is unavailable to the public. In response to our inquiries, security institutions were unwilling to divulge this information.

The constitution establishes the judiciary such that it cannot function effectively. There are currently four separate judicial structures with separate budgets that do not cooperate well.

3.4. Control by the independent oversight bodies

There are fourteen independent oversight bodies in Bosnia and Herzegovina. The following table summarises their roles and the government level at which they work:

Table 2: Independent Oversight Bodies

Institution	Level	Field
Institution of Human Rights Ombudsmen of Bosnia and Herzegovina	Bosnia and Herzegovina	Human rights
Parliamentary Military Commissioner	Bosnia and Herzegovina	Human rights
Independent Police Board of Bosnia and Herzegovina	Bosnia and Herzegovina	
Board for Complaints of Police Officials Bosnia and Herzegovina	Bosnia and Herzegovina	Human rights
Public Complaint Board Bosnia and Herzegovina	Bosnia and Herzegovina	Human rights
Independent Police Board FBiH	Federation of Bosnia and Herzegovina	
Independent Police Board RS	Republika Srpska	
Personal Data Protection Agency Bosnia and Herzegovina	Bosnia and Herzegovina	Human rights
State Auditor	Bosnia and Herzegovina	Budget
Public Auditors Office FBiH	Federation of Bosnia and Herzegovina	Budget
Public Auditors Office RS	Republika Srpska	Budget
Anti-Corruption Agency Bosnia and Herzegovina	Bosnia and Herzegovina	
Central Election Commission Bosnia and Herzegovina	Bosnia and Herzegovina	
Communications Regulatory Agency of Bosnia and Herzegovina	Bosnia and Herzegovina	Electronic media
Independent Police Board of Brčko District	Brčko District	

The most significant institution for the protection of human rights is the Institution of Human Rights Ombudsmen of Bosnia and Herzegovina, a unified state-level institution which was established in 2007. The Ombudsmen are responsible for overseeing

the respect for human rights in the entire public sector, without any special mandate for the security sector. Bosnia and Herzegovina has never adopted a large scale strategic approach to ensure and enhance the protection of human rights. Without a proper legal and regulatory framework to ensure that the Ombudsmen's decisions are implemented, the Ombudsmen's office tends to resolve issues on an ad hoc basis. As a result, decisions of the Ombudsmen are often challenged and the work of the Ombudsmen cannot progress.

While the Ombudsmen have planned many initiatives in the field of human rights and for marginalised groups, and have produced an array of reports such as the "Special Report on the State of Human Rights within the Institution for Execution of Criminal Sanctions,"[45] little action has been taken to implement these plans or follow up on the Ombudsmen's recommendations. The Ombudsmen have only dealt with security actors as part of their research and recommendations on the penal system and the treatment of prisoners.[46]

According to the Ombudsmen's 2010 report non-compliance with its recommendations indicates society and government do not accept the Ombudsmen as the national institution in charge of preventing human rights abuses. The report goes on to suggest that such a low regard for human rights and the institutions protecting them shows that democracy is not very well developed in Bosnia and Herzegovina (Institution of Ombudsmen for Human Rights, 2011, p.37).

In its 2009 and 2010 annual reports, the Ombudsmen state that a large number of institutions in Bosnia and Herzegovina have failed to fully implement the provisions of the Freedom of Access to Information Act. However, the reports pointed out that certain progress had been made, with only five out of sixty-one institutions not managing to appoint a point of contact designated to deal with public relations in instances of requests for access to information. Although Bosnia and Herzegovina has an advanced and modern Freedom of Access to Information Act, there are certain problems with its implementation. The main problem is that provisions from this law do not specify clearly enough that the institutions must present their answers in the form of an announcement (rather than a decision). This, in the appeals process, creates problems for the appellant, as the provided announcement cannot be appealed, as is the case with a decision.

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45 All Special Reports are availabe on the webiste of the Ombusmen Institution: http://www.ombudsmen.gov.ba/PublikacijeEn.aspx?category=Special%20Reports.

46 The Law on Execution of Criminal Sanctions, Detention and Other Measures (2005) which regulates the basic and most important human rights in BiH, in article 68, gives prisoners the right to communicate with the Ombudsmen BiH as an independent body charged with the protection of fundamental human rights and basic freedoms, allowing them to appeal in a form of a petition or an appeal in terms of any problem. This right which the prisoners can exercise is also reflected in article 20 of the Law on the Ombudsmen, which states that "correspondence to the Ombudsmen or the Institution by the prisoner cannot be placed under any censorship, cannot be opened, and the conversations between the Ombudsmen or persons he delegated can never be overseen" which shows that the existing regulation in BiH contains stipulations for the control over the penal issues by the independent institutions outside the perimeter of the prison system.

One area to be strengthened for independent bodies in Bosnia and Herzegovina is their power to sanction. These institutions can do very little to enforce sanctions and depend on the voluntary compliance of those found violating certain laws or regulations. State and entity-level legislatures have expanded their capacities at the recommendation of auditors. Their capacities are still insufficient, however, in relation to what is needed for the recommendations from the auditor's reports to be implemented. The current record fails to offer any examples of an institution that has been penalised or undergone any discipline.

Each year, the auditing institutions publish reports showing concrete failures of specific institutions. Unfortunately, after an analysis and discussion in parliament, highlighted issues often fail to be reviewed or remedied. In its 2010 report, the Audit Office for the Institutions of the Federation BiH (Public Auditors Office Federation BiH, 2011) failed to grant a positive grade to a single institution. These and similar findings of the auditor are possible evidence of neglectful state resource management. Legal changes should be made to allow sanction of those institutions not abiding by the recommendations.

The Parliamentary Military Commissioner of Bosnia and Herzegovina is a unique institution in the region. The first Commissioner was appointed soon after parliament adopted the 2009 Law on the Parliamentary Military Commissioner (Official Gazette of BiH, 51/09) and has been active in promoting human rights and basic freedoms of military personnel. According to the Law on the Parliamentary Military Commissioner, the Commissioner can take up cases forwarded to him/her by the Ombudsmen (Article 7). The Commissioner is also responsible for investigating specific cases based on the recommendation of the Parliamentary Assembly and the Joint Committee for Defence and Security. The Commissioner has also been granted the power to conduct investigations according to his own judgement, and can demand recommendations for investigation from the Joint Committee. The Commissioner has access to information necessary for investigations, and the minister of defence can reject access only in cases when the information is classified. Even in these instances, the minister must submit reasons to the Joint Committee for Defence and Security.

3.5. Financial transparency

In 2005, Bosnia and Herzegovina began a serious budgetary reform with the aim of strengthening the phases of planning and management in the field of public finances. Bosnia and Herzegovina since has created a sound legislative framework on financial transparency. It has built up a modern, medium term process of planning with a defined three-year budgetary calendar and division of responsibility. In accordance with the Law on Financing of Bosnia and Herzegovina Institutions, (Official Gazette of BiH, 61/04) the Ministry of Treasury and Finance Bosnia and Herzegovina is charged with the preparation of the budget and financing of the budget users, as well as adopting all the relevant regulations for the preparation of the budget and activities for implementation. Each institution is obliged to adopt internal acts, such as rules of procedures, which further help to organise this field. The legislative framework has

significantly improved since 2008, in particular with the adoption of the Law on Internal Auditing of Bosnia and Herzegovina Institutions (Official Gazette of BiH, 27/08) and the Law on Fiscal Council Bosnia and Herzegovina (Official Gazette of BiH, 63/08). Both of these laws promote adequate transparency of the budget, making it publicly available during the development and implementation phase.

From the auditors' reports, it can be observed that certain security sector institutions, such as the Ministry of Defence Bosnia and Herzegovina, received unsatisfactory grades. The state auditor expressed a reserved opinion for the financial report and the legality of management during 2009.

The audit office regularly conducts annual controls of the state security actors, which are publicly available. By this approach, it brings about an improvement of the financial activities of certain institutions. Some of the institutions, like the State Investigation and Protection Agency of Bosnia and Herzegovina (SIPA) have improved their financial activities by following the recommendations of the audit office. Certain suggestions were given to the financial activities of the Ministry of Security, which had failed to reach the desired dynamic of employment in 2006 and left behind unused resources for the payroll of personnel. These resources then were directed elsewhere. This trend was noticed in other security institutions. The reports on the financial activities of Bosnia and Herzegovina institutions cover all of the state security actors and are available to the wider public. An exception is the report on the Intelligence-Security Agency Bosnia and Herzegovina. Audits of the agency are performed by parliamentary commission in accordance with the Law on the Intelligence-Security Agency.

All institutions are required, in accordance with regulation, to establish internal control and internal auditing procedures.[47] This obligation, however, never has been adhered to fully. Only certain institutions, such as the Ministry of Defence Bosnia and Herzegovina, the border police and the State Investigation and Protection Agency have established internal auditing. An overarching reform in accordance with international standards and European practices is in progress and should be functional by the end of 2012. The reformed system should include a complete, functional internal control system. One of the main characteristics of financial control is that it is carried out in accordance with a more traditional inspectional approach of the external audit, rather than more regular internal audits. This is particularly the case in terms of expenditure control, where it is difficult to differentiate between the public and private expenditures of officials. For example, the line between official and personal performance is blurred when considering expenditures such as representation, use of official cars, phones, using state owned property after hours, etc.

47 Institutions with an annual budget superior to two million Bosnia and Herzegovina convertible mark have to establish an internal control mechanism.

3.6. General transparency

The Constitution of Bosnia and Herzegovina provides guarantees for the protection of fundamental human rights and freedoms (Constitution of BiH, Art.II) in accordance with the European Convention for the Protection of Human Rights and Fundamental Freedoms, including access to information and the right to privacy.

Protection of personal data, as an essential component of the protection of privacy, is a fundamental individual right considered essential for the functioning of democratic society. The Criminal Code of Bosnia and Herzegovina recognises the criminal offence of "unauthorised processing of personal data." (Official Gazette of BiH, 3/03). The Constitution of Bosnia and Herzegovina does not clearly define the rights of all citizens to access public information, although the European Convention is embedded in the Constitution and by default creates a basis for respecting the freedom of access to information.

3.7. Access to information and data protection

Laws on the Freedom of Access to Information were adopted in 1999 in three somewhat different versions, at the national level and the two entity levels. To standardise these laws, the High Representative reached a decision that allowed the OSCE to prepare a draft version of the Freedom of Access to Information Act in line with best practices. The Parliamentary Assembly Bosnia and Herzegovina adopted this draft law in November 2000 (Official Gazette of BiH, 28/00), while the entity parliaments adopted this Law during 2011, giving Bosnia and Herzegovina unified regulation on the freedom of access to information.

The Law on Classified Data Protection (Official Gazette of BiH, 54/05) established a system of classification and categorisation in which data can be classified either as a low or high level of classification, depending on the government institution. The level of classification varies from institution to institution.

According to the report from the OSCE Department for Democratisation, only about one third of the population of Bosnia and Herzegovina knew of the Freedom of Access to Information Act and roughly the same percentage believe that it will benefit citizens (OSCE, 2004). The 2009 annual report from the Ombudsmen states that many institutions in Bosnia and Herzegovina are not fully implementing the Freedom of Access to Information Act, but that certain progress has been made (Institution of the Ombudsmen BiH, 2009).

The Law on Classified Data Protection defines a shared basis for accessing and protecting secret information[48] from unauthorised disclosure, destruction and misuse. In

48 The types of secret information covered under the law include: public safety, defence, foreign affairs, intelligence and security, declassification of data, and the procedures for security checks and security clearances to access secret data. For more information, see Law on Classified Data Protection, Official Gazette BiH 54/05.

2006, Bosnia and Herzegovina signed an agreement with the EU on Security Procedures for the Exchange of Classified Data. In doing so, it obliged itself to fulfil the minimum EU set of standards related to the procedure of protection and exchange of classified data. As a result the Law on Classified Data Protection was amended and the scope of data protection in Bosnia and Herzegovina was broadened to ensure that regulations are in conformity with NATO standards.

In its 2009 Human Rights Report on Bosnia and Herzegovina (US Department of State, 2009), the US Department of State found that, although the Law on Free Access to Information provides for citizen access to government records, many government agencies have not complied with the law. According to the Freedom of Access to Information Act, the government must provide an explanation for any denial of access and citizens may appeal denials in the court system or to the ombudsmen's offices. In practice, the government has sometimes failed to provide the required explanation for denial of access unless citizens appealed to the ombudsmen or courts, or sought legal aid.

Public awareness of the law remains low. Although the Freedom of Access to Information Act establishes new procedures for accessing information in government possession, generally new principles of administrative procedures have failed to be established. The overall practice in this domain, as the main indicator of transparency in administrative decision making, seems to be subject to dual regulation in the state apparatus, which as a consequence brings about insufficient clarity over the applicability of the legislative framework.

4. Conclusions

Any analysis of security sector reform in Bosnia and Herzegovina must acknowledge the specific context in which these changes have unfolded. Emerging from a devastating war, constitutional legal provisions formed a part of the peace agreement. The international community played a significant role in shaping and building security institutions. In such a unique environment, progress was hindered by a lack of political will among representatives of the different constituent peoples to come to a consensus on national interests. There has been progress, however, in the domain of security that can be considered a qualified success. Although much work remains, Bosnia and Herzegovina has achieved necessary stability, without imminent threats to the security of citizens or the possibility of a new conflict. The state has created conditions necessary for further political, economic and social development. The significance of this progress should not be understated, considering the situation prior to the signing of the Dayton Accords.

In the defence sector, Bosnia and Herzegovina has been confronted with many challenges, which created obstacles in achieving balance in its financial operations, civilian oversight and command, and transparent oversight of defence sector structures. The establishment of democratic oversight of the security sector has been one of the major

challenges in the process of security sector reform, but progress in this area represents one of chief indicators of successful transformation.

As establishment of the security sector was not treated separately within the framework of the peace agreement, the international community assumed obligations concerning the institutional, legal, and normative establishment of the security sector. The international community, notably through the Office of the High Representative in BiH, strongly influenced reforms. Sometimes the approach had to be robust since local politicians were not up to the task. The adoption of the so called "Bonn Authorisations"[49] significantly aided the High Representative and other members of the international community in encouraging and sometimes imposing necessary reforms.

In the course of these processes, complementary forms of democratic control and oversight of the security sector have been established, including parliamentary oversight, executive control, judicial control, and control by independent state bodies. A key impediment to the full implementation and realisation of these legislative provisions is a lack of capable management. In addition, policy makers will need to overcome the legacy of undemocratic mentalities and procedures. Security institutions and personnel will need more time to adopt and internalise democratic values and principles.

Parliamentary oversight of the security sector in Bosnia and Herzegovina, through the work of the relevant committees, can be rated as quite good. Quality legal regulation provides these committees with different mechanisms for oversight. The committees are extensively using these mechanisms, despite the fact that in certain situations, narrow political interests are put ahead of legal efficiency and pragmatism. Committee work was put on hold following the 2010 elections when the composition of the new committees, including the parliamentary committees overseeing the security sector, was delayed for several months. Legislators, therefore, must adopt procedural safeguards to prevent similar situations from interrupting the work of committees in the future.

Attempts to offer insight into security sector reform and the trends that have characterised this process have revealed that reform is proceeding positively. The first generation of reform, characterised by the difficulties of Bosnia and Herzegovina's unique context, has been satisfactorily carried out with significant assistance from the international community. The forthcoming period will require an increase in transparency in all areas of the security sector, ensuring sustainability and local ownership over all processes and insisting on greater responsibility of the management structures of security institutions.

49 The Peace Implementation Council (PIC) decided to vest the OHR with additional powers at its conference in Bonn, which was held on 9 and 10 December 1997. The High Representative could now impose laws and dismiss officials found to be obstructing the implementation of the Dayton Peace Agreement.

5. Recommendations

The proposed law on parliamentary oversight of security sector should be adopted: The control and oversight work of the parliamentary committees in Bosnia and Herzegovina is overall quite good. There are sufficient laws on the books to provide these committees with a variety of tools for oversight of the work of security institutions, which are being utilised. In certain situations, narrow political interests are put ahead of legal efficiency. The proposed law on parliamentary oversight of the security sector, currently in parliamentary proceedings, should be rapidly adopted, since it would improve some undefined legal provisions of control and oversight.

Cooperation between committees of the Parliamentary Assembly of Bosnia and Herzegovina and executive authorities should be increased: Cooperation between committees of the Parliamentary Assembly Bosnia and Herzegovina in charge of oversight of the security sector and executive authorities is insufficient. This is particularly evident in the lack of cooperation between the Joint Committee on Supervision of the Work of the Intelligence-Security Agency and the Council of Ministers of Bosnia and Herzegovina. During recent years this situation has improved, but we believe this cooperation is not yet up to the level necessary to implement control in line with democratic practice. Therefore, the Law on the Intelligence-Security Agency Bosnia and Herzegovina should be amended to establish norms that closely define forms of cooperation and establish responsibility for failures to fulfil obligations in this part of oversight.

Quality of internal control bodies should be increased: In spite of quality control systems, internal control bodies still have notable deficiencies. Insufficiently staffed structures and inadequate expertise of those in charge pose significant challenges. Activities slowly being implemented for internal financial control serve as an example that should be followed by other internal control units.

Penalty provisions for non-adherence to the recommendations of the Ombudsman or Audit Office should be established: The capabilities of independent bodies remain limited. The causes include insufficient capacities and a lack of political independence. Non-compliance with the recommendations of independent bodies remains an obstacle to reform. The State Auditor's annual report often points to problems with the financial management of the Ministry of Defence Bosnia and Herzegovina,[50] but there have been no consequences. What should be strengthened in Bosnia and Herzegovina are the penalty provisions for non-adherence to the recommendations of the Ombudsmen or the Auditors Offices.

Judicial reform should become a priority: Currently in Bosnia and Herzegovina there are four separate pyramids of the judiciary, which have a low level of cooperation. The system needs to be strengthened and made more efficient. Structural dialogue over

50 All Special Reports are available on the webiste of the Ombusmen Institution www.ombudsmen.gov.ba

the judiciary between the EU and Bosnia and Herzegovina should offer some solutions to help reach a more quality oriented institutional arrangement.

The role of civil society organizations in the process of oversight over security sector should be strengthened: Having in mind the upcoming second generation of security sector reforms (first generation SSR in Bosnia and Herzegovina is complete), the role of civil society organizations in the process of oversight of the security sector needs to be improved and strengthened.

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Chapter 3 – Croatia

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Abbreviations and acronyms

BiH	Bosnia and Herzegovina
CoE	Council of Europe (Vijeće Europe)
DP	The Croatian State Budget (Državni proračun)
DPROSRH	Long Term Development Plan of the Croatian Armed Forces (Dugoročni plan razvoja OSRH)
DUR	Croatian State Auditing Office (Državni ured za reviziju)
EC	European Community (Europska Zajednica)
EU	European Union (Europska Unija)
HDZ	Croatian Democratic Union (Hrvatska demokratska zajednica)
HS	The Croatian Parliament (Hrvatski Sabor)
ICTY	International Criminal Tribunal for the former Yugoslavia
MAP	Membership Action Plan (Akcijski plan članstva)
MoD	Ministry of Defence (MInistarstvo obrane)
MUP	Croatian Ministry of Interior (Ministarstvo unutarnjih poslova)
NATO	North Atlantic Treaty Organisation (Organizacija sjeverno-atlantskog ugovora)
OO	The Croatian Committee for Defence (Odbor za obranu)
OSRH	Armed Forces of the Republic of Croatia (Oružane snage Republike Hrvatske)
OUPNS	The Croatian Parliamentary Committee for Internal Policy and National Security (Odbor za unutarnju politiku i nacionalnu sigurnost)
PfP	Partnership for Peace (Parterstvo za mir)
RoC	Republic of Croatia (Republika Hrvatska)
SAP	Stabilisation and Association Process
SDP	Social Democratic Party (Socijal demokratska partija Hrvatske)
SFRY	Socialist Federal Republic of Yugoslavia (Socijalistička Federativna Republika Jugoslavija)

SSR	Security Sector Reform
UVNS	Office of the National Security Council (Ured Vijeća nacionalne sigurnosti)
VGNSOA	The Council for Civilian Oversight of the Security Intelligence Agencies (Vijeće za građanski nadzor sigurnosno obavještajnih agencija)

1. Introduction

This chapter will discuss major elements influencing the building of security sector structures and underlying oversight mechanisms in the Republic of Croatia (RoC). In order to do so, this paper provides:

1. a chronology and brief analysis of the relevant events for Security Sector Reform (SSR) in Croatia; and

2. a framework of the main processes influencing this reform throughout the corresponding periods.

The period from 1990, when the dissolution of the former Yugoslavia (SFRY) and independence started in earnest, will be divided into several major periods. This will be done to draw conclusions and judgments of trends that marked security sector structures' development and building by execution and operationalisation of the overarching processes and their influence on the state and society. These periods are as follows:

- 1990–1995: first multiparty elections, initiation of the national state-building process, following the war and its successful conclusion, including liberation of the territory.
- 1995–1999: emerging peace and the death of the first President Franjo Tudjman.
- 2000-present: progress in SSR, building strong control and oversight mechanisms and raising the role and influence of parliament (HS) in the security sector.

2. Background for extending referential framework

It is simple to approach the period after 2000 unitarily, but there were differences in the approach of governments to societal development as could be observed during three election terms. The first of these two political philosophies was nationally oriented and exclusive, and the other liberal and open to external influence. Correspondingly the period after 2000 will be divided into three phases:

- 2000–2003: Political changes by Social Democratic Party led coalition, end of a semi-authoritarian regime and a semi-presidential political system, beginning of real transition and beginning of accession to the Euro-Atlantic community.
- 2004–2007: Return of Croatian Democratic Union (HDZ) to power, first post-Tudjman HDZ government and slow emergence of SSR and overall state administration reforms influenced all state activities (presently strongly under way).
- 2008–2011: Second term of HDZ government; more importantly, marked by the beginning of economic crisis and acceleration of many positive processes, namely accession to NATO and EU; also explosion of the anti-corruption investigations and growing sensibility of society to the irregularities executed by the elected officials and their cliques and clients.

On the second topic the main processes influencing development of the security sector structures can be summarised as follows:

- political influence of ruling political elite;
- external-international politics and the mark on societal and administrative development;
- development of legal framework consistent with European democratic standards;
- building administrative capacities in cooperation with NATO and EU partner countries;
- implementation of normative framework in line with common standards and procedures;
- financial accountability of state administration;
- transparency as a measure of openness of official structures;
- cultural acceptance / internalisation of values and departure from less optimal governing; and
- influence of civil society in process of societal change and SSR.

2.1. Outlining the context

The Croatian example shows that state building, democratisation and SSR are lengthy processes. There is a unique historical, political and societal context, as well as stages that are represented within the chronological framework of this chapter.

The initial period of state building (1990-1995) was marked by war and occupation of almost a third of Croatia. In 1989, most former communist states in Central and Eastern Europe changed their systems and started to move towards the EU and NATO. This was usually accomplished simply by changing political systems. Croatia, unfortunately, needed a more difficult road. This prevented Croatia from advancing further towards Euro-Atlantic integration. Croatians were forced to cope with problems of war and needing to fight for international recognition. In addition, internal politics did not bring democracy and the rule of law and certainly did not meet criteria for Euro-Atlantic integration as with other ex-communist countries. Initially, negative consequences of the rigid domestic and foreign policies were mediated by the status of victim of the aggressive war, but after miscalculated involvement in events in Bosnia and Herzegovina (BiH) it became progressively harder to maintain this position.

This period of "democratic deficit" (1995-2000) represented an era of semi autocratic regime with all its negative consequences. It is clear that these first two periods, given the very nature of the political and security environment, had very little in common with real democratisation and almost nothing to do with SSR and overall reform.

On the contrary, the period starting with the electoral and constitutional changes in 2000 opened new opportunities for the country to initiate necessary reforms, including SSR, and take part in the accession process of the EU and NATO. This has brought

new dynamics to both, internal and foreign policies in Croatia, stimulating a constant upgrade of the institutional apparatus required for a successful finalisation of these two processes that would help Croatia find its place in the Trans-Atlantic club.

Considering Croatia's political system and the elites running it during the 1990's, the changes in 2000 represent an important event for the future of Croatian democracy and the country's position internationally. Also, constitutional changes that followed and the new dynamics of Euro-Atlantic accession processes contributed to general reform, including SSR. This period was followed by HDZ's return to power. Its first term was marked by internal struggle between realising that reforms were necessary and deeply vested interests of the political elite preventing real reform.

Dynamics of politics in state administration and SSR set the framework for recognition of the two positive periods: First, during the Social Democratic Party (SDP) led coalition, when the political elite presented some ambition to positively shape results of reforms, but were blocked by right-wing opposition and by rigid conservative groups. Second, only during the second term in office did the present HDZ government, pressed by growing economic crisis, an urgent need to finalise EU accession processes and rising pressure among the majority of citizens, start real political, legal, organisational and functional reforms resulting in positive changes.

Influence of political elites on reform only recently reached desired levels and they remain the weakest link in the reform chain. Too much time was spent guarding political and economic interests. External influence and conditions were an important element of democratisation and reform, but this left 'marks' on the process and political, administrative and societal change was of varying quality. At first, external influence was positive and considered helpful to the war effort and national defence. This soon deteriorated because of discord over Croatian participation in the war in Bosnia and Herzegovina as well as growing autocratic tendencies by political elites, most notably President Tudjman. Consequently, the second period saw deep disruption of this process and growing misunderstanding with the international community. Political interests of the elite were the primary cause of this approach towards international organisations and countries and their political structures.

After a coalition of six political parties led by SDP won parliamentary elections in 2000, international relations improved and there were various cooperation programmes easing tensions and resulting in a sense of growing understanding. The period was marked by the accession to the Partnership for Peace (PfP) and the start of the "Stabilisation and Association Process." This trend continued after HDZ returned to government with deepening of the expert cooperation and strong emphasis on building state administration and security sector structures' administrative capabilities. Border problems with Slovenia increased international and domestic tensions. The judicial processes before the International Criminal Tribunal for the former Yugoslavia (ICTY) and a general feeling that the international community was placing too many harsh conditions on Croatia led to the feeling among parties and the public that international cooperation and conditions were no longer positive for the development of Croatia. This was a reversal of the situation after the war, until the death of the first

president, but its roots are different. The first time it was the result of manipulation of public opinion by political elites. Later, dissatisfaction grew among large parts of society, taking a life of its own and consequently influencing and shaping the behaviour of elites. Consequently, the political context in which SSR unfolded was marked by reluctance and even open mistrust of the elite for the first decade. At the beginning of the millennium, political barriers were finally broken and SSR started in earnest, not to be stopped or reversed.

2.2. Legal framework

The Croatian security sector legal framework has been built throughout the last twenty years. This process has had ups and downs, mostly due to prejudices of elites (e.g. President Tudjman). In the first two periods of development of state administration and security structures, parliament (HS) mostly served the interests of the ruling HDZ elite. The process of adjusting the legal framework to standards of developed democratic countries of the EU and NATO started after the SDP coalition won the 2000 election.

After elections in 2000, the SDP-coalition committed itself to regaining lost ground. There were significant improvements and adjustments to the security legal framework. Most noteworthy was an attempt to bolster the authority of parliament in security and defence matters. Part of the security and defence related regulation that was formerly highly influenced by the president has been adjusted with a more balanced approach, giving the president, government and parliament more equal shares of authorities and obligations, producing among them a real system of checks and balances. It could be argued that the rule of law in security and defence was always present in Croatia, from the point of view of the existing legal framework and the fact that the rule of law was one of the societal values enshrined in the Constitution of the Republic of Croatia (Art. 3.). Since 2000, serious attempts have been made to address the inherited weaknesses of the past semi-presidential system and the quality of the laws has improved.

Although fraught with difficulties and longer than necessary, standardisation of the legal framework has been one of the most successful elements of SSR. After stalemate in the second period until 1999, there has been continual improvement in the legal framework, mostly as a result of standardisations undertaken for NATO and then EU accession. Analysis of regulations shows parliament in the field of oversight of security structures, adoption of the strategic security documents, and long term development planning are rather well elaborated and regulated, with certain authorities now even taking the roles of the executive.

Crucial authority in the security sector is retained by the executive and distributed between government and the president. By applying its mechanisms for control of government and public administration, parliament is empowered to monitor implementation of security policy and development of the military. The constitution and corresponding security laws establish a framework for providing security to citizens,

social groups and institutions as a whole. Coordination, management and accountability in the security system are clear, and laws regulate missions and competences of security actors. Sporadic discretionary actions can happen only as abuse of law on an individual level and are dealt with by higher levels of the executive, judiciary and legislative. The vertical harmonisation of the security sector laws with the Constitution of the Republic of Croatia has been achieved after the 2000 elections in a slow but steady manner. This was due to the serious and systematic attempt of the then coalition government to instil a desired level of order in the security sector related legal framework.

2.2.1. Security sector mapping

All security organisations report to corresponding ministries, particularly the Croatian Ministry of Interior and Ministry of Defence. They serve to transfer political guidance from the parliamentary majority to the security sector. All these organisations (police, military OSRH, intelligence, etc.) have professional headquarters responsible for daily execution of tasks and duties. Through these structures, there is executive control over daily activities. Also, two important functions visible in the following diagram (Figure 1), namely enforcing accountability and bolstering transparency, are exercised through this network of institutions and organisations.

The next line of supervision is parliament's related security, defence, internal or foreign policy committees exercising their oversight roles and providing the above mentioned institutions and organisations with financial assets and resources necessary for their work. This role is exercised through annual preparation, passing and control of execution of the budget.

The third line of supervision comes from the judiciary. Courts are authorised to exercise oversight over all operations of state. The legal framework provides a web of norms making all of the above mentioned institutions and organisations responsible for investigating if they find the legal framework has been breeched and asking investigative bodies to become involved.

Finally, especially during the last decade, civil society has been strengthened and gained importance. Their investigations are often starting points for discovery of irregularities, and their actions define points of departure from the way the state formerly did its job.

Apart from the above mentioned institutions, there are also many independent state bodies tasked with regularly checking the actions of state administration, including security structures, and for some crucial fields, (e.g. data protection and anti-discrimination policies), there are ombudspersons with additional authorities to ensure quality operation of structures.

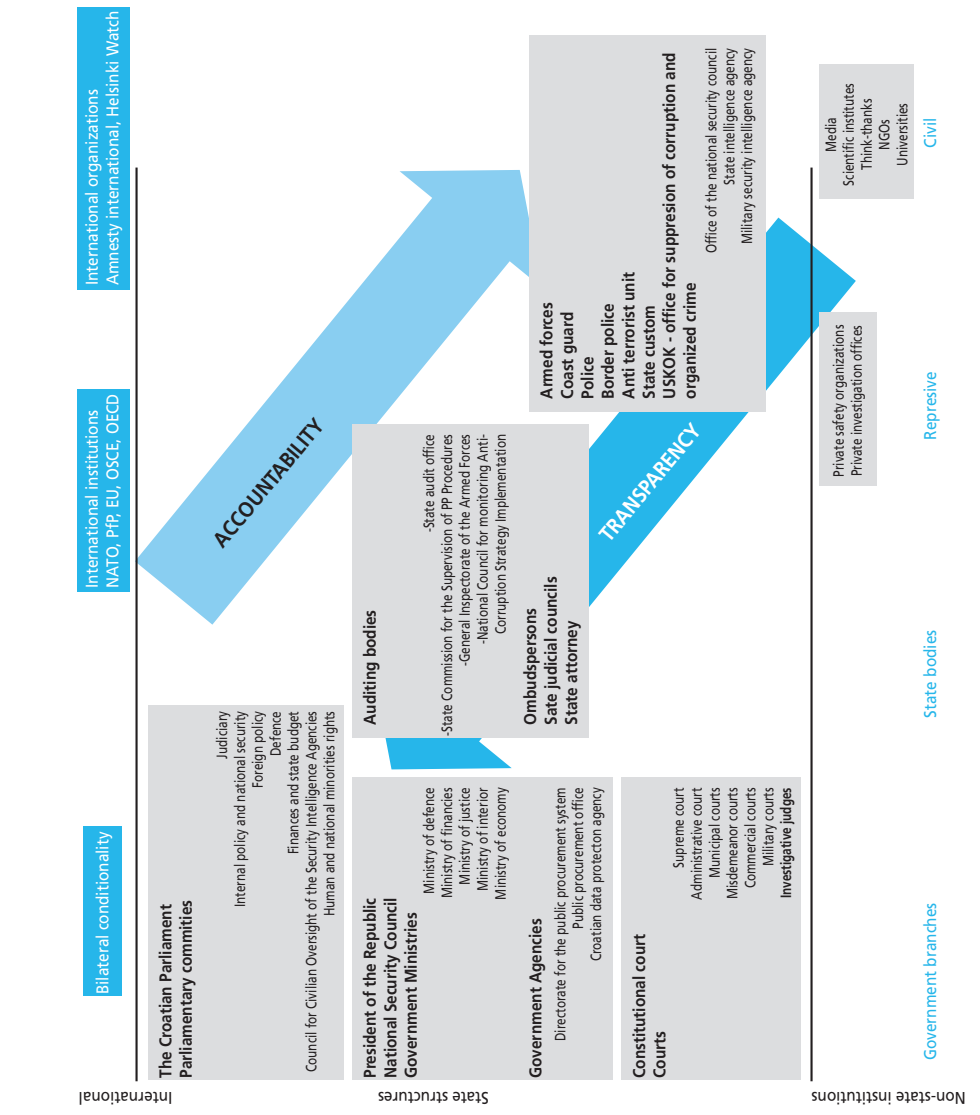
This web of interrelations is a mechanism that on the first level enables state organs to pursue and improve accountability of all professional organisations, especially those utilising oppressive powers. On the second level, this web enables civil organisations and institutions to exercise influence on daily operations of security structures in pushing state officials and civil servants to ever higher levels of transparency. The international environment – on the bilateral and multilateral level as well as through international organisations – plays a significant role in building accountability and transparency. However, they do so less in a direct way than by influencing and imposing standards of transparency and accountability through the mechanisms and tools of conditionality. During the last ten years, Croatia has been involved deeply in NATO and EU accession, and significant improvement has been made in accountability and transparency. Croatia today and the Croatia of ten years ago are practically two different state structures and countries. Even the latest controversy over publically disclosed corruption could not have been possible without significant changes in the culture achieved during this period. At last it seems that the influence of the civil sector, coupled with growing professionalisation of the administration, is paying dividends and slowly creating a different climate in society.

2.2.2. Chain of command

Chain of command and civilian management of the security sector is legally defined. The division of power and responsibilities (in peacetime and war or emergencies) of the president, prime minister, ministers and operational commanders is stipulated by the Constitution, the Defence Law, the Law on Police or in the case of intelligence agencies, by the Law on Security-intelligence Agencies. Croatia is unique because the president and prime minister, as head of government, share many responsibilities for smooth operations of the Croatian Armed Forces (OSRH) and intelligence agencies. Many of the most important actions or documents can happen only if both sides co-sign proposals or decisions. Also, the minister of defence, in most of these situations, provides the starting point for the process because most of the acts or procedures cannot be passed or started without his initial proposal. This arrangement is sometimes clumsy, but it prevents the prime minister or president from accumulating too many security sector related powers and authorities.

Also the role of the Head of the General Staff of the Armed Forces is more complicated than in most of the other countries in the region because he/she reports to the minister of defence and further to the government in most planning and personnel related functions, while at the same time being responsible to the president in command authority.

Figure 1


International
State structures
Non-state institutions
Government branches
State bodies
Repressive
Civil
Bilateral conditionality
International institutions
NATO, PFP, EU, OSCE, OECD
International organizations
Amnesty international, Helsinki Watch
ACCOUNTABILITY
TRANSPARENCY
The Croatian Parliament
Parliamentary commities
Judiciary
Internal policy and national security
Foreign policy
Defence
Finances and state budget
Council for Civilian Oversight of the Security Intelligence Agencies
Human and national minorities rights
President of the Republic
National Security Council
Government Ministries
Ministry of defence
Ministry of financies
Ministry of justice
Ministry of interior
Ministry of economy
Government Agencies
Directorate for the public procurement system
Public procurement office
Croatian data protecton agency
Auditing bodies
-State audit office
-State Commission for the Supervision of PP Procedures
-General Inspectorate of the Armed Forces
-National Council for monitoring Anti-Corruption Strategy Implementation
Ombudspersons
Sate judicial councils
State attorney
Armed forces
Coast guard
Police
Border police
Anti terrorist unit
State custom
USKOK - office for suppresion of corruption and organized crime
Office of the national security council
State intelligence agency
Military security intelligence agency
Constitutional court
Courts
Supreme court
Administrative court
Municipal courts
Misdemeanor courts
Commercial courts
Military courts
Investigative judges
Private safety organizations
Private investigation offices
Media
Scientific institutes
Think-thanks
NGOs
Universities

3. Transparency of the security sector

Transparency of the security organisations and their operations could be measured thorough execution of their functions and tasks. Of all the possible functions, protection of private information, freedom of access to information and secrecy of the information and data of public interest could give insight to the state of affairs in this field.

In the next few years, having firmly established the legal framework, and annually improving the implementation of standards, the most important activities will be improving organisational resources and further internalising democratic values. Examples of the extensive interpretation of confidential and classified information on defence and security issues exists but is being reduced in scope and importance on an annual basis. Recently, more emphasis has been placed on education and training of personnel to conform to societal needs of transparency, so this is the area where most achievements were made in recent years. Equipping and staffing of these structures is satisfactory for these tasks.

3.1. Secrecy of documents

In all above fields, good practice has been visible during the last five or more years. There is less classified data and recent corruption scandals have put pressure on state officials. There are significant efforts to change the organisational culture of secrecy in state security institutions through adequate training, either on a bilateral basis with supporting countries or within the framework of activities with the CoE, not only for those directly responsible for the implementation of relevant legislation, but for most personnel. Several thousand security sector and state administration employees have gone through training and education programmes of NATO and the EU. In addition, there is a legally prescribed administrative procedure to challenge classifications. The corrective role played by independent state bodies is declining because of improving practice of state institutions, which can be seen through reduction of the corresponding legal proceedings before courts or state administrative bodies.

Any document declared secret or confidential can be declared open through a procedure led by the same structure that declared it secret. Capacities of state bodies regarding classification and declassification are well established and the overall security structure is performing regular training of personnel to make them more adept at handling these needs. These bodies have clearly defined roles, procedures, competences with supporting laws and regulation.

3.2. Access to classified documents

The right to information is an issue (with protection of data) that, if overzealously applied, can be used to prevent information being made public in order to protect someone's image. Both laws serve to protect overlapping values and none should take precedence. It is up to the legal framework streamlining and also achievement of

higher standards of operations of state officials to render this possible clash irrelevant or at least acceptable.

Many institutions, primarily NGO's, have complaints about the behaviour of persons in charge of providing required information. The 2009 GONG report stated only half of the institutions contacted answered the questions, which is a significant step back compared to 2008 when the rate was about sixty percent. There is also a significant increase in the number of unresolved complaints. It should be noted that the number of anonymous complaints has increased annually and, as a general rule, state agencies do not process these complaints. It would be a waste of resources to process anonymous complaints because in the end, the subject who should be informed about the findings is not known. In some cases even anonymous complaints are processed as an element that could lead to more findings or as a starting point for follow up investigations.

3.3. Privacy protection

Recently, there have been no substantiated cases of serious abuse of personal data. Most complaints were submitted by NGOs, which are sensitive towards what they consider substandard laws and implementation of procedures, but it is also seldom that the remarks made bear real and practical significance. Protection of personal data is almost impenetrable, to the point that by the book application of the related legislation and procedures can prove to be harmful for the execution of some other important social values and public interests.

The Council for Civilian Oversight of Security and Intelligence Agencies is empowered to investigate citizen complaints. In cases of human rights violations, they are obliged to send reports to the president, prime minister, president of parliament and the attorney general. These possibilities seldom are used. An ombudsperson is also empowered to investigate complaints.

Citizens recognise their rights regarding protection of private data. In most cases, private data is stored, collected and distributed only with the subject's prior consent. The extent of this issue is revealed by a hot debate over possible publication of a war veteran's registry. The official decision in this case has been the Act of Personal Data Protection does not allow publication of this register. This discussion continues.

State and security structures are keen to protect personal data, especially when it is consistent with their interests. There is a robust mechanism protecting personal data involving the judiciary, namely judges appointed to the Croatian Supreme Court. Also, citizens have the right to appeal to security structures and get information regarding what specific data has been acquired and for what purposes. In case of any discrepancy, there is the process before the judiciary that should resolve disputes.

4. Patterns of democratic accountability of security sector

There are different layers and types of safeguarding mechanisms enabling accountability of the state administration and security in particular. The constitution establishes civilian control and oversight of security institutions. Primary security laws regulate both actors and internationally recognised criteria and standards. The constitution and primary laws envisage legal protection of human rights of citizens and security personnel. There are also clearly defined procedures for protection of these human rights including use of special investigative procedures.

Civilian control of the security sector is prescribed at three levels. First, as a democratic civilian control of the security sector institutions by the executive, through the roles and authorities of the president, government and corresponding ministries (Art. 112, Constitution). Second, as democratic civilian oversight exercised by parliament, its security, intelligence and defence related committees and other independent audit bodies responsible to parliament (Constitution, Art. 80 and other laws), for example the State Auditory Office (DUR). Third, as the operational leadership, management, command and control exercised by high ranking professionals belonging to the professional security, intelligence, defence and military structures, civilians when possible and military when necessary, but appointed by the president, government or parliament. They are all scrutinised by parliamentary committees before their appointment, which is prescribed by various security sector laws.

4.1. Executive / Parliament / Judiciary / independent oversight bodies

The executive performs operational, management, command and control functions over operations of the security sector. Every security institution and their internal control bodies closely follow all occurrences of any breech of law. Databases are established and updated regularly. This process is duplicated by independent state institutions which are responsible for overall control of legality of actions and budgets and regularly manage their own registers.

Parliamentary control and oversight is accepted by security actors and MPs and there is awareness of its importance. Practice shows control and oversight over special measures and coercive means is accepted by security sector actors. Citizens are regularly informed about the results of control and oversight as well as about the right to turn to all political and professional institutions in case of violations of human rights.

The legislator performs multilayered oversight of security sector institutions. Adequate parliamentary mechanisms to initiate procedures for establishing political responsibility and changes of existing policies are in place and extensively used when there is a reason. Most of these mechanisms are placed before the parliamentary committees (e.g. defence and budgetary) and network of independent state bodies (e.g. State Audit Office).

There are numerous ways in which parliament and its security sector committees can perform their oversight functions. Proposing and passing laws is just one (probably the most visible) activity. There are regular reviews of security sector policies and actions, reviews of regular reports prepared by security sector institutions, and hearings of security sector officials, who can always ask for extraordinary reports to be prepared in case of need. Those hearings and reviews are mostly related to review of legality of actions and financial accountability of security sector institutions. Representatives of the security sector are usually invited to participate in sessions of the security sector related committees. There are also frequent visits to security and defence facilities where committee members can get deeper insight of day-to-day problems of the security sector.

Laws also provide parliament with competences for oversight of all security institutions that are authorised to use these special repressive and investigative measures, civilian and military intelligence agencies and the office tasked with monitoring information and communication systems after direct approval of a Supreme Court designated judge. It is being done through the authority and responsibility of parliament and its committees to pursue oversight of legality of using special investigative and repressive measures undertaken by security sector organisations. The role of the Council for Civilian Oversight of the Security Intelligence Agencies (VGNSOA) (a subcommittee of the Parliamentary Committee for the Internal Affairs and National Security, staffed by independent experts chosen from public life) is to ensure influence and authority of society and citizens over actions of security structures.

The judiciary is there to address issues when mistakes or crimes are committed and to check behaviour of the security sector as well as all state administration. Judicial oversight is marked by an independent judiciary conducting impartial review of actions of possible perpetrators that is subject solely to the laws and regulation and free of politics.

The Croatian judiciary is broad. The foundation for this wide scope comes from the legal framework being established around several types of breaches. They are distinguished by the possible magnitude of breeches, as well as by the underlying nature of misdemeanours and crimes of would be perpetrators. There is also the common characteristic of most courts being organised in two levels (first and second tier courts).

There is regular cooperation between the executive and CSOs and human rights experts, as well as cooperation with independent experts on issues such as reviewing strategic documents, etc. Despite almost every area of life being constantly surveyed by media and CSOs eager to find every trace of possible misdeeds, it has been years since the last case of possible abuse of individual liberties by a security institution has been substantiated.

4.2. Police / intelligence / armed forces

Operations of the intelligence and counterintelligence agencies are covered by the Law on Security-Intelligence System (ZSOS). This was an extension and adjustment of the previous law on security as a part of the ongoing improvement of the legal framework. ZSOS prescribes roles, tasks and membership of the national security council. The head of parliament is also a member of this council. It is strange to have the head of the legislative branch as a member of the predominantly executive body, which in turn possesses quite serious repressive powers. Article 6 of this law establishes the Office of the National Security Council (UVNS), which serves as a professional advisory and reporting organisation for leadership in security, intelligence and defence. This office is not truly a security agency and does not possess any police powers or authority to do any job reserved for the intelligence agencies.

By the same law, there is, as mentioned in the previous paragraph, the civilian Security Intelligence Agency (SOA), tasked with intelligence and counterintelligence work inside and outside of the country (Law on Security-Intelligence System 2006, Art. 23) and authorised to conduct proceedings against citizens, and the Military Security Intelligence Agency (VSOA) confined to working domestically and tasked with collecting defence and military related information and protection of defence structures while being authorised to act only against defence personnel in the confines of the military installations. Proceedings against military personnel outside the military installations must be undertaken in cooperation with the civilian agency.

All repressive powers of security agencies are legally balanced by the involvement of the highest levels of the judiciary in proceedings, namely judges of the Supreme Court (VS) appointed by the President of the Supreme Court, operations of the Parliamentary Committee for Internal Policy and National Security (OUPNS), the Committee for Defence (OO) and also the Council for Civilian Oversight of the Security Intelligence Agencies (VGNSOA). Although it should be said that activity of VGNSOA is not what it should be, its operations and existence still present some sort of democratic development generally not present in other countries, especially in transitional states. At present VGNSOA works as part of the official state structures within the boundaries of legislative power; clearly the intent of its creation was something else.

Nearly everything said about control and oversight of intelligence agencies and the institutions so tasked also applies to control and oversight of police and armed forces. One notable difference is that these two security sector structures report to their respective ministries.

4.3. Checks and balances – good practice(s) & bad practice(s)

There are satisfactory levels of security reform compared with the other countries in the region, but work remains. This is visible in the procedure for passing security related strategic documents. It is the prerogative of parliament to pass national security and defence strategies. Although appearing clear and democratic, some of these

norms result from overzealous attempts of parliament to dominate certain issues that should be left to the executive. After years of ignoring security, parliament went to the other extreme after the 2000 elections, resulting in basic strategic security and defence related documents being passed by parliament.

There is no societal and institutionally significant denial or failure of recognition of the importance of the right to ask for information. In addition, all international norms on protection of human rights are observed and anti-discrimination polices pursued according to international standards. Gradually over the years, enforceability of procedures and official responsibilities towards proper handling of requests aimed at access to information has been increasing. Consequently, the perception of its relevance is gaining more recognition within the general public and state structures. So, the added value of freedom of information is gaining ground and heavily influencing the internalisation of norms in state officials and employees.

There are still examples of superfluous interpretation of confidential and classified information on defence and security by security structures, but also of a lack of knowledge and expertise of such sensitive relations and problems by the media and civil society. Too wide ranging interpretations of classified documents are habitual, due to the ambition of some high positioned security officials to keep their positions out of public scrutiny by mystifying their profession. On the other hand, there are few journalists who are able to recognise the tiny distinction between information which should be considered as confidential in the national interest and information or problems which deserve public scrutiny. A lot of education should be done in this field. This is mostly fine tuning. Journalists are not competent enough to analyse very sensitive civil military relations, especially in terms of democratic oversight of armed forces and vice versa. Wider social development, partly related to previous abuses and corruption, helped build understanding among citizens to recognise their rights.

Human rights are important among societal values. This position also is fostered by NGOs and the media. In this situation MPs cannot avoid this important issue, even if they want to. This makes them aware and sensitive to any breeches of human rights and the individual liberties protection system, so all these elements together make them effective in pursuing values growing from this issue. Again, some are more interested, active and committed, but overall they represent a strong force addressing mistakes of the security sector. Protection of human and civil rights are internalised by most MPs and professionals and political appointees, as well as employees of security agencies and organisations.

In all fields, these values are accepted and pursued by society and state. More importantly, there is improvement in internalising these values by employees of the security structures and state administration. There is a serious training of state employees fostering understanding that misdeeds result in sanctioning. Finally, this value is achieved by better and more deeply informing citizens, done regularly by state institutions, helping in confidence building, creating public opinion and improving public perception.

Horizontal harmonisation also is unproblematic since state institutions must observe the laws as such, considering all provisions related to their fields, and there are no major clashes among norms. Even in the case of the Law on Right to Access Information and its relation to provisions of the Law on Protection of Personal Data, as impractical it may seem there is no discrepancy; there is a clear intention to protect individuals from publishing personal data without consent, which is observed by institutions. The only impediment to the framework enabling free access to information is the clash with the Law on personal data protection, which stipulates any information related to a specific individual is exempt from free access to information.

Rising levels of knowledge and skills needed in order to accomplish a more thorough internal control is one of the highlights throughout the system. It has been recognised by all societal institutions as having utmost importance in order to achieve responsible governance of the security sector and state institutions as a whole. All events causing political turmoil in recent years underline this statement and show the importance of this process.

4.4. On operational execution related dynamics

While previously discussed processes (political influence, external conditionality and legal framework) mainly set the scene for operations of state administration and the security sector, three more processes deserve discussion. Two of them – implementation of standards and building administrative capacities – are discussed here and increasing financial accountability is discussed in the following section.

Implementation of norms, procedures and standards acquired through changes and updating the legal framework need not strictly follow the dynamics of previously discussed processes. Effectiveness of implementation has varied throughout the last twenty years. It started relatively well, as most norms and also most of the cadre were inherited from SFRY. This started to deteriorate quickly after the war up until 1999, as some of the professionals inherited from the previous political system were sidelined or chose to leave.

With the SDP-led coalition, the situation improved. Professional structures were allowed to shape their personnel management policies and perpetrators of illegal and unethical actions were shown the exit. Unfortunately, this process was temporary. In the next period, with the return of HDZ, it seemed the situation returned to its worst. Fortunately, growing demands for quality personnel, as a result of tasks before state administration and security organisations, finally marked a departure from old personnel management. Positive results in quality of implementation were soon visible and there is hope that this process went too far to be reversed and in the following period it will be strengthened.

Implementation of procedures and standards requires a necessary level of administrative capacities. This is partly related to material resources but mostly depends on expertise gained by personnel of various agencies, including the security sector. While lack of

resources is a fact of life in all transitional countries, how they approach the task of an ever growing need to upgrade and raise the expertise of their personnel shows quite confidently the path they have undertaken in building more capable societies.

The level of expertise among personnel inherited from previous state structures at the beginning of independent Croatia was reasonable, considering underlying circumstances, but as in most of the reviewed processes and development of their dynamics, the period until 1999 was lost time. Only after the SDP coalition won elections, and especially after joining PfP, and undertaking programmes like Membership Action Plan (MAP, Planning and Review Process), Individual Partnership Program, and later starting cooperation with the CoE and signing Stabilisation and Association Process it became a norm to increase seriously the quality of personnel in the state administration. This trend has continued and represents one of the two most important processes for successful reform.

All of this not only helped build and internalise democratic and professional values among personnel of state institutions but also helped societal acceptance of these values. For a long time it seemed that internalisation of values was a task too big for anyone. At the beginning, society and state institutions were committed to democratic values as a point of departure from the communist regime. During the war and especially in the first post war period these values were mostly forgotten; what happened was a closing of society and self-sufficiency of political views among elites. Even the 2000 change of government did not alter this trend because of a strong resistance among conservative elements of politics and society. So, only during the last five years did the stance toward accepting democratic, balanced civilian and professional values and ethics become prominent and start to reap benefits for all of society.

5. Selected aspects of security sector oversight

5.1. Budgetary aspects

Budgetary appropriation and spending along with procurement of goods, services, equipment and personnel for government are probably two of the most sensitive issues today. This is due to scarcity of financial resources and many irregularities that happened too often to be accidental. Regarding the annual procedure of proposing, passing and executing the budget, its transparency and incremental improvements, implemented as a result of the lessons learned from previous cycles, seem to have paramount importance.

5.1.1. Budgetary transparency

Control and oversight competences for budgetary planning and spending are regulated, harmonised vertically and horizontally and in line with international standards. Oversight and control over implementation of government financial policy is regulat-

ed and oversight and control of the process is distributed along the line of institutions including legislative, executive and judicial branches, passing to independent state bodies, ending with the important role of civil society and economic and financial institutes and think tanks. There is a decade long record of oversight and control over budget planning and spending which is becoming more serious and thorough every year.

Adoption of the State Budget (DP) is one of the most important financial and political events of the year. The state treasury, part of the Ministry of Finance (MoF), carries out:

- Budget preparation
- Budget execution
- State accounting
- Public debt management.

Parliament passes the budget (Constitution, Art. 80). As all security budgets form specific parts of the overall budget there is a clear responsibility of the corresponding ministries to prepare and defend specific parts of the state budget before parliament. This is regulated by the Law on Police (ZP) and by the Law on Defence (ZO) as well as by internal regulations and decrees. As for intelligence agencies, the body authorised and responsible for proposing their draft budget to parliament is the National Security Council (Law on Security Intelligence System 2006, Art. 3). Parliamentary committees, namely the Committee for Defence (OO) and Committee for Internal Policy and National Security (OUPNS), are highly involved in the process of examining budgets before their presentation to parliament. During this review, committees have all means put at their disposal by law. This means they can ask authorised personnel from ministries and other state agencies to take part in their sessions and explain all issues of interest to the committees, which in practice they do quite eagerly, ensuring implementation of democratic norms and standards.

According to this, parliament can scrutinise proposed budgets, change them, send them back for review, and decide on the nominal amounts and structure of every specific budget. This happens regularly and results sometimes in hundreds of amendments to the final budget text. Even eventual changes related to the structure and overall amount of the specific budgets, which might occur during the year as a result of execution of the budget, must be amended by parliament. Ministers may only redistribute allocated money within the same elements of the specific budget. They are not allowed to transfer money from one part to another part of the budget.

There is regular cooperation of different parliamentary committees during the process of control and oversight over budgetary planning, approving and spending. Independent experts are consulted on revision of budgetary planning and spending. Parliament has a strong position in exercising budgetary oversight while at the same time the State Audit Office is empowered to control execution of the budget and report to parliament its findings. No agency is exempt from its control.

5.1.2. Lessons learned from implementation

Implementation of the procedures aimed at fostering state financial transparency (especially within the security sector) has progressed greatly. It finally created a realisation among state actors supposedly working for the public good that society's resources are lent to them in order to achieve results for society. It has been a long and troublesome process, and although it would be wrong to conclude the job is over and there is no danger of the reversal of positive trends, the results are obvious.

One element is related to the necessary and sustainable level of decentralisation in this process. It would be beneficial to reduce the level of centralisation and disperse the budgetary and financial authorities to the local authorities and communities – districts and municipalities. This is problematic because approximately one-third of the communities on all levels do not raise sufficient funds and therefore rely heavily on the state budget.

5.2. Procurement aspects

Procurement is one of the most sensitive parts of the overall activities of the state. It lends the possibility for many abuses. It is not surprising that most recent investigations are related to this field. After almost two decades of independence, Croatia finally has reached the point where such irregularities are not accepted. The role of media and civil society, as well as the unwillingness of the majority of citizens to comply with theft of the public revenues, cannot be overestimated in this process.

5.2.1. Procurement transparency

Political steering of the budget is fully implemented, with all state administrative services fulfilling tasks in supporting societal values. Otherwise, attempts to implement a multi-annual strategy of state expenditures and procurement so far were unsuccessful. This is not because of ineptitude of political and state administrative structures but for a simple pragmatic reason of the economic crisis, which made all analysis and simulations irrelevant. A clear example is represented by the Long Term Development Plan of the Armed Forces 2006-2015. Prepared in different and better times, it became the victim of the deteriorated economy. Currently, no institution is considering it.

Financial accountability of security institutions is in line with other state agencies and because of the importance of security they are among the most scrutinised parts of the state by media and civil society. All necessary regulations that provide instruments for more substantive democratic oversight in terms of financial accountability are in place. The security or military budget is not separated from the overall budget and does not have special treatment compared with budgets of other state institutions. Security sector procurement, by its nature, faces experiences of much public interest. Due to the classified nature of some security related documents, however, if there is

a suspicion of certain misdeeds, sometimes it takes time before enough evidence is obtained to prove or negate suspicions.

Procurement underwent several significant changes in 2008, including entry into force of a new Public Procurement Act and new institutional setting and regulation. The Public Procurement Act is nearly fully harmonised with EU standards. Croatia also intends to develop electronic procurement capacities, gradually through the insertion of a legal framework in the Public Procurement Act and the further implementation of the Programme e-Croatia and the Croatian National Security Programme.

Competences required for control of the budget are well defined in law. They are generally executed through regular control procedures foreseen by annual control plans and by extraordinary control procedures that can be performed any time, practically unannounced, by request of security sector or Ministry of Finance officials on a case by case basis, especially if there is reasonable doubt about serious irregularities in spending.

5.2.2. Lessons learned from implementation

Whatever the outcome of deliberations about the overarching processes, of transparency of the budget and public procurement, it has to be taken into account that state institutions and organisations, and political as well as administrative apparatus, spent almost ten years adjusting operations of the state (local authorities included) and security sector institutions to the standards of NATO through the process of negotiations with and accession to NATO. More importantly, they spent more than seven years doing the same through the process of negotiations with and accession to the EU, implementing stricter rules and procedures than was the case with NATO.

Recently discovered misdeeds and their prosecution shows that political, administrative and judicial structures have finally started to work according to citizens' and society's expectations. It is expected, and recent events encourage this, that existing pressure and momentum will prove vital for building a reasonably good government and management of state affairs.

5.3. On building accountability related dynamics

Financial accountability has been gained through the ever growing involvement of media and civil society organisations and expertise coming from independent institutes and think tanks. There were two notable low-points. The first was in the second half of the 1990s when the political elite led by President Tudjman was at odds with almost everyone involved in the reform (internationally or domestically). The second time was during 2004-2007 when the HDZ wanted to perform as few reforms as possible while retaining full grasp over finances. It is not by accident that almost every major scandal investigated in the last few years has its roots in that period. While the

Social Democratic government marked a positive movement towards growing financial accountability, only during the recent HDZ government have things started to change drastically. This is because of growing demands of standard financial accountability procedures with that of the EU, and also because society and some of its most influential institutions like media and civil society finally managed to impose enough pressure to change the governmental approach, so far irrevocably.

During the war and the first post-war period, transparency was low. This was explained as necessary to defend Croatia from constant threats to independence. After elections in 2000 and the subsequent three periods, transparency continuously increased. Reasons for this, political and societal, differed over time but the overall results are the same. The Social Democratic government approached it as a conviction; the first HDZ government was unable to alter the process because of growing societal demands, and the recent HDZ government started to play a reluctant but active role in the process. The result is that today it is much easier to get information about state administration activities than ever before.

The role of civil society was also at its worst during the war and post war years, but in the last decade, weak and financially fragile civil society organisations have asserted disproportionate influence over state undertakings. The times when President Tudjman and his clique were at constant odds with civil society are over. The biggest achievement is the realisation among political and professional leadership that once civil sector organisations and the media take a bite at any issue, the pressure will not go away and eventually almost all abuses will be brought to light.

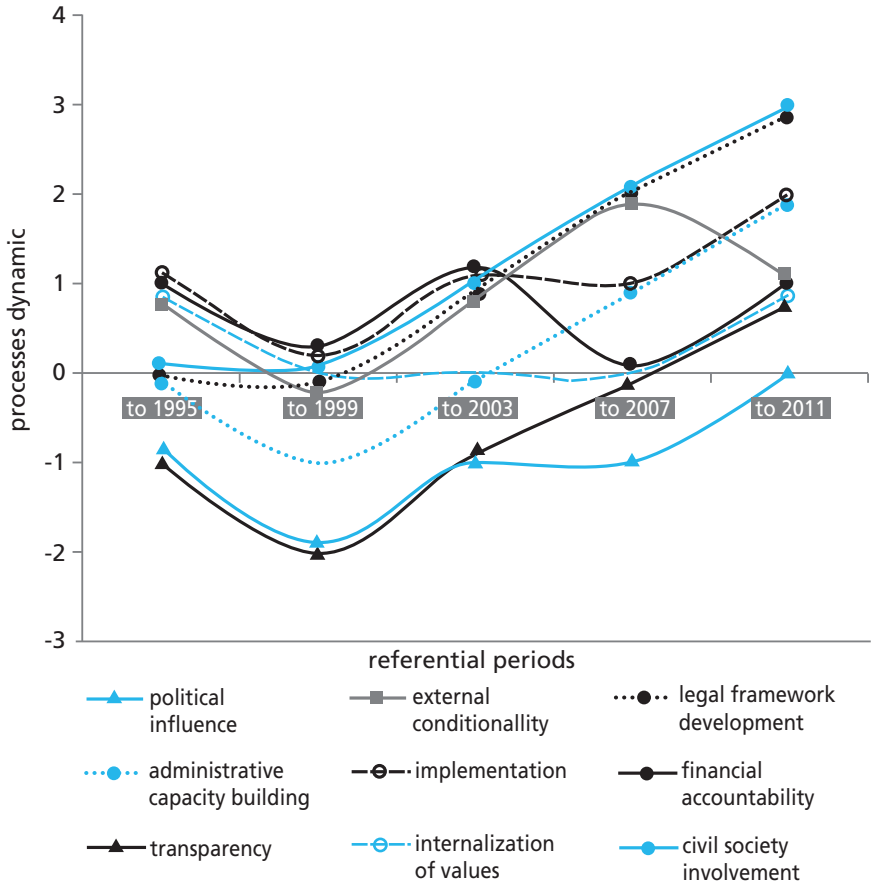
6. Conclusions

Interesting conclusions can be drawn by reviewing the main processes influencing the development of the security sector through the framework of periods that were defined above. The first period, 1990-1995, is characterised by three groupings of elements. The lowest is comprised of political influence on and transparency of government and the security sector. At the time of independence, political elites proclaimed their commitment to the widespread values and standards of democracy, but it soon deteriorated significantly. Consequently, transparency suffered and the war provided a convenient excuse.

At the beginning in this first period, the quality of the legal framework, administrative capacities and influence of the civil society were generally acceptable for a transitional country. This was mostly due to Croatia inheriting a relatively orderly set of legal norms from the Socialist Federal Republic of Yugoslavia. The laws were adjusted to make the departure from the communist system. The newly independent Croatia also inherited a relatively satisfactory level of expertise among civil servants and state employees. Interestingly, the influence of the civil sector was greater in this period than in the following period because during the war there was a need to utilise all available societal resources, even from politically and ideologically different parts of

the spectrum. Remaining elements had a positive influence on reform with special emphasis on the influence of the international factors responsible for the relatively fast recognition of Croatian independence and reasonable amount of political and professional help in the war.

Diagram 1: Dynamics of the main security structure related development processes[52]



52 Dynamics of the main processes influencing development of the security sector structures monitored through the extended referential framework are presented here. Mark "0" on the diagram represents average state of affairs in every process reviewed and as such is not the lowest possible, but the lowest acceptable value considered from the point of view of the well being and development of society. In this equation "average" is the function and the result of the organisational, functional, material and institutional prerequisites, subdivided in the above mentioned main processes, necessary to achieve minimum of positive effects desired by society.

Reform deteriorated in the next period (1995-1999). The agent of that reversal of fortune was undoubtedly the political elite, which brought itself and society more and more at odds with the international community. This was fostered by a tightening grip on society. The legal framework, however, continued to be updated and adjusted and the levels of administrative capacities were maintained.

The third period, 2000-2003, saw incremental improvement of reform apart from internalisation of values. Credit, again, goes to political elites: this time the SDP, and its influence on the development of the reform processes. This was the time when accession to NATO and the EU were started. This third period also was marked by dramatically increasing institutional and administrative capacities. Also, serious attempts to close the gap in regulatory quality were undertaken. There was an emphasis on higher levels of financial accountability. Civil society finally started to take its place in overseeing activities of the state.

Blame for the latter needs to be put on the most rigid parts of society, mostly related to veteran groups, etc. facilitated by the then right wing parliamentary opposition.

The fourth period, 2004-2007, was marked by HDZ's return to power. While some processes, like building administrative capacities, improving laws, influence of external factors, increasing importance and influence of civil society and improving transparency, could not be stopped or reversed, some others suffered. This was most true for the stalemate in internalisation of values that was subjected to the previous obstacle. Most importantly, this is the period when most of the current corruption and procurement scandals started. Again, the main cause of reversal was political influence exerted by strategically scattered politicians and officials.

The present period, 2008-2011, is probably the most important in the history of independent Croatia. At last, most irregularities have come to a head, many of them being discovered, investigated, and prosecuted. This led to a completely new view among the general public about the way policies are being framed and pursued and in general, despite relative gloom and despair related to the economic situation and financial crisis, it has helped to build high expectations among citizens. Any future government, if reasonably responsible, can use this as a building block on which it could start further development of the society and state.

While most processes (eight out of nine) show improvement, the influence of external factors, namely the international community and its influence on further state administration and security sector reform, shows deterioration. However, for the first time this is an issue where the most rigid and conservative parts of society, mostly focused around veteran groups and small far right political parties, are at odds not only with the rest of society but also with the political mainstream. Processes reviewed can be grouped into four streams:

- First, the most successful: building administrative capacities and improvements to the legal framework.

- Second: quality of implementation of change and influence of civil society.
- Third: level of transparency, quality and scope of internalisation of values, influence of external conditionality and adherence to financial accountability.
- Finally, the worst: influence of political elites on reform.

Consequently, if successfully managed by political elites, the change in society and the state could bring about more benefits.

7. Recommendations

Implementation of the following recommendations may help build better and more efficient security sector structures:

- Improve the level of knowledge of political appointees: Parliament, government and civil society should strengthen programmes of domestic and international education and training activities tailored for specific types of appointees.
- Increase pressure from media, civil society organisations and think tanks for increased transparency: They should consider establishing joint operations and pooling resources.
- Increase importance of professional ethics: Professional security sector organisations must incorporate internalisation of important societal values. Making values operational should become the most important element for annual assessment of civil servants, state officials, and soldiers.
- Emphasise improving financial accountability standards: This may be achieved by cooperation of civil sector organisations, state and security institutions.
- Establish procedures of international expert and scientific exchange among all societal and state institutions: To increase mutual understanding and cooperation in obtaining a better state and society.
- Improve finances of civil society organisations by tenders to accomplish relevant reviews and analysis on behalf of the security sector structures and state administration.
- Streamline implementation standards and procedures and build the professional ethics within state and security institutions.
- Improve legal framework: All government departments and agencies in cooperation with parliament and its bodies, should work to continue progress.
- Increase capacities: The state should make a special commitment to tools, equipment and acquisition, along with instigation of the process of permanent education of personnel.

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Chapter 4 – Kosovo

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Abbreviations and acronyms

ACA	Kosovo Anti-Corruption Agency
AG	Audit General
AoK	Assembly of Kosovo
CIASKSF	Committee for Internal Affairs, Security and Supervision of the Kosovo Security Force
EU	European Union
EULEX	European Union Rule of Law Mission
IAU	Internal Audit Unit
KCB	Kosovo Consolidated Budget
KCSS	Kosovar Center for Security Studies
KDI	Kosovo Democratic Institute
KFOR	NATO-led Kosovo Force
KIA	Kosovo Intelligence Agency
KP	Kosovo Police
KSC	Kosovo Security Council
KSF	Kosovo Security Force
LPFMA	Law on Public Finances, Management and Accountability
MKSF	Kosovo Ministry for Kosovo Security Force
MoF	Kosovo Ministry of Finance
MoIA	Kosovo Ministry of Internal Affairs
MoJ	Kosovo Ministry of Justice
MP	Member of Parliament
NATO	North Atlantic Treaty Organization
OAG	Office of Auditor General
OSCE	Organization for Security and Co-operation in Europe
PIK	Police Inspectorate of Kosovo

PSU	Professional Standards Unit
OCKIA	Oversight Committee for Kosovo Intelligence Agency
YIHR	Youth Initiative for Human Rights

1. Introduction

The security sector reform and development in Kosovo is in its early, formative stages. As this chapter will show, an entirely new security sector was built up from scratch and with direct support from the international community within a relatively short period of time. Because Kosovo security institutions have only been set up recently they have not been able to fully take up all their functions. Considering the circumstances in which the Kosovo security sector developed, any concrete assessment of local capacities to implement public policies should not start until after the 2008 Declaration of Independence. Only after this was the Kosovo security sector handed to locals. As a result, for the first time in Kosovo's history preconditions were created for establishing civilian and democratic control of the security sector (KCSS, 2011).

Until the end of 2011, Kosovo institutions made significant progress in establishing an institutional and legal infrastructure. The Constitution of the Republic of Kosovo explicitly refers to the security sector in chapter 11, defining separately all the roles of main security institutions. The constitution also refers to the civilian and democratic control of security institutions, the applicability of international agreements and the role of the Kosovo Assembly (Constitution, 2008: Art. 125). There are also separate laws and by-laws regulating the role of security institutions in detail. The authors of this chapter have identified that in addition to laws which were adopted (mainly as part of a comprehensive legislative package of the Ahtisaari Plan), there are other laws adopted during the pre-independence period which need to be modified due to conflicts with new laws (KCSS, 2012). For example, the laws on civil emergency management, criminal procedural codes and other important laws which were previously approved during the UNMIK period.

Good governance in the Kosovo security sector varies from one institution to another. The Kosovo Police (KP) is much better in this respect compared to the Kosovo Security Force (KSF), the Kosovo Intelligence Agency (KIA) and other security institutions.[55] In terms of internal control, research shows most of these mechanisms are still developing. Discrepancy among the development of internal control institutions might seem reasonable since the Kosovo Security Force (KSF) and the Kosovo Intelligence Agency (KIA) are new, so it is too early to have a complete picture of their progress. Deficiencies in the procurement system could lead to potential misuse of public funds, a major cause of which may be the use of single source tendering. In comparison, the situation is slightly better in terms of protection of human rights and rights of employees.

It is also disputable whether other oversight mechanisms, such as relevant Kosovo parliamentary committees and independent state institutions, are exercising their role in a proper and effective manner. As argued throughout this chapter, the mandate of the two parliamentary committees is limited and only exercised occasionally, making oversight efforts insufficient. Finally, the justice system is relatively weak and has a limited track record of scrutinising acts and potential deficiencies in the security sector.

55 Nevertheless, the reader should bear in mind the KSF and KIA were only recently established and are therefore both in the process of consolidation.

The methodology used by the KCSS team for drafting this chapter is based on the regional project "Civil society capacity building to map and monitor Security Sector Reform in the Western Balkans (2009-2011)" as originally developed by the Belgrade Centre for Security Policy. The authors used a wide variety of methods to collect data. The team relied predominantly on face-to-face interviews in order to receive first hand information from stakeholders on specific issues. The authors had only limited access to secondary sources. There also was a critical assessment of the current legal framework.

The chapter starts with mapping key security actors in Kosovo. It outlines the scope of their responsibilities and provides a brief explanation of their mandate in order to give the reader a clear overview of the security architecture in Kosovo. The chapter continues with an analysis of two dimensions of accountability: vertical and horizontal. The vertical dimension in this chapter critically evaluates the role of executive branches and governmental bodies as well as internal mechanisms in controlling security institutions. On the other hand, the horizontal dimension means control exercised by other oversight institutions. This includes key institutions which play different roles in overseeing security institutions such as the Kosovo Assembly, judiciary, independent state institutions and civil society.

2. Mapping the security sector in Kosovo

The security sector in Kosovo is composed of a variety of institutions and mechanisms. Their competencies and powers are set out in the constitution and supported by laws and regulations. Among the most important institutions or mechanisms are the parliament, the president, the government (prime minister and relevant ministries), the Kosovo Security Council and Kosovo Police, Kosovo Security Force as well as the Kosovo Intelligence Agency. As will be explained below, not all security institutions are empowered to use force or retain an executive mandate. Currently, the only local security institution in Kosovo entitled to use any kind of physical force is the police, making it the most important local security institution.

The emergency management sector, local safety mechanisms and private security companies are crucial security actors. However, due to the scope of the research, length of the chapter and, in particular, that these institutions have less responsibility than those mentioned above, no specific mapping or analysis of these mechanisms is made. Regarding oversight actors, apart from the Kosovo Assembly, their role will be treated in the oversight section of this chapter.[56] Similarly, the role of the judiciary in the security sector is elaborated briefly in the section subtitled "judicial control".

56 In the oversight section, there will be a more detailed explanation of the role of oversight bodies such as: parliament, judiciary, independent state institutions and civil society (community based non-governmental organisations, think tanks, academia and the media). Although civil society will not be mapped, the analysis will highlight key developments with respect to the role of these other actors in the security sector.

The international military presence (NATO–led KFOR) and the European Union Rule of Law Mission in Kosovo (EULEX) are, without doubt, two important international missions in Kosovo which retain an executive mandate in some areas.[57] Considering their mandate is very limited, this chapter will not focus on international actors in Kosovo. Their main mandate is to provide support to local institutions in building their capacities; therefore the basic foundation of Kosovo's security sector is comprised of local security institutions.

The analysis of institutional actors will start with a brief description of the role of the above mentioned institutions starting with the parliament or Assembly of Kosovo, followed by the president, the government, the Security Council, the Kosovo police, the security force and the intelligence agency.

2.1. Kosovo Assembly

Kosovo is defined by its constitution as a parliamentary democracy. The Assembly of Kosovo (AoK) is the only central institution in Kosovo that is directly elected by citizens. In total, there are seats for one hundred twenty members of parliament (MPs), one hundred of which are elected directly by the citizenry at large and twenty are reserved for minority ethnic communities (Constitution, 2008).[58] The AoK is the most important institution in governing the country and a cornerstone for establishing democratic institutions and a democratic security sector. Another important role of AoK is its external oversight of the security sector[59], explained in more detail below.

2.2. President

Since Kosovo is a parliamentary democracy, the role of the President of the Republic of Kosovo is quite limited.[60] According to the constitution, however, the president has an important role in the security sector since he/she serves as commander-in-chief of the Kosovo Security Force; appoints the commander of the Kosovo Security Force upon the recommendation of the government; and in conjunction with the prime minister appoints the director, deputy-director and inspector general of the Kosovo Intelligence Agency. Moreover, the president, in consultation with the prime minister,

57 On issues of organised crime, corruption and war crimes.
58 From those twenty seats, ten seats are reserved for local Serbian community representatives whereas ten others are reserved for the other recognised local minorities living in Kosovo.
59 In general, the role of the Assembly of Kosovo is broad and includes but is not limited to the following: adopting laws; amending constitution; ratifying treaties; announcing referenda; approving budgets; electing the president, government and Kosovo Judicial Council; proposing judges for the Constitutional Court; overseeing the work of the government and implementing foreign and security policies; giving consent to the president's decree for announcing the state of emergency; and deciding other general issues as set forth by law.
60 The current constitutional reform, however, will foresee modifications of the provision related to the role of the president in which he/she will be elected directly by citizens and this role is expected to be more important.

has the authority to declare a state of emergency and consequently chairs the Kosovo Security Council during states of emergency.

2.3. Government

The prime minister chairs the Kosovo Security Council[61]; appoints the general director of Kosovo Police; consults with the president on matters of intelligence; and, in conjunction with the president, appoints the director, the deputy director and the inspector general of the Kosovo Intelligence Agency.

There are two ministries which directly cover the security sector in Kosovo. The first is the Ministry for Internal Affairs (MoIA), which is responsible for implementing the internal public safety policies. The MoIA oversees the Kosovo Police (KP), Police Inspectorate of Kosovo (PIK), Civil Registration Office, and the Department for Public Safety, and others.[62] Secondly, the Ministry for Kosovo Security Force (MKSF) is responsible for managing the Kosovo Security Force (KSF), and this institution is currently given a mandate for disaster relief and response. The Ministry of Justice (MoJ) also contributes to governing the security sector by administering the judiciary and penitentiary systems in Kosovo. Additionally, the Ministry of Foreign Affairs and Ministry of Integration play indirect roles in the security sector. Both coordinate the process of integration to NATO and the EU, consequently requiring a set of standards for the military, police and other institutions.

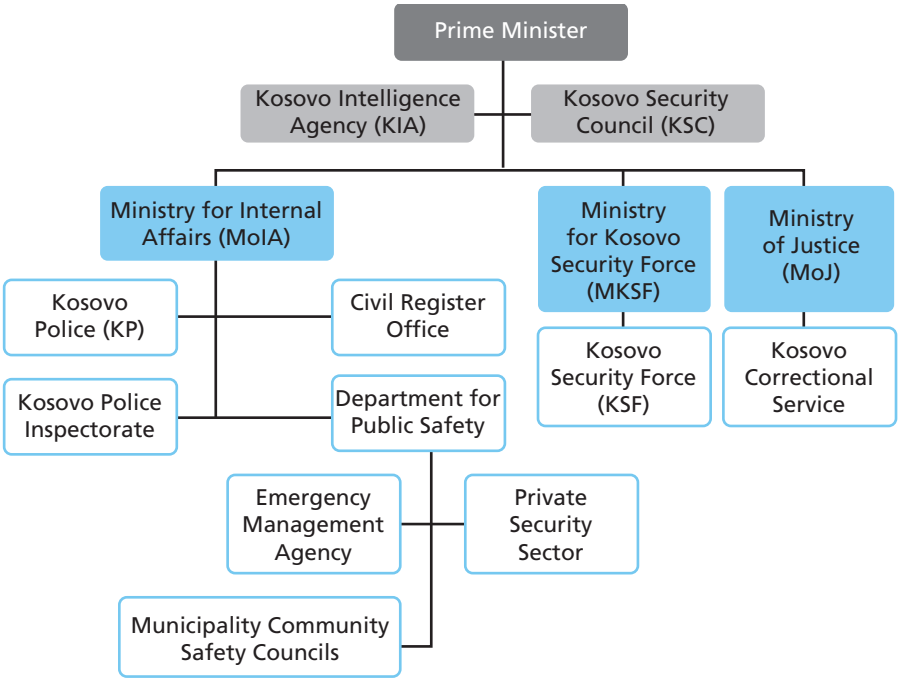
Although the Ministry of Finance (MoF) is not directly related to the security sector, the development of the security sector relies heavily on this ministry. The MoF is responsible for planning the budget and allocating the expenditures for each of the ministries, institutions and other expenditure agencies, including those operating in the security sector. The Kosovo Customs Agency is also part of the MoF.

The Kosovo Security Council is a body led by the prime minister and has a deliberative and advisory role for issues related to Kosovo's security sector and regional stability. The KSC is to provide advice and comments on draft legislations and strategies that are related to the security sector (Law on Kosovo Security Council, 2008). The role of the KSC is secondary compared to the executive and its importance can be measured only when analysing its strategic importance.

The role of the KSC, however, expands if the president were to declare a state of emergency. During these periods, the chair passes from the prime minister to the president (Ibid, 2008). In addition, during a state of emergency the advisors become regular members of the Council (Ibid, 2008).

61 Apart from states of emergency, when the president takes over the chair of Kosovo Security Council from the prime minister.
62 For more details, please see the Figure 1.

Figure 1: Organisation of the Security Sector



2.4. Kosovo Security Council (KSC)

The Kosovo Security Council[63] is a body led by the prime minister and has a deliberative and advisory role for issues related to Kosovo's security sector and regional stability. The KSC is to provide advice and comments on draft legislations and strategies that are related to the security sector (Law on Kosovo Security Council, 2008). The role of the KSC is secondary compared to the executive and its importance can be measured only when analysing its strategic importance.

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63 The Kosovo Security Council (KSC) is composed of the prime minister, the deputy prime minister(s), the Minister of the Kosovo Security Force (KSF), the Minister of Internal Affairs, the Minister of Justice, the Minister of Finance and the Minister for Communities and Return as permanent members. The KSC has a permanent secretary and the permanent members can invite new members to join if and when necessary.

2.5. Kosovo Police

Since 1999, the main task of the police has been to provide safety and security and to enforce the rule of law throughout Kosovo. The Kosovo Police (KP) is the only security institution entitled to use force in accordance with the applicable legislation (Law on Police, 2008). The KP operates under MoIA authority and control and supervision of the general director, who is appointed by the prime minister upon the recommendation by the Minister of Internal Affairs (Law on Police, 2008). Currently the KP has approximately eight thousand police officers, fifteen per cent of whom are women and around fourteen per cent of whom are ethnic minorities.

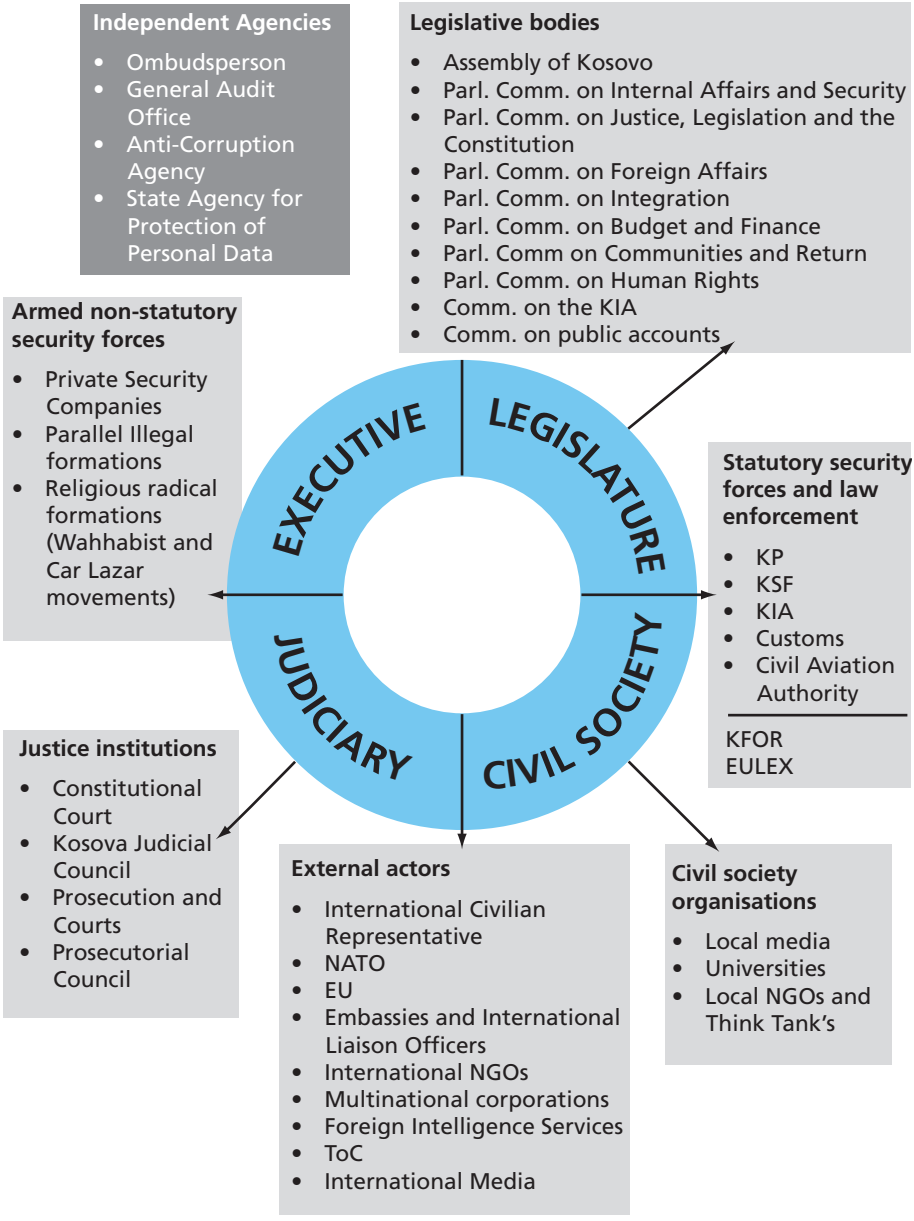
2.6. Kosovo Security Force

The Kosovo Security Force (KSF) is the newest security institution in Kosovo. Currently, the KSF is a civilian structure with a humanitarian mandate designed to fulfil security functions that are not appropriate for police or other law enforcement institutions (Law on KSF, 2008). Although the law permits KSF members to be equipped with light weapons, they do not have the power to exercise force. The KSF operates under the control and administration of the Ministry for the Kosovo Security Forces (MKSF) which is composed of sixty per cent civilians and forty per cent uniformed personnel. The initial mission of the KSF is limited and not well defined. It has disaster relief functions but at the same time it is perceived as a predecessor of the eventual Kosovo Army. The mission of KSF can only be reconsidered five years after its establishment. A majority of political and institutional actors in Kosovo have made clear their preference for transforming the KSF into a military force, a process which is expected to be concluded by the end of 2013.

2.7 . Kosovo Intelligence Agency

The Kosovo Intelligence Agency (KIA) was established to gather information concerning risks and threats to the security of Kosovo. The KIA is prohibited from using direct or indirect force, to make arrests or to initiate criminal proceedings. Structurally, the director of the KIA is accountable directly to the prime minister, and the director is assisted by a deputy director. Both are appointed jointly by the president and prime minister for a five year mandate which can be renewed only once. The KIA also has an inspector general who is appointed by the president and the prime minister for a term of four years.

Figure 2: Mapping of the Security Sector in Kosovo - DCAF SCHEME



3. Analysis of democratic governance & oversight of security sector

The legal framework sets out two types of oversight for the security sector in Kosovo: internal control mechanisms and external oversight actors.

The internal control of Kosovo's security sector consists of a complex structure involving the internal chain of control, vertical hierarchy and horizontal oversight. This includes inspectorates, internal investigation units, internal audit offices and procurement offices. To fully understand the security sector it is also important to analyse the role of external oversight mechanisms. External oversight refers to the control and oversight of the security sector on the horizontal level. Amongst these institutions are: parliament, independent state institutions, the judiciary and civil society.

In order to have a clearer overview of how governance in the Kosovo security sector is functioning, in the following part the role of internal control mechanisms will be elaborated and then there will be a specific part on the oversight mechanisms.

3.1. Internal control of the security sector in Kosovo

3.1.1. The structure of internal control

Internal control and supervision is performed either by security institutions themselves or by the internal control mechanisms of the ministries and agencies under which they operate. These might include mechanisms such as: internal investigation units, internal auditing units, procurement offices and inspectorates. Apart from these mechanisms, in some branches such as supervision of the budget, internal control is exercised by other ministries or governmental bodies, most notably by the Ministry of Finance.

The existing legal framework provides that the internal control of the security sector on the institutional and ministerial level is carried out by both civilian and uniformed structures (Constitution, 2008). Despite being clearly outlined in the legal framework, in practice, internal control of the security sector in Kosovo is still developing. As explained, this can be justified by the fact that some of the security institutions in Kosovo are still in their infancy particularly the Kosovo Security Force and Kosovo Intelligence Agency.

The oldest security institution, the Kosovo Police (KP) has made measurable progress in exercising internal control. This control is carried out by mechanisms such as: the Professional Standards Unit (PSU), the Internal Audit Unit (IAU) and the Police Inspectorate of Kosovo (PIK). The PSU is a police unit which is responsible for investigating minor cases of alleged misconduct by KP personnel, while the IAU is a unit responsible for auditing the expenditures and procurements made by the police. The PIK is a mechanism which operates under MoIA independently from the KP with power to investigate allegations of serious disciplinary and financial problems in the police.

According to the new Law on the Police Inspectorate of Kosovo, which the Kosovo Assembly passed in late 2010, the inspectorate is competent to investigate serious criminal allegations related to the KP whereas competences for investigating minor disciplinary offences lie with the Professional Standard Unit operating under the police (Law on PIK, 2010). In terms of professional capacities, the police inspectorate faces personnel shortages with just forty inspectors. Thus, the capacities of this institution to exercise its broader mission are insufficient, providing greater urgency for defining a more concrete, focused mission of this mechanism. Research has shown that the internal control mechanisms for PK require additional staff and staffers need professional trainings on executive control (KCSS, 2012). Lack of understanding among the government and financial constraints in the Kosovo budget have contributed to the current situation in the police inspectorate.

The internal control mechanisms of the Kosovo Security Force (KSF) and the Kosovo Intelligence Agency (KIA) are still in the initial stages of development. The KSF is slightly more advanced and has established control mechanisms including: Internal Investigation Units, the KSF Police and the KSF Inspectorate. It is also important to mention that the KSF has not yet published any reliable report on their activities and therefore no data on the investigations conducted to date are available. Similarly, the Kosovo Intelligence Agency (KIA) remains in its infancy. There has been limited consolidation of its inspectorate, which is led by the inspector general. The legislation provides a specific internal control for KIA, which is unique in the region. The fact that the inspector general is appointed directly by the prime minister and president and reports separately to them gives prominence to the internal control mechanisms in intelligence.[64] The appointment of the inspector general was announced in the media but, since then, there has been no information on the performance of this mechanism. This lack of transparency results from the specific legal designation of the KIA as a non-transparent security institution (Law on KIA, 2008).

Table 1: Internal Control Mechanisms

Control Mechanisms of KP	Control Mechanisms of KSF	Control Mechanisms of KIA
• Kosovo Inspectorate Police (MoIA) • Department of Budget and Finance (MoIA) • Director of Kosovo Police (KP) • Legal Department at MoIA • Department of Public Procurement & Contracts (MoIA)	• Minister of KSF • General Inspector of KSF • Internal Audit Office • Human Rights Unit • Legal Department Unit	• Prime Minister • Director of Kosovo Intelligence Agency • General Inspector of KIA

64 For more details on the responsibilities of KIA inspector general, please see the Law on KIA (Chapter on Inspector General).

3.2. Good governance practices & accountability of Kosovo security institutions

3.2.1. Financial governance

Sound financial governance, which includes budgetary transparency and procurement procedures, is one important aspect of good governance in the security sector. In Kosovo, the internal control of budgetary accountability is exercised through the Kosovo Ministry of Finance. Supervision of procurement is exercised by the Agency of Public Procurement, the head of which is nominated by the government.

Budgetary transparency is clearly defined by the Law on Public Finacial Management and Accountability 2003. The law clearly states how all budgetary agencies, including security institutions, have to conduct their planning, execution and reporting of the budget. Each expenditure agency is obliged to appoint an executive financial director and certifying officer. The law regulates the budget and reporting system conducted by public authorities and prescribes the power of the Minister of Finance and other institutions related to the budget process. The legal framework of the security institutions does not have any specific provisions on financial expenditures, however, there is an exception for the KIA, which is allowed to use accelerated procedures in the event of any extraordinary circumstances (Law on KIA, 2008). Another issue of concern regarding the internal budgetary control over the security sector is the limited administrative capacities of internal audit units and the Ministry of Finance. According to the General Audit Office, the police managed to complete its work plan for 2009. In comparison, the performance of the Ministry of Internal Affairs was less satisfactory (OAG 2010, p. 20). One of the main deficiencies is related to limited staff and the high staff turnover, due to low salaries. Limited numbers of qualified personnel is a recurring problem common to many security institutions in Kosovo (OAG, 2010).

The Treasury Department and the Department of Budget of the Ministry of Finance are some of the most complex public institutions. This may be mainly due to its complicated bureaucratic structure rather than just a lack of human resources. The financial statements of all public institutions, including security institutions, are finalised by 31 March each year.[65] These annual financial statements are published regularly on the Ministry of Finance's webpage. The semester and quarterly budget reports are also published within a year, which provides interested parties with a statement on the progress made on spending public funds throughout the year. The reports show the amount spent in five budget lines: wages and salaries; goods and services; utilities; subsidies and transfers; and capital outlays (KCSS, 2012).

65 As this research has been conducted since 2008, financial statements are available for 2008 and 2009. There is partial data on 2010.

Hearings for budgetary proposals are held regularly. The MoF invites representatives from different organisations to discuss details for each budget line in order to agree on final budget proposals. KCSS research shows hearings are transparent, yet there is no prior notification to interested parties by the MoF on the timing of hearings. This makes it difficult for citizens and civil society representatives to attend these meetings. The hearings are set for a specific date but only the actors directly involved are informed, though there may be some exceptions when this information is made publicly available (KDI 2010, p.37).

Procurement oversight is regulated by the Law on Public Procurement which was adopted in 2003, amended in 2007 and replaced by the adoption of a new law in 2011. At the time of its adoption, this law was a turning point for public institutions. It required them to consolidate their procurement units and follow the law so as to ensure maximum efficiency, transparency, cost effectiveness and fair use of public funds and resources in Kosovo (Law on Procurement 2003, Art 1.1). In addition, the new law includes some provisions suggested by an EU directive, in alignment with international standards. There is no specific legislation regulating defence and security procurement. The KSF and KP legislation does not have any separate provisions on procurement procedures, meaning it should comply with the Kosovo Public Procurement Law. The Law on the Kosovo Intelligence Agency (KIA), however, includes a provision indicating that, "in extraordinary circumstances relevant to the work of KIA, the KIA director in specific situations may expend funds without regard to the provision of the laws relating to government expenditures"(Law on KIA 2008, Art. 42.1).

Procurement in the security sector in general also has been criticised by the Office of the Auditor General, civil society and the media for lacking transparency. Tender announcements, made only on the web pages of institutions or procurement agencies, might not be sufficient in implementing the transparency provisions of the Law on Access to Official Documents. There is no data showing that most bids have been published in daily newspapers or other sources in order to reach more potential bidders. Although the security institutions regularly publish information on contracting, annulling of tenders or calls for bids on their web pages, this information is not updated regularly. Furthermore, the publication for all of the contracting authorities is published with approximately a three month delay.

A number of shortcomings in the procurement practices of different security actors have been identified by the authors. Shortcomings in the management of procurement are evident in the turnover among procurement officers at the central and local levels. Training provided to procurement officers, organised since 2009, is insufficient and has not been in accordance with applicable laws (KCSS, 2012).

Single source tenders are one of the key problems in public procurement in Kosovo. According to the rules on procurement, tenders can be awarded to a single company without a call for tender only if this service provider is 'specialised' in a specific service or purchase. The significant rise in single source tenders in recent years, however, raises serious concerns about a lack of open competition and disregard for regular procurement procedures. The general figures showed the tender passing through sin-

gle source procedures in the entire public sector rose from fifty million Euros in 2008 to one hundred sixty-four million Euros in 2009. Presumably, public actors are deliberately bypassing regular procedures. Their reasons for favouring certain companies may be linked, in some cases, to corruption.

The authors sought out data for two security institutions, the KSF and the KP, on the application of non-transparent and non-competitive procedures. According to data provided by the Public Procurement Agency for the fiscal period of 2009, the KP procured fifteen contracts using single source tendering for a total of €892,167.46. The KSF procured seven contracts amounting to over two hundred thousand Euros.[66] This data does not include single source procedures used by MoIA, KIA or other security sector institutions. According to the statements of officials, however, these amounts only represent funds committed and do not necessarily mean that the KP and the KSF spent the entire committed amounts on single tendering procurements. In general, due to potential abuses of public funds, public procurement remains a most controversial area.

3.2.2. Supervision of breach of law and human rights

The security sector in Kosovo has been set up in a short time and built in a post conflict environment where both international and local authorities contributed enormously to building security institutions that function in accordance with democratic principles. As a result, the issue of breaching the law and human rights never particularly concerned the security sector. Notably, violations of the human rights of security sector employees have occurred infrequently. Although there is limited information about newly established security institutions, the Kosovo police, as the most prominent security institution in Kosovo, has undoubtedly set a good example. Statistics show there is a very low number of complaints initiated by citizens against police for breach of the law and human rights. The police inspectorate reviewed one thousand one hundred eighty-five complaints, of which five hundred seventy-seven were citizen initiated complaints, thirteen were complaints from institutions, and five hundred ninety-five were initiated by police (KCSS, 2012). Of those complaints, the PIK pursued further investigation into four hundred eight and turned five hundred forty-one cases over to the KP Professional Standards Unit (PSU).

Table 2: Types of cases investigated by KIA

Total number of cases investigated by PIK	**408**
Serious disciplinary allegations against PK officers	20%
Allegations inappropriate use of force by PK members	13%
Suspected criminal cases involving the PK officer	12%
Suspected corruption affairs	2%

(Source: US State Department, 2010)

66 €221,621.00 (PPA Database, 2010).

Court decisions for criminal cases were pending in one hundred six cases, and one hundred cases were pending before the Senior Police Appointment and Discipline Committee. Of the four hundred eight cases investigated by the PIK, twenty per cent were allegations of serious discipline violations. Of the discipline violations, twenty per cent were for serious cases of conduct unbecoming a police officer, thirteen per cent involved allegations of inappropriate use of force, twelve per cent involved criminal offences (and were referred to the prosecutor), nine per cent were for serious insubordination, two per cent concerned complaints of corruption, and the remainder were various violations categorised as serious (US State Department, 2010). In addition, during 2009 and 2010 the most targeted group, which faced extensive use of force by police during their demonstrations, were activists from the "Vetëvendosje"[67]. According to these statistics, there are no specific cases when police have discriminated based on ethnic, gender or others prejudgments. Overall, the number of cases of serious offences committed by police officers is low. However among the largest concerns remains the politicisation of police (EC Progress Report, Kosovo, 2011) which might explain the approach of police officers towards "Vetëvendosje" activists, a political movement belonging to the second largest opposition party in Kosovo.

3.2.3. Transparency of the security institutions

In recent years, Kosovo had sound experience in applying the Law on Access to Official Documents (2003). This law helped develop customs for access to information but was not expansive enough to account for the demands of a growing public administration as well as increasing demands by civil society and the media to access public documents. This led to the adoption of a new law in 2011 (KCSS, 2012).

Security actors lack the administrative capacities necessary to answer requests of interested parties to access documents. The Kosovo Police (KP) is reported to be the "champion" in providing information in a timely manner, compared to other security institutions. This might not be an accurate representation of the newer security institutions, however, since the police receive more requests for access to official documents compared to the KSF or the KIA and, in particular, bear a larger public security burden. However, limited transparency in the KIA and the KSF should be noted, based on their frequent negative responses to the requests of civil society and journalists.

The reports of civil society organisations also have criticised the implementation of the relevant rules by public administration, stating that "enquires and e-mails meet a wall of silence" (YIHR 2010: 24). Nevertheless, based on the fact that there have been no complaints filed with the Ombudsperson against security institutions regarding access to information, it could be concluded the sector might be better, in comparison to other public institutions. The core problems remain gaining access to "sensitive" cases in the security sector and delays in consolidating the system for

67 Vetëvendosje, which in English means "Self-determination", was initially a civil society movement. During the 2010 general election it was transformed into a political party, becoming the third largest parliamentary party in Kosovo.

classification of information until the end of 2011 (EC Progress Report, Kosovo 2011, p.30).

According to Section 7 of the law, the Office of the Ombudsperson in Kosovo can receive complaints about alleged refusals to give access to information. The Ombudsperson's powers, however, are restricted to requiring reasons from institutions for the refusal of access or for the lack of reaction (KCSS, 2012).

4. Horizontal oversight of the security sector in Kosovo

4.1. Parliamentary oversight

Parliamentary oversight over the security sector in Kosovo is newly established and has limited experience. It was first introduced towards the end of 2006. More comprehensive consolidation of parliamentary oversight, however, only occurred after 2008. After the Declaration of Independence, it became possible to put all local security institutions under the scrutiny of parliament.

Overall, in 2011 and 2012 there are two parliamentary committees with a mandate to oversee the Kosovo security sector: the Committee for Internal Affairs, Security and Kosovo Security Forces as well as the Committee for Supervision of Kosovo Intelligence Agency. The first committee does cover the oversight of police, security force, emergency management and other related mechanisms within the scope of internal affairs. The other committee covers, specifically and exclusively, the Kosovo Intelligence Agency. Indirect oversight of the security sector by general committees was set-up immediately after the establishment of the Kosovo Assembly in 2001. Among these committees, which continue to oversee important areas of the security sector, are the Committee on Budget and Finances, with the competence to oversee the finances of all institutions funded by the public institutions (including those of the security sector), the Committee for Community Rights and Interests and for Return, and the Committee on Human Rights, Gender Equality, Missing Persons and Petitions, with a responsibility to oversee human rights issues, particularly those related to the security sector.

Despite initial positive signs, neither the general nor the specific security sector committees have performed their oversight responsibilities successfully. One exception is oversight of human rights which has been more advanced compared to other areas. To achieve this progress, the Kosovo Assembly (AoK) has established different parliamentary committees responsible for covering human rights issues. It is important to mention that the Committee on Rights and Interests of Communities and Return is the only permanent committee within the AoK which is mandated by the Constitution. The attention of the AoK to human rights issues has had an impact on the security sector. Security institutions now have greater consideration for human rights protection and to conditions for equal access to employment. Success related to oversight of

human rights by the Kosovo Assembly, however, may be considered an exception due to attention paid by the local and international mechanisms operating in Kosovo to promote an interethnic and intercultural environment.

The oversight of budget expenditures in the security sector however, has been a matter of concern. Although competent oversight committees exist, there were almost no discussions by the parliamentary committee regarding security sector budgetary expenditures. The only occasion when there might be parliamentary discussion about the budgetary issues are when Annual Audit General Reports are discussed. Until now parliamentary committees have not initiated any additional ad hoc parliamentary discussion specifically about the budget expenditures of security institutions (Venhari, 2010). Of greater concern is the fact that contracts exceeding one million Euros have not been subject to discussion despite this being legally required. This constrains the efforts of parliament to oversee budgetary expenditures and especially high value contracts in the security sector. Further, this shows limited interest among MP's to exercise their role in scrutinising expenditures of public funds.

Parliamentary oversight of the activities and policies of security institutions is also nearly non-existent. These committees failed to address most of the shortcomings of the security sector regarding the adaptation of strategies, implementation of good governance practices and other important governmental policies. This can be a detriment to the checks and balances between the legislative and executive within this sector (KCSS, 2012). There were no discussions either in committee or plenary sessions on the adoption of a security strategy for Kosovo or for other institutional strategies.

The main deficiencies which indicate a low performance in parliamentary oversight are related to limited professionalism within the Assembly staff in addition to a lack of effort among MP's (Selmani, 2010). Regarding recruitment of parliamentary support staffers, there are indications that political biases and personal preferences influence the hiring of personnel. This problem is common throughout public administration in Kosovo. This could be one explanation for the relatively low number of skilled staffers among parliamentary committees, which is highlighted in a number of different reports (KDI, 2011). In addition, there is a lack of political willingness expressed by political or institutional leaders to move the processes forward. This is due to a combination of personal or party interests and the influence they have over other members of parliament, indicating that in practice the AoK has much less influence on security sector actors than it is given by law.

4.2. Independent state institutions

Independent state institutions are among the main mechanisms for oversight of security institutions, especially with respect to human rights protection and appropriate use of public funds.

Table 3 – Security Sector Parliamentary Oversight Committees		
Parliamentary Oversight Committees responisble for Kosovo Police	Parliamentary Oversight Committees responisble for Kosovo Security Force	Parliamentary Committees responisble for KIA
Parliamentary Committee for Internal Affairs and Security and Oversight of Kosovo Security Forces	Parliamentary Committee for Internal Affairs and Security and Oversight of Kosovo Security Forces	Parliamentary Committee of Oversight of Kosovo Intelligence Agency
Parliamentary Committee for Budget and Finance	Parliamentary Committee for Budget and Finance	
Oversight Committee on Public Finance	Oversight Committee on Public Finance	
Committee of Legislation	Committee of Legislation	
Commission on Human Rights, Gender Equality, Missing Persons and Petitions	Commission on Human Rights, Gender Equality, Missing Persons and Petitions	

The only independent state institution authorised to oversee human rights protection in all public areas, including the security sector, is the Ombudsperson Institution in Kosovo (Ombudsperson). Since the security sector is one of many oversight areas covered by the Ombudsperson, however, this institution has very limited capacities. The Ombudsperson lacks sufficient personnel for adequate training. A significant portion of qualified personnel have left the institution due to erratic financial support and low salaries. The Ombudsperson Institution is also lacking space and premises at both the local and central level (Jashari, 2010). The Ombudsperson often is faced with political interferences which have hindered its work (YIHR, 2009). Although the Ombudsperson lacks consistency in reporting, its reports did mention few cases of human rights violations caused by security institutions. In the latest Annual Report published by the Ombudsperson (2008/2009), only twenty-three cases of human rights violations caused by the police were mentioned. This represents only five per cent of all cases and only one case has been reported for the KSF whereas no case was filed for the KIA (Ombudsperson, 2010). Among the most vulnerable groups which have been affected by human rights violations from the police are activists from "Vetëvendosje". The report, however, does not identify any particular group as a vulnerable target requiring specific attention, apart from traditional groups such as gender and ethnic communities, for whom statistics are provided.

There are two independent institutions in Kosovo which are established to control expenditures of public funds: the Office of Audit General (OAG) and the Anti-Corruption Agency (ACA). The role of the OAG is to provide independent oversight of all budgetary expenditures of public funds. The OAG conducts regular audits and publishes annual reports for each public institution and for private enterprises whose funding includes funds allocated by Kosovo's Consolidated Budget (Law on OAG, 2008). The role of the ACA is related to investigation of corruption affairs. The ACA is responsible for investigating all allegations against the employees of the public sector regarding the possible misuses of public funds or nepotism (Law on ACA, 2009).

Both the OAG and the ACA submit their Annual Reports to parliament with reasonable regularity. However, there are cases when the parliament delayed the discussions of these reports. This was due to attempts from actors operating at the governmental or political level to pressure these institutions to 'embellish' findings highlighted by reports according to their individual or party interests (KCSS, 2010). These reports provided data highlighting the inefficiency, mismanagement and misuse of public funds by security institutions and also provided recommendations for how these institutions could spend public funds more efficiently. However, these reports noted that in most cases the security institutions respond to their recommendations.

4.3. Judicial control

The Kosovo justice system is the most fragile sector in the country. It constantly faces criticism regarding its inefficiency, high level of corruption and lack of professionalism. It is now undergoing general reforms which need to be concluded by 2013 (KCSS, 2010). According to the constitution, in principle, Kosovo has a unified independent judicial system. The current organisation of the judiciary includes the Supreme Court, the district courts and the municipal courts (which are the regular courts), and the minor offence courts and district commercial court (which are the specialised courts).

The role of the judiciary in the oversight of the security sector is especially important concerning the use of force by law enforcement officials, treatment in custody and detention, and the use of special investigative measures. In principle the only local security institution which is entitled to use force is the Kosovo Police. Guards working in the Kosovo Correctional Services, however, have limited competencies to use force. In 2010, the Kosovo courts had only eleven registered cases against police officers and no cases filed against customs officers or correctional service personnel. Despite this record, the European Commission's 2010 "Kosovo Progress Report" states, in a paragraph about the civil and political rights, that the Kosovo government needs to do more to prevent torture, allegations of ill-treatment and excessive use of force by police and prison personnel (EC Progress Report, Kosovo, 2010).

Treatment in custody and detention is another important aspect of judicial control. The Kosovo Police force is the main actor entitled to arrest and keep individuals in custody. According to legislation arrested persons have the right to receive a medical examination and medical treatment, including psychiatric treatment (Criminal Procedure Code, 2004). Reports highlight that the facilities and treatment in detention centres are progressively reaching minimum standards, however the problems in the judiciary are affecting the rights of detainees. There are notable concerns that rulings on detention (on both initial and extended detention) are poorly reasoned, despite the fact that both international law and the Kosovo legal framework clearly require full reasoning. Delays in sending reports from the Kosovo police to the prosecutors presents a huge obstacle for them and their ability to draft adequately reasoned requests for detention (OSCE, 2009). When it comes to administrative capacities, although there is notable progress, lack of sufficient office space for the staff of the judiciary remains a concern.

Another important aspect related to the judiciary is the authorisation of special investigative measures. The Kosovo Police, Kosovo Intelligence Agency and EULEX can be authorised by court orders to use special investigative measures.[68] According to legislation, the use of special investigative measures is exercised through a wide variety of methods.[69] Regarding the use of special investigative measures by the Kosovo Intelligence Agency, the Supreme Court Judge, upon the review of a written application made under oath and approved by the KIA director or deputy director, has the authority to give permission for the use of surveillance to the KIA (Law on KIA, 2008). Nevertheless, the so-called emergency surveillance allows the KIA director or deputy director to grant an oral order for special investigative measures without an order from a Supreme Court judge. They are then required to inform the judge within forty-eight hours. Use of this mechanism raises doubts as to whether there is a concrete criterion which would legitimise the use of the emergency surveillance (Hasani, 2011).

Although measurable progress has been reached in the conditions and treatment within the penitentiary system, the main obstacle to the justice system remains the judiciary itself. According to published reports reviewed, the judiciary leads the polls when it comes to corruption. Corruption within this system starts from judges and prosecutors and permeates to attorneys, notaries, etc. This high level of corruption is minimising progress made by the police and the penitentiary system in Kosovo. There are many criminal cases which were reported by police but ended without being examined thoroughly by the courts. Similarly, there are people who are being kept in detention for years waiting for trial, while in other cases, people charged with the same crimes are allowed to prepare their defence from outside prison. In this regard, judicial reform which started in 2010 is the most important step to improve the rule of law and protection of human rights in Kosovo.

5. Conclusion

After 2008, Kosovo adopted a basic legal framework defining the role of security institutions. It seemed, however, most of the legislation covering the security sector did not reflect local needs and there was limited involvement of locals in the process. More of an effort should have been made to involve local policymakers and civil society or citizens in the process. Inclusiveness, though one the main tenants of Security Sector Reform theory, saw only limited application in the recent legal developments in Kosovo. As a consequence, one part of the legislation immediately required amendments. Political context is another indicator which is pushing reform. The political

68 For more details about the cases of authorising special investigative measures please see: Kosovo Criminal and Procedural Code (for Police and EULEX) as well as Law on Kosovo Intelligence Agency (for KIA).

69 Covert photographic or video surveillance; covert monitoring of conversations; search of postal items; interception of communications by a computer network; controlled delivery of postal items; use of tracking or positioning devices; a simulated purchase of an item; a simulation of a corruption offence; an undercover investigation; metering of telephone calls; and disclosure of financial data.

context, therefore, is a crucial indicator for defining a vision and mission for the entire security sector in Kosovo.

There is some progress in terms of good governance of the security sector, though this is still in its infancy. In general, there are internal mechanisms established either within security institutions or within the respective ministry. While the police inspectorate has a significant track record of implementation, other internal control mechanisms have limited practice, notably the newly established security institutions. Neither the KSF nor KIA have published reports or made an overview of the work of their internal control mechanisms available to the public.

There is a sufficient level of human rights protection which has been demonstrated in practice. Both ethnic and gender representation within the security sector are relatively high. Problems within the Kosovo security sector are evident in financial transparency and governance. There is insufficient budgetary control of security institutions and their budgetary transparency is relatively low. So far, no security institution has reported to the Assembly of Kosovo on contracts exceeding one million Euros, although the approval of these contracts by the Assembly is required by law.

Horizontal oversight in the Kosovo security sector is mainly functional, including oversight exercised by external mechanisms such as parliament, independent state institutions, the judiciary and civil society. The main challenges to external oversight are lack of established practices within security institutions and through external mechanisms. The Kosovo Assembly has established the necessary infrastructure to oversee the security sector. Both security sector parliamentary committees and other committees have oversight responsibilities. A problem exists, however, in terms of professional capacities. Hardly any parliamentary committee has sufficient capacities in their field. This limits efficiency and quality of their work.

Finally, although independent state institutions are established, most face a range of challenges in exercising oversight. The most basic include limited budgets, limited personnel, lack of professional capacities, high staff turnover, and limited office space. Most of these institutions also face more complex challenges arising from political pressure and interference.

6. Recommendations

6.1. Internal control of the security sector

- Regarding internal control of police, a new law governing the KP should be adopted as soon as possible. Its provisions should be in harmony with the Law on the Police Inspectorate of Kosovo.
- The internal control mechanisms of the Kosovo Security Force and the Kosovo Intelligence Agency should be more transparent. They should publish their reports

regularly to the respective institution. This will give the public a clear picture of the treatment of personnel and the implementation of good governance practices within each institution.

- Budgetary transparency must improve. Security sector institutions must begin to submit their requests to parliament for the approval of all contracts that exceed a sum of one million Euros.

6.2. The Kosovo Assembly, Independent Institutions and Justice System

- Parliament needs to be more efficient when analysing annual reports submitted by independent state institutions. It should avoid delays to eliminate possible pressure imposed by political actors or other groups who may have interests in changing the findings made in the reports.
- The judiciary system needs to improve its practices and efficiency in order to not hinder contributions and progress made by other security institutions, in particular the progress of the Kosovo Police and Kosovo Correctional Service.

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Chapter 5 – Macedonia

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Abbreviations and acronyms

CDS	Committee on Defence and Security
DSCI	Directorate for Security and Counter Intelligence
MP	Member of Parliament
SSR	Security Sector Reform
MoI	Macedonian Ministry of Interior
MoD	Macedonian Ministry of Defence
NPM	National Preventive Mechanism
PSO	Peace Support Operations
SAO	Macedonian State Audit Office
SICPS	Macedonian Sector for Internal Control and Professional Standards

1. Introduction

Macedonia shows a solid track record reforming its security sector. Much progress has resulted from the efforts to facilitate EU and NATO integration. Good governance and democratic control of its security sector were part of these reforms but not all security sector actors have reformed at the same pace. The objective of this chapter is to provide an overview of the accountability and oversight of Macedonia's main security actors since its independence in 1991.

This chapter concentrates on three security actors: Armed Forces[71], police and intelligence services[72]. It examines how oversight of these institutions functions and is ensured by six bodies: the parliament, president, constitutional court, ombudsman, state audit office, and the Macedonian Sector for Internal Control and Professional Standards (SICPS). The text explains how the work of certain oversight mechanisms in relation to one actor is better than in relation to another (i.e. the commendable work of the Ombudsman of the Republic of Macedonia with the police as opposed to its poor performance when overseeing the intelligence services).

The main finding suggests that, of the three actors, the police are the most scrutinised because of their presence in daily life and the heightened risk of human rights infringements resulting from their broad powers.

This chapter used laws and regulations, interviews and requests for public information as primary sources[73]. Interviews were conducted with professionals having significant security experience. For some of the indicators data was scarce so research remained limited (e.g. little information was available on the profile of training for MPs). Analysis of reports by international and local organisations helped fill those gaps. For a better illustration each of the three security sector actors discussed in this chapter are accompanied with a table giving a snapshot of their performance of the oversight bodies.

2. Context

The necessity for reforming Macedonia's security sector began after the independence in 1991. At this time, most figures in the security sector had been in high positions

71 Under "Armed Forces", this paper refers to the Army of the Republic of Macedonia, as stipulated by the Law on Defence (Art.1). Official Gazette of the Republic of Macedonia No. 42/2001, 01.06.2001.
72 By intelligence services this paper points to: the Directorate for Security and Counterintelligence, Intelligence Agency and the Army Intelligence and Counterintelligence Unit.
73 Questions utilising right of access to public information were sent to the following institutions: Ministry of Internal Affairs, Ministry of Defence, Intelligence Agency, Ombudsman, the president, Constitutional Court and parliament. Most of the questioners that were used were developed by the Belgrade Center for Security Policy. The answers received using this data collection tool refer to 2008, 2009, 2010 and 2011.

under the previous political system. It comes as no surprise that the transformation of the security sector did not lead to immediate change towards greater accountability and openness of security institutions. The main security sector institutions at that time were focused less on safeguarding the principles of transparency and accountability and concentrated on safeguarding the fragile Macedonian independence. Parliament focused on its legislative functions and not necessarily on developing and strengthening oversight mechanisms. Independent state institutions such as the Ombudsman or the audit office were not created until later (1997).

Following scandals in the 1990s,[74] it became evident that the reform of the security institutions needed to be streamlined. Most security sector reforms were supported by the donor community (e.g. OSCE, EU and NATO). After Macedonia's internal armed conflict in 2001,[75] the security sector received renewed reform impetus to overhaul the security architecture. Greater representation of different Macedonian ethnic communities was at the heart of the Ohrid Framework Agreement.[76] This emphasis on representation was reflected in the police reform and led to the creation of multi-ethnic patrols to secure public order in ethnically mixed areas.

Police have received considerable donor assistance. In 2002, in cooperation with government, an expert group was tasked by the European Commission Justice and Home Affairs team to propose a strategy for MoI reform. In addition, an EU Police Mission (EUPOL Proxima) and EU Police Advisory Team (EUPAT) had a role in supporting implementation of police reform from 2003 to 2006.[77] The Macedonian Armed Forces have received international support as part of their involvement in NATO's Membership Action Plan since 1999,[78] thus the Armed Forces also have undergone different reform cycles.

Finally, intelligence services, which have complicated organisational structures (i.e. the Security and Counterintelligence Department is part of MoI) have benefited indirectly

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74 Examples include the wiretapping affair « Duvlo », (meaning «borrow») when the ruling party at that time (Social Democratic Union - SDSM), was accused of abusing MoI's wiretapping equipment to intercept the communications of the opposition party VMRO DPMNE (Internal Macedonian Revolutionary Organisation—Democratic Party for Macedonian National Unity) and the assassination attempt of President Kiro Gligorov in 1995.

75 This study considers the events of 2001 an "armed conflict" according to the definition devised by the Department of Peace and Conflict Research at Uppsala University: "An armed conflict is a contested incompatibility which concerns government and/or territory where the use of armed force between two parties, of which at least one is the government of a state, results in at least 25 battle-related deaths." (available at http://www.pcr.uu.se/research/ucdp/definitions/definition_of_armed_conflict/?languageId=1). For a more detailed analysis of the Armed Conflict of 2001 please consult International Crisis Group (2001).

76 The Ohrid Framework Agreement was the peace deal signed by the government of the Republic of Macedonia and ethnic Albanian representatives on 13 August 2001. The agreement ended the armed conflict between the National Liberation Army and the Macedonian security forces and set the groundwork for improving the rights of ethnic Albanians.

77 More information about EU's Proxima and EUPAT missions can be found in European Union Institute for International Relations (2009).

78 The Membership Action Plan (MAP) was launched in April 1999 to assist those countries which wish to join the Alliance in their preparations by providing advice, assistance and practical support on all aspects of NATO membership. http://www.nato.int/docu/handbook/2001/hb030103.htm.

through assistance to and reform of their parent ministries. However, in hindsight, one has to say that the intelligence services have not internalised the principles of good governance (see, for example, discussion on transparency and accountability below).

Table 1 – Competences of Oversight Bodies

President
The president is head of the Armed Forces. He/she is elected by the people for a five-year term. The constitution enables the president to appoint the Chief of the General Staff of the Macedonian Army. According to the constitution, all new laws require the president's signature, giving him/her veto powers.

Parliament
Parliament is the legislature and the actor with most control competences over the security sector. The possibility to initiate, amend, pass and overturn legislation allows parliament to intervene in the security sector. Separate committees that discuss the work of security actors give parliament the opportunity to have detailed and substantive discussions about these institutions, note and act upon irregularities, provide recommendations, etc. Currently there are four committees tasked with overseeing the security sector.

Parliamentary Committees
- Committee on Defence and Security – entitled to follow Armed Forces and police, acting as a parent committee on issues related to their functioning.
- Standing Inquiry Committee for the Protection of Civil Freedoms and Rights – the only parliamentary body with an investigative role, acting as a parliamentary focal point where citizens can lodge complaints about infringement of rights.
- Committee for Supervising the Work of the Security and Counter Intelligence Directorate and the Intelligence Agency – responsible for overseeing the work of the Intelligence Agency and the Directorate for Security and Counter Intelligence (DSCI) within the Ministry of Interior. The work of this committee is of outmost importance because of the traditionally closed work of the Intelligence Services. Moreover, the committee oversees the work of the DSCI which has police authorizations, increasing the likelihood of a misuse of their authorities without proper oversight.
- Committee for Supervision of the Application of Communication Interception Techniques by MoI and MoD – the body overseeing the Ministries of Interior and Defence when it comes to checking the legality of use of communication interception techniques by the two institutions. It was created in 2008.

Constitutional Court
The Constitutional Court, part of the judiciary, is responsible for ensuring laws are constitutional. Additionally, it has the right to investigate human rights violations and decide on accountability of the president in case of constitutional violations.

State Audit Office
The State Audit Office (SAO) performs audits in accordance with yearly plans and checks financial reports, determines irregularities in the work of institutions and issues recommendations to avoid possible irregularities. Moreover it has the right to access classified data and perform field visits.

Ombudsman
The Ombudsman is the central body responsible for investigating human rights violations. He/she is entitled to oversee all three security actors and is selected by parliament for a eight-year mandate giving him/her autonomy and independence from politics. In addition, the Ombudsman can conduct field visits and access classified data.

Table 2: Supervision over Armed Forces

Oversight mechanisms and competences		Parliament	Ombudsman	President	State Audit Office	Constitutional Court
	Which are functioning in practice?	• Votes on the budget • Decides on sending PSOs • Conducts field visits abroad • Parliamentary questions in the plenary • Discusses public procurement deals (sporadically) • Proposes laws within political group/ individually (sporadically) • Files amendments within parliamentary groups • Discusses budget provisions • Submits interpellations to the minister (sporadically) • Debates on PSOs (mandate, need, risks, etc) sporadically • Cooperates with CSOs (sporadically)	• Receives complaints and acts upon them • Files criminal charges (sporadically) • Conducts field visits (sporadically) • Holds meetings with officials (sporadically) • Issues recommendations	• Appoints/ dismisses the Chief of Staff	• Performs auditing • Issues recommendations • Conducts field visits • Accesses classified information • Files criminal charges (sporadically)	• Assesses legality of laws
	Which are not functioning in practice?	• Initiates oversight sessions and public debates • Goes through final audit reports for the respective ministry/state institution • Submits interpellation about the work of the president	• Starts investigations independently	• Exercises veto power over new laws	• Follows up on issued recommendations	• Protects freedoms and rights of the individuals and citizens * • Decides on accountability of the president **

* Since 2008 the constitutional court has not decided upon any citizens complaints regarding the work of the Armed Forces.
** There has not been a case where parliament has initiated such a process and that is why the Constitutional Court has not exercised this right so far.

Oversight institutions have been expanding their oversight mechanisms, especially in the last decade. For example, the portfolio of the Macedonian Ombudsman has been expanded to include the functioning of the National Preventive Mechanism against Torture and other Inhumane and Degrading Treatment. In parliament, new committees have been formed such as the Committee for Supervising the Application of Communication Interception Techniques by MoI and the Ministry of Defence and the Standing Inquiry Committee for Protection of Civil Freedoms and Rights. The overall concept of control and oversight of security shows considerable progress especially in the institutional set up and regulation. As the text below argues, visible deficiencies in implementation continue to exist across the sector.

3. Oversight and control – Armed Forces[79]

The Armed Forces have not been examined by oversight bodies with the same scrutiny applied to others, such as the police, even though the legal framework puts in place the most important oversight mechanisms. Since their creation in the early 1990s' they have not provoked many scandals nor was any attempted misuse of the army for political purposes ever noted. Furthermore, they play a passive role in everyday affairs thus are perceived as apolitical and are trusted by the people (almost sixty-five per cent of all citizens say they trust the Armed Forces, compared to fifty-two per cent in the case of police) (Macedonian Centre for International Cooperation, 2010).

This positive perception might be because the Armed Forces are hardly visible in society. The end of conscription in 2006 and the establishment of integrated border control with the Police Border Unit assuming border duties from the army has contributed to this overall impression. Today, the Armed Forces are in the media only when the news reports on Peace Support Operation (PSO) activities.[80] Qualification for NATO further reinforced the image of a reformed defence sector (US Department of Defense, 2008).

Lack of public presence, together with acceptance of traditionally held values like "the army protects our sovereignty", and overwhelming public support for NATO integration (Makedonska Informativna Agencija, 2010, p.12) lessens pressure for oversight of the army.

3.1. President

Oversight of the Armed Forces is not solely the responsibility of one institution. They draw authority from parliament as well as the president, who is head of the Armed Forces, and to certain extent from government. The president appoints the Chief of

79 This chapter does not include an analysis of the Army Intelligence and Counterintelligence Unit.
80 Currently the Armed Forces are in NATO's ISAF mission in Afghanistan with 242 personnel, the EU ALTEA mission in Bosnia and Herzegovina with 12 personnel and one member of the Armed Forces taking part in the United Nations Interim Force in Lebanon.

the General Staff and also can dismiss him or her. The Chief of the General Staff is responsible for command of army units and is accountable to the president as well as to the minister of defence.

Box 1: General Dimov dismissed from office

In 2010, the president dismissed General Zoran Dimov after consultations with the minister of defence and chief of the general staff. The reasons were disobedience of command and violation of the Macedonian Army Code (Alfa TV, 2010).

All legislation approved by parliament needs to be signed by the president. This "veto power" is rarely employed. There have been no cases of legislation related to the Armed Forces being vetoed by the president.

3.2. Parliament

The Macedonian Parliament has several oversight and control competencies related to the Armed Forces: voting on PSOs, passing strategies, declaring war or a state of emergency, etc. (Law on Defence, Article 17)[81]. In practice, oversight focuses mostly on implementation of the government's policies. Having in mind that the president of the country is the head of the Armed Forces, MPs can initiate a procedure for deciding on the accountability of the president through the Macedonian Constitutional Court. No such motion has been initiated by parliament so far.

Parliament derives its oversight role regarding PSOs from the Law on Defence, which authorises MPs to decide to send soldiers abroad (Law on Defence, Article 41). The procedure is as follows: the government sends a proposal to parliament (Committee on Defence and Security) including different elements such as a legal basis for sending troops, mandate and finances aspects. It is up to committee members to discuss the proposal, which should then be sent to a plenary session. In spite of these powers, MPs have rarely substantially debated PSOs. For example, discussions of the advisability of such missions or more detailed questions about the nature of missions (e.g. risk to soldiers or other technical questions), are rarely raised. Nor do MPs substantially debate the proposed mission budgets even though they receive basic financial information.

There are many reasons for this lack of debate. Primarily, as Macedonia progresses towards the EU and NATO, there is a common belief that contributing to PSOs will strengthen the bid to join these organisations. This is easily verified by examining statistics when committee members vote on sending soldiers abroad. In all cases the committee has voted in favour and with consensus. Secondly, given the lack of MP expertise about PSOs, no substantial debate can be expected on technical aspects.

81 For more details on the competences of the parliament regarding the defence of the country please also refer to Table 1 of this document.

Thirdly, the Committee on Defence and Security does not have adequate staff to provide the necessary information and data for more substantive discussions on these topics. In addition, MPs have not received training on these issues. The lack of scrutiny over PSO budgets could be explained by the fact that other countries cover a large portion of the PSOs' costs. For example, most transportation costs of Macedonians in Afghanistan are covered by Norway. There is a modest record of requested ad hoc reports for operations with higher risks. On this note, the only time MPs asked for an extraordinary committee meeting was in 2008, when a helicopter from Macedonia's contribution to the EU's military mission in Bosnia and Herzegovina crashed and eleven were killed.

At the end of each operation, MoD updates MPs in committee on their results. Usually the Macedonian minister of defence or a deputy attends. MPs may (and do) visit soldiers serving abroad at least once annually. These field visits are coordinated with representatives from MoD.

Lack of parliamentary debate and scrutiny regarding sending soldiers abroad turns parliament's oversight process into rubberstamping. In addition, according to the Law of Defence (Article 41a), once Macedonia joins NATO, the government will decide to join NATO led PSOs. Given the tendency of ruling party MPs not to criticise government decisions, this might cause more parliamentary leniency. Lack of a specific law on sending Armed Forces abroad contributes to ambiguities in the PSO oversight process.

With the adoption of the new Law on the Parliament (2009), another mechanism became available to MPs. This 'Oversight Hearings Mechanism' enables MPs to subpoena ministry officials and ask them to report on policy implementation. Since entry into force of this provision, no hearing has been initiated for the Armed Forces. Additionally there is no record of a public debate on a law related to the Armed Forces.

The Committee on Defence and Security (CDS) performs basic control by reviewing proposed and final budgets. However this committee has hardly ever examined army related procurement.

There is a practice to take most committee decisions by consensus, especially those related to investigations such as requests for budget documentation. This limits CDS oversight because most members and the CDS chair come from the ruling party and tend to avoid confrontation with the leadership. In this environment, ruling party committee members can overturn any initiative within the committee, allowing more scrutiny of the Armed Forces. Since 2006, MPs have not initiated an interpellation towards the Minister of Defence.[82] MPs have undergone trainings by international civil society organisations on areas such as policy oversight and budget scrutiny but so far there is no substantial increase of involvement in Armed Forces oversight.

82 Data available since 2006.

3.3. Constitutional Court

The Constitutional Court is an important Armed Forces oversight mechanism. One can note that it is largely immune to political interference. In the last decade, this court ruled on several laws dealing with the Armed Forces (provisions from the Law on Defence and the Law on Army Service). Most of these provisions had to do with labour issues. Court findings suggest the body is a vital oversight mechanism doing its job properly when it comes to examining the constitutionality of the laws and secondary legislation despite the government publicly criticising some rulings. Reasons for these high standards can be traced to the selection procedure of judges, their long nine-year mandates and high levels of experience.

The Constitutional Court can only rule on violations of certain citizen rights.[83] This is the main reason why, from 1991 to 2010, of one hundred and fifty-nine requests submitted for protection of citizen rights and freedoms, the Constitutional Court dismissed one hundred and twenty cases and accepted only one complaint (Institute for Human Rights, 2011a). This suggests that there is a need to amend the constitution and expand the competences of the Constitutional Court in protecting citizens' rights and freedoms, or to create a specific law on the Constitutional Court which would broaden its role and competences. (Ibid.)

3.4. State Audit Office

MoD annual expenditures are a large proportion of the overall state budget.[84] Since 2001 the State Audit Office (SAO) has published two MoD audits, in 2006 and 2008.[85] These two reports point to a number of breaches of relevant laws and rules on expenditure by the MoD. For example, some expenditures were never recorded in the book of records – a clear breach of the Law on Accounting. Cases of waste of public resources were also included in the SAO reports, for example a case when more than fifteen thousand Euros were spent on converting a military vessel into a civilian VIP vehicle.[86] The fact that the Law on Public Procurement does not apply for procurement of equipment, goods and services that have high defence and security importance (Law on Public Procurement, Article 6) further complicates financial oversight of MoD. This problem is raised in the 2006 SAO audit because the deals in question were not classified. No such irregularities were identified in the 2008 report.

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83 Article 110, paragraph 3 of the constitution sets out that the Constitutional Court "protects the freedoms and rights of the individual and citizen relating to the freedom of conviction, conscience, thought and public expression of thought, political association and activity as well as to the prohibition of discrimination among citizens on the ground of sex, race, religion or national, social or political affiliation".

84 An example can be seen in the total funds allocated to PSOs which has increased sharply with the growing commitment to participation. They rose from one million Euros in 2003 to nearly eleven million in 2010. For more information, please consult Nova Makedonija (2010).

85 A list of all the audits done by the State Audit Office can be found at: http://www.dzr.gov.mk/DesktopDefault.aspx?tabindex=0&tabid=340.

86 There is no record of opening a public procurement procedure for this investment and as such it has not been envisaged in the yearly plan of investments of the Ministry (State Audit Office, 2006)

Even though the SAO issued several recommendations aimed to improve MoD work, it has not followed up on these recommendations.[87] Once certain irregularities are identified, the SAO has the right to address these by informing competent authorities, including the prosecutor. The SAO submitted such a case to the prosecutor for some irregularities identified in the 2006 final report for MoD. The prosecutor, however, has not initiated proceedings because of (what the prosecutor's office finds) lack of evidence.

3.5. Ombudsman

The Ombudsman of the Republic of Macedonia is another control mechanism mandated to oversee the Armed Forces. Because there is no specialised army ombudsman, these tasks were included within the general competences of the Macedonian Ombudsman. The annual reports of the Ombudsman reveal the number of complaints regarding the Armed Forces is low, ranging between two to five complaints.[88] The yearly reports also list complaints the Ombudsman has not acted upon. In most cases, the Ombudsman has not initiated an investigation or has halted the ongoing one.[89] So far the Ombudsman has only acted upon one human rights complaint concerning an Armed Forces member. He found elements suggesting torture and the prosecutor initiated a criminal procedure against a high ranking army official. (Pirovska, 2011)

4. Oversight and control – Police[90]

The police have been scrutinised by domestic and international actors. Many reforms have been launched to make the police more citizen-oriented, such as establishing community policing, an initiative supported by the OSCE. Presence of police in daily life and in sizeable numbers throughout the country has increased the likelihood of human rights abuses. Increased accountability mechanisms have contributed to greater scrutiny of police work. Despite increased involvement of the international community in MoI work, which led to increased openness towards citizens, performance of the oversight institutions does not necessarily show that MoI has performed exceptionally well in improving transparency and accountability towards citizens and state institutions.

87 Since 2009 the State Audit Office implements a new methodology which includes issuing follow-up sections in all of their final audit reports on the status of the recommendations that were given to the respective body the previous time when the audit was performed.
88 For a full list of the Ombudsperson's annual reports please refer to the following link: http://www.ombudsman.mk/ombudsman/MK/odnosi_so_javnost/godishni_izveshtai.aspx
89 Please refer to the section for the Ombudsman's work with the police for an explanation about why the Ombudsperson failed to initiate/complete these investigations. These to a great extent apply for the Armed Forces as well.
90 For an analysis of the work of the Directorate for Security and Counterintelligence please refer to the next section dealing with Intelligence Services.

Table 3: Supervision over Police

Oversight mechanisms and competences		Parliament	Ombudsman	President	State Audit Office	Constitutional Court
	Which are functioning in practice?	• Votes on the budget • Cooperates with CSOs (sporadically) • Parliamentary questions in the plenary • Discusses budget provisions • Discusses public procurement deals (sporadically) • Discusses the annual report about the work of the Ministry of Interior • Issues interpellations of ministers • Proposes laws within political group/individually (sporadically) • Files amendments within the parliamentary group/individually	• Receives complaints and acts upon them • Conducts field visits • Holds meetings with officials • Issues recommendations • Files criminal charges • Starts investigations independently		• Performs auditing • Issues recommendations • Conducts field visits • Accesses classified information • Audits issued recommendations	• Assesses legality of adopted laws • Protects freedoms and rights of individuals and citizens (sporadically)
	Which are not functioning in practice?	• Initiates oversight sessions and public debates • Goes through final audit reports for the respective ministry/state institution		• Exercises veto over new laws	• Files criminal charges	

4.1. Parliament

The police are controlled by several parliamentary mechanisms. The Committee on Defence and Security acts as a parent committee while other committees follow specific aspects of police work (e.g. financial topics discussed in the Finance and Budget Committee). Findings on control of the police to a great extent match findings on parliament's oversight of the Armed Forces with one difference being that MPs seem more proactive concerning police. For example, since 2006 three interpellations have been directed towards MoI leadership, but none towards MoD. Also, members of the Sector for Internal Control and Professional Standards (SICPS), a MoI body tasked with internal control, often attend sessions of the parliament's Standing Inquiry Committee for the Protection of Civil Freedoms and Rights. The government has initiated all police related legislation while considerable amendments have followed. Very few of these amendments are adopted. For example, forty amendments were proposed in 2009 when the Law on Internal Affairs was presented to the CDS. Out of these, thirty-eight amendments, all from the opposition, were rejected.

Parliament also oversees police expenditures. During committee discussions on MoI budgets, MPs tend to discuss budget proposals, implementation and final accounts. Questions mainly are related to whether and to what extent the salary expenditures affect the development of the MoI (e.g. equipment).

Discussions often get more animated at plenary sessions when scandals over alleged misuse of public money have broken out and it becomes a chance for the opposition to score political points.[91] Such behaviour could be explained by opposition MPs having little power at committee level. They cannot overrule ruling party MPs, who are seldom interested in acting independently and in getting involved in discussions critical of the government. As a result, no substantive inquest into police budgets is likely at committee level. Lack of active and quality parliamentary oversight over MoI increases the danger of unlawful procurements.

Since 2008, MoI has delivered four annual reports about police to parliament. These focus on different areas of police work including combating crime, countering drug smuggling, etc. Even though the report for 2010 was delivered in early-March 2011, the Committee on Defence and Security has not yet discussed it (Ministry of Interior, 2010, p.30). The discussion has been delayed because of the elections held in June 2011.

Outside the committee, opposition MPs tend to show more initiative in overseeing police. The minister of interior takes one of the top three positions when it comes to number of interpellations raised by opposition members. None have been successful, due to votes of the majority ruling party. The last interpellation for the minister of interior was in 2009.

91 One of the reasons for the motion for interpellation towards the Minister of Internal Affairs in 2009 was the alleged misuse and procurement of police shirts and vests. More information available at: http://www.mia.com.mk/default.aspx?vId=68251448&lId=1&pageNum=4.

4.2. Sector for Internal Control and Professional Standards

Since the police are the only security actor that enjoys a wide range of means of coercion, the higher likelihood for human rights infringement requires an extra layer of oversight. The Sector for Internal Control and Professional Standards (SICPS) acts as a separate unit within MoI. It is directly subordinate and accountable to the minister, thus ensuring its independence. The SICPS is tasked to monitor and act on offences by ministry employees such as violation of human rights, corruption, disrespect of working hours etc.

Every citizen may submit complaints regarding misconduct by the police which obliges the SICPS to initiate an investigation no later than thirty days from the filing. The MoI is obliged to inform the citizen about the outcome of an investigation and the actions that have been taken to process the complaint. Ministry employees are requested to fully cooperate with the SICPS, which also means giving them access to classified information. Throughout the years there has been an increase of the competences of this internal controlling mechanism.

In 2010, the SICPS acted on one thousand two hundred and sixty-one cases out of which eight hundred and forty-one were initiated by citizens and the rest by civil society organisations, the Ombudsman and other institutions (Ibid.). Part of the cases they have acted on come from their own findings, reports from the media, MoI initiatives etc. Apart from receiving complaints, the SCIPS is also entitled to make unannounced control visits in different departments of the MoI. In 2010 it performed twenty-one controls and found different irregularities, including police officers consuming alcohol on duty, violation of working hours, etc. In 2010, the SICPS forwarded two hundred and nineteen cases to the disciplinary commission within the ministry. This resulted in nine suspensions of police officers. Most of the other cases ended up with written warnings. Additionally, cases where the SICPS noticed possible criminal offences were forwarded to the public prosecutor, who filed criminal charges against twenty-nine employees from the Ministry of Interior, most of whom were allowed to use police authorisations. The SICPS has the tools to perform its oversight and control responsibilities, as the statistics provided above show, and displays satisfactory results when it comes to sanctioning police for misdemeanours.

Regarding human rights, however, there have been reports of the SICPS refusing to act (Utrinski Vesnik, 2009). The SICPS has been criticised often, especially by civil society and international organisations. Throughout the years there have been a number of examples of police brutality (Balkan Insight, 2011). Some civil society representatives are vocal in expressing their concern about the effectiveness and the position of this body under the hierarchy of the MoI and suggest creating an independent civilian body completely outside of MoI authority (Efremov, 2011). In many cases where it is clear police used excessive authority, the SICPS has shown partiality by saying no clear evidence was found showcasing police excess. The Ombudsman also believes that the

SICPS is unprofessional and leaves space for abuse.[92] Aware of the increased need for preventive activities in the field of human rights and police proceedings, the SICPS, in cooperation with a group of human rights experts, in 2010 started providing specially designed human rights trainings to the special police units (Stancevska, 2011). Also in 2010, the SCIPS conducted visits to several police stations jointly with local civil society organizations (Ibid.).

4.3. State Audit Office

The State Audit Office (SAO) noted irregularities in spending of MoI's budget and breaches of the Law on Public Procurement. The audits for 2007 (State Audit Office, 2007 pp. 4 and 8), 2004, (State Audit Office, 2004 pp. 6 and 8) and 2003 (State Audit Office, 2003, p.6) highlight deficiencies such as not opening calls for public procurement, repeating calls even though the same items were being procured, etc. Additional weaknesses have also been noted in the internal payment systems and the internal budget control mechanisms.

On several occasions, the Ministry of Interior did not publish calls on international procurement as required by the Law on Public Procurement, which stipulates materials exceeding forty thousand Euros should undergo international procurement. Instead, the MoI opened bids to Macedonian companies only. The SAO, through its audit reports, uses strong language to note the disrespect of the law, in particular a lack of transparency, disabling fair competition and wasteful spending.

Apart from making its findings public and presenting overall findings separately in a yearly report to parliament, the SAO also issues recommendations on how the ministry should address irregularities. The SAO (in the case of the MoI) performed follow up audits to audits performed in the MoI in 2004 and 2007 to examine if and how its recommendations were implemented. The findings suggest that the Ministry has followed most, but not all of the recommendations. So far the Committee on Defence and Security does not regularly discuss the final audit reports on state security institutions (i.e. the Ministry of Interior). In addition there is no record of SAO forwarding irregularities found in the work of MoI to the public prosecutor's office.

4.4. Ombudsman

The Ombudsman is tasked to monitor police with several mechanisms to ensure vigilant oversight. With the ratification of the Optional Protocol to the Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment the Ombudsman was given additional oversight powers and was nominated to per-

92 The Ombudsperson has also criticised the SICPS' failure to conduct thorough investigations in some cases: "It is the Ombudsman's finding that the Sector for Internal Control and Professional Standards consistently in its replies negates the citizens' testimonials for over passing authorisations by certain police officers and their unprofessional or inadequate conduct". (Ombudsman of Macedonia, 2010, p.34)

form the role of the National Preventive Mechanism (NPM) against torture and cruel, inhumane or degrading treatment or punishment (Law on ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment No. 07-5829/1, 2008). Established as a separate unit within the Ombudsman institution, the NPM can perform field visits to all detention facilities (including those that are secret). Even though the law establishing this body was enacted in 2009 the unit started functioning fully in 2011 and so far conducted several surprise field visits to police stations (Pirovska, 2011). In spite of the enhanced powers the work of the NPM to a great extent is similar to the traditional role of the Ombudsperson and one can note that (in this initial phase of harmonisation) the activities of these two overlap in cases such as detention facilities.

Table 4: Total number of complaints submitted to the Ombudsman regarding police procedures

2004	2005	2006	2007	2008	2009	2010
243	391	500	346	236	259	238

Source: Annual Reports of the Ombudsman.

Although the Ombudsman's 2010 annual report reflects a decrease in complaints regarding police procedures compared to 2009 (Ombudsman of Macedonia 2010, p.16) the police are still rank six among state organs against which complaints are submitted, with two hundred and thirty-eight complaints in 2010. Out of three hundred and five complaints regarding police procedures (sixty-seven cases were transferred from 2009) the Ombudsman interrupted or failed to begin investigations in two hundred and thirteen – a large proportion of the overall number of complaints. This relatively large number of overturned complaints raises significant questions. A spokesperson of the Ombudsman explained that some of these cases were unfounded or had been submitted too late. Additionally the Ombudsman sometimes cannot proceed with an investigation because the information provided by the MoI is insufficient (Pirovska, 2011).

Most complaints regarding police are related to failure to take measures to protect life and property of citizens, delays, excessive use of force, etc. In 2010, the Ombudsman visited all thirty-eight police stations throughout the country. The areas of investigation included police records as well as detention rooms. The Ombudsman's activity can cover all police stations, enabling a thorough assessment of police work and allowing determination of whether basic standards and human rights are respected. Something that should be addressed more carefully in the future is that visits to police stations have been announced, possibly preventing objective evaluation.[93] As a result of previous visits, the 2010 report notes there were improvements in conditions of detention rooms. It also stresses some police stations still have detention rooms below minimum standards of human dignity, health and hygiene.

93 All thirty-eight visits were previously announced even though the Ombudsman has the right to conduct surprise field visits.

4.5. Constitutional Court

Throughout the last nine years the Constitutional Court has acted on many complaints regarding conformity of laws on internal affairs, police and rulebooks with the constitution. As a result, the court has struck down different provisions on eight occasions.[94]

Because its rulings are binding the Court has direct control over the activities of legislative and executive branches. However lawmakers have not respected court decisions in all cases where the court has dismissed legal provisions. For example, despite ruling out Article 29 from the 1995 Law on Internal affairs because of a conflict with Article 12 of the Constitution, lawmakers later enacted the same provisions in Article 50 of the 2006 Law on Police (Institute for Human Rights, 2011b). The Court has dealt with only very few complaints concerning protection of human rights because of its limited competence in this area and because many appeals are badly prepared and declared inadmissible (Institute for Human Rights, 2011a).

5. Oversight and control – Intelligence services

As a legacy of the communist past and the nature of their work, intelligence services remain the least transparent security actors. Twenty years after independence, intelligence services are seldom open to those having the right to scrutinise them. This can be observed in the work of the Directorate for Security and Counter Intelligence (DSCI) which, apart from having competences to perform counterintelligence activities, is entitled to use police powers. The oversight bodies, especially parliament and the Ombudsman, perform only pro forma oversight, meaning there is no substance in the oversight they are practicing. As an example, in the history of the work of the parliamentary body responsible for oversight of the Intelligence Agency (IA) and the DSCI, it has only once performed an investigation visit to the IA and never to the DSCI or the Army Intelligence and Counter Intelligence Unit (Rahikj, 2011).

5.1. Parliament

Two parliamentary committees monitor the security and intelligence agencies: (1) The Committee for Supervising the Work of the Intelligence Agency and the Security and Counter Intelligence Directorate (Committee Supervising Intelligence Agencies), and (2) the Committee for Supervision of the Application of Communication Interception Techniques by MoI and MoD (Committee Supervising Communication Interception).

94 The rulings derived from the Laws on Internal Affairs, Law on Execution of Sanctions as well as the rulebook on police work.

Table 5: Supervision over Intelligence Services

Oversight mechanisms and competences		Parliament	Ombudsman	President	State Audit Office	Constitutional Court
	Which are functioning in practice?	• Files amendments within the parliamentary group/ individually (sporadically) • Votes on the budget • Initiates interpellations (minister of interior) • Discusses public procurement deals (sporadically) • MPs questions • Discusses annual report on the work of the DSCI and IA • Conducts field visits (sporadically)	• Receives and acts upon complaints • Issues recommendation (sporadically)	• Appoints the Chief of General Staff • Appoints and dismisses the director of the Intelligence Agency	• Performs auditing • Conducts field visits • Accesses classified information • Follows up on issued recommendations (sporadically)	• Assesses legality of adopted laws
	Which are not functioning in practice?	• Submits interpellations to the president (reg. Intelligence Agency) • Investigates about possible human rights abuses • Initiates oversight hearings or public debates • Cooperates with CSOs • Goes through final audit reports for the respective ministry / state institution • Proposes laws within political group / individually	• Conducts field visits • Holds meetings with officials • Files criminal charges • Starts investigations independently	• Exercises veto over new laws	• Files criminal charges • Issues separate recommendations	• Protects freedoms and rights of individuals and citizens * • Decides on accountability of the president **

* Since 2008 the Constitutional Court has not decided upon any complaint by a citizen regarding the work of the intelligence services.
** There have not been any cases where parliament has initiated such a process, which is why the Constitutional Court has not exercised this right.

Members of the Committee Supervising Intelligence Agencies lack expertise necessary to oversee the Intelligence Agency and the Directorate for Security and Counter Intelligence (Member of Parliament, 2011). This is particularly true for field visits which require more specific information and experience (Official from the Intelligence Services, 2011). Apart from one employee, committees do not employ advisors providing information and expertise to committee members. This lack of capacity is paired with a lack of political will among the committee members. To increase independence and efficiency of committees, the parliamentary rulebook dictates that the committee chairpersons should be appointed from the opposition. This contributes to committee independence. In practice almost all decisions, especially within the Committee Supervising Intelligence Agencies are taken by consensus, meaning the majority of committee members (who are members of the ruling party) do not want to oppose or go beyond the "ceremonial" function of their work. The Committee Supervising Communication Interception is an exception, with the majority of members coming from the opposition.

The annual reports of the IA and the DSCI are very sparse and lack information in many areas such as budget lines or procurement deals. The head of the Committee Supervising Intelligence Agencies has noted that there is a degree of unaccountability in the financial segment, with no explanations for the large amount of money spent on procurement of equipment in the Directorate for Security and Counter Intelligence (Utrinski Vesnik 2011, p.3).

Relevant state bodies do not take these committees seriously. The director of the DSCI missed many deadlines for submitting reports or work programs. Members of committees have only sporadically requested extraordinary reports from the security and intelligence services.

The Committee Supervising Communications Interception seems to do slightly better than the Committee Supervising Intelligence Services. So far both the Ministry of Interior and the Ministry of Defence have been cooperative in delivering reports on their work to this committee. The Committee Supervising Communications Interception also has enhanced powers, including field visits and access to classified data, but so far has not used them. In plenary sessions, especially those for Parliamentary questions, the Minister of Interior is regularly questioned about the work of the director of the DSCI. Many of them are about the alleged abuse of special investigative measures by the DSCI. All of the "sensitive" questions seem to come from opposition parties.

5.2. President

Since the president appoints and dismisses the director of the IA he/she acts as a counterbalance to the power vested in the government. In this power sharing agreement, the Intelligence Agency is obliged to report first and foremost to the president. Appointment of the Intelligence Agency head has been controversial. The appointment of persons with political portfolios coming from party ranks to positions such as the directorship of the Intelligence Agency has drawn public and expert criticism.

Box 2: Alleged abuse of power and alleged wiretapping without prior court decision

In 2002, opposition leader Branko Crvenvkovski published information suggesting MoI head, Dosta Dimovska, abused her position and ordered Mr. Aleksandar Cvetkov (head of the communications interception unit) to intercept communications of journalists and party activists. This was done without prior court decision (Utrinski Vesnik, 2007). The office of the public prosecutor initiated an investigation based on the material delivered by the opposition. This was followed by former President Trajkovski using his right to grant amnesty to Dimovska and Cvetkov. Shortly afterwards Dimovska was appointed director of the Intelligence Agency.

5.3. State Audit Office

The State Audit Office (SAO) does not separately audit the DSCI or the Army Intelligence and Counter Intelligence Unit. Thus the relationship between MoI, MoD and SAO described above applies here. The only audit of the IA so far occurred in 2006 (State Audit Office, 2006). SAO findings found no irregularities in the IA and it has proven to follow the Law on Public Procurement.

5.4. Ombudsman

The Ombudsman has been inactive in the security and intelligence domain.[95] Its findings on police or the Armed Forces do not provide separate findings for the DSCI or the Army Intelligence and Counter Intelligence Unit. Even though the Ombudsman has authority, it has not performed field visits to the DSCI, the IA or Army Intelligence and Counter Intelligence Unit in three years.[96]

In the opinion of the Ombudsman's spokesperson, the Ombudsman has more of a reactive role when it comes to its engagement with the intelligence services (Pirovska, 2011). So far there were no complaints forwarded to the address of the Ombudsman about the activities of the intelligence services (apart from cases connected with labour and citizenship related rights). This can be explained by the fact that the Ombudsman has not actively publicised its role in on intelligence oversight to the public, choosing instead to highlight its work on vulnerable and marginalized groups. However, the fact that the DSCI and the Army Intelligence and Counter Intelligence Unit can apply special investigative measures (such as communication interception) creates a risk for potential human rights infringements. The nature of these measures is secret, thus the

95 The only activity where the Ombudsperson was involved was in 2002 and 2003, where he recommended speeding the process for obtaining Macedonian citizenship. According to procedure, the Directorate for Security and Counterintelligence should give an opinion about applications for Macedonian citizenship (not posing security threat to the country). This proved to be a very long procedure and has been changed with the Law amending the law on Citizenship of the Republic of Macedonia [Закон за измена и дополнување на законот за државјанство на Република Македонија] Official Gazette No.8/2004.
96 Data available for 2008, 2009 and 2010.

person under surveillance is not necessarily aware of their usage. Lack of cooperation has led to thorny relations. Even though recognised in the constitution and laws, the oversight mandate of the Ombudsman regarding intelligence services cannot be thoroughly practiced because of distrust existing among parties. "Even if the intelligence services open their doors and allow us to go through their work, the data that we will receive will be cosmetic and not necessarily reflect the reality."(Pirovska, 2011)

In the past decade, cases have surfaced indicating human rights abuses such as illegal wiretapping (Utrinski Vesnik, 2007), detention of suspects in police stations by DSCI personnel without these being necessarily recorded (Geteva, 2010) or even cases which suggest the existence of secret detention facilities (European Committee for the Prevention of Torture, 2008). The Ombudsman did not witness such practices during the visits in police stations. Still, considering that all the visits in 2010 were previously announced to MoI employees, these findings cast doubt on the overall process. The increased powers of the Ombudsman through the National Preventive Mechanism include conducting visits to secret detention facilities. However, so far there have been no such visits. This is due to a lack of concrete indications that such practices might exist, according to the Ombudsman's spokesperson (Pirovska, 2011). Overall, the Ombudsman's office seems sceptical about its involvement in overseeing the work of the intelligence services through prevention activities.

5.5. Constitutional Court

The Constitutional Court has struck down only two provisions from the Law on the Intelligence Agency. Both involved employment opportunities and equal access.

6. Conclusions

The many reforms that were introduced in the past 20 years have, without a doubt, greatly contributed to the progressive outlook of the security sector today, especially seen from the perspective of democratic and civilian governance. The process of normative and institutional set-up is almost finished, with a need for certain modifications (e.g. the outdated law on the Intelligence Agency). Commitment to EU and NATO membership brings security sector governance to the spotlight since democratic governance is a precondition for membership.

Most of the problematic issues raised in this chapter are systemic, meaning they are embedded and have a long tradition in the system regardless of the political party in power. The main reasons for some of the setbacks that could be observed in the overall performance of the institutions overseeing the work of the security sector:

- Lack of political will among parliamentarians and independent state institutions to conduct substantial oversight leaves a great possibility that the principle of good governance continues to be impeded in sensitive areas such as misuse of finances, excessive force, human rights infringements, etc.

- Insufficient cooperation among oversight institutions and security actors (e.g. between Ombudsman and the SICPS or between parliamentary committees and the DSCI) hinders smooth flow of information and prevents more joint cooperation activities.
- MP's lack of expertise on security sector oversight remains a problem despite constant calls for strengthening this shortcoming by engaging more staff and resources.

What will dominate the security sector arena in coming years, especially in oversight and accountability, are efforts of state institutions to implement relevant laws, guaranteeing full usage of oversight mechanisms. Parallel to this, the role of civil society will become more prominent, contributing to the effective control by scrutinising Macedonian security actors.

7. Recommendations

7.1. Parliament

- When political parties decide on appointing MPs to committees, particularly those dealing with oversight of intelligence, they should ensure the MPs have genuine interest in the particular field and possibly legal experience.
- Committee members should undergo specially designed training, particularly in budget scrutiny; intelligence services functioning; peace support operations.
- Parliament should hire advisors to assist the Committee for Supervision of the Interception of Communications, the Committee for Defence and Security and the Standing Inquiry Committee for Protection of Civil Freedoms and Rights. Additionally, all four should receive separate budgets. Committees tasked to follow the Intelligence Agency, the Directorate for Security and Counter Intelligence and the Army Intelligence and Counterintelligence Unit in coordination with the relevant ministries and agencies (MoI, MoD and Intelligence Agency) should develop an annual training plan to fill gaps in the competences of parliamentarians. The Committee for Defence and Security and other relevant committees should insist on public debates and hearings on draft laws.
- A parliamentary workgroup should be formed to examine final reports by the State Audit Office.

7.2. Parliament / Government

- A special law on Peace support operations should be adopted.
- Competences of the Constitutional Court regarding citizens' rights and freedoms

should be expanded by constitutional amendment or adoption of a law on the Constitutional Court where its role and competence would include other constitutional rights.

7.3. President / Government

When appointing the directors of the Intelligence Agency and the Directorate for Security and Counter Intelligence, the president and government should bar party leadership from eligibility.

7.4. State Audit Office

The State Audit Office (SAO) should do more audits on security actors especially MoI, MoD and the Intelligence Agency. The SAO should better utilise its competence to submit cases to the prosecutor for misuse of public finances.

7.5. Ombudsman

The Ombudsman should exercise its right of unannounced inspection of security institutions. The Ombudsman should design and execute campaigns focusing on the Armed Forces and human rights protection.

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2. Interview with a Member of Parliament - member of the Committee for supervising work of Directorate for Security and Counter Intelligence and the Intelligence Agency. Interview conducted on November 4, 2011.

3. Interview with Aneta Stancevska – Head of the Sector for Internal Control and Professional Standards (Ministry of Internal Affairs). Interview conducted on November 6, 2011.

4. Interview with an official from the Intelligence Services. Interview conducted in August 2011.

5. Interview with Uranija Pirovska – State Advisor for International Public Relations, Office of the Ombudsman. Interview conducted on December 6, 2011.

6. Interview with Kiril Efremov – Coordinator for Public Relations- Movement Against Police Brutality in Macedonia. Interview conducted on December 7, 2011.

Chapter 6 – Montenegro

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Abbreviations and acronyms

CDS	Council for Defence and Security of Montenegro
CSD	Parliamentary Committee for Security and Defence
DPS	Democratic Party of Socialists of Montenegro
EC	European Commission
FoIA	Freedom of Information Act of Montenegro
MANS	Network for Affirmation of Non-Governmental Sector
MoIA	Ministry of Internal Affairs of Montenegro
MP	Member of Parliament
NATO	North Atlantic Treaty Organization
NSA	National Security Agency of Montenegro
PZP	Movement for Changes (Montenegro)
SAI	State Audit Institution of Montenegro
SDP	Social Democratic Party of Montenegro

1. Introduction

The aim of this chapter is to provide insight into the current state of the reform of the security sector in Montenegro, critically evaluating this process in order to identify key trends, achievements and challenges. The analysis will concentrate on patterns of democratic accountability in the security sector.

The overall outcome of the analysis is that Montenegro has achieved progress in the area of parliamentary oversight of the security sector, but significant challenges remain regarding its financial transparency.

Research for this chapter was broad based on qualitative analysis and the research team was committed to accuracy. Critical analysis of legislation was complemented by reviewing other data and sources.[98] In particular, face to face interviews with key stakeholders were one important research method. A limitation, and simultaneously a certain positive challenge, was that literature and expert analysis on these topics are limited or nonexistent in Montenegro. It would not be overly pretentious to say this was a pioneering analysis of those means and mechanisms of security sector reform that make and keep the Montenegrin security sector accountable. Another limitation was the secretive nature of state security sector actors which are traditionally closed institutions (although certain improvements were noticeable). Response to questionnaires and requests for interviews sometimes took more time than expected, and sometimes the researchers were not provided with answers. Finally, we aimed at covering all security providers (see Annex) with a special focus on the traditional actors (police, military, and intelligence services).

The analysis begins with background information summarising existing oversight mechanisms and security sector actors in Montenegro, while placing the analysis in a context which defines security sector reform (CEDEM, 2010). In the following section on patterns of democratic accountability of the security sector we analyse the role of parliament in this process. The Parliament plays an important role in setting legal parameters, adopting the budget and key strategic documents and overseeing security activities (Born, 2003). We focus on relevant committees in charge of parliamentary control of the security sector and briefly refer to specifics of these committees in comparison to other countries in the Western Balkans region. Montenegro recently adopted the Law on Parliamentary Oversight within the Area of Security and Defence (2010), which gives a broad spectrum of possibilities to members of parliament for control and oversight of the security sector. We next address independent institutions

98 Annual reports of the Ombudsman, State Audit Institution, Agency for Protection of Private Data, Police Directorate, parliament, interviews with relevant stakeholders, public opinion surveys, CSOs reports, etc. Moreover, it should be stressed that the data used in this analysis is a product of a three year regional project entitled "Civil Society Capacity Building to Map and Monitor Security Sector Reform in the Western Balkans," in which seven regional think tanks mapped and monitored their domestic security sector according to different criteria: the Legal State, Oversight by Independent State Bodies, Judicial Control and Oversight, Parliamentary Control and Oversight, Executive Control and Oversight, General Transparency, Financial Transparency and Representativeness.

in charge of overseeing the sector. We have identified most of those independent oversight institutions that can usually be found in democratic states do exist in Montenegro and have been functional for several years. Montenegro has institutions that are unique, such as the Council for Civic Control of Police Work. In the next part of our analysis we explore the extent to which the mechanisms for internal control of the main security sector actors are in place and functional, an important part of the overall controlling mechanism over security providers. Then, we examine whether the constitutionally proclaimed right to free access to information is functioning in practice, despite there being no oversight mechanism (institution) ensuring that this right is implemented. We discuss how the new institutions and mechanisms for protection of private data are being introduced to the system. This is followed by an analysis on the aspects of financial and judicial control of security providers. Finally, recommendations are offered on how democratic and civilian oversight of the security sector in Montenegro can be improved.

2. Overview of security sector reform & mapping of security actors

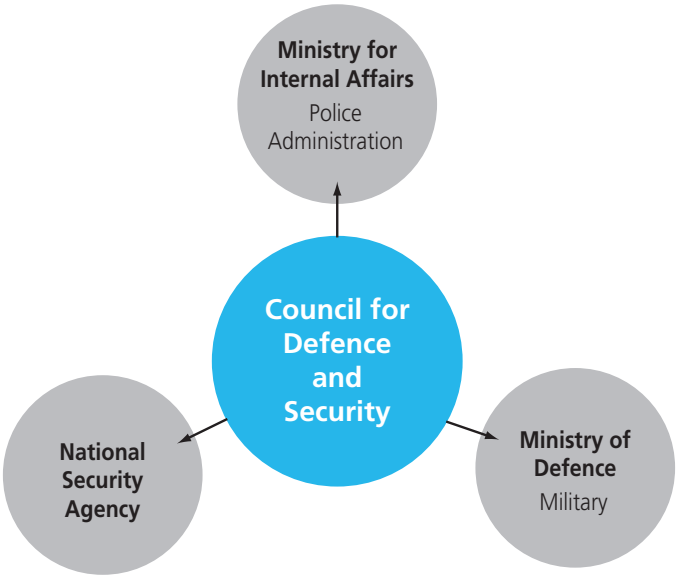
Most of the reforms in the Montenegrin security sector took place after the country regained statehood, following the referendum on independence in 2006.The process of SSR started only after independence, with support of the international community, and had to account for the presence of long-lasting elites who remained in positions of power. [99] The last point is important to stress since the continuity of the elites has had a strong impact on security sector reform. Montenegro was among the last Western Balkan countries to begin security sector reform. This process has mostly been limited to reorganisation, rather than substantial reform. It could be said that direct external threat to Montenegrin security disappeared after the downfall of the Milosevic regime in 2000. Still, the largest security provider, the Montenegrin police, remained unchanged, which negatively influences the slow progress of security sector reform. It appears that the ruling party had absolute control over security forces and was unwilling to deprive itself of full control. This continued even after 2000 and still continues to this day. As a consequence, security sector reform only advances very slowly.

In addition, discussions on the reform were surrounded by criticism of both the security sector and the government that was supposed to reform it. The opposition criticised the performance of the security sector and regularly asked questions about unsolved murders and repeated suspicions about alleged corruption and nepotism in the security sector. There were also accusations (mainly by opposition parties) against the ruling elites implying that they had connections with individuals with criminal backgrounds and organised crime.

99 Montenegro is the only post socialist country in the Western Balkans which has not experienced a change of ruling party. The Democratic Party of Socialists (DPS) backed with smaller coalition partners has been in power since the beginning of the 1990's, from 9 December 1990 until the present.

The process of security sector reform in Montenegro has addressed a number of different issues: reforming the existing structures (police, intelligence services); creating new security actors such as the military; and establishing the institutional mechanisms for external and internal control.

Graph 1: State Security Sector Actors Authorised to Use Coercive Means



The main actors in the security sector in Montenegro that are authorised to use force are: the police, the National Security Agency and the military. In addition, the Council for Defence and Security is in charge of commanding the military and analysing and evaluating state security on the basis of which it makes decisions and/or undertakes certain measures. The members of the Council for Defence and Security are the president, the speaker of parliament and the prime minister.

Based on numbers of individuals serving[100] as well as a budget overview (Table 1), the largest security provider in the country is the police. The current legal stipulation (Law on Police (2005), Art.5) places the police under the administrative oversight of the Ministry of Interior i.e. the minister suggests the candidate for the post of director of police to the parliament. Among a number of competencies, the police are in charge of protecting security and constitutional rights and freedoms of the people.

100 The current number of individuals serving in the police is five thousand three hundred thirteen (according the Police Reform Strategy document for the period 2011-2013. The strategy is available at: http://www.upravapolicije.com/fajlovi/upravapolicije/editor_fajlovi/pdf_fajlovi/Strategija_reforme_policije.pdf). On the other hand, the military is projected to have two thousand six hundred thirty-one service personnel by 2014. While we could not identify the exact number of employees in National Security Agency, our interviews suggested that the National Security Agency has significantly less than one thousand employees.

Table 1: Total Budget allocated for the state security providers in 2011		
Institution	€	%
Police Administration	64,190,201.15	42.0
Ministry of Interior	8,341,646.71	5.5
Police Academy	1,355,076.00	0.9
Ministry of Justice	1,261,553.23	0.8
Prosecution Offices	5,364,839.00	3.5
Judiciary	19,256,218.38	12.6
Prison System	8,407,196.68	5.5
Administration for Prevention of Money Laundering	519,057.62	0.3
National Security Agency	5,904,174.07	3.9
Ministry of Defence	38,252,279.53	25.0
Total	**152,852,242.37**	**100**

The military is the second largest security provider. Military reform started after independence in 2006 when the military was built up from scratch, and the reform process is still ongoing. As envisioned by the main strategic documents, the military is projected to grow to two thousand six hundred thirty-one soldiers by the year 2014 (see Table 1). According to the constitution, the military is in charge of protecting the sovereignty and territorial integrity of Montenegro. The military is under democratic civilian control (Constitution (2007), Art.129).

Table 2: Strategic Defence Review (2010)
Current and projected number of personnel in the MoD and the Montenegrin military.

	Ministry of Defence				Military of Montenegro					Total (Military and MoD)
Current number	Civil servants and state employees	Commissioned officers	Non commissioned officers	TOTAL (excluding General Staff)	Commissioned officers	Non commissioned officers	Civilians	Soldiers under contract	TOTAL - MILITARY	
Current number	135	65	7	207	328	900	314	580	2122	2314
Projected number (2014)	231	43	1	275	350	905	301	800	2356	2631

Finally, the National Security Agency is, according to relevant legislation, the civilian intelligence and counter-intelligence service designed to protect the national interests of the country. (Law on National Security Agency (2005), Art.1) The law prescribes that the National Security Agency is under democratic civilian control.

The present analysis was unable to point out the key issues or debates that have framed security sector reform and governance in Montenegro. One reason for this alluded to previously is a highly disinterested public that is reluctant to take an active role in giving these issues visibility. This could be perceived as the result of broader contextual factors within which security sector reform in Montenegro has unfolded, mentioned previously. In addition, the government followed a top down approach when reforming the security sector and it did not include other actors in discussions about the reform. Although not essential for security sector reform, the fact that the government never clearly defined its goals for reform or proposed a coherent action plan had deleterious results. The government did not specify by which means it planned to achieve the aims of the reform nor did it provide a cost benefit analysis of the reform or a prognosis of how long it would last. To put it simply, the country never made a detailed needs analysis as set out above – "the plan of state reform" (Hadzic, 2009) before embarking on reform. Without a clear plan and guidelines, it was unlikely for serious debates around the security sector to occur. Notwithstanding the lack of interest from civil society and insufficient expertise in this area, eventually, all of these factors meant that Montenegro (including parliament) has never had a serious debate regarding the structure, pace and costs of security sector reform.

The European and Euro-Atlantic integration process (the aim to become member of the EU and NATO) and efforts to bring security sector legislation in line with international standards helped to advance reform. The specific local context of the country, however, must not be neglected. Unfortunately, in practice, this mistake was made. As was the case in a number of post-communist countries, Montenegro mostly has adopted legal standards of Western countries without sufficiently taking into account the local context and security needs. As a result, these laws are constantly being changed and amended. This is a serious burden on state resources, both human and material. For instance, when it comes to the main strategic documents of the state, such as the National Security Strategy, the desire to fulfil all the necessary conditions in regard to accession to the NATO Alliance are evident, whereas needs and challenges emanating from the national context are hardly taken into account. The National Security Strategy is an important document with the main purpose being to define potential security challenges, risks and threats. Instead of including challenges that are specific to Montenegro and the Western Balkan region, however, certain definitions were simply copied from NATO strategic documents. Regions such as the Middle East and the Caucasus, which are major NATO priorities but not necessarily Montenegrin priorities, have been included in the strategy. The National Security Strategy also claims that organised crime in Montenegro is solely an external threat. This again ignores the domestic context, because it excludes the possibility that organised crime may originate and/or be present in the country. This is simply not in accordance with numerous reports from international and domestic organisations. Also, the European Union, in its

seven points (requirements) for starting association talks with Montenegro, included fighting organised crime and corruption among the top issues to be addressed.

3. Patterns of democratic accountability of the security sector

The main part of this analysis will be devoted to an overview of patterns of democratic accountability over the security sector in Montenegro. The legislative framework has been established setting up different oversight mechanisms. The main ones are: the Ombudsperson, the State Audit Institution, the Parliamentary Committee for Security and Defence (CSD), the Council for Civic Control of the Police Work and the Agency for Private Data Protection. The general impression is that the capacities of these institutions need further strengthening. This can be concluded based on the main recommendations from the latest European Commission progress report: "The current financial and human resources of the Ombudsman's office are not sufficient to carry out all its tasks efficiently ... The capacity of the Ombudsman and of the State Audit Institution needs to be further enhanced."(European Commission 2010, pp.9-10)

As part of research for this chapter, we also examined the cooperation between oversight bodies. It seems that there is very little cooperation, and it is usually ad hoc and not systematic. We will argue below that better cooperation would make these oversight bodies more efficient.

Another explanation for their inefficiency could be the fact that these were not internally driven processes but rather these bodies were created because of demands and conditions imposed from outside.

3.1. Role of Parliament

A good place to begin an analysis of security sector oversight mechanisms is the Parliament of Montenegro. We believe the most significant improvement was made in oversight by parliament and the performance of this important institution has improved over time both in terms of efficiency and transparency. Montenegro has a solid legal framework on parliamentary oversight of the security sector. The Parliamentary Committee for Security and Defence (CSD) is in charge of overseeing the work of the entire security sector. The work of this committee is covered by a comprehensive legal framework, which was recently completed and improved by the introduction of the Law on Parliamentary Oversight within the Area of Security and Defence. This law extends the mandate of members of parliament to control the security sector and encourages them to take initiative by obliging CSD members to make yearly action plans for control and oversight. Since the law was recently adopted we do not have insight into its practice. The law does not prohibit CSD members from including other oversight bodies in their meetings or from asking them for advice. In addition, according to the law, to hold a meeting during regular parliamentary sessions on one specific topic, the

CSD only needs the agreement of one third of its members. This clearly improves the capacity of the CSD to act independently and to monitor the whole security sector in Montenegro. This was not the case before, when its work was only governed by the Rules and Procedures of the Parliament. In addition, the members of Parliament have received numerous trainings and have been offered a number of study visits to learn best practices from Western countries.[101] The work of the Parliamentary Committee for Security and Defence is widely covered in the media, and recently there were successful attempts to involve civil society in the work of the committee.[102]

As required by law, the heads of the security institutions report to the CSD. If there is a need for extraordinary hearings, officials are rather prompt in appearing before the committee to answer the questions of members of parliament. This is a significant step forward in the reform for more accountability. It is also important to mention that members of the CSD have the right to access any kind of information regardless of the level of secrecy. This is quite advanced compared to access to information of other parliamentary committees and should bring about more transparency of the security sector.

The research for this chapter identified a number of weak points in the parliamentary oversight of the security sector. For example, the members of the relevant parliamentary committees generally do not use their powers fully. This comes despite having such powers even before the recent adoption of the new Law on Parliamentary Oversight, the current Rules of Procedures and other constitutional and legal provisions.

Some ruling party MPs tend to refrain from embarking on any discussions that could be critical of the work of the government. Not enough mechanisms exist that would limit the impact of partisan politics, or ensure that the interplay of oppositional political forces contributes to the broader public good in terms of security sector reform and oversight. Political interests seem to guide the work of members of parliament in the CSD. It appears as if members of this committee are more focused on staying in line with their party policy instead of trying to question, research, monitor, and where possible, cooperate with other MPs (from the opposition or the ruling party when necessary) in order to keep the security sector accountable, transparent and under democratic and civilian control.

101 Interview with MPs, February 2011.

102 For example, the non-governmental organisation Institute Alternativa from Podgorica did an expert study 'Comments of the draft Law on Parliamentary Oversight within the Area of Security and Defence.' The document was made available to members of the CSD. Some of the comments from the IA were accepted when drafting the final version of the law.

Box 1: Impression of the Debate

"The Montenegrin Parliament has never had a discussion in plenum on the issue of overall security in the country; this initiative has always been blocked by the majority in PCSD". Interview with member of the Parliament of Montenegro; Podgorica; February 2011.

Our analysis has identified serious gaps in the oversight of the CSD. So far, it has never controlled the security institutions' budget planning or spending (Member of Parliament, 2011). This committee has failed on several occasions to seriously consider or react to reports of the State Audit Institution on malpractices in discharge of the budget of the relevant ministries (State Audit Institution, 2007). Indeed, the legal framework for parliamentary oversight is now sound but practice has yet to catch up in terms of the committee using its powers and authority effectively. There have been positive examples, however, of smaller political parties trying to take action. This was the case when the Social Democratic Party of Montenegro (SDP) (a smaller coalition partner) initiated the first ever visit to the National Security Agency (NSA) with the aim of controlling the use of special investigative measures by the Agency. Their influence, however, is limited and does not guarantee the complete and effective oversight of security institutions.

Research also revealed that parliamentary committees have only limited administrative support at their disposal. The CSD employs only one advisor and receives support from the parliament secretariat. This is not sufficient to guarantee the proper functioning of this committee. Furthermore, the members of parliament are members of several committees at the same time which prevents them from focusing solely on the work in the Parliamentary Committee for Security and Defence. In addition, the public trust in parliament is low (CEDEM 2002–2011). Low public trust likely stems from multiple sources. Inadequate oversight of the security sector could be just one source along with weak administrative support and overstretched committee members.

3.2. Control and oversight by independent state institutions

Parliament has established several independent institutions which report to it. A review of the relevant legislation revealed that the legal framework is in place for the functioning of these specific institutions. In addition, Montenegro has established mechanisms which are unique in the region, such as the Council for Civic Control of Police Work.

The Council for Civic Control of Police Work has competences over the civil oversight of police work, the controlling and monitoring of application of police competences, protection of human rights and freedoms of citizens, the implementation of the Montenegrin Law on Police in 2005 and other relevant domestic legal documents. It can discuss complaints from citizens or police officers and initiate its own investigations. This body is a unique blend, established by parliament but composed of the members of civil society. The Council for Civic Control of Police Work is comprised of five mem-

bers representing different institutions: the BAR Association, the Medical Chamber, academia, the Association of Lawyers and a representative of civil society representatives. The decisions (recommendations) adopted by the Council for Civic Control of Police Work are sent to the police director, with the intent that he act upon them. If the Council for Civic Control of Police Work is not satisfied with the action taken by the police director, it can inform the public and notify parliament. So far members of the Council for Civic Control of Police Work have been very active in performing their role. In the period from 2005 to 2008, the council addressed more than one hundred fifty cases (Council for Civic Control of Police, 2008). It was present in the media, and therefore had a certain outreach in public. Even though the Committee on Security and Defence has the possibility to involve the council members in its working sessions, this has not been the practice so far. Connecting the two institutions would most likely bring about positive synergy and much more accountability to the sector. Put simply, better coordination and cooperation should be the aim of these institutions in the future.

The two institutions which are by law obliged to interact with parliament through the submission of regular reports (at least once a year) are the Ombudsman and the State Audit Institution. Like similar bodies in most Western Balkan countries they do not have a mandate directly referring to security sector actors. This is not problematic since their provisions encompass the entire public administration. These institutions could perform more efficiently and with greater results. Their activity is limited to presenting a yearly report or to pointing out single incidents of malpractice. So far they have failed to make additional efforts and to monitor continuously the executive's follow up to their recommendations. One possible reason for this could be inadequate financial compensation and not enough working space (particularly in the case of the Ombudsman). Indeed, underfunding and denying office space should be considered political interference, in the sense that politicians may be denying these bodies the means needed to perform their duties. Finally, one must not discount the possible political interference in the election of the Ombudsman and the possible negative effect on its work this might have. In its 2010 progress report, the EC stated that the independence of the Ombudsman could raise concerns, as he/she is elected by a simple majority of parliament.

The role of the State Audit Institution (SAI) is important in the chain of independent oversight. The SAI exercises constitutional authority over the financial operations of the state. Its portfolio covers all legal entities in which the state has a financial interest. The State Audit Institution determines independently which entities it will audit, the timing and scope of the audits, and how the audits will be conducted. In several cases security providers have been the subject of separate audit revisions by the State Audit Institution. Nevertheless, the main issue of concern regarding the SAI's work remains that government and ministries follow the State Audit Institution recommendations very late or they do not implement them at all (Mirjacic, 2011).

The need to pay special attention to further enhancing the role of the Ombudsman and the SAI was stressed in last year's European Commission progress report (see Box 2).

Box 2: EC Progress report, 9 November 2010

"The Ombudsman's activities are currently mainly related to the functioning of the judiciary. The number of measures taken on his own initiative is low (below 2.3%) and he is not sufficiently involved in improving the legal framework regulating human rights. Despite recent improvements, awareness of the Ombudsman's role needs to be further strengthened, in particular at local level. Cooperation of the Ombudsman with NGOs on monitoring respect of fundamental rights and freedoms and improving the legal framework is still weak."

"…The State Audit Institution (SAI) of Montenegro is making progress with institutional reform, but does not yet fully comply with international standards. Montenegro has established an Audit Authority (AA) for the control of EU funds, as a body within the SAI. This jeopardises the operational independence of the SAI in exercising its role as external auditor of the executive (of which the Audit Authority is a part)." (European Commission, 2010, pp.24ff)

3.3. Internal control mechanisms

Since the beginning of the transition period there has been noticeable progress in the establishment of internal control mechanisms and executive control over state security actors. More or less, all security providers have internal control mechanisms in place and functioning. Their powers include the possibility to give recommendations and suggest corrective measures. Still, it is questionable how effective and efficient these bodies can be, considering the highly politicised and divided nature of Montenegrin society. It is common for parts of state administrations to be divided according to pre- or post-election agreement. [103] If misunderstandings occur between political parties, it is the institutions disputed which suffer the consequences. This has happened on a few occasions, notably over the internal controlling mechanism of the police. For example, by the end of 2009, a dispute arose over whether the Unit for Internal Control of Police should be organisationally placed within the Ministry of Interior or the police. The lasting dispute caused the internal controls to be inoperable for a period of time. The Law on Police was amended in December 2009, and the Unit for Internal Control met all the conditions to function in February 2011. Such examples represent a significant step backwards for the process of reform and an impediment for future progress. A similar misunderstanding occurred between the Internal Control Unit (within the Ministry of Interior, controlled by the SDP) and the Police Director (affiliated with the DPS). According to Ministry of Interior officials, DPS refused to give the Internal Control Unit access to a database of the police (Lakic, 2011). The deadlock was resolved

103 A pre-referendum division among those in favour of independence and those against it is still visible in everyday political life and is reflected in all aspects of daily life. For example, the adoption of the Montenegrin Constitution led to political deadlock over issues like the name of the language in official use, etc.

only after the Agency for Private Data Protection recommended that the police allow access to the Unit for Internal Control.[104]

Internal control institutions require greater human and material resources to perform their duties more effectively.[105] It is essential for the proper functioning and credibility of these mechanisms that governing posts are filled by competent and credible people. In recent years, however, the media and civil society have repeatedly claimed that the officials performing these duties are not qualified to be in those positions. [106] Senior posts are political appointees rather than merit based appointees. Not having reliable and credible officers at these posts also seriously affects the morale and productivity of other employees in some institutions.[107] Doubts about their professionalism and objectivity become somewhat less surprising when looking at the results of the internal control units of the police, the military and NSA. No high ranking officer so far has been investigated. The reports mainly deal with lower ranking officers. Moreover, reports by these agencies do not address budget spending of security actors, a serious concern for many institutions.[108]

3.4. Transparency and the role of civil society

The involvement of civil society organisations (CSOs) in democratic oversight is a key for ensuring public accountability and transparency of the security sector. The engagement of civil society organisations in the security policy domain strongly contributes to accountability and good governance. CSOs act not only as a government 'watchdog' but also as an index of how satisfied the public is with the performance of institutions. In this way they share responsibility for public security (Caparini & Cole, 2008, p.5). There are numerous benefits to having CSOs as an additional, unofficial pillar of security sector governance. For example, quite often in countries embarking on a transition to democracy, political elites monopolise the reform process. CSOs can perform their monitoring role in a number of ways, for example: by conducting research, informing the public by facilitating dialogue and debate on policy issues, educating politicians and decision makers, and putting security sector reform issues on the political agenda. Nevertheless, civil society organisations need 'tools' for performing these tasks. These include free access to information, good links with official oversight bodies, and the ability to appeal if security actors or official oversight bodies do not provide them with information they are entitled to receive by law. Transparency, therefore, is one of the main preconditions for CSOs to perform oversight.

104 Response from the Agency for Private Data Protection to the inquiry made by the Police Administration. Available at: http://azlp.me/index.php/sr/miljenja

105 In the statement for newspaper Pobjeda, head of Unit for Internal Control of Police, Mr Saranovic said that : Weak spots of the Department for internal control of police are number of staff and working facilities. Available at: http://www.pobjeda.me/arhiva/?datum=2010-11-04&id=194347

106 Interview with representative of relevant independent oversight institution; Podgorica; February 2011.

107 Ibid.

108 For more details please see the CEDEM Paper on Executive Control of Security Sector, 2010.

If we shift from theoretical presumptions and look into the situation 'on the ground' in Montenegro, we find that SSR started without the necessary input from civil society.[109] Civil society input would have given drafters of legislation a better understanding of context, circumstances and country needs in the field of security and allowed them to better address state needs. Furthermore, five years after independence, despite some improvements (including the establishment of a few civil society organisations dealing with security sector reform issues and some qualified journalists), the level of input from civil society is still not satisfactory. It seems that remnants of communist era thinking, where security matters were considered strictly reserved for the executive and not up for examination or questioning by civil society, are still present today.

The performance of civil society depends upon legislation guaranteeing free access to information. Free access to information was granted by both the Montenegrin Constitution and a separate law, the Law on Free Access to Information. The number of requests to state institutions based on this law has increased in recent years. The majority of these requests come from civil society organisations while a small portion come from individual citizens. This increase in requests suggests that not only has transparency within the security sector increased, but this has been accompanied by an increased willingness by the public to exercise their right to information. Further evidence of increased transparency is seen in cooperation between security sector agencies and civil society in the form of joint meeting consultations, trainings, seminars, etc.

Nevertheless, there are serious shortcomings in the functioning of the Law on Free Access to Information. The fact that Montenegro does not have an independent body which would specifically deal with the implementation of this law leads to a number of problems. For example, very often institutions deny access to information by claiming that it is of confidential nature. The person or group that made the request may then appeal to the court about being denied access. On a number of occasions, however, the institution that has been found to have denied access unlawfully does not act upon the decision of the court, without being subject to any negative consequences (NGO representative, 2011). Put simply, the right of free access to information is granted in theory but often denied in practice, and without any consequences for institutions which breach the law. In sum, while transparency of the security sector has improved, it is not yet at a satisfactory level.

109 Civil society organisations, citizens, experts within the area of security, academia.

3.5. Financial oversight and control

In recent years considerable efforts have been undertaken in Montenegro to increase financial transparency of the state security sector. Laws on financial transparency in the public sector have been adopted. Control mechanisms monitoring their implementation have been established and are functioning. The State Audit Institution was set up to control the regularity, thrift, efficacy and efficiency of budget expenditures and state property management. So far this institution has done separate audits of security actors,[110] but these practices are not frequent or regular. The financial transparency of the security sector is most certainly impeded by the fact that the police, the military and the National Security Agency (NSA) are excluded from the regular process of public procurement, and therefore not obliged to publicise details of their procurement processes.[111] This can lead to the misuse of funds, with procurements which do not fall into this category falsely claimed as confidential. One example is the building of new police administration building for thirteen million Euros without public tender (Vijesti, 2011) Another serious impediment in this process is that so far the Parliamentary Committee on Security and Defence has failed to inform the public of whether or not the security providers are using its resources in accordance with the law. The SAI and the Commission for Public Procurements have not initiated criminal proceedings, while the police have individually submitted only three criminal charges in the period of three years for the suspicion of misuse of official position in the process of public procurement (Institut Alternativa, (n.d.), pp.5-6) The public has not been informed if the court has adopted a decision in this area.

3.6. Oversight by the judiciary

The importance of an independent, impartial and functioning judiciary in scrutinising the security sector and ensuring its accountability cannot be overemphasized. This particularly applies to the judiciary's role in ruling on the constitutionality of laws on security sector reform and ruling on cases brought against security actors. Its importance should also be noted in appeals against decisions of security sector oversight bodies and deciding on approval of the usage of special investigative measures by the National Security Agency and the police.

During the last fifteen years, there have been many attempts to reform the Montenegrin judiciary. The extent of those reforms has been limited. Part of the reason is that judiciary institutions have suffered from previous political contexts in which daily politics influenced their work.

110 Police, Ministry of Defense, Police Academy etc.
111 As envisaged by the Decree on Foreign Trade Funds for Special Purposes. Adopted by the Government of Montenegro on: October 21, 2010.

The poor functioning of the judiciary in Montenegro is indicative of the specific problems all state institutions face in the country. The legislative and executive branches of power in Montenegro have been criticised for failing to respect the judiciary as a separate branch of power.

A number of cases have been reported when state institutions, especially the police, did not act upon court orders. For example, detention orders have been ignored, usually without explanation. In addition, in complex cases, the police and prosecution have failed to hand evidence to the defence. An example is the A.M. High Court in Podgorica, where evidence was obtained through the use of special investigative measures (CEDEM, 2011).

4. Conclusions

Since the transition started, and especially in the period immediately after independence, a number of positive steps have been taken to place the domestic security sector under democratic civilian control. Much work, however, remains to be done. On a positive note, Montenegro has completed its legal framework and created a number of institutions for control and oversight. The role of the Parliamentary Committee for Security and Defence (CSD) deserves special emphasis, having made significant progress since the time of its establishment in 2005. On the other hand, state institutions will need to establish a decent track record for their work in the future. Their proper functioning in terms of both effectiveness and efficiency, along with continued implementation of the law, will remain key challenges in the upcoming period. Completing this task is important foremost for the country and the well being of its citizens, but also for Montenegrin aspirations towards the EU and NATO membership.

5. Recommendations

- **The government (relevant ministries i.e. Ministry of Interior and Ministry of Defence)** should make a comprehensive plan of security sector reform, which includes: subjects of the reform, means, cost-benefit analysis, and all other relevant information. It should be available for public debate to allow citizen and civil society input, and should avoid the top down approach of previous security sector reform efforts. Additionally, it should be debated in the Parliamentary Committee for Security and Defence. Finally, the document should be brought to a vote in the Parliament of Montenegro. This document would set clear guidelines and a trajectory for reform.
- **Efforts to strengthen Parliamentary Committee for Security and Defence (CSD)** need to continue. Both members of parliament themselves and civil society organisations need to contribute to this process. New and practical ideas are needed from the CSD. Bringing new faces to the CSD could be a catalyst for such change. Also, yearly plans on the CSD's oversight work should be adopted in a timely manner and steps should be taken to ensure their implementation. The government should

make additional efforts to encourage better working conditions for CSD members and continue strengthening the material and human resources at their disposal.

- **The Parliamentary Committee for Security and Defence (CSD) must start dealing with financial investigations.** The CSD should provide the public with information regarding the results of such investigations and make the public aware of how tax money is spent. The committee could investigate on its own, but should also cooperate with the State Audit Institution (SAI) on some investigations. A proper mechanism for preventing political interference in this sphere is urgently needed. A certain amount of political influence is inevitable, but transforming the Parliamentary Committee for Security and Defence into an arena for solving political disputes at the expense of controlling the security sector is unacceptable.
- **More administrative and material resources should be provided** for the Parliamentary Committee for Security and Defence and other committees but also for other independent state institutions (such as the Ombudsman, SAI etc).
- **Oversight bodies should communicate and coordinate more effectively.** This is essential for their performance. One way of achieving better communication is signing memoranda of understanding between relevant institutions. The Parliamentary Committee for Security and Defence could be the initiator of this practice.
- **A basic level of transparency is a necessary condition** for outside actors to adequately monitor the security sector and ensure it maintains high standards. Proclaiming and embedding this right in the constitution and supporting laws is insufficient. Our analysis has identified the need to establish an independent institution (or to grant new, specific powers to existing institutions) to ensure that the right of free access to information is respected.
- **The Government Decree on Foreign Trade Funds for Special Purposes should be amended** in such a way as to bring security sector actors within normal procurement rules where possible.

The combined effect of these changes (if implemented) would bring about better accountability of the security sector and directly serve the interests of Montenegrin citizens. However, we must not disregard impediments to implementation of reforms, including the presence of long lasting elites in power and a strongly divided society. The following questions remain open: is it realistic to expect state security actors to take up and embrace reforms, and is the broader political environment conducive to an accelerated security sector reform process? Unfortunately, there are no easy or straightforward answers to these questions. Hopefully, the time ahead will provide some answers, and reform processes will continue (as we believe that it is an irreversible process) in the right direction and at the proper pace.

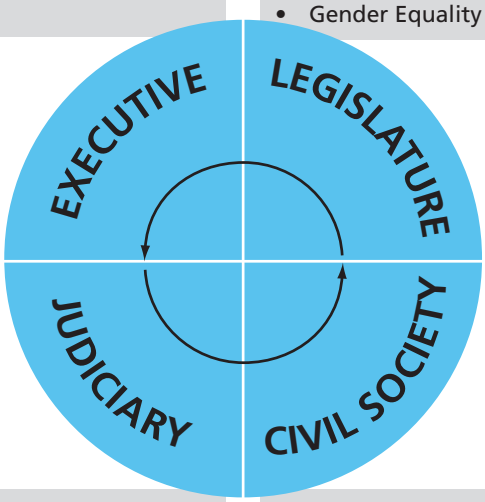
Annex: Holistic Matrix of Security Sector Actors in Montenegro

Legislative bodies

- Parliament of Montenegro
- Committee for Constitutional Issues and Legislature
- Committee on Political System, Justice and Administration
- Committee for Security and Defence
- Committee on International Relations and European Integrations
- Committee on Economy, Finances and Budget
- Gender Equality Committee

Armed Non-Statutory security forces

- Private security companies
- Criminal groups
- Religious radical formations (Wahhabist)



Statutory security forces and law enforcement

- Police
- Military
- Intelligence service – National Security Agency

Independent Agencies

- Ombudsperson
- State Audit Institution
- Council for Civic Control of Police Work
- Agency for Protection of Private Data

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Chapter 7 – Serbia

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Abbreviations and acronyms

CCD	Code for Criminal Proceedings
DSC	Defence & Security Committee of the National Assembly Serbia
HCC	High Court Council
IASP	Internal Affairs Sector of the Police
IBC	Internal and budget control
IG	Inspector General
LBS	Law on Budget System
MoF	Ministry of Finance
MIA	Military Intelligence Agency
MPI	Military Police Inspector
MSA	Military Security Agency
PPL	Public Procurement Law
PPO	Public Procurement Office
PPP	Portal of Public Procurement
RoP	Rules of Procedure of the National Assembly
SAI	State Audit Institution
SIA	Security-Information Agency

1. Introduction

The security sector in a post authoritarian and post conflict country, such as Serbia, can be one of the greatest obstacles to the consolidation of democracy. The main question of this chapter, therefore, is what are the achievements and weaknesses of Serbian security sector accountability and what repercussions does this have on democracy? In this chapter, we will focus on two components of accountability: legal compliance and respect for human rights, and transparency of resource allocation and spending. We will focus especially on accountability of security sector institutions to the government ministry under whose authority it is placed (vertical accountability) and also to other branches of government or institutions (horizontal accountability). These two aspects were chosen because our research indicates implementation in these areas is deficient, but also because respect for human rights and financial accountability are important issues for good public governance. Further consideration is given to patterns of democratic accountability in the security sector, including: oversight mechanisms, their development and functioning, their performance and level of accountability, as well as achievements and weaknesses.

One of the key findings of this research is that Serbia has completed the first generation of security sector reform: a legal framework regulating the sector is mostly completed[113]; there are institutions for oversight and control of the sector is under democratic civilian control. In order to complete the next phase and enter the second generation of reform, the legal framework must be fully implemented and adhered to by all security sector actors[114].

2. Background

When Serbia regained its statehood in 2006[115] all necessary preconditions for completion of the legal framework regulating its security sector were fulfilled. At that time, a new constitution was adopted which set the basis for legal regulation of the competencies, missions and tasks of the Serbian security sector institutions, as well as establishment of a clear and democratic chain of command over these institutions.

The Serbian "National Security Strategy" and a national defence strategy were adopted after the relevant laws: Law on Defence (2007) and Law on the Serbian Armed Forces (2007), as well as the Law on Security Information Agency (2002) and the Law on Police (2005) which were adopted before the constitution. These laws should be the basic legislation on Serbian security and defence but were quite vague and inco-

113 Notably absent is legislation regulating activities of private security companies.
114 More on security sector reform generations in: Edmunds, Timothy, 2004, "Security Sector Reform: Concepts and Implementation" in: Flury, Phillip and Hadžić, Miroslav (edt.) Sourcebook on Security Sector Reform. DCAF, CCMR. Geneva, Belgrade, pp. 50-53.
115 The Federal Republic Yugoslavia existed until 2003, when the State Union of Serbia and Montenegro was created. In the May 2006 referendum, Montenegro declared independence, ending the federal arrangement of two states.

herent. The reason for this was a lack of consensus on basic strategy on foreign and security policy priorities among political elites, despite the goal of integration into the EU. This had an impact on the quality of strategic documents, which were modeled on politics of the ruling parties, and the opportunity to create a new coherent and exhaustive strategic framework was lost.

The poor quality of these laws is revealed in their implementation. Even though regulations dealing with accountability in the security sector have been adopted, in practice their effect is not felt. The executive still controls the security sector. All primary laws regulating security actors provide mechanisms for government to control them. The 2007 Law on Serbian Armed Forces provides control mechanisms such as the Defence Inspectorate. In 2009, amendments to this law introduced a mechanism controlling military police ("Military Police Inspector").

The work of military intelligence services (the Military Intelligence Agency, MIA, and the Military Security Agency, MSA) was regulated by the Law on Security Services of the Federal Republic of Yugoslavia (FRY) in 2002. This law was consistent with international standards but never implemented (Milosavljević and Petrović 2009, pp. 229-230). In 2009, a new law regulating these services was adopted.[116] Although this law brought new mechanisms for control of military intelligence services – such as the Serbian "Inspector General" – this power did not always come with the necessary checks and balances. For example, any representative of MSA can gain access to any database of any state body without a court order or any other control [117].

Laws regulating the police and the Security-Information Agency (SIA) were adopted before the 2006 constitution. The Law on Police (2005) introduced an internal control mechanism into the police, but the Law on Security Information Agency (2002) does not provide sufficient internal control of the civilian security-intelligence agency, as will be explained below. Parliamentary control of the security sector was partly introduced by the constitution which prescribed that one of the roles of parliament is oversight and control of security intelligence agencies (Constitution of Serbia, Art.99). Articles 16 to 20 of the 2007 Law on the Basic Organisation of the Security and Intelligence System give parliament a more precise and stronger role in control of these services. This authority was further developed and confirmed in the 2010 Law on the National Assembly and new Parliament rules of procedures.

Judicial control of the security sector remains inadequate. Although the courts have mechanisms to control state security actors they are reluctant to do so. This can be seen in the current justice system reform which was criticised by, among others, by the European Commission[118] and which brought uncertainty to judges who should be responsible for execution of this control. All judges came through a problematic re-election procedure. Many flaws were observed by the European Commission and

116 Law on Military Security Agency and Military Intelligence Agency, Belgrade: Official Gazette No. 88/09.
117 Article 9.
118 European Commission, Annual Progress Report for Serbia for 2010, pp. 11-12.

others. The entire procedure was repeated and there are still cases before the constitutional court.

Full accountability of the state security sector will be possible when new institutions for independent oversight, including the Serbian Commissioner for Free Access to Information of Public Importance and Personal Data Protection ("Commissioner"), the Serbian Protector of Citizens ("Ombudsperson") and the Serbian State Auditor Institution (SAI) start to execute their authorities fully. Each of these independent oversight bodies is regulated by separate laws.[119] These laws mandate oversight of the security sector and protection of human rights, and they outline the difference between information which should be kept confidential, either in the interest of personal privacy or national security and what should not be kept secret. Another important law is the 2005 Law on the Protector of Citizens – a constitutionally prescribed institution for protection of human rights. The Ombudsperson is authorised to control government institutions work in accordance with the law and that human rights of citizens are protected (Art.17). Although state bodies are obliged to cooperate with the Ombudsperson, its decisions are not binding. Control of public finances is regulated by the Law on Budget, the Law on Budget System, the 2009 Law on Public Procurement and the 2005 Law on State Auditing Institution (SAI). SAI did not commence activities until 2009 because of a lack of resources. This institution, unfortunately, still does not have the expertise to control security sector finances.

Finally, the 2008 Anti-Corruption Agency Act introduced another independent body tasked to fight corruption. Similar to other independent oversight institutions, the Serbian Anti-Corruption Agency lacks resources. Additionally, it does not have investigative authority, which lessens its role and proper functioning. All these laws introduced independent oversight bodies into Serbia for the first time and set preconditions for full accountability of the security sector to citizens.

3. Accountability for legality of work and respect of human rights

3.1. Executive control and oversight

The executive has broad authorities over state security. This includes directing and coordinating state actors, approving internal organisation, as well as appointing and dismissing their heads and certain managers. State security actors are obliged to provide the executive with annual reports containing a description of results as well as measures taken.

The most important mechanisms through which the executive controls legal compli-

119 Deserving special note are the 2004 Law on Free Access to Information of Public Importance, the 2008 Law on Personal Data Protection and the 2009 Law on Data Confidentiality.

ance and respect for human rights are internal control bodies and inspectorates. The most reliable information about improper action by state security actors likely comes from the apparatus itself (Born and Leigh 2005, p. 26). In that respect, Serbia has been making slow but steady progress. During more than ten years of democratic transition almost all security related legislation has been adopted,[120] introducing internal control mechanisms to all state security actors. The laws have granted enough power for internal control bodies to effectively conduct their duties. These bodies have the right to access premises and files, collect, maintain, and publish information; take statements from employees, injured parties and witnesses. Citizens and security employees have channels for lodging complaints.

These legal changes have not been followed by implementation and practice of internal control bodies is not satisfactory, even though some have been functioning a while. For example from 2006 to 2010, the Internal Affairs Sector of the Police (IASP) received and processed more than thirteen thousand petitions and other documents containing complaints against police for abuse of power, but failed to hold accountable officers from the middle and higher ranks. In the words of the Head of the Internal Affairs Sector, Dragoljub Radović: "Senior police officers haven't been under the scrutiny of internal control up until recently. It's now different, since for the first time accountability of senior police has been considered seriously. This is a great step forward in the work of Internal Affairs Sector, although results are yet to be noted."[121] Recent scandals (see Box 1) show the power of these oversight bodies is limited and that 'untouchable' individuals difficult to hold accountable for their acts still exist in the police. [122]

There are two possible explanations for this. First, the 2005 Law on Police has flaws: For example, the Minister of Interior has the right to take cases which are processed by the Internal Affairs Sector and to hand those over to another body, if he concludes that another body would better handle the matter. This hampers the autonomy of the Internal Affairs Sector (and by implication the effectiveness of all internal control mechanisms). Second, the Internal Affairs Sector is poorly resourced. According to MoI information, the Internal Affairs Sector has filled only sixty-eight percent of its roster and has a deficiency of equipment and space. A problem arises from inadequate IASP premises. Because many regional centres have only one office, there are no facilities for conducting interviews and citizens might need to file a complaint against a police officer in the work place of the accused.

120 Law on private security has been missing for more than seventeen years, leaving three thousand private security companies which employ between forty and sixty thousand people out of effective control of state institutions. For more on obstacles to the adoption of Law on private Security see: Predrag Petrović, "Reserved Domains as Obstacles to Normative Regulation of Private Security Sector in Serbia," Working Document No. 1 (2011).

121 Unutrašnja kontrola zavodi red u MUP-u [Internal control brings order in to Ministry of Interior], 26 September 2010, Politika online: http://www.politika.rs/rubrike/Hronika/Unutrasnja-kontrola-zavodi-red-u-MUP-u.lt.html (unofficial translation)

122 Istraga o tajnim uređajima generala kasnila zbog svađe [Investigation on tapping was overdue because of bickering], Blic, internet: http://www.blic.rs/Vesti/Hronika/249892/Istraga-o-tajnim---uredjajima-generala-kasnila--zbog-svadje [10 August 2011].

Box 1: Untouchables in the Police?

At the end of April 2011, Serbia was shaken by a police scandal. It was revealed that Bratislav-Bata Dikić, Commander of the Gendarmerie, was under investigation and surveillance by the police for criminal offences, on suspicion of eavesdropping on other senior officers of the Gendarmerie. Dikić's bodyguards, however, became aware he had been followed by a surveillance vehicle of the criminal police and the investigation was compromised. A serious conflict ensued between Dikić and Rodoljub Milovic, head of the Department for Criminal Offences. It was then decided that a special commission would be formed, which would thoroughly investigate the case. However, because of disagreements over its composition, the commission was only formed after two days. During that time all evidence, i.e. eavesdropping equipment, could have been removed.

Without dwelling on the specific facts of the case or its political implications, this incident raises two important questions: Are the existing internal control mechanisms effective? Do higher officials have enough power to control all individuals and units within the organisations they are heading?

Like the Internal Affairs Sector, the Internal and Budgetary Control (IBC) of the Security-Intelligence Agency (SIA) has been functioning for a while but without enough autonomy from the SIA. Establishment of IBC and its competencies is regulated by classified bylaws passed by the SIA head to whom the IBC answers. Neither the executive or parliament have direct power over the IBC. It, therefore, cannot be ascertained how independent the IBC is from the rest of the SIA. This should be addressed with a new Law on the SIA which should introduce, inter alia, the institution of Inspector General for SIA who would be appointed by and be responsible to parliament.

Other internal control bodies are new and have insufficient practice. They will require time to develop. In particular, the Internal Control of the Military Intelligence Agency (MIA) was established in January 2010, the office of the Military-Police Inspector[123] in July 2010, and the Inspector General for the Military Security Agency (MSA) and the Military Intelligence in February 2011. The Military Police Inspector has not yet conducted control of Military Police but instead focused its attention on reviewing reports of Military Police and scrutinising cases conducted by the Directorate of Military Police and Criminal-Investigation Group (MOD answers to BCSP Questionnaire, 2010).

The organisational culture of state security institutions presents another obstacle for effective internal control. BCSP's research team learned from employees of the state

123 The institution of Military-Police Inspector was established with the Law Amending the Law on the Army, Official Gazette. No. 88-09.

security institutions during one workshop[124] that they are only willing to report their colleagues, including superiors, for illegal or improper action if there is a high probability that they would be revealed for not reporting such cases and consequently could suffer consequences. Employees actually do not trust internal control. When asked to what institution or organisation they would turn for help if not satisfied with internal control's handling of their case, most instantly answered "the media". Only a few mentioned the Ombudsperson. This suggests employees have little trust in state oversight and control institutions .

Finally, cooperation among different institutions tasked with monitoring and maintaining legality of state security work is almost non-existent. According to BCSP's research, only the Defence Inspectorate recently established some cooperation with other state inspectorates.[125] Collaboration of internal control bodies with the ISI has not been established yet. This might not be surprising given long culture of non-cooperation among different state institutions in Serbia, which has led to a fragmentation of the security sector. This fragmentation was worse in the first years of transition, when a hybrid political system dubbed "partocracy" was established (Golubović, 2006). Partocracy is defined as democracy featuring partisan politicisation of the state bureaucratic organs, in which competing parties try to capture and dominate posts and institutions.[126]

3.2. Parliamentary control and oversight

One of the weakest links in accountability of the security sector is parliament. There are several reasons. First, a post-authoritarian and post-conflict heritage makes it difficult to put the security sector under democratic civilian control, i.e. introducing effective and efficient parliamentary control and oversight. Due to the federal arrangement of Yugoslavia until 2006, the federal parliament had limited authority over military and security services, while the Serbian Parliament had authority over police and civilian security service[127]. After 2006, federal parliament gained broader competences for control and oversight over state security sector actors. Regular and full use of these competences, however, did not follow.

124 Institutions' representatives have tested Centre's methodology of measuring progress in security sector reform, BCSP, Internet: http://www.ccmr-bg.org/News/3976/Institutions%92+representatives+have+tested+Centre%92s+methodology+of+measuring+progress+in+security+sector+reform.shtml, [accessed: 12 August 2011.]
125 Ibid. We do not have information about achievements and results of the cooperation.
126 Ibid, p. 35.
127 See more in: Hadzic, M. et al. (2009) *Yearbook of Security Sector Reform in Serbia.* Belgrade: Centre for Civil-Military Relations.

Legal preconditions for effective parliamentary control and oversight of the security sector were set in 2010, when the Law on the National Assembly and new rules of procedure (RoP) were adopted[128]. Provisions of the RoP on organisation and functioning of parliamentary committees, however,[129] will be implemented only after the next parliamentary elections (2012). Until then, provisions of old RoP on organisation and functioning of committees (Arts. 43-73) remain. This is particularly important in the case of the Ministry of Defence (MoD), considering old RoP do not stipulate MoD is obliged to submit regular reports to parliament and the Defence and Security Committee (DSC). MoD, therefore, has not submitted reports to parliament in 2006-2010. This is the biggest deficiency in the system of democratic civilian control of the military.

The DSC is mainly limited to review of regular reports of state security sector institutions (MoI and security services) and their almost unanimous adoption. Control over use of coercive means is rarely performed. The DSC has yet to discuss parts of the annual reports of the Ministry of Interior (MoI) in which use of coercive means is analysed (although there is an increase in use of coercive means by police[130]), nor did parliament request the MoI to submit a report on work of the Internal Police Control Sector, despite having power to do so.

DSC did not request ad hoc reports by the Police Internal Police Control Sector even when there were abuses of police powers and breaches of human rights[131]. Similarly, the DSC also does not discuss petitions and complaints of citizens against security institutions, despite a 2010 increase of citizen complaints to the Ombudsperson concerning the police[132]. The DSC also did not discuss petitions and complaints of security sector personnel on working conditions, violations of rights and irregularities in the work of the institution[133], despite having the power to do so.

Control and oversight over use of special investigative measures also is rare. DSC does not cooperate with other parliamentary committees (e.g. Justice and Administration) or courts when performing control and oversight[134]. DSC, therefore, should develop a mechanism for regular cooperation with other committees and courts, such as joint

128 During 2009, parliament adopted primary laws and strategic documents (National Security Strategy and Defence Strategy) on defence and security, establishing democratic and civilian control and a clear division of roles among different security sector actors.
129 The new rules of procedure envisage the establishment of two new parliamentary committees: the *Committee on Finance, budget and control of the spending of public finances and the Committee for control of the security services.*
130 According to the answers to the BCSP's Questionnaire to MoI.
131 For example the DCS failed to discuss two cases that raised great public attention. The first one concerned a police officer who shot a young man during a patrol in March 2010 and was later sentenced to 13 years in prison. In another case the a police patrol, in June 2009 used excessive force on a group of young men. A special Commission within the MoI was established to examine this case, but so far has not reached a conclusion. (Magazine Vreme, Policija i građani- smrt Zorana Zarića: Interventna tragedija, March 2009, No. 951).
132 In 2009 there were one hundred ninety-eight complaints and in 2010 there were two hundred sixty-four complaints on the work of the police (Report of the Ombudsperson for 2010, http://www.ombudsman.rs/attachments/1304_Izvestaj%20narativni%20deo%20%282%29.pdf).
133 Parliament's answers to BCSP Questionnaire, October 2010.
134 Ibid.

meetings, regular exchange of information, consultations and so on. Although recently, MPs have participated in trainings to become more familiar with security institutions[135], they are still reluctant to use their powers. Currently, MPs are most interested in the work of security services (as evident from field visits[136]), but still there is no annual work plan of the Committee, clear procedures for performing field visits and reporting on them, procedures on organising hearings, or rules on submission of reports and recommendations to parliament. Additionally, power, for the most part, is in the hands of the executive and parliament is often used only for political legalisation of decisions which were made earlier at the top level of parties. As a result, MPs of the majority appear reluctant to question officials, making effective control and oversight of the security sector difficult.

Box 2: The private security companies and state authorities with police-like powers exempted from parliamentary control and oversight

Private security sector in Serbia remains outside parliamentary control and oversight. A draft law to regulate this was presented to the public in 2010, but it does not contain provisions obliging the police (or the Agency for Activities of Private Security) to submit regular reports to a relevant committee on results of supervision of private security companies (Petrovic et al, 2010, p.8). In addition, state authorities with police-like powers (such as Customs Administration, Tax Police, and Administration for Prevention of Money Laundering) are beyond parliamentary oversight. Consequently, no one is charged with overseeing how and why they use those powers, and the impact their operations have on constitutional rights.

3.3. Judicial oversight and control

Judicial oversight of the security sector is key for safeguarding the rule of law and protection of individual liberties. It is even more critical when other, internal or cross sector,[137] mechanisms of control and oversight fail or are inefficient. The judiciary must be able to decide freely, impartially and in accordance with law. The current regulatory framework mostly supports judicial independence, but its credibility will depend on how the system plays out in practice. The biggest challenge faced by the judiciary was the extraordinary general (re)election of judges in 2009.

135 Over the past few years, MPs and members of the professional staff of the Defence and Security Committee participated in numerous seminars and trainings on control and oversight of state actors in the security sector. Seminars and training sessions are usually organized by the OSCE Mission to Serbia, USAID and the Geneva Centre for Democratic Control of Armed Forces (DCAF), as well as by civil society organisations.

136 Members of the Defence and Security Committee, in past two years, performed two field visits to security services during which they discussed ways of improving the "quality of oversight of the Defence and Security Committee over the security services" with the representatives of these services (according to the reports on the sessions of the Defence and Security Committees, available at: http://www.parlament.gov.rs/content/lat/aktivnosti/skupstinske_odbor_lista.asp?Id=43).

137 For example, control exercised by executive by the legislative or mixed bodies.

3.3.1. Judicial oversight of use of force by state security institutions

Use of force by security institutions is an issue predominantly reviewed by courts reactively when processing allegations of abuse of authority in criminal, civil or constitutional settings. Incidents involving excessive force, notably during arrests (mostly involving police), generally being criminally prosecuted.[138] There are occasional obstructions of investigations into misconduct[139] and instances of institutional protection of members facing allegations. There also have been reports of judicial officials covering up police crimes.[140] This raises the issue of scope of misconduct that is actually being reviewed by courts. Cases involving such incidents are being processed slowly, in some instances resulting in a statutory ban on criminal prosecution due to a lapse of statutes of limitation[141]. A related negative practice is state security officials facing charges do not get suspended during investigation.[142]

One issue still causing concern is the fact that prolonged detention without charge is widespread in Serbia. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) observed in 2007 that persons in Serbia were being kept in detention for lengthy periods of time, which contributed to serious overcrowding of correctional facilities. Furthermore, courts also seem to be inclined toward extending detention even in situations where, according to European standards,[143] it would no longer be warranted. Courts, therefore, seem to be exposing individuals to potential mistreatment. Due to absence of statistics on cases of

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138 For example, only in 2009 police officers committed seventy-four violent crimes, including one murder and one case of aiding and abetting the commission of aggravated murder. The number of such incidents, however, is decreasing according to the Ministry of Interior http://www.mup.gov.rs/cms_cir/sadrzaj.nsf/informator.h.

139 In 2006, MoI Inspector general complained of obstruction of investigation on excessive use of force by members of the Gendarmerie against fans during a basketball tournament, http://bgcentar.org.rs/images/stories/Datoteke/ljudska%20prava%20u%20srbiji%202006.pdf>.

140 In 2006, an investigative judge from Smederevska Palanka was charged for falsifying a report in relation to injuries sustained by an accused that was beaten up by police officers during investigation. She was present at the station when the beating took place but reported that injuries were the result of a fall. (Belgrade Centre for Human Rights, 2006, Human Rights in Serbia, p. 211).

141 The latest high profile incident involving a murder of a 23 year old boy by an officer of a police Intervention Unit which took place in March 2009 is still pending before the court after a first instance conviction rendered in 2010 was quashed by the Appellate Court and remanded for retrial namely due to the fact that the first instance court did not fully established the facts of the case before reaching a judgment. It is likely that the case will not be finished by the end of 2011 (http://www.blic.rs/Vesti/Hronika/235498/Raicevic-ponovo-negira-krivicu-za-ubistvo-Zarica).

142 The UN Committee against Torture (CAT) noted this practice as a "concern" in its Concluding observations on Serbia's Initial Report on the implementation of the UN Convention Against Torture (UN-CAT, 2009, Consideration of reports submitted by states parties under article 19 of the convention: Concluding observations of the Committee against Torture, paragraph 10); Suspension from work is under relevant provisions of the Law on Police a possibility but not obligatory (Art. 165 of the Law on Police).

143 The European Court of Human Rights in its case law has stated that each decision on extension of detention cannot be based on the same set of facts and evidence as the previous one without showing that circumstances at the moment when extension of detention is being requested still justify imposition of detention (See, for example, ECtHR, Labita v Italy, Application No. 26772/95, *Judgment of 6 April 2000*, paras 152-154; W v. Switzerland, Application No. 14379/88, *Judgment 26 January 1993*, and *Mansur v. Turkey*, Application No. 16026/90, Judgment 8 June 1995, paragraph 55).

maltreatment in custody it is impossible to get a precise picture of how such cases are processed by courts. It is impossible to conclude with certainty from reported incidents whether such incidents are more or equally prevalent during police custody or court ordered detention, although the former seems to be more likely.

3.3.2. Oversight of the use of measures for secret collection of data

One of the most important roles of the judiciary regarding control of legality of state security actors is oversight and control of covert data collection. In Serbia, there are two legal regimes governing the use of these measures and consequently, two methods of judiciary control and oversight of security actors authorised to apply them. The first is defined by the Code for Criminal Procedures (CCP) which prescribes security services and police[144] must obtain an order from a judge to apply any measures for secret collection of data listed in the CCP. The measures may last a maximum of six months and can be extended for important reasons at most twice for three months each time. Any actor who uses these measures is obliged to submit reports to the judge on the measures used, and the judge decides which of the materials can be used in trial. If the case against an individual is not pursued, the collected data must be destroyed and the targeted individual may be informed he was subjected to special investigative measures.

The second legal regime for secret collection of data is defined by laws that regulate security intelligence services.[145] In this regime, security services can secretly collect data for preventive purposes, but not for the purpose of the prosecution of the perpetrators of crimes. Therefore, they must acquire the approval of the President of the Court of Cassation[146] or an authorised judge from that court. Once approved, measures can be used for a maximum of six months, and on the basis of a new application may be extended once again for a maximum of six months. The main weakness of this legal regime is that courts do not have any control during the application of the covert measures as well as after their termination. It is unclear when or whether measures are terminated and, if so, what happens with the materials collected. Are they stored forever in vaults or destroyed after a certain time?

Existing data, however, suggests courts use their rights in the process of approving and oversight of secret collection of data. Statistics show courts have more often rejected requests for application of measures which aim to protect national security and defence, than those intended to be used in criminal proceedings. Stricter control of the former by courts is understandable, given the fact that concepts of national security

144 CCP authorises following security actors to use secret collection of data: Security-Information Agency, Military Security Agency and Police.
145 Law on the Security-Information Agency and Law on Military Security Agency and Military Intelligence Agency.
146 The court of cassation is the appellate court of the highest instance.

and defence can be vague. Some research findings[147], however, suggest that courts do not thoroughly review the requests for application of measures for secret data collection. Thus, statistics show that courts have issued considerable numbers of orders for destruction of materials gathered through special investigative measures, which suggest courts in the process of approval did not correctly assess whether the use of these measures would serve the purpose for which they had been requested.

This could be explained by the fact that judges do not have expertise in special investigative measures.[148] Also, judges can approve special measures in trials for serious crimes, meaning their safety can be at risk from criminal networks. Institutions protecting them from criminals are the same ones that submit requests for special investigative measures. That is why some judges often tend to be "soft" towards law enforcement agencies.[149]

Regarding malpractice, from 2007-2009150 eighteen cases were filed, in which individuals claimed they were under unlawful surveillance, but charges were pressed only once and then dropped during the court proceeding. Some sources suggest law enforcement authorities occasionally apply special investigative measures contrary to law.[151]

3.3.3. Judiciary overshadowed by Executive

Many experts have expressed concern that judicial independence is jeopardised by political influences from the executive.[152] A reorganisation of courts was intended to stop this, but this is far from true. A new system of selecting tenure judges was introduced by the 2006 constitution whereby a new institution, the High Court Council ("HCC"), which is largely composed of judges elected through secret ballot, is exclusively charged with appointing tenured judges.[153] This change is largely perceived as a step forward in providing the judiciary greater independence from other branches as legal representatives will be in charge of its crucial personnel issues.[154] Concerns were

147 The BCSP team learned about these facts during the implementation of a project on the role of judiciary in control of special Investigative Measures in Serbia. The project included numerous workshops and interviews with investigative judges and prosecutors that are involved in the control of special investigative measures. Project title: "Judicial and Prosecuting Attorney's Oversight of Security Sector in Serbia", January 5 – May 31, 2009.
148 Ibid.
149 Ibid.
150 Republic of Serbia, Statistical Office, 2007-2009, Adult perpetrators of criminal offences – reports indictments, and judgments; Available data does not provide information about an alleged "perpetrator" (i.e. whether it was done by state institutions authorized to conduct surveillance who had allegedly acted contrary to their authorization, and if so, which institutions are alleged as perpetrators).
151 Jelena Jolić, "Sudska kontrola sektora bezbednosti," in *Godišnjak reforme sektora bezbednosti u Srbiji 2011*, ed. Miroslav Hadžić (Beograd: BCBP, 2011).
152 Filip Ejdus, Democratic Security Sector Governance in Serbia, PRIF-Reports No. 94, Peace Research Institute Frankfurt, Frankfurt, 2010.
153 Art. 147 of the constitution.
154 Art. 147 and 154 of the constitution.

expressed in relation to the role of the National Assembly in the election of first time judges.[155] The Council of Europe's Venice Commission stated that such a solution may undermine the overall effort as the HCC only will be able to pick candidates for permanent positions from people previously selected by the National Assembly.[156]

The process of re-election of judges started in 2009 and all tenure judges had to apply for positions in new courts. If not elected, they would automatically lose their mandate.[157] The process lacked transparency, no explanations were given for rejection of applications, and candidates could not appeal. There were serious allegations of security agencies collecting information on candidates on behalf of the executive. The Constitutional Court issued a position that the process was flawed and amendments to laws regulating the judiciary were adopted prescribing the newly staffed HCC will revisit all non-election decisions.[158] The fact that judges' positions depend so heavily on the will of political elites creates uncertainty among them and hampers their willingness to question decisions of security actors that are managed by the same elite.

3.3.4. Independent state institutions contributing to the accountability of the security sector

Independent state institutions overseeing transparency and protection of human rights – the Commissioner for Information of Public Importance and Personal Data Protection (Commissioner) and the Serbian Protector of Citizens (Ombudsperson) — were only recently introduced to Serbia. In spite of this, they have managed to become relevant to Serbia's security sector. They have done so by, firstly, providing annual reports with an overview of complaints addressing the work of security institutions and the replies from these institutions. Secondly, they proposed amendments and invoked public discussion around proposals of security related legislation. Thirdly, the highest representatives of these institutions have been present in the media and in public promoting rights and standards of good governance and transparency. Much of the reputation these institutions gained since their establishment is linked to personal reputation of the highest representatives who built reputations of credibility and impartiality.

The independent institutions have become relevant security actors by acting within their general legal competencies according to which the Commissioner is in charge of overseeing and supporting implementation of the constitutional and legal norms reg-

155 According to the 2006 Constitution persons who are elected to a position of a judge for the first time do not automatically get tenure, but undergo a three year probation period after which they are appointed by the HCC to tenure positions or they leave the judiciary (Art. 146 – 148 of the Constitution).
156 See, for example, Council of Europe Venice Commission, 2007, Comments on the Constitution of Serbia (Parts V, 7-9, Vi and VIII), 6 March, Available from: http://www.venice.coe.int/docs/2007/CDL%282007%29005rev-e.pdf, [Accessed on 27 April 2010], p. 3
157 Even though this process was heavily criticized by Council of Europe Venice Commission as well as by the professional association of judges, the re-election took place as planned.
158 Law on Amendments and Supplements to the Law on Judges (Official Gazette of the Republic of Serbia, No. 101/10).

ulating citizens' rights to have a free access to information of public importance and personal data protection. The Commissioner is a second tier authority acting on complaints of citizens and institutions in case their appeals have been rejected or not addressed.[159] The Ombudsperson is in charge of protection and improvement of citizens' rights and freedoms and for controlling the activities of the public administration.[160] Both of these institutions report to the National Assembly on the progress achieved and challenges faced by public administration regarding the rights they protect.

The Ombudsperson's mandate to protect citizens' rights authorises this institution to assess the legality of the work of state security institutions, acting either upon citizens' complaints or upon its own initiative.[161] Although in its 2010 yearly report the Ombudsperson institution mostly referred to the rights of detainees and convicted persons[162], and the right to privacy[163], most complaints that the Ombudsperson receives actually concern the citizen's right to have a well governed public administration. In addition, the Commissioner can help individuals to access information of public importance (as guaranteed by the Law on Free Access to Information of Public Importance (2004)) and thereby contributes to holding security institutions accountable and make their work more transparent. Also, the Commissioner's mandate to protect personal data allows this institution insight into data held by the state security institutions, and how they were collected.

3.3.5. Accountability translated into practice

By using their authorities, independent institutions have become relevant actors in the security sector. They have raised standards of transparency and accountability and

159 Law on Free Access to Information of Public Importance, Article 35. Law on Personal Data Protection, Article 44.

160 Law on the Protector of Citizens, Article 1.

161 For example, in January / February 2010 the Ombudsperson's paid an unannounced control visit to the BIA to assess the legality of the BIA's work especially their impact on citizens' rights and freedoms. The visit was triggered by the fears amongst the public that the BIA was involved in the contested process of the re-election of judges which took place in 2009 / 2010. The Ombudsperson stated that he did not find any evidence that the BIA had any unlawful role in that process. His report ended with a list of recommendations addressing BIA but also other stakeholders. (Report on the Ombudsperson's preventive control visit to the BIA, 16 February 2010).

162 In his 2010 annual report the Ombudsperson gave an overview of the living conditions of convicted people and detainees, including their rights during police custody in prisons and social and medical institutions for the treatment of the mentally ill. The Ombudsperson referred to inadequate living conditions as a main problem causing inhumane and degrading treatment of detainees and convicted people, while torture is not a systemic problem. Regular Annual Report for 2010, pp. 33-34.

163 On 30t September 2010 the Ombudsperson and the Commissioner, upon the initiative of a few civil society organisations, demanded the opinion of the Constitutional Court on Article 128 of the Law on Electronic Communication and Articles 13 and 16 of the Law on Military Security Agency and Military Intelligence Agency. According to the appeal, these articles are violating Article 41 of the Constitution of the Republic of Serbia since they allow intelligence services to have access to special investigative measures against the principle of communication confidentiality, as stipulated in the Constitution. This, according to the laws, could be done even without prior approval issued by the court. http://www.ccmr-bg.org/Novo/3847/Zastitnik+gradjana+i+Poverenik+pokrenuli+postupak+za+ocenu+ustavnosti+delova+Zakona+o+el.+komunikacijama+i+Zakona+o+VBA+i+VOA.shtml, 30 September 2010.

have acted as intermediaries of the requests between, on the one hand citizens, civil society organisations, media, other Serbian state and non-state institutions, and, on the other hand state security institutions. The growing number of requests to independent institutions[164] from citizens and civil society actors means the latter are getting acquainted with opportunities provided by the recently adopted legislation, allowing them to play a significant role in security sector oversight.

As a consequence of the active approach of the independent institutions, as is evident from the Commissioner's annual reports, the security actors have improved their records with respect to the right of access to information. In 2008, the Security-Intelligence Agency (SIA) was the institution that was least responsive to the Commissioner's requests. The record of the SIA has improved, according to the 2009 report.[165] Still, the MoI is the institution that receives most reaquest for free access to information of public importance. The topic that Serbian citizens were the most interested regarding the security sector in 2010, was data on the highly contested re-election of judges and prosecutors. According to the Commissioner's report, the Ministry of Justice and Supreme Council of Judges followed his findings on this issue.[166] There still are significant obstacles in the area of personal data protection due to the huge number of unregistered data collected without consent of the citizens whom that data concerns.

It is important to note that the results the independent institutions have accomplished so far have been achieved with reduced resources - limited work space and personnel, as reported in their annual reports. The increased number of requests being sent to the independent institutions, which already suffer from limited capacities, means not all complaints can be dealt with immediately. These limitations result in the independent institutions not exercising all the authority they have.[167] Lack of resources is something these institutions stress in their yearly reports, but it was also reported by the European Commission which urged Serbia to provide better working conditions.[168] In addition to this general remark, the independent institutions do not have specialised staff for oversight and control of security institution, with partial exception of the ombudsperson in regards to the control of prison system.

The work of these institutions is made even more difficult by the values based objections of the state security actors who might still claim that demands for transparency and accountability, and independent oversight are an unnecessary burden hamper-

164 Data by the Commissioner's office shows that the number of access to information requests sent via the Commissioner rose by 55.5% in 2010 as compared to 2009. Report on the conduct of the Law on free access to information of public importance and personal data protection for 2010, p.44.
165 Report on the conduct of the Law on free access to information of public importance and personal data protection for 2009, p. 11.
166 Report on the conduct of the Law on free access to information of public importance and personal data protection for 2010, p. 10.
167 Report on the conduct of the Law on free access to information of public importance and personal data protection for 2009, pp. 4-5.
168 European Commission, "Serbia 2010 Progress Report", November 2010, p. 8. Available at: http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/sr_rapport_2010_en.pdf.

ing their effectiveness.[169] As long as state security actors might perceive independent institutions as "intruders" which they ought to tolerate there is danger that those actors would attempt to avoid their mechanisms of control. This, coupled with the inconsistent government support for to ensure follow-up of the independent institution's recommendations,[170] might seriously undermine the effects of the independent institutions' work.

3.3.6. Attempts to bypass independent institutions

There are two major weaknesses in the system governing independent institutions' oversight of the security sector in Serbia. First, there are a number of potential loopholes in transparency related legislation. The absence of norms and bylaws which should accompany the Law on Data Confidentiality (2009) is one of them. Related to personal data protection, the Law on Personal Data Protection (2008) and constitutional norms are not enough for a thorough and transparent management of data collecting processes. This will remain a problem as long as there are no laws regulating the usage of video cameras in public spaces, the management of biometric data and activities of private security and detective agencies, and the management of data collected via these tools and by these actors. In addition, Serbia has no legal protection of whistleblowers, which has previously been highlighted as a shortcoming of the Law on Free Access to Information of Public Importance.

There is also a worrying trend of suppressing independent institutions' authorities and limiting their insights into the security sector. There have been regular attempts to bypass authorities of the independent oversight institutions when it came to drafting new legislation. This was evident during the adoption of the Law on Electronic Communication in June 2010 when only after amendments by the Ombudsperson to the draft law the Commissioner gained the right to have access to electronically-collected data on citizens. The same intention to limit independent institutions' access could be observed during the adoption of the Law on Data Confidentiality. More worrying was the proposal by the Ministry of Justice to suppress provisions on the oversight authorities of independent state institutions by limiting their right to have access to secret data, which provoked strong criticism from the independent institutions and civil society.[171]

4. Accountability in budgetary spending

Serbia's Law on Budget System (2009) established three mechanisms of budgetary control: the first being financial management (and control); the second, internal audit;

169 Interviews with the BIA, Military-Intelligence and Military-Security Agency, June 2010-April 2011.
170 Report on the conduct of the Law on free access to information of public importance and personal data protection for 2009, p.20.
171 "Expert discussion on the Draft Law on Data Confidentiality" http://www.ccmr-bg.org/Novo/3479/Strucna+rasprava+o+Predlogu+zakona+o+tajnosti+podataka.shtml, 25 August, 2009.

and the third, budgetary inspection, which is exercised by the Ministry of Finance (MoF). The National Assembly also exerts oversight, while an important role is played by independent bodies, especially the State Audit Institution (SAI).

One important aspect of financial management (and to a lesser extent control) is actors' obligation to prepare, on an annual basis, their respective proposals of financial plans. What has changed since the adoption of the Law on Budget System is that financial plans must now include a three year projection of incomes and expenditures, their purpose, and the sources from which they are intended to be financed. From a standpoint of transparency, this marks a significant change. For the first time, public officials need to relate every new activity they undertake to a specific government priority (Stojiljkovic 2010, pp. 11-12).

The unit within each respective organisation tasked with internal control has the primary responsibility for keeping that institution's spending in check. In Serbia, these institutions are the Defence Inspectorate, the Inspector General (of the Military Intelligence Agency and the Military Security Agency), the Internal and Budgetary Control Office/Group of the Security and Information Agency (SIA), the Customs Administration's Department for Internal Control, and the Tax Administration's Group for Internal Control. Only in the Ministry of Interior (MoI) does the internal control body have no such authority.

Obliged to determine if resources have been spent in a lawful manner, Budgetary Inspection (BI) of the Ministry of Finance has authority that reaches across Serbia's state security sector. It can access any document or report it finds important; it is even authorised to recommend to the minister of finance not to transfer funds allocated by the budget, with the exception of salaries (Law on Budget System, Art. 90; Par. 8). It is independent from the actors it oversees, and is solely responsible to the minister of finance, who receives reports which include principal findings and recommended measures.

From 2006 to2008, the BI inspected the management of state security actors' finances only five times[172], and not once since then. From the five inspections that were undertaken, no data was provided by the BI to BCSP. It was only the SIA in September 2010 and the MoD in February 2011 who themselves answered BCSP that no irregularities were found. Only in the case of the MoI did the BI find that several police departments, the Police Academy and the Police College[173] have mismanaged resources, with no further clarification.

The National Assembly controls spending primarily through its Finance Committee (FC) (Law on the National Assembly, Art. 15), as well as by discussing the Final Account of the Budget and the Annual Report submitted by the State Audit Institution (SAI). Although the Law on the Basis of Regulation of Security Services in Serbia (2007) pro-

172 The BI inspected how finances are managed in the MoD in 2006; CA in 2007; TA in 2007; MoI in 2008 and the BIA in 2008.
173 The latter two today form the Academy of Criminalistics and Police Studies.

vides (Art. 16) that the Defence and Security Committee (DSC) should "[oversee] the legality of spending", the Assembly's new Rules of Procedure (2010) failed to provide further elaboration.

Both aforementioned committees of the National Assembly repeatedly missed opportunities to exercise oversight. The Defence and Security Committee has not discussed actors' financial proposals, or any of the other key budget documents; while the Finance Committee is legally not responsible to analyse and decide upon financial plan proposals. The fact that funds intended for state security actors comprise a substantial sixteen per cent of the state budget (RSD 121bn of a total RSD 763 bn) does not seem to concern parliament.

A parliament staffer informed that the number of parliamentary committee's support staff is inadequate, and more importantly, personnel have obtained only modest training on exercising control over government spending.[174] The National Assembly's Section for Information and Research, numbering just five employees, has only been able to produce one publication entitled "Parliamentary Control over Budget Funds".[175] This publication only includes basic information on the role parliament should play in control and oversight and provides some insight into such practices in other countries.

4.1. Public procurement

Many aspects of public procurement in Serbia are imperfect, including the control and oversight mechanisms. The 2009 Public Procurement Law has been criticised for containing too many exceptions.[176] The single greatest flaw might be that no external control body is notified upon completion of procurement, which seriously hampers effective monitoring. The exceptions begin with small value procurement (procurement amounting to less than three thousand Euros annually). Confidential procurement is also excused from the Public Procurement Law and any procurement can be deemed confidential subjecting it to internal control only. The Public Procurement Office (PPO) has no authority in the matter. Weapons and protective gear, telecommunications and ballistic equipment and even transport all may fall under confidential procurement.[177] Since most procurement is handled through open procedures, regular reporting to the PPO remains the most important control mechanism. Each state security actor is

174 The parliament staffer was interviewed on 10 March 2011 during expert consultations organized by BCSP in Vrsac, Serbia. For more information, visit http://www.ccmr-bg.org/News/3976/Institutions%92+representatives+have+tested+Centre%92s+methodology+of+measuring+progress+in+security+sector+reform.shtml (accessed 21November 21 2011).
175 Ibid.
176 For the exceptions in the law see Article 7 on the Principle of Transparency in the Use of Public Funds. For an assessment of the law, see OECD SIGMA (Support for Improvement in Governance and Management), 2010, "Assessment Serbia: Public Procurement", http://www.oecd.org/dataoecd/19/47/47075563.pdf (accessed November 21, 2011): pp.2-3.
177 As provided by three separate regulations: one for MoD and SAF, one for MoI and one for BIA

obliged to send quarterly reports on signed contracts.[178] The PPO compiles these reports publishes them annually.[179]

Another feature of Serbia's procurement system is recurring unforeseen "urgent" or "emergency" procurement. In these cases, the actor has three days to report to PPO providing justification for requesting an exceptional procedure. PPO then notifies the BI and SAI. This is a common practice through which urgency is used as an excuse for shortening procedures and entering negotiations with a pre-selected bidder. If a bidder believes it lost for reasons without foundation in the Public Procurement Law, it can file a second degree complaint to the Commission for Protection of the Rights of Bidders in Public Procurement Procedures. This commission may suspend a procedure pending decision on the appeal (PPL, Art. 108). As a final resort, bidders can initiate administrative action.

An indirect oversight mechanism is the obligation to post procurement requests and data on the contracts signed to the Portal of Public Procurement ("PPP"). PPP was created in 2008, in order to have every notice for procurement in value over thirty thousand Euros (without VAT) available to potential bidders. Private companies can use the PPP to follow procurement notices, check whether they have all documentation, and stay informed on the status of their bid.. The PPO produces no "black list" of corrupt businesses. With no proof of actors exchanging information on their procurement practices, this allows bidders with suspicious records to enter competitions repeatedly. Conflicts of interest are also not a matter for the PPP, but for the Anti-Corruption Agency (ACAS). ACAS has not tackled any cases related to public procurement.

The PPO also should exercise control over small procurement. The SIA resorts to small value procurement up to five times more than others, while MoD and MoI use ten times more small value procurement. These numbers are suspicious since the Serbian Tax Administration resorted to small value procurement only eighteen times from 2006-2010 (compared to nine hundred ninety-nine cases of standard procurement).[180] Secondly, small value procurement procedure is being increasingly for purchasing goods declared confidential. MoI alone concluded twenty-five such contracts in the first half of 2010.[181] This push towards small value procurement also be driven by the need to avoid long procedures. In a context defined by lack of control, it remains a concern.

Outside the executive, only SAI may question actors on confidential procurement. The law establishing SAI contains a provision (Article 36) enabling this institution to access any data and documents (including confidential ones), for conducting an audit. In

178 In separate columns, these reports must include data on: the procedure, the subject, the value of the procurement in RSD, the selected bidder, the number of bids received and when and how the procurement call was announced. Reports must also include data on how many procurement procedures were aborted, and why (Public Procurement Law, article 94).
179 This annual report must be made available by March 31 each year (Public Procurement Law, Art. 96).
180 Ibid.
181 Ibid.

handling its yearly audit, however, SAI will be prepared to judge value for money only after it accumulates five years of practice in audit, according to standards of INTOSAI (International Organization of Supreme Audit Institutions).

Apart from actions exercised by internal control within institutions, there is no proof that independent oversight of confidential procurement has been established in Serbia. The three regulations – establishing the grounds for procuring "sensitive" goods and services[182] – have effectively prevented the public from accessing data on the subject and terms of the contracts signed. This is one of the reasons why Transparency Serbia (TS) asked the Constitutional Court to deliver judgment on the legality of these regulations. The Constitutional Court decided the regulations were consistent with the PPL.

5. Conclusions

Serbia has been making slow but steady progress in building a system of accountability of state security actors. Throughout the past six years (2006 to 2011), basic regulations have been introduced and all mechanisms and instruments for holding state security sector officials accountable are in place.

Despite these advancements, the following shortcomings should be noted: The Serbian ruling elite failed to pass the Law on Private Security Companies. Consequently, this has left three thousand companies which employ between thirty and fifty thousand people unregulated and without effective control by any state institution.

Despite the fact that legal preconditions for effective control and oversight of the state security sector are in place, state officials are not fully using these established mechanisms. Consequently there have been only modest results in the control of state security actors. Only minor cases of breaches of law have been reviewed by internal control bodies.

Parliamentary control and oversight is also ineffective, due to parliament being one of the weakest institutions in Serbia, instead of a cornerstone of the accountability and democracy. Efficient oversight by parliament and particularly the Defense and Security Committee is limited by a lack of initiative on the part of MPs, lack of clearly defined procedures for reporting on the performed inspection and oversight during field visits, as well as the lack of an annual work plan that would set the priorities of the Committees' work.

182 The three Regulations in question are: Regulation on Mobile Goods of Special Purpose (Official Gazette No. 29/2005) legally binding the Ministry of Defence, Regulation on the Goods of Special Purpose (Official Gazette No. 82/2008) legally binding the Ministry of Interior and the Regulation determining goods of special purpose that legally binds the Security and Information Agency (Official Gazette No. 21/2009).

The aforementioned problems could be explained by several factors. Firstly, established mechanisms of civilian control are new in the system and need time to be fully implemented, especially taking into account decades of authoritarian rule in Serbia. Secondly, due to a troubled history, a specific hybrid democratic regime, called "partocracy" was established in Serbia. It is marked by a multiparty system and free elections, but also features a lack of intra-party democracy as well as political deals between ruling parties concerning "the spoils"—that is, ministries and agencies. As a consequence, members of the same party do not want to question the work of their fellow party members that are heading the different ministries and agencies, nor do the members of the ruling party coalition want to "snoop" on the work of their peers, all because they want to avoid destroying the balance in the coalition. Finally, many existing regulations have flaws.

Such a system creates opportunities for different abuses of power, particularly when it comes to budget allocation and spending. Due to the limited capacities of internal control bodies, which perform only oversight of the legality of spending, the absence of parliamentary control in this regard and the fact that the State Auditor still does not have authority to control whether security institutions are spending funds appropriately, it is questionable whether there is systematic and effective control and oversight of the use of budgeted funds by the Serbian state security actors. Finally, most of the institutions tasked with the oversight and control of the security sector do not have sufficient material, financial and human resources for carrying out their functions.

The judiciary is not effective enough in making security actors accountable. Of great concern is the fact that the prime goal of the reform of judicial independence is compromised by the influence of the executive in the process of reorganisation of courts and re-election of judges, as well as in the daily work of the courts.

In contrast is the performance of the independent state institutions, especially the Ombudsperson and the Commissioner for Free Access to Information of Public Importance. These two institutions show strong dedication and willingness to exercise oversight and control of state security actors, despite the fact that they have insufficient resources and their work is obstructed, or at least is not supported, by the executive. This suggests to us that these mechanisms could be the drivers for control and oversight of security actors as well as the triggers for making other state institutions perform their oversight role.

6. Recommendations

6.1. Accountability for legality of work and respect of human rights

6.1.1. Executive

- The Law on Security Information Agency is not completely in accordance with contemporary democratic standards and principles. It is necessary that parliament adopt a new law on the Security-Information Agency introducing the institution of General Inspector of the agency and fully and precisely regulate its mandate and competences.
- The private security sector in Serbia has not been regulated for seventeen years, so there is almost no executive control over this sector. . Adoption of a special law that would fully and precisely regulate this sector is necessary.
- The Internal Affairs Sector of the Police (IASP) does not have sufficient material, financial and human resources. Job posts should be filled and the separation of IASP offices from police stations is necessary, in order to make the sector more accessible to citizens and police personnel who have complaints against police work.
- IASP does not enjoy enough autonomy from the Minister of Interior, who has discretionary power to hand investigations run by IASP over to any other organisational unit in the MoI. Therfore, the Law on Police should be amended in a way to remove the Minister's discretionary power.
- The internal and budgetary control of the Security-Information Agency needs to raise citizens' awareness of their right to complain about illegal actions of members of the Agency. That could be realised by publishing brochures which would explain what body is in charge of complaints and explaining in detail the process of filing a complaint.

6.1.2. Parliament

- Until the entry into force of provisions of the new Rules of Procedure (Art. 46-67) and the establishment of the Committee on Defence and Internal Affairs, which will review the reports of the Ministry of Defence, submitted every three months to parliament, parliament should request reports from the Ministry of Defence on the work of the Ministry in accordance with Art. 36 of the Law on the Government.
- The Defence and Security Committee should develop a midterm and annual work plan and determine priority areas of its activities.
- The Defence and Security Committee should develop a mechanism for regular cooperation with other parliamentary committees (Finance Committee, Justice and Administration Committee, Foreign Affairs Committee), such as joint meetings, regular exchange of information, consultations, etc.

6.1.3. Judiciary

- Courts should ensure that cases involving any alleged misconduct by security sector officials are processed impartially and without undue delay.
- Security sector institutions should ensure that allegations of misconduct on the part of their representatives that are not manifestly ill-founded are subjected to court review, and that all officials being criminally prosecuted do not continue performing their duties until conclusion of proceedings against them, particularly in cases where allegations involve abuses of their everyday authorities.
- The system of judicial control over the time spent in custody and/or detention should be expanded and strengthened by introducing, inter alia, obligatory court review of all decisions on custody, periodic judicial visits to custody units in addition to detention units, procedural rules for judicial referral of allegations of maltreatment to competent authorities for further investigation, and rules on enforcement of judicial recommendations pertaining to treatment and conditions in custody or detention (through changes to relevant laws including, but not limited to, the Criminal Procedure Code, Law on Enforcement of Custodial Sanctions, Misdemeanour Law and the Law on Police).
- Various systems of use of special investigative measures should be harmonised to the greatest possible extent through changes to laws regulating organisation and functioning of security sector authoritities (and accompanying regulation), such as the Law on Security Intelligence Agency, Law on Military Security and Military Intelligence Agency. This should ensure that courts play a role in approving the use of such measures and overseeing their implementation and termination, including destruction of information that is not going to be used.
- All institutions involved in the process of approval and use of special investigative techniques (i.e. institutions requesting, granting, and executing such measures) should ensure that records and statistics related to use of these measures are kept and mechanisms of protection of personal data set forth by the Law on Personal Data Protection are in place.
- Courts should increase transparency of judicial oversight of the security sector by making information and data regarding such control available to the general public through, for example, annual reports, statistics, and press / public statements regarding the outcome of any such court proceedings, when possible.

6.1.4. Independent state institutions

- The government should ensure the follow-up of independent state institutions' findings and recommendations, especially in those cases where these institutions rely completely on the government (as in case of the Commissioner) for enforceability of their recommendations.
- The government should provide independent state institutions with increased material and human resources in order to allow them to work efficiently within the scope of their competencies related to the control and oversight functions of the state security sector.

- Independent institutions should cooperate more often with civil society organisations and media on security sector issues in order to be more relevant, more publicly present and to gain more public attention and support.
- Independent institutions should develop human resource management policies which will allow development of staff working on security issues to increase their capacities of conducting control and oversight of the state security actors.

6.2. Accountability in budgetary spending

- The Ministry of Finance should, in accordance with the law, outline and propose ways for sanctioning institutions that are (a) ignoring deadlines imposed by the budgetary calendar; (b) breaching amounts for expenditures set within three years; and (c) failing to base their expenditures on strategies, action plans, laws and bylaws.
- The Ministry of Finance should initiate such changes to the criminal law so that every mishandling of budget allocated funds resulting in damage greater than two thousand Euros should be considered as a criminal act "grave mishandling of funds allocated by the budget". The proposed limit correlates to the maximum amount which may be spent on single small-value procurement.
- The Ministry of Finance should initiate such changes to the Public Procurement Law which would lead to placing all confidential procurement under its coverage, and thus control exercised by the Public Procurement Office (PPO).
- If confidential procurement is to become subject of the Public Procurement Law, the PPO should prepare an "Instruction for reporting on contracts signed with the purpose of procuring confidential (sensitive, special purpose) goods and services", which would be distributed to all security sector actors.
- The Ministry of Finance should initiate such changes to the PPL that would oblige all actors to report to the PPO the exact number and total value of small value procurement contracts they have signed with respective bidders. If the proposed measure does not contribute to greater transparency and more responsible planning, the MoF should then launch an initiative eliminating small value procedure all together.
- On the basis of a decision previously adopted by the minister or director of the institution in question, every actor of Serbia's security sector should adopt specific regulations with the purpose of defining extraordinary conditions under which urgent procurement or procurement through direct negotiations may be allowed.

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Annex: Accountability Table

Accountability for Legality of Work and Respect of Human Rights						
	Ministry of Interior, Police	Security-Information Agency	Ministry of Defense, Military	Military police	Military Security Agency, Military Intelligence Agency	Private Security Companies
Executive	Internal Affairs Sector for the Police	Government	Defense Inspectorate	Inspector General for the Military police	Inspector general	-
Parliament	Defense and Security Committee *					-
Judiciary	High Courts Basic Courts	High Court of Cassation High Courts	High courts	High courts	High Court of Cassation High Courts	-
Independent State Institutions	Ombudsperson, Commissionaire for information of public importance and personal data protection					-
Accountability in Budgetary Spending in Serbia						
	Ministry of Interior, Police	Security-Information Agency	Ministry of Defense, Military	Military police	Military Security Agency, Military Intelligence Agency	Private Security Companies
Executive	Ministry of Finance, Budgetary Inspection					-
	Public Procurement Office, Expert Government body					-
	-	Internal and Budgetary Control (internal body within the Agency)	Defense Inspectorate	Inspector General		-
Parliament	Finance Committee, Defense and Security Committee					-
Independent State Institutions	State Audit Institution					-

* After the parliamentary elections, scheduled for the Spring of 2012, Defence and Security Committee will be divided into two new committees: Committee for control of the security services and Committee for Defence and Internal Affairs.

Accountability of Statutory Security Actors in the Western Balkans

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Abbreviations and acronyms

ARS	Army of the Republic Srpska
BiH	Bosnia and Herzegovina
EU	European Union
FRY	Federal Republic of Yugoslavia
JNA	Yugoslav National Army
MoI	Ministry of the Interior
NATO	North-Atlantic Treaty Organization
ND and SSPC	National Defence and Social Self-Protection Concept
NSP	National Security Policy
NSS	National Security Strategy
SaMAF	Serbia and Montenegro Armed Forces
SFRY	Socialist Federal Republic of Yugoslavia
SSA	State Security Agency
SSR	Security Sector Reform
SU SaM	State Union of Serbia and Montene**gro**

1. Introduction

This chapter presents a comparative analysis of some key findings generated from regional research on security sector reform (SSR) in the Western Balkans. Its aim is to determine the level of progress in implementation of principles of democratic governance of the security sector in the countries of the region. For this purpose, key indicators are the existence and application of procedures which establish the accountability of statutory actors in undertaking security-related tasks. These include procedures used to make statutory actors accountable to legitimate state authorities and citizens for their actions or inaction. The chapter focuses on findings related to the responsibility of the military, police and intelligence services, including their civilian leadership, which together constitute the statutory component of the security sector.

Part 1 offers a brief description of the main features of the SSR context in the Western Balkans. It identifies potential similarities among these contexts and determines whether the similarities in their contexts brought about similar traits in their respective SSR processes. Research findings indicate that the trends of political democratisation and the scope of SSR in the given countries have been and remain interconnected. This is partly due to the fact that changes in the Western Balkans took place in a post-authoritarian and post-conflict context (Hänggi, 2004).

In part 2, analysis of main trends and modes of formation and/or transformation of state security forces in the region provides additional insight into the relationship between the context and SSR.

In part 3, comparative findings on the regulation of procedures, competencies and powers for democratic civilian control and oversight of security actors are considered. The existence and implementation of these procedures are key pre-requisites for the establishment of responsibility of security institutions. Evidence is analyzed concerning implementation of control and oversight competencies.

For the purpose of this chapter, the case studies presented in this volume were subjected to a qualitative content analysis. The case studies are used here as a primary source of empirical data. The insights gathered from country context analyses[185] developed earlier within the framework of the same project have also been used, including analyses of national security policies (Hadžić, Timotić, Petrović, 2010). The data available in the enclosed studies will not be elaborated in extenso in this text, and will be used only to substantiate the main findings of the comparative analysis.

The authors of the case studies had to adhere to a set of instructions in order to make the findings of their research easier to compare. They also had to select and summa-

185 Each consortium member published their own context analysis, all of which can be found in the bibliography of this chapter.

rise data from previous analyses[186] on the scope of security actors' accountability in their countries. The researchers had full autonomy in determining this scope, which, in turn, makes them responsible for the validity of findings and evaluations presented in their case studies. Similarly, the author of this chapter is fully responsible for the quality of the comparative analysis and his own interpretation of the findings.

The following text is intended to be more than just a compilation of the case studies' main findings. The data and results were interpreted and summarised by the author according to his understanding of political and security dynamics in the Western Balkans. He chose this approach to shed more light on processes underpinning the development, content and scope of SSR in these countries. Of course, this is only one of many possible ways for interpreting the similarities and differences, as well as the progress and setbacks in establishing the responsibilities of state security forces.

2. Similarities among contexts

The construct of the "Western Balkans" is based on the assumption that the Western Balkan countries, despite differences among them, have many similarities. Analysis of the sources, content and meaning of the discursively created image of this region and its countries exceedes the potential and purpose of this paper. For this reason, the author adopts the above-mentioned hypothesis and will expand it with an outline of main similarities and crucial differences among the Western Balkan countries. This chapter will also focus on similarities which make it possible to compare local SSR contexts and identifies observable implications that suggest similar underlying trends.

The context of SSR in the region will be presented here as a multi-layered social construct. It consists of a set of inter-connected and intertwined discursive layers, coming in chronological and historical order. The formative strength and explanatory value of each layer depends on the significance that current creators of the dominant discourse on context and SSR attach to it, and not on a particular layer's place in the order of historical events.[187]

The SSR context in the Western Balkans countries consists of two components: ideational and material. The ideational component gives the context, via national security policy and strategy (NSP, NSS),[188] its characteristics in terms of values, ideology, interests and politics, as well as the aspirations of local society. How these are arranged

186 The different criteria analyzed during this earlier phase of the project during which the authors were mapping SSR in their countries, were: the Legal State, Oversight by Independent State Bodies, Judicial Control and Oversight, Parliamentary Control and Oversight, Executive Control and Oversight, General Transparency, Financial Transparency and Representativeness.
187 This is also illustrated by the arbitrary removal of both Yugoslavias from the collective memory of every new state built on their territory, and by the buliding of new national and political identities on the basis of pre-Yugoslav era.
188 The concept of "nation" is used here to describe a political community encompassed by a state, not an ethnic group.

depends largely on the predominant strategic culture in a given country (Toje, 2009). Consequently, security policy can be understood as a canvas (containing symbols, meanings and messages) on which local elites imprint their own vision of the social and political entity that they represent. This chapter focuses on the construct created by ruling elites, not only of their own states, but also of the significant Other, with whose help, and in relation to whom, the Self is created (Neumann, 2011).

On the basis of these concepts the NSS determines security needs and security capacities of a given country. The capacities are, in turn, defined by current authorities in accordance with their interpretation of the list of protected values and interests of the local community. They first collect, classify and rate the key threats to their country's security and survival, and then identify their potential agents. Potential discrepancies between the expressed sense of being threatened and the country's assessment of its capacity to remove and/or prevent threats to its security is the starting point for the need and willingness to reform the security sector.

The ideational component of the context is amended with material products of a security policy and strategy, together with changes within the existing security sector. The form of these products is primarily determined by constitutional, legislative and systemic solutions that shape the security sector in a given country. In accordance with these solutions, security institutions are established and regulated. These institutions should guarantee the preservation and/or attainment of a desired level of security.

Basic similarities in SSR contexts of the Western Balkans countries can be traced along several inter-connected lines. All layers and by-products of both recent and distant past are accumulated along one line, with a common undemocratic political heritage in its centre. This heritage is a product of the domination of authoritarian regimes in the region during the 19th and 20th centuries. This had a crucial impact on the creation of another line, stemming from the relationship between local society and the state, with its security actors. The client status of notoriously politicised and ideologised apparatuses of state extortion represented one of the constants in this relationship. Accordingly, the protection of the ruling regime – the Leader, ruling class and ideology – was an irreplacable part of their mission. Democratic deficits were then, along the third line, multiplied and hit an extreme low during the period of state regimes that pretended to be socialist. However, the negative effects of these deficits did not disappear with the crumbling and/or fall of the old socialist regimes. The very foundations of the discursively (re)shaped image of the regional context, inluding the current concept and practice of reform of state security institutions, hide the roots of their overall heritage.

The current SSR context in the Western Balkan countries was mostly developed, as Table 1 illustrates, over the last two decades. Its existing form is the result of the joint, simultaneous effect of several long-term processes. The impetus for radical changes of context came from the collapse of socialist systems during late 1980s and early 1990s. Later on, the removal of the overlay put by the two blocs set the stage for the development of different political and security dynamics in the existing (and emerging)

states and in the region (Hadžić, 2001). The consequence of these changes, including the fall of delegitimised regimes, was that these countries witnessed an unprecedented explosion of long suppressed and important internal contradictions.

Table 1: Phases of change in the security sector contexts in the Western Balkans

Country	Formation of the state and apparatuses of power	Normalisation and stabilisation	Democratisation
Albania	The fall of Communism and the collapse of the old state structure (1991–1997)	Return to normality and Euro-Atlantic orientation of reforms (1997–2000)	Consolidation of security sector institutions and oversight (2000–2009)
BiH	First period (November 1990–December 1997)	Second Period (January 1998–January 2006)	Third period (February 2006–December 2009)
Croatia	Initial phase of state-building (1990–1995)	Era of democratic deficit (1995–2000)	Country on the reform track (2000–present)
Kosovo	The outset of security sector development (1999–2005)	Gradual transfer of competencies to the locals (2005–2008)	New security architecture (2008–present)
Macedonia	From independence to conflict (1991–2001)	From Ohrid to Bucharest (2001–2008)	Post-veto nationalism (2008)
Montenegro	End of socialism and socio-political context (1989–1997)	From the split of the ruling party to an independent state (1997–2006)	Building of institutions and Euro-Atlantic integration (2006–2009)
Serbia	Milosevic's era (1989–2000)	Democratic changes – Point of no return? (2000–2003) Beginning of the first generation of SSR (2003–2006)	Reforms vs. foreign policy shift? (2006–2009)

This was a time when key deficiencies – economic, political and security related – were brought to light. In the period of the second Yugoslavia, during the late 1980s, these deficiencies were internally crystalised and antagonised along ethnic and religous lines. The result of the wars and dissolution of the country in the 1990s was the creation of mostly ethnically cleansed states or state-like entities. The conflict in Kosovo followed, only to be ended with NATO military intervention in 1999, creating the key pre-requisites for Kosovo's later proclamation of independence.[189] The same

189 It should be noted that Serbia does not recognise this act and considers Kosovo and Metohia a part of its territory. Kosovo was one of the units of analysis in this project, and for more information on the development of SSR please consult chapter four above.The debate on the status of Kosovo is not within the framework of this paper.

wave of changes swept across Macedonia in 2001, giving rise to ethnic and religious consequences of the wars in the former Yugoslavia. However, the beginning of ethnic armed conflicts was prevented in Macedonia at an early stage by foreign intervention, and then frozen (Koneska and Kotevska, 2011, pp.5-6, 17).

Unlike the former Yugoslav countries, the consequences of the collapse of socialism in Albania were felt as late as 1997. After the collapse of the regime, the country faced a real threat of civil war. The effects of the wars in the former Yugoslavia, along with the collapse of the Albanian state, facilitated the irreversible penetration of the EU, NATO, and the United States into the Western Balkans. Ever since, a Euro-Atlantic overlay has been spread in the region.

The contexts, pace, content and scope of SSR processes in the Western Balkan countries were, and still are, marked by three crucial similarities. The first similarity is the result of the participation of five countries in the region – Bosnia and Herzegovina, Croatia, Kosovo, Montenegro, Serbia[190] - in the wars waged on ex-Yugoslav territory, and the direct exposure of the two remaining countries – Albania and Macedonia – to their consequences. The second similarity results from the fact that three new states – Bosnia and Herzegovina, Croatia, and Kosovo– and their security institutions were created and shaped under the conditions of a massive, internal and/or external use of armed force. The state and its security forces were created in Macedonia, directly transformed in Serbia and Montenegro[191], and indirectly transformed in Albania under the influence of the immediate war environment (Dyrmishi et al., 2011, pp.7-11).

The first two similarities led to the third important similarity of SSR contexts. Due to wars and/or internal conflicts, the irreversible parting of the Western Balkan countries with socialism was first prevented and/or delayed, and then considerably slowed down and made difficult on many levels. The absence of internal consensus on the needs, goals, manner and pace of the dissolution of the old regime contributed to this situation. During the 1990s, the economic and social price of post-socialist transition in these countries – including the costs of the establishment and transformation of the military, police and intelligence services – became enormously high. At the same time, the willingness of local populations to pay this price was progressively diminishing. The price became even higher when it included costs of war damages, and this was ultimately far more than the populations of the states in the region were able to pay. The growing number of transition losers, together with the costs of war, generated strong internal threats to personal and collective safety. This partly explains why state authorities were extremely cautious in reorganising and/or reforming the (inherited) military, police and intelligence services.

190 We will set aside the debate on perpetrators of the wars waged on the territory of former Yugoslavia, i.e. on agressors and victims. We included Serbia and Montenegro in this group as they, contrary to the claims of their former and current authorities, did participate in these wars from April 1992 onwards, first within SFRY and later in the Federal Republic of Yugoslavia (1992-2003).
191 Starting in 1992 they were members of the Federal Republic of Yugoslavia (FRY), and from 2003 until 2006 of the State Union of Serbia and Montenegro (SU SaM).

The formative phase was crucial for later, albeit uneven, developments of SSR in the region. A radical parting with the old regime was delayed and made more complicated due to the wars and/or war environment. This is also the reason why the countries of the Western Balkans spent so much time in the grips of authoritarian regimes which local authorities tried to make legitimate.[192] It is therefore not suprising that the processes of initial and/or fake democratisation and SSR often developed on two separate tracks.

The above-mentioned processes of the 1990s enabled the prolonged survival and mutation of an ethno-centric authoritarian regime in Serbia (Popović et al., 2011, pp.9-11) and Montenegro (FRY, SU SaM) (Radević and Raičević, 2011, pp.7-10), and its establishment in Croatia.[193] In both cases, plebiscite caesarianism was active under a disguise of democracy, enabling the central state authorities to gain and renew their legitimacy at regular, but not necessarily fair, elections. For these same reasons, the authoritarian model of rule is still employed by local ethnic-religious elites in the entities of Bosnia and Herzegovina, despite its externally installed democratic facade (Hadžović et al., 2011, pp.9-16). A similar model is applied in Kosovo, where power is still controlled by elites, a by-product of war (Qehaja and Vrajolli, 2011, pp.12-14). On the other hand, Albania, under the rule of the Democratic Party and after the ex-communists gathered in the Socialist party lost the elections in 1992, witnessed the formation of a new type of authoritarianism. It was accompanied by the strengthening of the political elites' personal power overstate security forces (Dyrmishi et al., 2011, p.8). At the same time, in Macedonia, members of the local ethnic Albanian community denied the legitimacy of the new regime and the state apparatuses of force until the Ohrid Agreement was signed in 2001. Strong ethnic divisions directly diminished the modest democratic capacities of the new institutions in Macedonia (Koneska and Kotevska, 2011, pp.7-13).

3. The emergence and shaping of security institutions

The emergence and shaping of security institutions in the Western Balkan countries were mostly determined by the collapse of socialism and the wars waged in the region. In this section I will pinpoint only the factors that were crucial in defining the form, social and professional profile, and power and position in society of these institutions.

The Western Balkan countries can be divided into two distinct groups according to their starting positions. The first group includes Croatia, Macedonia and Kosovo, as they gained their independence during the violent dissolution of Yugoslavia. Their state security forces were created out of (pre)war necessity, their purpose being to create new states by armed force and/or protect them. Bosnia and Herzegovina cer-

192 In the countries of Yugoslav origin, new authorities covered themselves with the veil of democracy primarily to achieve external legitimacy, while internally they legitimised themselves primarily by means of ethnic-religious and state-building arguments and reasons.
193 See also Knezović and Staničić, 2011, pp.14-16, which describes it as a semi-presidential system with democratic deficits.

tainly falls into this category as well, because ethno-political communities of Serbs, Croats and Bosniacs started building up their armed units on its territory before the outbreak of war. The same military formations later played key roles in the throes of a full-blown armed conflict.[194] This is why Bosnia and Herzegovina was constituted as a separate and independent state consisting of two entities only after the Dayton Agreement had been signed. The exisiting security forces were changed, and new ones created, in accordance with the provisions stipulated in the Dayton Agreement.

The ultimate goals of the sides in conflict and the (pre)war dynamics set the pace of establishment and determined the nature of security institutions in this group. What these institutions (and the states themselves) have in common, as the authors of the case studies observed, is the fact that they were all built from scratch. Nonetheless, a more complex process seems to have been at play here. It is therefore closer to the truth to assert that the security forces in these countries were the product of two simultaneous and inter-connected processes.

When the new states proclaimed their independence, they had already put under their control the local police and civilian intelligence services, including their databases and networks of associates.[195] Naturally, the purpose of these institutions – their symbols, legitimacy, underpinning ideology, professional and ethnic structure of personnel – were all changed at the same time. In addition to the existing ones, new armies were being formed immediately before and/or during the war.[196] Despite this, old patterns of civil-military and civil-police relations found their way into the new states due to the mutation of the authoritarian regime, brought about by the takeover of the former military, police and intelligence personnel.[197] Moreover, the special status of intelligence services remained intact. The new state security institutions also inherited, and later transformed, the organisational culture of their Yugoslav predecessors.[198]

The second group includes Albania and Serbia and Montenegro – first as parts of the FRY and State Union of SaM, and later as two independent states. What these states have in common is the fact that all of them inherited the security forces, together with their social and professional baggage, from the former state and/or former regimes. However, in Serbia and Monetenegro, unlike Albania, these institutions were changed in the circumstances of the undeclared state of war – more precisely, during their undercover participation in combat operations in Croatia and Bosnia and Herzegovina, and quite open participation during the war in Kosovo. Thus, there are certain

194 BiH Army, Army of the Republika Srpska, Croatian Defence Council.
195 In Croatia and Bosnia and Herzegovina, this happened after the first multi-party elections (1990) won by the noncommunist elites, whereas in Kosovo, these bodies emerged by the end of the 1990s, along with the formation of the Kosovo Liberation Army.
196 The core of the Croatian Army was thus created, within the Croatian National Guard, which was then a part of the police.
197 In the formative phase, the officers of the former Yugoslav National Army comprised the core of the Macedonian Army; see also, Koneska and Kotevska, 2011, p.11.
198 The heritage of the Yugoslav National Army penetrated the post-Dayton Army of Bosnia and Herzegovina via members of the armed forces of the former Army of the Republic Srpska, which had been created from the western remnants of the former Yugoslav National Army.

similarities between the processes of (re)shaping the security institutions in Serbia and Montenegro (FRY), Croatia (Edmunds, 2007), Bosnia and Herzegovina and Kosovo, just as the non-participation of Macedonia and Albania in the wars brought about similarities in those two countries. While Macedonia, in the early years of its independence, was trying to create and equip new and/or different security institutions, Albania was struggling to prevent the disintegration of inherited institutions and transform them to suit the needs of a proclaimed democratic political system.

It should be noted that in the former Yugoslavia the sides in conflict saw the war as an opportunity – always imposed by the other side – for settling historical debts between the nations that constituted Yugoslavia, creating ethnic states and a final demarcation from Others. It is therefore not surprising that all others – the neighbouring Yugoslav nations and their next-door neighbours – became central objects of overall securitisation. New security institutions were created and/or shaped to fit the newly designed states. Their members were socialised, under the disguise of patriotism and a xenophobic-chauvenistic code, with combat morale to fit the disguise.

The result was ethnic cleansing of the inherited military, police and security services in the FRY, while ethnically clean security formations were created for the purposes of the new state in Croatia, Bosnia and Herzegovina and Kosovo. Their operations during the war were in both cases legitimised by the necessity of armed combat to protect the survival of their nations and states. Protection of the state was good cover for national leaders to gain absolute power during the war. Furthermore, it acquitted both them and their security forces of any accountability and protected them from any form of control and oversight. This led to national laws on the military, police and intelligence services containing a number of provisions guaranteeing many discretionary powers to top state officials.[199]

Moreover, the unwritten rule of the war was that the ends justified all means. The (pre)war network of interests among local political, security and criminal elites was strengthened. This gave way to blatant violations of human rights, culminating in war crimes committed by various formations of all sides. Numerous para-military and para-police units were formed in each country from, or with the support of, its regular forces. On the other hand, units of regular state security forces were gradually sprouting from various para-formations.[200]

Nonetheless, on the strategic level, these states had a strong chain of civilian command during the war, and local military, police and intelligence services were directly subordinated to the chief commander. They lost their professional autonomy during combat and merely became the executors of the chief commander's political and war

199 For instance, the laws on the military and defence in the FRY were adopted 18 months after the state had been established.

200 For example, during the war, and under the auspices of the State Security Agency (SSA), the notorious Special Operations Unit (SOU) of the MoI was created out of the para-military formations that used to spread havoc in Croatia and Bosnia and Herzegovina.

(ill)will.[201] This was a cornerstone of their later transformation into a praetorian guard of the local Leader (Žunec, 1998; Hadžić, 2000). However, the lower down the hierarchical ladder the units were, the more operational autonomy they had. On a tactical level, the combat dynamics directly depended on the will of local warlords and their representatives. These units were fighting and committing crimes together with paramilitary formations. This was the root of what was later to become a large-scale and cross-border criminalisation of wars in the former Yugoslavia.

The externally enforced end of the wars in the former Yugoslavia required the countries who participated in them to return their military, police and intelligence services to peacetime conditions. Demilitarisation, demobilisation, decriminalisation and depoliticisation became top priorities on the agenda. These processes could not be carried out successfully without the return of local society from wartime to peacetime conditions. Despite this, the heritage of war remained an important intervening factor for a long period of time. In each country it had a different meaning and it affected differently the scope and content of reform of inherited security institutions.

In Bosnia and Herzegovina, the processes were undertaken, but not finalised, with participation and under the auspices of NATO and various representatives of the UN, EU and the OSCE. Conversely, in Croatia and FRY, the reconfiguration of the security sector was carried out autonomously, until the death of Franjo Tuđman in 1999 and the toppling of Slobodan Milošević in the 2000 elections. An important similarity between the two states was reflected in the fact that a caesarian involution of the authoritarian regime occured in both countries after operation "Storm" in Croatia and the signing of the Dayton Agreement. On the other hand, a key difference resulted from the fact that Croatia emerged as a winner and FRY as a loser after the war.

Croatian armed and security forces gained considerable power and reputation during the war, which gave them priority in the distribution of power and benefits after the war. Their contribution in the war and loyalty to Tuđman spared them from any changes, especially from radical ones. Moreover, the image of patriotic warriors and state-builders protected them from any accountability for war crimes. Consequently, after Tuđman's death, the security elites and right-wing political parties represented the biggest obstacle to radical SSR. They represented a political threat to any successor of Tuđman's, particularly if he would dare to radically change their status and/or limit their power.

On the other hand, Slobodan Milošević greatly profited, though temporarily, from the deafeat of his war policy. During the war, he put all existing state security forces under his total control and authority. After the war, he secured their loyalty by protecting them from accountability for defeat, and by putting their wartime criminal files safely under lock and key. This was the main reason why security elites, together with right-wing political parties, became not only the main obstacle to

201 From the military point of view, and in the example of the Yugoslav National Army (JNA, ARS), this is illustrated by the unjustified blockade and devastation of Vukovar, the bombing of Dubrovnik, and the siege of Sarajevo that lasted several years, as well as by the later involvement of the JNA in the war against NATO.

radical SSR, but also the main threat to the power and lives of democratisation agents in Serbia.[202]

In the second half of the 1990s, while Milošević was preoccupied with Kosovo and with preserving his power, Montenegro was laying foundations for its future independence. This was the objective that Milo Đukanović had in mind when he started to gradually transform the local police forces into an internal army meant to prevent potential military intervention by Belgrade (Radević and Raičević, 2011, p.16).

In conclusion, Croatia, Serbia and Montenegro got on the reform track no sooner than 2000, by which time Albania and Macedonia, together with Bosnia and Herzegovina (after it was designated a protectorate of the international community following the 1996 Dayton Agreement), had already started with its reforms. Kosovo joined the reform track later, and its security institutions were shaped under the patronage of external actors after 1999. Regardless of timing, the normalisation and stabilisation phase began in all these countries, during which legal, systemic and political conditions were set for the reform of inherited state security institutions.

4. Patterns of democratic accountability of statutory security actors

The analysis now turns towards existing patterns of control and oversight of security actors in the countries of the Western Balkans, and on the methods for the establishment of their accountability. The findings of the case studies in the chapters above suggest that state security actors in the Western Balkan countries are structured in accordance with democratic principles of developed societies. The Western Balkan countries have amended old and/or adopted new constitutional and legal solutions. It is also evident that they are rapidly abandoning state-centric security concepts. In other words, they are gradually adopting the concept of security as a public good, and accordingly shaping the security sector in a holistic manner. Consequently, the sector's structure has been considerably modified in the past ten years, though to a different extent in each individual country. Nevertheless, each sector now has a very diverse and complex structure, as some public administrative bodies have been added to the traditional security forces (Annex, Table 2).

Structural changes are also the result of a simultaneous diversification and specialisation of the old and emerging security institutions. These trends were spurred by radical changes of the security context on global, regional and national levels in the past twenty years. In particular, they were spurred by the emergence of a new political and security configuration on all levels, which gave rise to the develop-

202 The undeniable proof is the assassination of the Prime Minister Đinđić (2003), committed by members of the secret service and criminal formations.

ment of a modified list of challenges, risks and threats to the security of the global community, states and citizens.[203]

In order to respond properly to new threats, Western Balkan countries, like others in the Euro-Atlantic community, increased the numbers of their security actors. Certain authority was later given to, for example, customs, financial and tax institutions, and anti-money laundering units. These bodies also have powers to conduct some intelligence and counter-intelligence activities for their own purposes. At the same time, the protection of state borders was no longer under the jurisdiction of the military, but the border police. The same wave of changes swept over the military, police and intelligence services, calling for a redefinition of their mission and tasks.[204] This was deemed necessary because the countries had formed professional militaries. The traditional security institutions were extended to include various special operations units tasked with combatting terrorism, organised crime, money laundering, corruption, etc. Doctrines for the use of the military, police and intelligence services were changed. Out-dated boundaries between military and police are slowly disappearing, giving rise to a politicisation of the military and militarisation of the police. Moreover, intelligence services are increasingly engaged in some traditional police tasks on behalf of specialised judicial bodies.[205] Active participation of these countries in international security cooperation, along with the membership of some of them in NATO and/or the EU and the preparation of others for membership gave additional impetus to these changes.

These changes made it necessary for the Western Balkans countries to redistribute competencies and specify and delineate the powers of their security actors. To this end, existing and new laws were revised and amended (Annex, Table 3). Political and conceptual grounds for this were found in the national security strategies adopted during the previous decade (Annex, Table 4). Numerous thematic and specific strategies and operational and action plans for the removal of certain threats to national security came from the same source. For this purpose, cooperation among the ever-increasing number of state security institutions, and between the competent ministries and other public administration bodies, was stipulated by law. Horizontal and vertical distribution of governing competencies among the executive bodies has been formally secured throughout the region. Due to all these factors, democratic governance of the security sector became a demanding and complex task. Paradoxically, this complexity made it more probable that state security institutions would carry out their mission and tasks responsibly, and be accountable for them to the authorities and citizens. That provided an additional foundation for the democratic (re)shaping of the security sector.

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203 For more information on the way this list is made in the Western Balkans countries see: Hadžić, Timotić, and Petrović (eds), 2010.

204 For example, the explicit obligation to protect the territorial integrity of the country was excluded from the mandate of the Serbian Army; see The Constitution of the Republic of Serbia, article 139, The Official Gazette of the FRY, Belgrade, 2006.

205 We refer to special prosecutors' offices for war crimes and for organised crime.

The emergence of new actors permanently eroded the security monopoly and exclusivity of the traditional security forces. Parallel with this, a shift of national security from the high politics domain to the public policy domain began. Today, only parliament has the competencies to define national security strategy in Western Balkan countries, and executive bodies are obliged to draw upon those strategies in order to create and implement the current security policy. To achieve this, a clear chain of civilian command was established in these countries (Annex, Table 5). The lines of integrated and coordinated management of the state security institutions were simultaneously developed. Professional autonomy of the military, police and intelligence services was formally secured and strengthened.[206] Civilian supremacy in governance was also strengthened, owing to a gradual inclusion of non-uniformed experts in relevant ministries. This partly limited the influence of the security elites' corporate interests on governance. This is also the goal of professionalisation of public administrations, aimed at limiting the influence of the political class on the governance of the security sector. It can be justifiably concluded that executive actors in the region now possess all necessary authorities and means for strict control of the state security forces. It is far more important that this form of control, unlike the inherited authoritarian model, is now based, at least declaratively, on democratic procedures and precepts. All leaders and executives are bound by law to work transparently and to be available to the public, in accordance with legal provisions on confidentiality.

The main supporter of democratic governance comes from the fact that security sector governance regimes have now become rather complex, owing to an increased number of actors as well as administrative and command reforms. The establishment of bodies and procedures for internal control of each security institution is an additional check. Evaluation and assessment of the readiness and capacity of the units and members of a given institution is among the key competencies of internal control bodies. They are authorised to control the legality of security forces' work, including budget spending. In addition, one duty of internal control bodies is to systematically monitor whether the security institutions respect human rights of the public and of their own personnel.

Managerial and command competencies in the Western Balkans countries are distributed among different bodies and institutions of the executive branch. For example, a country's ministry of finance has an obligation to systematically control financial management in the statutory security sector. This is additional proof that systemic deconcentration, redistribution and restriction of security power has been undertaken. This dangerous power is thus no longer solely in the hands of a single state leader or ruling group. Local security services can no longer apply special measures without a court's written consent. It can be safely assumed that the danger of arbitrary – external or internal – abuse of state security forces has been largely removed in the region.

In order to prevent a situation in which all decision-making would depend on the power and willingness or unwillingness of the current administration, and on the ex-

206 It was for this purpose that the position of the director was introduced, who is selected through open competition.

ecutive bodies' free will in particular, the countries of the Western Balkans built a large infrastructure for democratic control and public oversight of statutory actors entitled to use force. Security-related competencies were formally distributed among the executive, legislative and judicial branches. Control and oversight were raised, as stressed in the case studies, to the level of constitutional and legal principle. For instance, Montenegro adopted a special law regulating this issue.

Key competencies for control and oversight were given to national parliaments. These competencies are based on the parliaments' authority to define a national security strategy, decide on war and peace, proclaim a state of emergency and adopt the state budget. In addition, parliament approves participation in international security missions and ratifies agreements, including those on the exchange of confidential data, with NATO and the EU. The control power of parliament also rests in its sovereign right to appoint and/or dismiss the government and its ministers. This right entails an obligation to constantly control and oversee their work. To accomplish this, parliament considers and adopts (or rejects) annual reports of relevant ministries and security actors under their jurisdiction. The parliaments of Western Balkan countries, like parliaments throughout the world, use the law and rules of procedure to authorise their committees to exercise – through various instruments and methods – direct control and oversight of statutory security actors (Annex, Table 6). If they discover that laws have been violated, the committees can ask the parliament to determine the accountability of civilian leadership and executive bodies that committed violations and politically sanction them.

In contrast, the judiciary has the final say in determining the constitutionality and lawfulness of security institutions' work and the work of their personnel. In cases of legal violations, the judiciary, unlike the parliament, has legal power not only to sanction perpetrators, but to demand return to the previous state of affairs. The scope of judiciary control in Western Balkan countries includes protection of human rights for the public, as well as the rights of security personnel. It is therefore the explicit obligation of the judiciary to oversee and control the work of national intelligence services if they violate or restrict constitutionally guaranteed human rights.

A key departure from the authoritarian model of civilian control in the Western Balkans was made by the introduction of independent state institutions (Annex, Table 7). The independence of these institutions is guaranteed by the constitution and/or related laws. Their heads are elected and appointed by parliament and they are accountable primarily to parliament for their work. Their formal independence from executive bodies is strengthened by the fact that their mandate lasts longer than the election cycle. The map of independent state institutions' areas of work in every Western Balkan country clearly indicates their role in overseeing critical aspects of democratisation and SSR, including: (1) free access to information of public importance and personal data protection, (2) protection of human rights and freedoms, (3) budget spending control, and (4) fighting corruption. In the majority of Western Balkan countries, specific bodies have been established in each of these areas and their task is to

control and oversee the work of executive actors. Statutory security actors are also under their jurisdiction.[207] Bosnia and Herzegovina went even further to establish a special institution of the ombudsman for the protection of human rights of local military personnel.

The findings of the case studies in this volume indicate that the national military, police and security intelligence elites in the region, as well as their subordinates, accept all key norms and consequences of electoral democracy. They willingly subordinate themselves to legal authorities and civilian leadership. In doing so, the elites seem to have retired permanently from the public political scene, making the state security institutions now formally depoliticised. It is also undeniable that civilian authorities in these countries fully exercise their jurisdiction over the state security forces.

Nevertheless, for a definitive assessment of the Western Balkan countries' progress in SSR and in securing the accountability of statutory security actors, the role that the EU, NATO and the USA played, and still play, in the region should be taken into account. The first phase of their military and political involvement was ended with the prohibition of war and the imposition of peace. The result was a changed local security context and the establishment of conditions for a gradual transformation of the Western Balkans from a conflict zone into a security regime. The second phase involved overall support for the normalisation and stabilisation of these countries as well as their initial democratisation. Support arrived in the form of advisory assistance and donations for security sector reform, including reform of existing institutions. The efficacy and efficiency of support was first secured, and later considerably enhanced, by the policy of conditionality in those countries preparing for NATO or EU membership.

These endeavours brought many benefits – economic, political and security – to the region. However, the countries' ruling elites benefited most. The policy of conditionality, however arbitrary it may have been, provided authorities with an alibi for making risky changes in the security sector. The focus on meeting EU and/or NATO standards resulted in hypocrisy by political and security elites. They dealt mostly with the reorganisation and modernisation of their respective institutions, and much less with radical reform. For this reason, they found it much more important to introduce new rules and institutions than to consistently implement the adopted laws or to improve the democratic capacities of the new institutions. It is therefore not surprising that occasionally foreign models and solutions were simply copied,[208] as some authors of the case studies observed. This is evident, for example, in the indiscriminate inclusion of NATO and US discourse on terrorism in national security strategies. The result is that terrorism is perceived as one of the major threats to national security in the majority of Western Balkans countries. The author's impression is that readiness for membership in NATO – particularly if it is supported by sending the troops to Afghanistan

207 The Constitution of the Republic of Serbia (article 138) stipulates that the President of the Republic is exempt from such control although he commands the army in war and peacetime.
208 This is illustrated by the uncritical adoption of the NATO concept of civil-military relations, which is primarily intended for the execution of occupational power, given the fact that it was tailored to serve the purposes of NATO mission in Afghanistan and Iraq under US leadership.

or Iraq – can hide and/or compensate for serious setbacks not only in SSR, but in the consolidation of democracy in these countries.

This helps explain why political and security elites in the region adopted democratic vocabulary so quickly and successfully. An uninformed observer may get the impression that relationships in the "authorities - security actors - citizens" triangle in the Western Balkans countries run smoothly, without serious tensions. He/she may wrongly assume that the local security sector no longer generates serious threats to the democratic system and personal safety of its citizens.

5. Conclusion

As many studies point out,[209] numerous incongruences between the proclaimed and realised goals in the Western Balkans call for caution. Major discrepancies were observed in many SSR areas, as well as in the process of establishing accountability. For instance, it is obvious that new legal and systemic structures do not in themselves guarantee responsible and democratic behaviour by state security institutions and their leadership. Evidence for this claim is the ease with which the governments of these countries support the increased competencies of intelligence services for the implementation of special measures and for permanent control of electronic communications. It is also difficult to see how national authorities managed to reform their security institutions without undertaking lustration or opening the intelligence services' secret archives. Moreover, 'selective memory' is still a prevailing policy across the states that emerged from the former Yugoslavia, where previous wars are perceived, for different reasons and despite numerous crimes, as not only legitimate, but necessary. When armed conflicts ended, instead of clearing up the war mess and establishing individual accountability for crimes, the local heads of state started apologising to one another. This gives rise to suspicions that members of state security forces are still being socialised on the remnants of the ideology and value system inherent to previous wars. However, these remnants are now disguised and covered under the veil of a democratic narrative.

There is also a huge discrepancy between the system of democratic control as installed and its results in practice. It becomes evident when the outcomes of parliamentary control and oversight are carefully analysed. The majority of case studies explain these deficiences as the absence of "political will" of the ruling parties and unwillingnes of deputies (MPs) of the majority parties to control their party colleagues who exercise power in ministries charged with overseeing security forces. Other reasons include the small number of parliamentary support services and simultaneous participation of

209 Here I refer to the majority of the context analysis publications produced by the consortium members of this project. The only exception is Croatia, which achieved, according to the authors of the context analysis, the highest standards of SSR and of securing the responsible work of state security actors. See: Knezović and Staničić, 2011.

MPs in the work of several committees. The list also includes various forms of obstruction that executive bodies resort to in order to make the work of independent state institutions more difficult.

What is actually at play in the majority of Western Balkans countries is not the development of democratic accountability, but organised and covert pressure put on the state security forces to be loyal to the ruling parties and their appointed executives in the relevant ministries. It is more about personal and/or party control, rather than democratic control, of these institutions and their members. Executives appointed by parties still have discretionary powers which allow them to be sole decision-makers in matters such as confidential and/or urgent procurement, the conversion of the military industry, or the fate of public property used by security institutions. As a result, it has become quite common in the region that, after changes of power following elections, nearly entire top-level personnel of ministries and security forces are replaced.

Even if all the above-mentioned reasons are true, they are not sufficient explanations for the lack of full democratic accountability of statutory security actors. The author firmly believes that the roots of these deficiencies, of which just a few were mentioned, lie in the nature of the systems that exist in the Western Balkans countries. Their characteristics are primarily determined by the fact that the post-conflict and post-authoritarian transitions of these countries remain difficult and have not been entirely successful. Research conducted by Freedom House warns that transition has not been finalised yet (Annex, Table 8).[210] Croatia, Serbia, Macedonia and Montenegro have been ranked as Semi-Consolidated Democracies (with the score 3.00-3.99). A score of 4.00-4.99 places Bosnia and Herzegovina in the group of Transitional Governments or Hybrid Regimes. Kosovo, with the score 5.00-5.99, has been ranked as a Semi-Consolidated Authoritarian Regime.

Given all the facts, it is reasonable to conclude that SSR in the Western Balkan countries can be carried out successfully only if their new democratic infrastructure becomes viable. Only then it can be expected that security actors, as well as their controllers and supervisors, will carry out their work responsibly and according to the needs of society and its citizens.

210 Table 8 developed by Gorana Odanović, BCSP researcher.

Annex

Table 2: Statutory security actors

Albania	BiH	Croatia	Kosovo	Macedonia	Montene-gro	Serbia
Armed Forces	Armed Forces BiH	Armed Forces	Kosovo Security Force	Armed Forces	Military of Montene-gro	Military of Serbia
State Police	State Investiga-tion and Protection Agency (SIPA)	Police	Kosovo Police	Police	Police	Police
Military Police	Intelligence – Security Agency BiH	State intelligence agency	Kosovo Intelligence Agency	Intelligence Agency	National Security Agency	Security-Intelligence Agency
Prisons Police	Court police	Military Security intelligence agency	Customs	Army Inte-lligence and Coun-terintelli-gence unit	Customs	Military Security Agency
State intelligence service	Border Police	Anti-terrorist unit		Customs	Administra-tion for Prevention of Money Laundering	Military Intelligence Agency
Military intelligence service	Police of Republika Srpska	State customs				Customs
Republican Guard	Police of the Federa-tion of BiH	USKOK				Tax Police
Financial Intelligence Unit	Cantonal police de-partments	Border Police				
General Directorate of Customs	Brčko Dis-trict Police	Coast Guard				
General Tax Directorate	Court police of entity/can-tons/Brčko district					
Coast Guard						

Table 3: New legal framework

Laws	Albania	BiH	Croatia	Kosovo	Macedonia	Montenegro
Army	Law on the Armed Forces of the Republic of Albania, 1998.	Law on Armed Forces Service, 2005.	Law on Defence, 2002; Law on the Service in the Armed Forces of the Republic of Croatia, 2002.	Law on Kosovo Security Force, 2008.	Law on Defence, 2008; Army service regulation law, 2010.	Law on Army, 2009.
Police	Law on State Police, 2007;	Law on Directorate for Coordination of BiH police bodies and Agencies for Police Structure Support, 2008.	Law on Police, 2000;	Law on Police, 2008.	Law on Police, 2009.	Law on Police, 2009.
Civilian Intelligence and Counter-intelligence Agencies	Law on National Intelligence Service, 1999;	Law on Security Intelligence Service, 2004.	Law on Security services of the Republic of Croatia, 2002; Law on Security Intelligence system of the Republic of Croatia, 2006.	Law on the Kosovo Intelligence Agency, 2008.	Law on the Intelligence Agency, 1995.	Law on National Security Agency, 2011.
Military Intelligence and Counter-intelligence Agencies	Law on the Military Intelligence Service, 2003.		Security and Intelligence System of the Republic of Croatia Act, 2006.			
Border police		Law on State Border Service, 2001.		The Law on integrated management and control of the State Border, 2008.		Law on the State Border, 2005.
Customs	Customs Code of the Republic of Albania, 1999.	Customs Policy Law of Bosnia and Herzegovina, 2004.	The Customs Law, 2010.		Customs Law, 1992.	Customs Law, 2008.
Financial and/or tax police						
State bodies for preventing money laundering	Anti – money Laundering and Counter Terrorism Financing Law, 2008.	Law on the Prevention of Money Laundering and Financing of Terrorist Activities, 2009.	Law on the Office for the Suppression of Corruption and Organised crime, 2001.		Law on Prevention of Money Laundering and Other Proceeds from crime, 2004.	Law on Prevention of Money Laundering and Terrorist Financing, 2009.

*Table 4 - part 1: Political and Strategic Framework **						
Albania	BiH	Croatia	Kosovo	Macedonia	Montenegro	Serbia
Security Strategy Document 2000 (2004)	General Framework Agreement for Peace 1995	National Security Strategy 2002	National Security Strategy (to be adopted in 2010)	Ohrid Framework Agreement 2001	National Security Strategy 2006 (2008)	National Security Strategy 2009
Defence Policy Document 2000 (2007)	Security Policy, 2006	Defence Strategy 2002	Kosovo Police Strategy 2008	National Security and Defence Concept 2003	Strategy of Defence 2007 (2008)	Defence Strategy 2009
Military Strategy 2002 (2005)	Defence Policy, 2001 (2008)	Military Strategy 2003	KSF Strategy Not adopted	Strategic Defence Review – Political Framework 2003		Strategic Defence Review 2009
Strategy of the MoD Sector, 2007	Military Strategy, 2009	Strategic Defence Review, 2005	National Strategy for Integrated Border Management 2009	National Security Strategy 2008		National Anti-Corruption Strategy 2005.
National Strategy on Integrated Border Management 2007	Military Doctrine 2003	Armed Forces Long-Term Development Plan, 2006		Strategy of Defence 1999 (2010)		National Anti-Money Laundering and Financing of Terrorism Strategy 2008.
National Strategy on Public Order Sector and State Police 2007	Defence Review 2009 (ongoing)			White Paper on Defence 1998 (2005)		National-Strategy for Combatting Organised Crime 2009.
National Action Plan for the Fight against Trafficking In Vehicles 2008	Defence White Paper 2005			Police Reform Strategy 2003 (2004)		

* The table was developed on the basis of data provided in the collection of essays "Security Policies in the Western Balkans" Miroslav Hadžić, Milorad Timotić, Predrag Petrović (eds), CCMR, 2010; the year when a document was revised and/or amended is given in parentheses.

Table 4 - part 2: Political and Strategic Framework						
Albania	BiH	Croatia	Kosovo	Macedonia	Montene-gro	Serbia
Strategy to Fight Organised Crime, Trafficking and Terrorism 2008	Strategy for Combat-ing Terrorism 2006			National Strategy for Integrated Border Manage-ment 2003		
	Strategy for Preventing Money Laundering and Financing Terror-ist Activities in BiH 2009					
	Strategy for Fighting Organised Crime 2009					
	Strategy for Fighting Corruption 2009					
	Strategy for Control-ling, Preventing and Fighting Drugs 2009					
	Mine Action Strategy 2002 (2009)					

Table 5: Civilian leadership and governance						
Albania	BiH	Croatia	Kosovo	Macedonia	Montenegro	Serbia
President	Presidency of BiH	President of Republic	President of Kosovo	President	Council for Defence and Security	President of Republic
Prime Minister	Council of Ministers BiH	Prime Minister	Prime Minister	Prime Minister	Prime Minister	Prime Minister
Council of Ministers	Ministry of Defence BiH	Council of Ministers	Ministry of Internal Affairs	Council of Ministers	Government	Government
Minister of Defence	Ministry of Security BIH	Minister of Defence	Ministry of KSF	Minister of Defence	Minister of Defence	Minister of Defence
Minister of Interior	Presidents of Entities	Minister of Interior	Ministry of Economy and Finance	Minister of Interior	Minister of Interior	Minister of Interior
Minister of Finance	En-tity/cantonal governments	Minister of Finance	Ministry of Justice	Minister of Finance	Director of the NSA	Minister of Finance
Minister of Justice	Ministries of internal affairs of Entities/ cantons	Minister of Justice	Director of KIA	Minister of Justice		Minister of Justice
Director of SIS		Director of SIA		Director of IA		Director of the SIA

Table 6: Parliamentary Control and Oversight Bodies						
Albania	BiH	Croatia	Kosovo	Macedonia	Montenegro	Serbia
Committee on National Security	Joint Committee for Defence and Security	Judicary Committee	Committee on Internal Affairs and Security	Security and Defence Committee	Parliamentary Committee for Security and Defence	Defence and Security Committee
Committee on Legal Afairs, Public Administration and Human Rights	Joint Committee for Oversight over the Work of Intelligence – Security Agency of BiH	Committee of Internal Policy and National Security	Committee on the Kosovo Intelligence Agency	The Standing Inquiry Committee		
Committee on Economy and Finance	Security Committee of the Parliament of Federation of BiH	Defence Committee		Parliament's Committeee for supervising of the Intelligence Agency and the Security and Counter Intelligence Directorate		
	Security Committee of National Assembly of Republika Srpska	Council for Civilian Oversight of the Security Intelligensce Agencies				

Table 7: Independent State Institutions						
Albania	BiH	Croatia	Kosovo	Macedonia	Montenegro	Serbia
People's Advocate	Institution of Human Rights Ombudsman of BiH	State audit office	Ombudsperson	Ombudsperson	Ombudsperson	Ombudsperson
State Supreme Audit Institution	Parliamentary Military Commissioner	Ombudspersons	General Audit Office	State Audit Office	State Audit Institution	State Audit Institution
Commissioner for the Protection of Personal Data	Personal Data Protection Agency BiH	State Commissioner for the Supervision of PP Procedures	Anti-Corruption Agency		Council for Civic Control of Police Work	Commissioner for Information of Public Importance and Personal Data Protection
Commissioner on Protection Against Discrimination	State Auditor		State Agency for Protection of Personal Data		Agency for Protection of Private Data	Anti-Corruption Agency
High Inspectorate on Declaration and Audit of Assets	Anti-Corruption Agency BiH					
Procurement Advocate						

*Table 8: Democracy score **								
Year	Albania	Bosnia	Croatia	Macedonia	Montenegro	Kosovo	Serbia	Average score for the Western Balkans in 2011
2008	3.82	4.11	3.64	3.86	3.79	5.21	3.79	4.07
2009	3.82	4.18	3.71	3.86	3.79	5.11	3.79	
2010	3.93	4.25	3.71	3.79	3.79	5.07	3.71	
2011	4.04	4.32	3.64	3.82	3.82	5.18	3.64	

* Score is based on the Freedom House 'Nations in Transit' annual reports. Source: Freedom House "Nations in Transit", http://www.freedomhouse.org/report-types/nations-transit . The ratings are based on a scale of 1 to 7, with 1 representing the highest level of democratic progress and 7 the lowest.

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Project methodology and grades: Mapping and monitoring security sector reform in the Western Balkans

Security Sector Reform Index: Measuring to Advance Democratisation

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211 Sonja Stojanović is the director of the Belgrade Centre for Security Policy (www.bezbednost.org). She is an author of the methodology for measuring SSR that was used throughout this regional collaborative research project. She has extensive experience in measuring SSR in transitional societies from the perspective of civil society.

Abbreviations and acronyms

BCSP	Belgrade Centre for Security Policy
BiH	Bosnia and Herzegovina
CEDEM	Centre for Democracy and Human Rights
CSO	Civil society organisation
CSS	Centre for Security Studies, Sarajevo
DAC	Development Assistance Committee of the OECD
DCAF	Geneva Centre for the Democratic Control of Armed Forces
EU	European Union
FoAI	Freedom of Access to Information, refers both to the right and the law
KCSS	Kosovar Centre for Security Studies
IDM	Institute for Democracy and Mediation
IMO	Institute for International Relations
NATO	North Atlantic Treaty Organization
OECD	Organisation for Economic Co-operation and Development
OSCE	Organisation for Security and Co-operation in Europe
PSC	Private security company
SSR	Security sector reform
SSRI	Index of Security Sector Reform
UN	United Nations

"Not everything that can be counted counts
and not everything that counts can be counted"

Albert Einstein[212]

1. Introduction

While struggles for oversight and accountability of security providers are issues as old as the study of democratisation itself, the interest of the international community in security reform in other countries is a newer phenomenon. Security sector reform (SSR) has been a major priority of international donors during the last two decades. As a region, the Western Balkans has been a focal point for SSR efforts, with substantial input from the international community. The ultimate goal behind the prioritisation of SSR has been stabilization of the region by re-establishing functioning state security institutions and oversight mechanisms. However, activities aimed at developing civil society's capacity to actively practice oversight over state and non-state security providers and their controllers were limited. More common were state-centric approaches to SSR. Missing was a holistic approach to SSR that acknowledges civil society as an important pillar of governance emphasizing democratic control, promoting transparency and independently monitoring security providers in order to increase their accountability.

It is in this context that the motivation arose to develop a rigorous, systematic methodology for mapping and monitoring the security sector from the perspective of civil society organisations (CSOs). This chapter introduces a measurement framework[213] on the quality of democratic governance of the security sector in democratising countries. It was developed by a CSO, for use by other CSOs, with the aim of strengthening nationally driven assessments and local ownership of security sector reform.

The methodology was originally developed by the Belgrade Centre for Security Policy (BCSP),[214] an independent Serbia-based think tank, for use in mapping and monitoring security sector reform in Serbia. The methodology was then expanded and advanced though a collaborative research project carried out by an informal consortium

212 Quoted in Williams, 2011

213 "Assessment refers to the collection of data to describe or better understand an issue, measurement is the process of quantifying assessment data, research refers to the use of data for the purpose of describing, predicting, and controlling as a means toward better understanding the phenomena under consideration, and evaluation refers to the comparison of data to a standard for the purpose of judging worth or quality." Huitt, W., Hummel, J., & Kaeck, D. (2001).

214 BCSP was founded as the Centre for Civil-Military Relations (CCMR) (www.bezbednost.org) in 1997. It is the oldest CSO specialising in security issues in the Western Balkans. In 2010, CCMR was renamed the Belgrade Centre for Security Studies in order to better reflect the scope of its mission and activities.

of seven CSOs from the Western Balkans,[215] each of whom made assessments of their respective national SSR contexts. The results of these assessments have, among other products, resulted in the country case studies available in this volume. The larger aim of the regional project was to develop a research and advocacy tool for civil society organisations interested in holistically overseeing the security sector in their respective countries. Therefore, the benchmarks for assessing progress in SSR were chosen in accordance with the oversight role of civil society. The methodology was built to reflect key challenges of SSR in countries transitioning to democracy.

In this chapter I present a brief background of the development of the methodology, followed by a discussion of the originality of the methodology, key challenges and consequences of its use, discussion of the data collected, and some examples of the measurement framework. I end by presenting some concluding remarks on lessons learned and ideas for future research.

2. Background: An Overview of the Index

The pilot version of the methodology (Stojanovic in Hadzic et al. 2009, pp. 67-100) was created and tested in a case study of the Serbian security sector from 2006-2008, conducted by BCSP. The results of the first monitoring phase of SSR in Serbia were presented in the Yearbook of SSR in Serbia, 2008 (Hadzic, Milosavljevic, Stojanovic and Ejdus, 2009). As a point of departure, Hänggi's definition of an ideal type of reformed security sector 'essentially aimed at the efficient and effective provision of state and human security within a framework of democratic governance,' (Bryden and Hänggi, 2004, p.1), was used to identify three aggregate dimensions of SSR: 1) democratic governance; 2) efficient security provision, and; 3) effective provision of human and national security. The Yearbook contains analyses of publicly available data on security sector reform progress along these three dimensions. Each of the three dimensions was further disaggregated into criteria and sub-criteria (see Table 1).

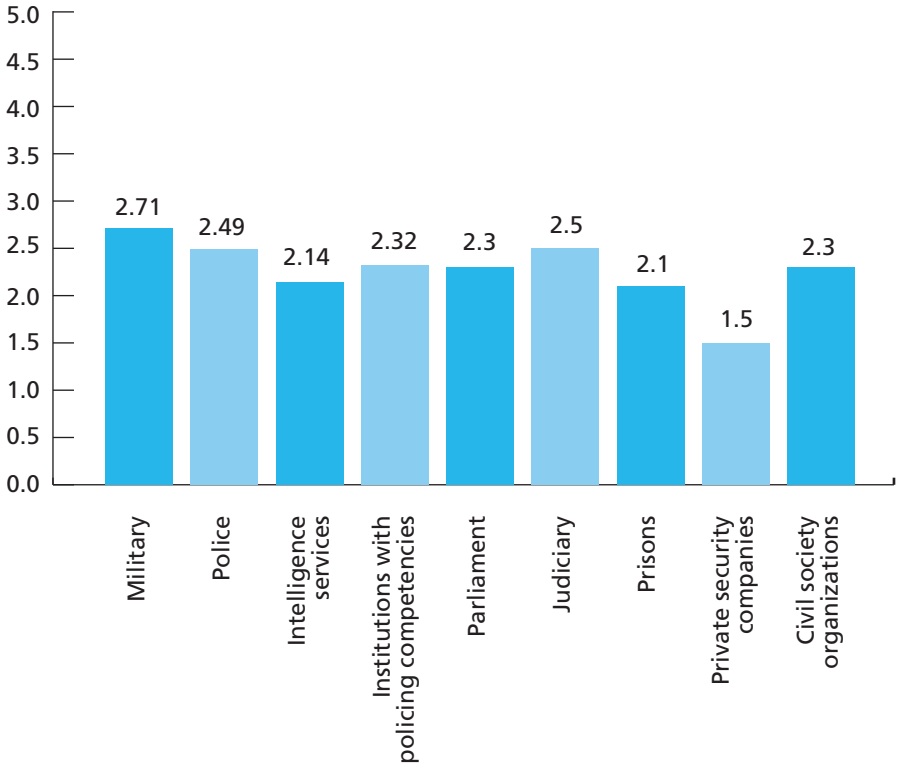
The dominant unit of analysis at that time were individual actors or components of the security sector. Each key actor was given a grade. Data was collected and analysed so that grades were given to the following actors: the military, police, intelligence services, institutions with some policing competencies (customs administration, tax police and the Administration for the Prevention of Money Laundering), prisons, private security companies, and state and independent bodies in charge of monitoring and control of the aforementioned actors (including the National Assembly, judiciary, and civil society organisations). For results of the first cycle of research, see Table 2.

215 The partners the project "Civil Society Capacity Building to Map and Monitor SSR in the Western Balkans" 2009-2011 include: Analytica, Skopje; BCSP, Belgrade; the Centre for Security Studies (CSS), Sarajevo; the Center for Democracy and Human Rights (CEDEM), Podgorica; the Kosovar Centre for Security Studies (KCSS), Pristina; the Institute for International Relations (IMO), Zagreb; and the Institute for Democracy and Mediation (IDM), Tirana. Additionally, the project was supported by the Geneva Centre for the Democratic Control of Armed Forces (DCAF) and funded by the Norwegian Ministry of Foreign Affairs.

Table 1: Dimensions, criteria and sub-criteria of security sector reform used during the pilot research by BCSP (2006-2008)

DIMENSION	CRITERIA	SUB-CRITERIA	Grades given			
			ACTORS			
			Statutory actors that use coercion (police, military, intelligence)	Statutory actors that do not use coercion (parliament, government, judiciary)	Non-statutory actors that use coercion (private security companies)	Non-statutory actors that do not use coercion (CSOs, academia etc.)
DEMOCRATIC GOVERNANCE	Representativeness	Representation of women	✓			
		Representation of national/ethnic minorities	✓			
	Transparency	General transparency	✓		✓	✓
		Financial transparency	✓			
	Accountability – democratic civil control and public oversight	Control by the executive	✓	The competencies, capacity and resources to exercise control over security providers and their managers	✓	The capacity to exercise control over security providers
		Parliamentary control and oversight	✓		✓	
		Judicial review	✓		✓	
		Oversight by independent state authorities (ombudsperson, anti-corruption agency etc)	✓		✓	
	Rule of law	Rechtsstaat (legal state)	✓		✓	✓
		Protection of human rights	✓		✓	✓
	Participativeness (Participation of citizens and civil society organisations)	Participation in policy-making	✓			
		Participation in implementation and evaluation of policy	✓			
EFFICIENCY	Good governance		✓			
	Human resources management		✓			
	Financial management		✓			
EFFECTIVENESS	Integratedness of security sector		✓	✓	✓	✓
	Legitimacy of the sector or actors		✓	✓	✓	✓
	Ratio between aims, resources and outcomes		✓		✓	✓

Table 2: Results of application of Index of SSR in Serbia (2006-2008)



The Yearbook was the first reference to cover the security sector holistically and it was widely used by policy makers, security practitioners and the European Commission as a baseline for measuring SSR progress in Serbia. The added value of the initial methodology's design was its actor-approach, which is more conducive to national advocacy, as media and security professionals were most interested in which institution is 'the best' and which is 'the worst' according to our Index. The grading range, from 1 (failing) to 5 (best), was used to communicate results. This scale deliberately adopts the grading system used by schools in region (1=Failing, 5=A), so it is easily understood by both security professionals and the wider public.

3. Changes in the Methodology

In the interest of improvement, the methodology from the pilot study was reviewed together with partners from the project and security professionals. After a critical assessment, suggestions were offered in peer-review sessions organised in Belgrade,

Brussels and Geneva.[216] This resulted in a decision to alter the focus of the research. The dimensions of efficiency and effectiveness were dropped from the second phase of research due to difficulties identified in the pilot version, specifically the need for greater technical expertise and access to confidential data (Stojanovic in Hadzic et al. 2009, pp. 67-100). Regarding the first issue, for a serious evaluation of efficiency of actions of statutory actors that use force (the police, military and intelligence services), it is essential to have specialised knowledge and technical expertise. For example, in order to define adequate indicators of police efficacy in suppressing and preventing crime, it is necessary to have criminological expertise. This kind of expertise typically requires years of work in the police or specialised training which is rare amongst civil society actors. Secondly, the research encountered a lack of available data that would enable a more precise measurement of each actor's efficiency in providing physical safety for citizens. For example, combat readiness of the military is usually carried out only as a part of internal assessments and it is classified in every country. It is difficult to measure effectiveness of whole institutions, especially those in the security sector. For example, the effectiveness of certain statutory security actors, such as the military or intelligence services, cannot be fully measured under normal (peacetime) circumstances. In other words, the effectiveness of armed forces can be evaluated with certainty only during a state of war or immediately after it. Similarly, the effectiveness of the intelligence services can be assessed in principle only on the basis of information publicly released by their civilian superiors or intelligence officials. This usually happens after intelligence services have successfully prevented some action under their jurisdiction.

Due to these serious challenges regarding access to data and quality control of interpretation of evidence, a decision was made to maintain a thematic focus on the quality of democratic governance in the security sector. This corresponded with the type of expertise typically available in civil society and with civil society's oversight role. The ultimate goal was to allow researchers to use the Index as an evidence-based platform for practicing public oversight of the entire security sector in their respective countries. Therefore, benchmarks for assessing progress in SSR were chosen to reflect the oversight perspective of civil society and the key challenges of SSR in countries in transition to democracy.

The second major change in the methodology was a shift from an actor-oriented grading approach to a sector-wide approach, which is explained in greater detail below. During the pilot study it became clear that some reform criteria were not of equal importance for all actors, and that they could not be equally applied. For example, standards for transparency are not the same in private security companies (PSCs) as in statutory actors authorised to use force (e.g. police, military etc). PSCs should make some information available to public authorities, but as private businesses they do not have an obligation towards citizens to be transparent to the same extent as those

216 The design of the methodology - including the separate components for mapping, monitoring, and measuring SSR - was thoroughly discussed at two meetings with foreign experts. The first was held in cooperation with DCAF in Geneva within the framework of the International Security Forum, on 20 May 2009. The second was held with the European Policy Centre in Brussels (EPC), on 17 March 2009.

institutions financed by taxpayers (unless they are contracted by public institutions). Statutory actors operate under a social contract with citizens and therefore have a greater obligation to make information available on their functioning. Similarly, it would be pointless to expect that citizens will participate in creating and implementing the security policies of private security companies, as these are commercial non-statutory agencies. Moreover, under the actor-based model, applying oversight criteria to oversight bodies themselves (e.g. parliament, the judiciary, the executive and independent state authorities or CSOs) less accurately measures the primary goal of SSR – effective control over security providers. Our research was interested in determining whether oversight bodies perform their oversight role, rather than whether or not they are under someone else's oversight. The second justification for the shift from an actor-based to a sectoral approach is that the sector-wide approach more realistically captures the aim to provide human security as an outcome delivered to individual citizens, irrespective of providers. Human security is reflected in feelings of safety and trust that citizens perceive through the interplay of multiple institutions. For example, the methodology no longer instructed researchers to assess separately the quality of human rights protection by the police, military, intelligence services etc., but to assess one grade for the quality of human rights protection over of the entire security sector. The improved methodology was inspired by a holistic approach to security sector reform, which treats human and national security as equal goals of security policy while acknowledging the contribution of both non-state and traditional state actors in the implementation of these goals.

Data was still collected for each actor (as in previous research) and next aggregated based on common trends, with an overall grade presented for each criterion. Data aggregation was done according to a generic grading format, described in greater detail below. While collecting and interpreting data, the researchers respected unique features of actors at the level of individual indicators (for example, differentiating between the desired levels of transparency among agencies with vastly different functions). Additionally, differences in the depth and quality of oversight exercised over specific institutions are explained in narratives which accompany grades. Within these narratives, certain 'champions' and 'worst students' are identified and supported with evidence, for advocacy purposes.

Thus, in the second cycle of the project (2009–2011), the methodology was enhanced in two tracks: firstly, new research procedures were developed to improve the validity of results; secondly, the Index underwent empirical fine-tuning through its application not only in Serbia but in research throughout the Western Balkans. The 'Index of SSR' was shared and tested by six partner think-tanks[217] in the regional component of the study, which resulted in individual publications on SSR in each of the respective Western Balkan countries.[218] While in this publication the research findings are not presented in a comparative manner, standardised methodology was used by the

217 For this purpose, BCSP delivered training sessions during which the Index of SSR and results of country studies were reviewed. Between training sessions, BCSP and DCAF staff members were in charge of research coordination and provision of mentorship to participating CSOs.
218 Including a 'Context Analysis of SSR' published in each country and this volume.

consortium to test its application in different contexts, improving its focus and highlighting comparable indicators. Great attention was paid to determining whether common procedures and instruments are applicable (i.e. verifiable when submitted to falsification testing) throughout the region. Important innovations in data collection and validation methods included consultations with journalists and professional representatives of state authorities of Serbia, as well as the creation of an Expert Review Committee composed of three independent reviewers.[219]

Table 3: Actor vs. Sector-wide approach to measuring democratic governance in security sector

Actor-oriented approach	Sector-oriented approach
• Allows more in-depth analysis of each actor (e.g. military, police…) • Recognizes different functions of different organisations and develops specific indicators • More interesting for local advocacy **Challenges**: • It is difficult to integrate results, which numerically reflect findings for different types of actors • Ranking the importance of actors	• Not all criteria are relevant for every actor • Better captures human security as an outcome and service delivered to individual citizens, irrespective of providers • More context sensible, taking into account the interplay among different actors • More interesting for international and regional advocacy as it aggregates data for whole sectors **Challenges**: • As an innovative and relatively untested method, presents challenges in implementation • Potentially less interesting for local advocacy • May shift focus away from notable actors who may serve as an example of best or worst practices

4. Goals of the Improved Methodology

Flaws and challenges noted in the pilot design led to methodological innovations that in turn helped redefine the ambition of the research. The improved methodology was developed in order to:

18. Create a methodological instrument for measuring SSR from the perspective of civil society in transition countries;
19. Generate and share useful knowledge on the state of democratic governance in the security sector;
20. Account for a whole-of-sector approach and the interplay between individual components of the security sector;
21. Enhance civil society's advocacy potential, based on systematized evidence;
22. Increase the capacity and commitment of civil society stakeholders to strengthen democratic oversight over the security sector.

219 This issue is presented in greater detail in the section of this chapter on data collection.

5. Components of the Methodology

Before gathering empirical data, the researchers had to find an answer to the problem of determining what a reformed security sector means, in other words, 'what a reformed security sector should look like.' According to Timothy Edmunds (2003, pp.20-21), the answer must be considered from three perspectives: a) from the perspective of an ideal type of reformed security sector; b) on the basis of regional standards of reform; and, c) on the basis of the reform process assessment in a given state (process/facilitation approach).

The first approach requires a previously defined generic framework or an ideal type of a reformed sector. Hänggi's definition was used for that purpose in this research, as described above. The three dimensions offered by Hänggi can be interpreted as final goals of SSR, although these have not been fully achieved even in developed democracies. As von Bredow and Germann observe (2003, p.167), 'the objective […] of SSR is to optimise the protective power of the security sector and, at the same time, to minimise the inherent coercive risks for the emerging democratic culture.' This is paradoxical, as success is usually measured in situations of crisis but avoiding crises is one of the goals of reform.

In understanding SSR as a process, our approach was that it is only possible to measure with certainty the level of SSR at a given point in time and that this requires using the ideal model of a reformed sector as a benchmark. To develop the measurement scale, it was necessary to further define the criteria and their content for each of the dimensions of reform. Each dimension had to be operationalised into criteria and the criteria were further developed into fields of observation. We considered that dimensions contained in the SSR definition given above were not absolute and manifested themselves differently in different countries. In addition, the general definition of SSR builds on the normative assumption of the existence or aspiration for a democratic political system. However, how this norm is implemented mainly depends on the dominant political culture and public administration tradition in a given country. For example, the same norm of democratic oversight over security intelligence agencies has been 'operationalised' differently across countries, depending on relations among the executive, legislative and judiciary branches and their relations with civil society. Consequently, oversight of security-intelligence agencies carried out by a government-appointed committee (such as in the UK) is as democratic and legitimate as oversight carried out by a parliamentary committee (such as in Germany) or by a security and defence committee which oversees the police and the military (as in Serbia), or when a special body, consisting of civil society representatives, is included in parliamentary oversight (as in the case of the Civic Oversight Committee in Croatia).

Box 1: Where is this framework applicable?

There is no value-neutral measuring, and the methodology used within this project is no exception. The tools chosen for measuring are based on certain values and norms, usually of the party on whose behalf the measuring is undertaken. The logic of appropriateness which guided the BCSP team in defining the criteria for each dimension and in determining the indicators reflects the normative assumption that 'true' security sector reform takes place only in countries that have begun democratisation. Therefore, in this methodology, even the lowest grade of 1 assumes that at a minimum the first democratic elections have taken place. Differently from Freedom House's 'Freedom in the World' annual survey, we do not give grades for 'non free' or reforms that have taken place in non-democratic regimes. In addition, this SSR Index assumes a continental legal and public administration legacy, as well as standards set by international organisations (particularly European organisations, e.g. Council of Europe). In this context, a state is perceived as the 'dominant security provider' and oversight mechanism and authority for security governance comes 'from above' (from statutory institutions) and from legal sources. Since the idea of the state as a desirable model of social organisation is presupposed here, this model will probably not be fully applicable in regions where this concept of the state has not yet been internalised.

Our methodology also presents challenges for use in analyzing federal states with multi-level governance and oversight structure (including, in our study, Bosnia and Herzegovina).

Starting from norms valid in Europe, where we wanted to apply our Index, we decided to operationalise the various dimensions of an ideally reformed security sector in line with the standards of the UN and European regional organisations (OSCE, Council of Europe, EU, NATO). This conformed with a regional approach to measuring reform. However, the disadvantage of this approach is that these standards do not provide the right tools for a holistic measurement of SSR. Nonetheless, our basic analytical units were derived from minimum common standards and these were then turned into our criteria of SSR. This was how the first version of the SSR index was created, comprising a list of 22 differentiated criteria. After this, the relevance of different criteria was debated in workshops held in Belgrade and Oslo, which included the participation of international experts.[220] Similarities between the original twenty-two criteria allowed them to be logically consolidated into a smaller group of criteria, on which data collec-

220 Apart from the contributions of BCSP researchers and the presence of associates such as Djordje Vukovic (CESID), Bogoljub Milosavljavic and David Law (DCAF), who were all included in operationalising the Index, we received useful comments from researchers from the Norwegian Institute of International Affairs after a presentation held in May 2008 and from a group of students enrolled in the Master's programme on International Security at the Faculty of Political Sciences at the University of Belgrade and finally from participants of the DCAF regional Young Faces programme, with whose participation the methodology was tested.

tion began during the first year of the project.[221] After several pilot versions, the selection was narrowed down to eight final criteria.[222] The following criteria were chosen within the regional component of the project: (1) the legal state; (2) parliamentary control and oversight; (3) judicial control and oversight; (4) oversight by independent state bodies; (5) executive control and oversight; (6) general transparency; (7) financial transparency; and (8) representativeness.

Each criterion was sub-divided into fields of observation. In order to develop a standardised instrument, each criterion had no more than five fields of observation. In defining different criterion and disaggregating them into fields of observation, we relied upon internationally recognised norms for democratic security governance while trying to avoid overlapping definitions between criteria. For example, in order to analyze public availability of data it is important to understand and examine implementation of key exceptions to this right: limitations related to protection of privacy and limitations related to information classified in order to protect national security. Therefore, we emphasized weighing the right of access to information of public importance with the need to protect privacy of individuals and security as public good. Within the criterion of financial transparency we emphasized two key areas where public availability of data is intended to prevent corruption and increase efficiency: transparency of budget planning, execution and reporting of state institutions; and public procurement. For the criterion of general transparency three interconnected fields of observation were delineated: 1. access to information of public importance, 2. protection of private data and 3. protection of classified data. For financial transparency, two fields of observation were examined: 1. transparency of budget and 2. transparency of public procurement.

Our intention was to avoid double-counting, or overestimating different factors by measuring the same events several times under different criteria. For example, in order to avoid overlap among criteria, it was agreed that in the legal state criterion only the existence, compatibility and consistency among primary laws and their enforceability/implementability was analysed, while the quality of implementation of these laws was monitored in other criteria. For each criterion, a Codebook was developed containing a detailed definition of the criterion, delineation from other criteria, key indicators, a grading scale from 1–5 and useful references for further research.

221 An interesting tool for determining the level of importance of each criterion was designed by a team from the Institute for Democratisation, which worked on the development of the Index of 'open society.' Within the framework of this research, two questionnaires were given to experts containing a list of criteria for societal openness. The first questionnaire was used to assess the level of implementation of openness in Croatia. The second was a scale of importance, on which the experts judged the importance of each criterion for achieving an ideal level of openness in any society. For more details, see Goldstein, Simon (2006) Index of Open Society, Croatia 2006 (DEMO: Zagreb).

222 Two other criteria relevant for democratic governance, human rights protection and participativeness, were analysed in both cycles of research in the Serbian case. However, due to limited resources in the regional project, these two criteria were excluded.

Table 4: Matrix of criteria analysed in the second phase of research 2009-2011

Name of criterion	Fields of observation				
Legal State	Existence of relevant legislation (Constitution, primary laws on actors and criteria, law on public administration) regulating security sector.	Regulation of security sector actors` competences, missions, tasks and regulation of civil chain of command	Arrangement of democratic civilian control and public oversight in accordance with international norms of DCAF and human rights protection	Compatibility and consistency of laws	Law enforceability
General Transparency	Free access to information of public importance.	Personal data protection	Confidential data protection		
Financial Transparency	Budget transparency	Public procurement transparency			
Executive Control and Oversight	Oversight and control over the legality of work and human rights protection.	Oversight and control over the legality of the budget spending.	Reporting	Sanctioning	
Parliamentary Control and Oversight	Oversight and control over the legality of work and human rights protection.	Control over the budget spending of the state actors that are entitled to use force.	Oversight and control of the government policy implementation.	Oversight and control of the bilateral and multilateral security cooperation.	
Control and Oversight by Independent State Institutions	Human rights protection. (e.g. Ombudsperson)	Control over the budget spending; Suppression of corruption. (State Audit Institution, anti-corruption bodies)	Oversight over free access to information of public importance and personal data protection. (e.g. Data Commissioner)		
Judicial Review	Judicial oversight of law enforcement: a. use of force by law enforcement officials b. treatment in custody	Use of special investigative measures			
Representativeness	Access to jobs for women in security sector	Access to career development opportunities	Access to jobs for national minorities in security sector	Access to career development opportunities Accessibility of all posts at all levels of management to national minorities	

6. The Logic of Grading

The logic of grading reflects the differentiation between the first and the second generation of security sector reform. Grades 1 to 3 refer to first generation reforms. Grades 4 and 5 reflect second generation reforms.

According to Edmunds (2003, pp.16-19), first generation reforms include putting in place constitutional norms, basic laws and structures necessary for getting the security sector under the control of democratically elected civilian authorities. However, this is just one of the first steps in the democratisation process. The focus of reform in the first generation is the establishment of formal structures of civilian control as well as a clearer division of competencies among different actors within the security sector. This sets the foundation for democratic control. In addition, the demilitarisation and depoliticisation of security sector governance should also take place during the first generation. These steps seek to remove the potential danger of state or non-state actors using force to jeopardise the democratic functioning of a political community. Therefore, key indicators marking completion of the first generation of reforms in the Index of SSR are:

- Adoption of key primary laws for all fields of observation, containing provisions in line with international standards of democratic civilian control of armed forces and human rights standards.

- Ending notable bad practices so that their occurrence is scarce, serious violations are an exception, and there is a track record of good practice. This usually requires at least 2 years of implementation of new primary laws.

The second generation of reforms coincides with the process of democratic consolidation (Linz and Stepan, 1996, p.7).[223] This only applies if the process of state creation has been completed in a given community; that all threats to sovereignty have been removed. During the second generation, civil society (which has been empowered) becomes an active participant of democratic civilian control and oversight, alongside politicians. This contributes considerably to the social legitimisation of security institutions in society. It is equally expected that first generation reforms become consolidated at lower levels of management and that mid-managers identify with reforms. Fundamental democratic values should in effect become part of the organisational and professional culture of state actors. These organisations should begin to act on the principles of political neutrality. The key question in this phase is not whether the security sector should be reformed or why, but how to accomplish reform in the most efficient and effective way. It is therefore necessary during the second generation to build administrative capacities of state agencies for the management of re-

223 In particular, Linz and Stepan give five arenas of democracy: (1) Conditions must exist for the development of a free and lively civil society, (2) There must be a relatively autonomous and valued political society, (3) Rule of law to ensure legal guarantees for citizens' freedoms and independent associational life, (4) A state bureaucracy that is usable by the new democratic government and (5) An institutionalized economic society.

sources within the security sector. A pre-requisite is that civil servants and institutions are trained in planning, budgeting, programming, monitoring, overseeing and implementing reforms. Therefore, key indicators for the second generation of SSR (marked with grades 4 and 5 in the Index) focus on:

- High levels of institutionalization of good practices through development of relevant tasks/posts/organisational units, secondary legislation and internal procedures, and allocation of sufficient and adequate material and human resources.
- Changes in the behaviour and attitudes of security sector personnel so that their organisational culture has internalized norms of democratic governance. These changes must be recognized by society, as shown by public trust in institutions and lack of fear to address them directly with grievances.

7. Aspects analysed in each field of observation

Differentiation between first- and second-generation security sector reforms allowed the researchers to more clearly justify grades given for each criterion. In addition, it allowed them to more systematically apply a set of four grading components, which were elements that could be used to evaluate the criteria, with the exceptions of the 'legal state' and 'legitimacy.'[224] Within all fields of observation the following grading components were applied:

1. **Constitutional and legal framework**
2. **Implementation**
3. **Administrative and management capacity**
4. **Values**

1. 'Constitutional and legal framework' refers to the existence and quality of the constitution and primary laws for actors, criteria, and public administration. Primary laws include laws adopted by parliament. Primary laws for actors are key laws governing different actors within the security sector, which exist for all major security actors. They define its competences, mandate and position within the security sector (e.g. Law on Military, Law on Police.) Primary laws for criteria are key laws for every criterion. They should be applicable to all security sector actors (e.g. Law on Free Access to Information of Public Importance and Law on Data Classification). Primary laws for public administration are key laws for public administration. They regulate the work of all state bodies which create public administration (e.g. Law on State Administration, Law on Government, Law on Civil Servants, Law on Ministries).

224 For an explanation of different units of analysis between the criterion 'legal state' and the legislative review component within other criteria see the end of section 'Components of Methodology' in this chapter. For the criterion 'legitimacy,' the generic component of 'trust/distrust in state actors' was analysed using results of public opinion surveys, including victimization surveys.

Within the grading component 'Constitutional and legal framework' researchers analysed the existence or lack of key (primary) legislation for each criterion, checking if it was in line with international standards of democratic civilian control and protection of human rights. In analysing primary legislation, their analysis was limited to:

- Existence of provisions in the constitution which provide for certain rights (e.g. protection from torture and inhumane treatment). It is however, important 'not to ask too much' of constitutions, as many do not have explicitly defined provisions on democratic civilian control or newer generation rights (e.g. freedom of access to information).
- Existence of key/primary laws for each criterion (e.g. for general transparency, primary laws are Law on Freedom of Information, Law on Classification of Data, Law on Personal Data Protection) and
- If that criterion was introduced in key laws for actors (e.g. Law on Defence, Law on Police, Law on Civilian Intelligence Service) and public administration legislation (e.g. laws on civil servants, ministries etc.). For example, the researchers analysed whether the general right of access to information was properly regulated within the primary laws on actors (e.g. law on police, military etc.) or if it was introduced in a such a way that it unjustifiably restricts access to information (e.g. by containing provision that only 'justified requests for information will be granted' as in the case of Serbian Law on Police).[225]
- Researchers did not analyse the existence of legislation not essential for introducing relevant norms at the systems level, or legislation which only partly regulates security actors (e.g. Law on Ammunition).

The existence of key primary laws is a discriminatory indicator for grades 1-3. To receive a grade of 3, the methodology required that primary laws for all fields of observation under one criterion be adopted. For example, if two out of three primary laws for the 'general transparency' criterion (Law on Freedom of Information, Law on Classification of Data, Law on Personal Data Protection) were adopted, the researcher could not give grade 3. Without the adoption and implementation of all three laws one cannot talk about adequate safeguards being in place to guarantee the right to access to information. For example, laws on freedom of access to information (FoAI) are commonly adopted without being fully implemented due to lack of related laws on data secrecy and/or private data which would clearly define all exceptions to the freedom of access to information.

2. 'Implementation' refers to the frequency, quantity and quality of bad/good practices and an established track record of good practice. The existence of bad practice served as a discriminatory indicator for grades 1-3. Bad practices could be analyzed in terms of:

225 For more details see Stojanović, Sonja 'Police Reform' in Hadžić, M. et al. (2009) Yearbook of Security Sector Reform in Serbia 2008 (Belgrade: CCMR & Dangraf), pp. 159-199.

- Frequency: frequent/occasional/exception,
- Quantity: widespread/moderate/scarce,
- Quality: serious bad practice (e.g. severe cases of violations of rights),moderately bad practice or minor cases of bad practice.

In order to give a high mark for a track record of good practice, we relied upon the same indicators: frequency, quantity, and quality; as well as duration/continuity of good practice.

To receive a grade of 3, bad practice had to be scarce, serious bad practice (e.g. excessive use of force resulting in death) had to be an exception, and there must have been a track record of good practice (at least 2 years). The idea of establishing a good track record was chosen in order to make sure that grades were not awarded for new norms which may not be implemented. Under this grading component, we acknowledged that it is possible for serious bad practices to still occur, but as exceptions. Even in the most advanced consolidated democracies, individuals can sometimes breach social norms and create serious incidents. However, such practices can no longer be regular and enshrined in an organisational culture, as they are when a grade 1 is assessed.

3. 'Administrative and Management Capacity' analyses the existence of institutional preconditions for efficient and effective management. This element of grading is key for higher grades (4 and 5), as it is only at grades 4 and 5 that the administrative capacity is expected to improve and service becomes more predictable due to improved management.

Some indicators used were:

- Existence and quality of secondary legislation and internal regulations (by-laws, instructions, procedures, guidebooks, codes etc.).[226] Secondary legislation and internal regulations should be in line with international standards of democratic civilian control and protection of human rights, and there should be procedures in place for effective provision of service in line with democratic governance.
- Existence of tasks in job descriptions/posts/organisational units in charge of provision of service (e.g. units analysing complaints of citizens) or oversight of implementation of criterion (e.g. Ombudsperson in charge of overseeing protection of human rights). For some criteria, we did not require evidence of a specific post/organisational unit, but rather that the task is recognised as a responsibility in the job description (e.g. liaisoning with civil society). This indicator is important to understand who or which units are tasked to provide certain services.

226 Also known as 'laws made under the authority of parliament' (secondary legislation – adopted by the executive in order to administer the requirements stipulated in laws). It is contrasted with 'laws adopted by parliament' e.g. primary laws.

- Adequate allocation and management of material and human resources necessary for implementation of the criterion: Relevant organisational units should be equipped with adequate quantity and quality of material and human resources necessary to perform their role in an effective manner.

- Institutionalizing a criterion in the manner described above usually requires at least 5 years of implementation. This timeframe was justified with the expectation that an implementation period longer than the typical term of one government (4 years) is indicative of a commitment to and institutionalisation of a new norm.

This set of indicators is important for higher grades (4 and 5). While some institutional preconditions for implementation of a relevant norm might exist at lower grades, it is only at the grades 4 and 5 that administrative capacity has improved and service delivery has become more predictable due to improved management. The key difference between 4 and 5 is that in the latter, management capacity also encompasses proactive practices and knowledge-based management (e.g. greater reliance on analysis, intelligence, strategic planning, evaluation, performance management etc.).

4. 'Values' analyzed internalisation of norms enshrined within the organisational culture of security actors and the attitudes/perceptions of society. Acceptance of SSR values is a key indicator for higher grades (4 and 5). Within this set of indicators we analyzed:

- Whether the organisational culture has internalised new norms or provides resistance and impunity for breaches of democratic civilian control and human rights norms. Evidence for this was gathered indirectly through analyses of practice (e.g. number of declined requests by citizens, impunity for higher ranks, choice of sanctions for breach of right, politicisation of certain function) or directly through interviews, focus groups, internal surveys, and participant observations. Also, important for analyses of change in organisational culture was evidence of any change of values nurtured in training (entry-level, in-service), as well as in the requirements and procedures for promotions and sanctions.
- Attitudes/Perceptions of society. This considers whether a new norm (e.g. access to information) was implemented in such a way that ordinary citizens trust that state institutions will provide them a service in line with their rights. It also means that new behaviours of security providers have been legitimised with society at large.
- Fulfillment of this set of indicators requires a longer period of time; a change of generations within state institutions is often necessary.

'Values' is a key indicator for higher grades (4 and 5) for a criterion. It is only at grade 5 that norms have been fully internalised in organisational cultures of relevant state institutions and legitimised in society at large.

8. Grade aggregation at the level of criteria

After extensive research, the findings were summarized qualitatively and a grade was assigned for each criteria. The grades were required to be on a discrete, half-point scale (compared to the continuous decimal-based scale of the pilot study). Grades were assigned for whole criteria, without grades being assessed for each field of observation. These final grades were not simply an average of different components for each criterion but holistically considered the criteria beyond the sum of its constituent parts. It should be mentioned that the final grades do not account for the intentions, even the best ones, of the actors in question. Researchers were not assessing the amount of effort put into reform, but rather the outcome. Despite criticism received from those whose work was assessed that the Index of SSR does not capture all efforts and progress made on a yearly basis, for reasons of validity, higher grades were only awarded if efforts led to improvement.

Grade 3 provided an important watershed level of reform and is important for understanding the grading scale.[227] In order to receive a grade 3 or higher, relevant rights need to be safeguarded in a state's constitution and primary laws for all fields of observation need to be adopted. For example, in the case of general transparency, this would mean that public access to information and privacy of personal data are guaranteed in the constitution and the following laws have been adopted: Law on Freedom of Information, Law on Classification of Data, and Law on Personal Data Protection. If the adopted legislation does not contain provisions in line with international standards of democratic civilian control and human rights protection, a grade 3 could not be awarded. For example, if legislation on freedom of access to information exists but demands justification for requests from those that require public information, a grade 3 would not be appropriate.

Moreover, legislation must be implemented for at least two years. That usually means some administrative and management capacity is in place including key secondary legislation and internal regulations (guidebooks for implementation, standardised forms, etc.). Also, it would require that existing posts/organisational units were tasked to perform duties prescribed with the primary laws for that criteria or new posts/ organisational units were developed for that purpose. In the case of general transparency, this would mean that statutory security institutions have identified posts or units in charge of dealing with requests for freedom of access to information, data classification and personal data protection. It is also important that independent state institutions are established to oversee general transparency (e.g. Information Commissioner, Data Protection Commissioner, etc.). The relevant authorities might not have enough resources for their work, but they must have been allocated some resources so that those in charge of providing services for a criterion can start functioning.

227 For a comprehensive discussion of each grade level, please see Annex I.

Table 5: Generic grading system

	Constitutional and legal framework		Implementation			Administrative and management capacity		Values	
	Relevant provisions in Constitution	Legislation	Seriously bad practice	Bad practice	Decent practice	Procedures and Institutions	Resources (human, financial, material)	Organizational culture	Public recognition
1		?			?	?	?		
	Frequent, wide-spread, severely bad practice, maybe no legislation								
2						? ?	? ?		
	Still some bad practice, attempt to regulate relevant right for criterion resulted in adoption of some, but not all laws for relevant filed of observation								
3	For all fields of observation								
	Laws and key institutions are in place for all fields of observation, sporadic bad practice								
4									
	Mechanisms are fully functional (track record time of successful implementation), institutionalized through secondary legislation, bad practice is an exception								
5									
	Institutionalization for all indicators, prevention is the rule, there is organisational culture and acceptance by broader society								

The results of these factors are most evident at the level of implementation and a gradual change of values. In practice this usually means that laws have been implemented for at least 2 years. Examples of bad practice may still exist, but serious bad practice is an exception. Sporadic bad practice may occur mostly due to lack of adequate resources. Security institutions mostly comply with the decisions of oversight bodies. Personal data is collected, stored and distributed in line with legislation. Information is selectively classified as secret according to clear criteria for classification which has been made public and can be challenged in judicial or external oversight initiatives, in line with the relevant law on data classification. There is no resistance to reforms, but dominant organisational cultures may not yet have internalised all relevant democratic norms. In practice, this means that officials in security institutions disclose relevant data not because they believe in the right of citizens to know about public matters, but because the new legislation prescribes that they should do so. At this level of reform, the public has started demanding services from state institutions, although selectively, and there is still some lack of trust. The public is informed about new rights but not educated sufficiently to routinely practice these rights.

9. Data collection

Research teams conducted significant research on each criterion that included desk reviews of primary and second sources, interviews, questionnaires and in some cases focus groups with relevant state authorities. Due to the pioneering nature of this

exercise, most research teams gathered data predominantly from primary sources (official legislation, reports, overviews of statistics, etc.).

Desk research revealed a lack of official reports specific for the security sector and a scarcity of independent secondary analysis. More data was available regarding legislation and less about values held by state security institutions' employees. Researchers faced a particular challenge that state authorities in charge of control and oversight of public administration (e.g. State Audit Institution, Ombudsperson, etc.) did not provide specific data on the security sector, but presented these institutions as a part of general trends. It was especially difficult to find information on implementation of laws and administrative and management capacity in the reports of state institutions. There was a large difference in the amount of available data on security sectors among countries analysed. For example, more empirical sources were available in Serbia where there are many civil society organizations specialized for oversight of the security sector and stronger independent state authorities actively practicing oversight. Sources in Bosnia and Herzegovina and Kosovo were predominantly created by international organizations or consultants and did not always take into account accountability to the domestic population. All countries lacked secondary sources produced by independent entities (other CSOs, academia, the media). In all countries, research on some aspects of democratic governance was truly a journey into unexplored territory, with financial transparency, public procurement and executive control serving as examples. All countries also lack reliable statistics, which created problems when analyzing the quantity and quality of implementation.

As such, mapping components were mostly implemented by direct requests to relevant authorities under freedom of information regulations. Participating organisations used original questionnaires developed by BCSP and adjusted them to their cases. This proved useful in indirectly testing the transparency of security institutions. Some difficulties were encountered, including: understanding the jargon used in various security institutions, following up requests which were ignored and suffering informal pressure due to excessive use of FoAI laws. Requests for interviews were initially difficult to get, despite promises of anonymity to the sources. Once the project research became better publicized due of FoAI requests or the publication of preliminary results, some research teams gained access to useful interlocutors. Interviews proved useful for under-researched topics. The nature of the insights provided in interviews depended on the profile of interviewee. In general, research teams found that parliamentary staffers and professionals working in security institutions were more willing to talk about specifics and provided richer content, while interviews with politicians proved more useful for obtaining insights on context and values.

In conclusion, as the Index on SSR seeks to gather information on different aspects of the security sector, it was crucial to select and design appropriate data-gathering instruments. No single source could provide all the information required. This is an important lesson learned from the Index's initial regional phase, where the project relied too heavily on a single research method, namely desk research. A relatively large

number of research methods and a resource-intensive research design, mixing different methods, were essential for ensuring accurate and useful research outputs. It also accommodated variations in the institutional designs and political contexts studied.

10. Validation of research instrument and findings

The validity of research findings was improved through focus groups (expert consultations) with representatives of government agencies and journalists. Moreover, all papers were reviewed by BCSP and DCAF experts, as well as peer reviewed in a series of nine workshops organized during the project cycle.

At the workshops, researchers were given the opportunity to review papers and grades from other organisations, usually in mixed teams. A special session was organized in the last workshop for a final review of grades, some of which are included in this publication.

11. Measuring oversight from the perspective of a CSO

A major innovation of the methodology was that it was initiated by a CSO for use by other civil society organisations, with the aim of strengthening nationally driven assessments and local ownership of security sector reform. The majority of methods and instruments used to assess SSR are devised to suit donor needs and interests. This applies equally to individual donor countries[228] and international organisations which endorse reforms in candidate countries seeking membership (NATO, EU) or organisations encouraging reforms in their own member countries (OSCE, UN).[229] This could explain, at least in part, why none of these organisations has developed a holistic/comprehensive approach to measuring progress in SSR; or more precisely, why they only draw their beneficiaries' attention to certain aspects of SSR. So far, the OECD (2007) is the only organisation which has developed a comprehensive approach, in their Handbook on Security Sector Reform,[230] which contains guidelines and instruments for programming and implementation of a holistic approach to SSR and for measuring its progress. However, this is primarily intended for donor countries that are members of the OECD Development Assistance Committee (DAC).[231]

228 A majority of conceptual texts on SSR were developed in the UK and the Netherlands. For key sources see: Rynn and Hiscock (2009); and Rynn (2009).
229 For a detailed list of standards and models for SSR promoted by different international organisations, see: Law, D. (ed.) (2007) Intergovernmental organisations and security sector reform (DCAF) or for the second generation literature: Sedra, Mark (2010) The Future of SSR (Ontario: CIGI).
230 OECD-DAC Handbook on Security System Reform (SSR): Supporting Security and Justice (2007) available at: www.oecd.org/dac/conflict/if-ssr.
231 DAC-Development Assistance Committee is the main body within which OECD member countries define and monitor global standards in key areas of development and co-ordinate their development assistance (www.oecd.org/dac).

Therefore, the benchmarks for assessing progress in SSR in the above described methodology were chosen in accordance with the oversight role of civil society and to reflect the key challenges of SSR in countries transitioning to democracy. An important consequence of this is that our measurements greatly depended upon publically available data.

12. Measurement as an advocacy tool

A motive of our methodological approach is to increase its public advocacy potential by creating transparent benchmarks and solid empirical evidence that highlights specific areas for improving democratic governance of the security sector. The guiding principle here is the claim that 'what gets measured, gets managed' (Pollitt, 2000, p.121). The assumption behind this well-known performance management aphorism is that by measuring performance it becomes evident what should be done to improve or maintain quality. While this is not always true and all indicators can be perverted, designing our holistic framework for analysis has considerably helped participating CSOs to develop their understandings of security sector governance and to diagnose key issues in their respective countries. Measuring helped provide more comprehensive insight into key problems in regional security sector governance and assisted with developing policy recommendations in each of the participating countries.

The second assumption behind the aphorism quoted above has also proven true; that is, measurement draws the attention of those whose performance is measured.[232] By promoting the results of this study we want to attract the attention of the governments studied and each country's public to the achievements and weaknesses of democratic control and accountability of security sectors. Using our Index, we hope to use empirical evidence as a starting point for a more rational debate about accountability in Western Balkan security governance. The results could be used to inspire further debate about the accountability of current policy-makers for SSR progress setbacks or delays.

Our empirical evidence should also help reduce the politicisation and securitisation of SSR discussions in the region. This is of great importance, as SSR belongs to the domain of high politics (Hoffmann, 1966, pp. 892-908) i.e., a public policy which is of particular importance for the sovereignty of a state and the protection of its citizens' national identity. These issues are difficult to place under public scrutiny as they more easily trigger emotions, prejudices, beliefs and ideology-laden arguments, compared to so-called 'low politics' (e.g. health, education etc). This is particularly important for Western Balkan states in a post-conflict setting where security issues are still pre-

232 At the time this paper was written, only BCSP and KCSS had presented the results of their research to those whose work they have evaluated. BCSP launched findings from the first cycle of research in a series of events and during a media campaign promoting the *Yearbook of SSR in Serbia*. In the second cycle of research, BCSP had group consultations (focus groups) with those whose work was evaluated. KCSS presented a separate publication with results for Kosovo based on research done within this project, which garnered much attention.

dominantly discussed from collectivist and ethno-nationalist perspectives. Information about which security actor is in charge of which domain, what their competencies are, who controls different actors and what their budgets are is not openly available. This lack of transparency impedes national oversight of the security sector (including by civil society) and impedes confidence building necessary for regional security cooperation. Hence, an impartial mapping of the security sector in each Western Balkan country was an integral early stage of the project, to facilitate the later process of measuring and grading.

The Western Balkan societies do not have a long tradition of citizen participation in the oversight of security sector governance. As a consequence, traditional security actors have more expertise and credibility than most civil society organisations. We hope to use our Index of SSR to contribute to the increased visibility of civil society organisations in security policy communities, as well as their increased credibility amongst the general public. Therefore, we expect that putting forward empirical evidence will help create an environment for debate based on rational arguments and replicable research. Any recommendations made based upon our research gains credibility from the fact that our evidence was collected in a systematic manner using clear benchmarks for the success or failure of SSR.

13. Challenges

The major challenges of implementing this methodological framework have been: dependency on public sources, aggregating grades for entire sectors and acquiring comprehensive understandings of security sector actors' distinctive features.The amount of data available and the types of sources used, and consequently the grades given, were often indicative of the level of transparency in the work of different security sector actors. Institutions which granted researchers access to data gained an opportunity to make potential progress in their reform known to the public and therefore to be assessed more thoroughly. On the other hand, non-transparent institutions risked having the changes they had made pass unnoticed by the public, resulting in lower grades due to the lack of available data. For example, during the first cycle of the Serbian case study the Ministry of Interior, intelligence agencies, judiciary and prisons all failed to provide the number of their employees, nor did they provide any data on human resources management. The researchers tried to overcome this problem by collecting data from secondary sources and by triangulation with media sources. Consequently, the grades for these actors were lower than for other actors that provided required data or made it available on their websites.

The most difficult challenge has been aggregating findings at the sector level. This requires advanced understanding of individual actors (e.g. police, military, intelligence, PSCs, etc.) and their interplay. As background literature and empirical data is more available for traditional security providers, final research findings contain disproportionally more data and analysis for these two 'usual suspects' than for other actors. It has proven almost impossible to collect data on non-statutory actors (e.g. private se-

curity companies, CSOs) in all examined countries. It is also very difficult to aggregate one grade in situations when there is great discrepancy in the quality of democratic governance among actors. For example, it is not uncommon that executive control over the police is much more developed and transparent than executive control over the military or intelligence agencies. There is more information on the functioning of internal affairs units and other bodies that deal with citizens' complaints about the police and investigate police corruption and violations. Additionally, in most cases decent parliamentary oversight has been exercised over the police and military but only formally exercised over intelligence services, making the assessment of an overall grade for parliamentary oversight difficult. These kinds of dilemmas were first resolved by individual researchers and then discussed at joint workshops so that different research teams would apply the same standards to their countries.

Conceptually, the grading system risks missing the context in which reform takes place and may not adequately represent reform dynamics, including how far a security sector has progressed in comparison to before reforms began.[233] Proposals to increase the grading scale to reflect a greater number of potential outcomes (including non-free societies) have been discussed. Additionally, the Index does not capture unique post-conflict dynamics present in some cases, especially the role of international actors in Bosnia and Herzegovina and Kosovo. Therefore, similar grades may be given for different dynamics in different countries, based on different contexts.

Finally, the methodology captures well a level of democratic governance in a particular security sector at a particular moment of time (mapping component). Moreover, it also might indicate the weakest and strongest links in oversight and democratic governance (monitoring or diagnosis component). It does not, however, necessarily provide reasons for success or failure. As much of the analysis is oriented towards the functioning of statutory institutions, it misses informal drivers or spoilers of reforms. Based on findings from the mapping and monitoring components of the project, more in-depth research needs to be designed to examine the dynamics of accountability in each country that account for these more subtle influences.

14. Conclusion

This chapter has offered a brief description of the background, ambitions, logic, limitations, and aspirations of the methodology that has guided the research of this informal Western Balkans research consortium. The aim of creating the Index of SSR has been to combine qualitative and quantitative research methods in a way that sheds light on the dynamics of SSR, identifies its 'critical points' and provides tools for the longitudinal tracking of this process in countries consolidating democracy. The

233 Before beginning the measuring phase of the project, the partner CSOs published separate 'Context Analysis of SSR' studies that focus on analyzing the socio-political context within which reform was carried out in their respective countries since the fall of Communism in 1989. Links to relevant publications are provided in the Introduction to this publication.

primary aim of the project and this publication is to contribute to the development of practical policies in the Western Balkans. The contributors hope that the empirical data and insights presented in the publication will raise readers' awareness about the potential difficulties of measuring the process, as well as encourage further academic research on SSR in states in transition.

Annex I: Grading System for SSR

FIELDS OF OBSERVATION		Field 1	Field 2	Field 3	Field 4	Field 5
GRADE 1 Focus is on legal norms and bad practice	**Constitutional and Legal Framework** (Constitution, primary laws for criterion, actors and public administration legislation)	*Indicator existence of primary laws:* Primary laws for that criterion have not been adopted (e.g. for general transparency primary laws are Law on Freedom of Information, Law on Classification of Data, Law on Personal Data Protection). *Indicator contents of primary laws are in line with DCAF and human rights standards:* If some primary laws exist, their provisions are not in line with international standards for that criterion, especially standards regarding democratic civilian control and human rights protection. At the same time, if there is a primary law for criterion, it is very likely that the primary laws for actors (e.g. Law on Defence, Law on Police etc.) have not been harmonized with it, so they limit introduction of that criterion in practice.				
	Implementation (results of implementation)	*Indicator frequency, quantity and quality of bad practice:* There is a widespread bad practice. There are systemic and systematic violations of human rights. Systemic violations refer to those induced by institutions, while systematic violations refer to frequent and great number of violations. Cases of serious bad practice are not unusual.				
	Administrative and management capacity for implementation	*Indicator existence and quality of secondary legislation and internal regulations* (by-laws, instructions, guidebooks, codes etc.): As the key legislation is lacking or is not in line with DCAF and HR standards, relevant secondary legislation is either missing or does not contain provisions which would guarantee provision in service in line with democratic governance. *Indicator:* Key posts/organisational units in charge of implementation of criterion are either missing or are not performing their role in line with standards of democratic security governance. *Indicator adequate allocation and management of material and human resources necessary for implementation of the criterion:* Relevant organisational units are not equipped with adequate quantity and quality of material and human resources necessary to perform their role in effective manner.				
	Values (of employees in state institutions and wider society)	*Organisational (institutional)* culture does not stimulate sanctioning violations of human rights. There is active resistance to reforms. *Attitudes/perceptions of population:* Population is lacking trust in state institutions and therefore does not dare to demand for implementation of criterion (e.g. filing complaint with human rights NGO and not with government authority).				

FIELDS OF OBSERVATION		Field 1	Field 2	Field 3	Field 4	Field 5
GRADE 2 Focus is on legal norms and practice	**Constitutional and Legal Framework**	*Indicator existence of primary laws:* There are a few primary laws, but not all fields of observation have been regulated with primary laws. Indicator contents of primary laws are in line with DCAF and human rights standards: Some primary laws are in line with international standards of DCAF and HR protection, while most primary laws for actors are not providing adequate guarantees for protection of HRs and DCAF.				
	Implementation (results of implementation)	*Indicator frequency, quantity and quality of bad practice:* There is still bad practice and attempts of introducing good practice. Serious bad practice is occasional. Good practice has not yet become a regular phenomenon.				
	Administrative and management capacity for implementation	*Existence and quality of secondary legislation and internal regulations (by-laws, instructions, guidebooks, codes etc.):* As there is lack of adoption of norms of DCAF and HRs in primary legislation, secondary legislation and internal regulations DCAF and HR and/or are not implemented. *Key posts/organisational units in charge of implementation of criterion* are either missing or are not performing their role in line with standards of democratic security governance. Maybe some new bodies were created after the adoption of some of primary laws for observed criterion, but the institutional infrastructure for implementation of criterion is inadequate and not fully functional. *Resources* have either not been allocated at all or insufficient quantity and inadequate quality of material and human resources is allocated for implementation of the criterion.				
	Values (of employees in state institutions and wider society)	Dominant *organisational culture* is still undemocratic and there is resistance to reforms. *Attitudes/perceptions of population:* Population is lacking trust in state institutions and therefore does not dare to demand for implementation of criterion (e.g. filing complaint with human rights NGO and not with government authority) or starts selectively asking for some services but not all they are authorized to demand.				

FIELDS OF OBSERVATION		Field 1	Field 2	Field 3	Field 4	Field 5
GRADE 3 Focus is on the existence of primary laws that are in accordance with DCAF and the beginning of their implementation	**Constitutional and Legal Framework**	*Indicator existence of primary laws:* **There are primary laws for ALL fields of observation** and they contain provisions **in line with international standards of democratic civilian control and human rights protection.**				
	Implementation (results of implementation)	Good practice exists for a while. (In practice this usually means that the laws are being implemented for at least 2 years). There are still examples of bad practice, but serious bad practice is exception.				
	Administrative and management capacity for implementation	Key preconditions for start of implementation of all primary laws are in place. This means that: *Key secondary legislation/internal regulations have been adopted* so to enable the start of implementation of new legislation. Existing *posts/organisational units* were tasked to perform duties prescribed with the primary laws for that criteria or new posts/ organisational units were developed for that purpose. In any case, they have started working and performing their duties. Some resources have been allocated so that posts/units in charge of provision of services for this criterion can start functioning.				
	Values (of employees in state institutions and wider society)	There is no resistance to reforms, but dominant *organisational culture* has not yet internalised all relevant democratic norms. *Attitudes/perceptions of population*: Population has started demanding services from state institutions, but selectively and there is still some lack of trust in their fair treatment.				

FIELDS OF OBSERVATION		Field 1	Field 2	Field 3	Field 4	Field 5
GRADE 4 Focus is on institution-alization and positive values	**Constitutional and Legal Framework**	There are all primary laws that are in accordance with DCAF.				
	Implementation (results of implementation)	There is a notable track record of good practice (minimum 5 years). Good practice has become a rule and bad practice is an exception. Bad practise is regularly proportionally sanctioned.				
	Administrative and manage-ment capacity for implementation	There is a horizontal and vertical harmonization of all legal documents necessary for implementation of criterion. This means that new norm has been intro-duced not only in primary laws for criterion, but also in primary laws for actors and in relevant public admin-istration legislation. Majority of relevant secondary legislation is adopted. The result of harmonisation is that norms in relevant primary legislation are not contradictory and that together with harmonized secondary legislation and internal norms they provide a coherent legal platform for implementation of criterion. The posts/organisational units tasked to perform duties prescribed with the primary laws for that criterion are fully functional and equipped with sufficient resources. If there has been cooperation with CSOs is in imple-mentation of criterion, it is no longer carried out on ad hoc basis, but there is institutionalized in set of procedures and practices.				
	Values (of employees in state institutions and wider society)	Democratic values are adopted by the institutions. Bad practice is regularly and adequately sanctioned. Citizens are being informed about their rights and about the results of state institutions' work. The special attention is paid to information of citizens about sanc-tions applied to those who breached rights or norms of DCAF.				

FIELDS OF OBSERVATION		Field 1	Field 2	Field 3	Field 4	Field 5
GRADE 5 Focus is on adopted values	**Constitutional and Legal Framework**	There are all primary laws that are in accordance with DCAF.				
	Implementation (results of implementation)	Significant efforts are invested in preventive and proactive work to diminish opportunities for bad practice. There is a notable track record of good practice (minimum 10 years). Good practice has become a rule and bad practice is an exception. Bad practise is regularly proportionally sanctioned.				
	Administrative and management capacity for implementation	There is a horizontal and vertical harmonization of all legal documents necessary for implementation of criterion. The posts/organisational units tasked to perform duties prescribed with the primary laws for that criterion are fully functional and equipped with sufficient and adequate resources. The second generation of reforms has taken place after lessons have been learned from initial years of implementation. These reforms address the issue of more efficient and effective management. Therefore, new procedures and practices have been internalized to allow for strategic planning, performance management, budgeting and management of services required for advance implementation of criterion.				
	Values (of employees in state institutions and wider society)	Security sector institutions have completely internalised democratic values. Citizens have also adopted these values and have recognized that the institutions are functioning in line with democratic governance norms. There are no significant differences between perceptions of majority population and minority/marginalized groups (e.g. youth, ethnic minorities etc.).				

Important notes

Only one mark can be given and displayed for each criterion. We give **only one grade for the whole criteria and not grade per field of observation or grading component.** The final grade for crterion is not calculated as an average grade for grading components, but following the generic grading logic. When giving mark for criterion, take into account all specifics, including the importance of sequencing of the grading components for building marks. Please remember that in order to get a higher grade than 3, all fields of observations must be covered.

When to use a half grade?

- If one grading component is really good (i.e. legal framework) but the bad practice does not allow for higher grade then 2.5 should be given, not 3
- If we are assessing a number of institutions and some are better than others (but all fields of observation have to have a track record of decent practice)

Half grades are to be kept. Only a whole grade (e.g. 3) or half a grade can be given (e.g. 3.5), but not grades such as 2.8, 2.33, etc.!

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Grades for Parliamentary Control and Oversight, General Transparency and Financial Transparency

Introduction

Below is a compilation of grades given for three of the eight criteria used as indicators in the methodology of the project Civil Society Capacity Building to Map and Monitor Security Sector Reform in the Western Balkans, 2009-2011: 1) parliamentary control and oversight; 2) general transparency; and 3) financial transparency. The information contained below is by no means comprehensive and is meant only to showcase a limited selection of the results of the project.

The aim of the grading component of the project was two-fold. On the one hand, a standardized grading methodology forced researchers to be systematic and compile evidence based upon clear set of commonly accepted standards. Thus, grading encouraged uniformity of SSR assessments throughout the region and allowed researchers from different contexts to employ comparable methods and learn from each other's experiences.

On the other hand, the aim of grading, using a scale familiar to both policymakers and the general public, was to draw attention to key achievements and limitations of reforms and help spark a dialogue on the drivers, spoilers, and overall benefits of democratic civilian control over the security sector.

All efforts were made to obtain full disclosure of information from primary sources. Peer reviews were conducted to ensure consistent use of the grading scale.[234]

Final discretion in assigning grades was left to the individual researchers investigating security sector reform in their respective countries. Their local knowledge and expertise lends credibility to the grades assigned. In some ways, the uniform grading scale was constraining, forcing researchers to make judgments based on available evidence, which was limited in some cases. Despite its limitations, our hope is that these grades will serve as a useful tool in assessing SSR in each country of the Western Balkans and in promoting dialogue between civil society, security and oversight institutions and the public.

The grades given below were determined solely by the researchers from within their respective countries, based on the findings of their own research. The grades, while derived from a common methodology, are not meant to be comparative between different countries. Included are executive summaries of more detailed case studies prepared by each of the participating CSOs, independent publications of which are forthcoming. Data and information upon which each grade has been assigned can be made available upon request to the relevant CSO, each of whose contact information is included in this volume.

234 The peer review for grades and executive summaries for IMO has not been completed. Their grades reflect the authors' views and local ownership of analysis.

Table: Measuring Three Criteria of SSR in the Western Balkans

Albania

PARLIAMENTARY CONTROL AND OVERSIGHT	grade:	2

Executive Summary

Control and oversight of the security sector by parliament in Albania is generally formal and ineffective. The constitution lays down provisions for parliamentary control and oversight of the executive branch but implementation is partial. Parliament controls the adoption of legislation, policies and budgets but only partially oversees implementation. In addition, parliament endorses the executive's proposals with little or no substantial input. Laws on security sector institutions lay down accountability provisions but no legislation exists to regulate the interaction of parliament with these institutions in the implementation process. Incomplete legal frameworks and poor practice have precluded the development of administrative capabilities able to adequately support oversight processes. There are three permanent committees which perform control and oversight functions but their coordination is poor. The failure of parliament to effectively fulfil its mandate has led to the emergence of the executive branch as the main, rather unbalanced power in control of the security institutions.

Recommendations

- Legislation should be adopted in order to allow parliament to take a more independent position and balance the influence of the executive branch.
- Legislation should be adopted in order to provide standard parliamentary oversight procedures of all security institutions.
- Parliament should improve administrative capacities that support parliamentary committees.
- The permanent committees responsible for control and oversight of security actors should be better coordinated.
- Current legislation should be amended to allow for parliament to be substantially involved in the planning process of the budget of security actors.
- Current legislation should be revised to provide parliament with a precise role in the control of the arms' trade.

GENERAL TRANSPARENCY	grade:	2

Executive Summary

Efforts to increase transparency of public institutions in Albania during the last 10 years have been characterized by both progress and obstacles. The new legal framework has brought important improvements in transparency practices but still needs revisions and clarifications in order to provide a clear scheme of exceptions for the non-disclosure of public information, protection for "whistleblowers" and systems to promote better record maintenance. On the other hand, conflicts can be identified in the Law on Access to Official Information and the Law on Information Classified State Secret, as the latter fails to acknowledge society's right to know about issues of public interest that might override the government's classification. Furthermore, classification of information as well as the process of declassification of data remains non-transparent and hidden from the public.

Albania

Despite endeavors to promote transparency of security sector institutions by establishing primary legislation enshrined in the Law on Access to Official Documents, 12 years after the adoption of this law, vertical harmonization of the legal framework has yet to be accomplished. Rarely do organic laws refer to transparency standards while private bodies exercising public functions, such as PSCs, are not included in the scope of the existing law. The situation is not promising- we refer to the implementation of the law on access to official information, despite progress in establishing administrative capacities during recent years. Although citizens have become more aware of the application of this law, reports show problems in obtaining information from public and governmental institutions. As a consequence, the lack of unified institutional standards related to transparency practices in security sector institutions has led to a fragmented approach to transparency standards.

Recommendations

- Revise current legislation on access to information in order to provide guarantees in regards to the right of citizens for access to official data, as well as public authorities' obligation to release timely and comprehensive information.
- Current legislation on transparency should be harmonized in the organic laws of all security sector institutions, with no exceptions.
- Security sector institutions should apply the 'public-interest test' to evaluate the government's classification concerns while the Law on Access to Official Information should take prevalence: transparency is the rule, classification is the exception
- The Law on Access to Official Documents should clarify obligations concerning transparency of statutory private security bodies exercising public functions.

FINANCIAL TRANSPARENCY	grade:	2

Executive Summary

As a result of the EU integration processes, during the last few years there has been an effort to improve financial transparency but results have been mixed. Recently adopted legislation on a budget management system meets most international standards but still lacks provisions for ensuring full transparency along all four stages of the budget process. Due to poor implementation of legislation, financial transparency in Albania remains at very low levels. Some important documents regarding transparency are not published or are not made available to the public while the quality of information provided is poor. The adoption of secondary legislation has been slow while poor harmonisation has made implementation more difficult. Administrative capacities are generally in place but qualifications, levels of professional independence and cooperation among the structures involved in the four stages of the budgetary process are still poor. The security sector abides by the general regulatory framework but it reflects the overall problems of the system.

Regarding transparency in public procurement, the legal framework has been revised, aiming to comply with EU directives. Nevertheless, the legislation only partially approximates the 'acquis communautaire.' The introduction of new procedures and oversight mechanisms established for control of the public procurement system brought new developments in regards to institutional

Albania

transparency. However, serious obstacles exist especially in the implementation phase where the transparency of public procurement applications and evaluation processes remains low. Particularly, the legal framework fails to define transparency and oversight implications related to public procurement of 'classified goods' due to national interest, lacking clear oversight procedures to monitor and investigate these actions. This leaves room for illegal and corrupt practices.

Recommendations

- Legislation on the budget management system should be revised to include provisions that require the government to publish the re-budget statement and the mid-year review, as well as produce and publish the citizen's budget.
- The government should improve the quality of information provided in its published documents.
- Parliament should make better use of its powers and require the executive and the Supreme State Audit Institution to improve financial transparency.
- Revision of the secondary legislation should focus on ensuring full approximation with the acquis communautaire.
- Revision of the Law on Public Procurement should clarify the 'classified procedures' of public procurement on the basis of national security.
- Oversight institutions with authority over public procurement should be empowered to identify and punish potential violations.

Bosnia and Herzegovina

PARLIAMENTARY CONTROL AND OVERSIGHT	grade:	3

Executive Summary

Parliamentary competencies for security sector oversight and control are mainly determined by the Rules of Procedure of the House of Representatives and House of Peoples of the Parliamentary Assembly BiH and by the laws regulating the work of security actors. Apart from the state level, the entity parliaments - Parliament of the Federation of Bosnia and Herzegovina and the National Assembly of the Republic of Srpska - through their committees and boards, also have competencies over the security sector. Legal solutions provide the BiH parliaments with a good basis for quality democratic control over the security sector. The adoption of the Law on Parliamentary Oversight over the security sector at the state level, currently in parliamentary proceedings, would further improve the state-level legislative framework. Harmonization of state-level and entity-level laws related to oversight of the security sector is needed to avoid overlapping competences and to further improve the quality of oversight.

Administrative capacities of parliamentary committees need to be strengthened, particularly in regard to human resources and expertise. Lack of expertise and insufficient human resources are more prominent in entity-level committees, both with only one person acting as a committee secretary. On the other hand, capacities of state-level parliamentary committees are quite stronger, though additional expertise would further improve the quality of work these committees perform. International organizations, such as the OSCE and DCAF, who previously supported entity parliamentary committees, played a major role in training state-level committees after they were established. Besides these, USAID, the Groningen Institute and the European Centre for Security Studies provided assistance.

The work of parliamentary committees is constant and transparent. The data we have acquired and regular annual reports by parliamentary committees, published on the Parliamentary Assembly's official website, testify that these committees perform their work within the framework of relevant legal solutions, utilizing all legally available types of control. The work of the Joint Committee for Defence and Security and the Joint Committee for Oversight over the Work of the Intelligence – Security Agency of Bosnia and Herzegovina, both established in 2004, should be singled out, as it is rated as quite good and in accordance with the law and with democratic oversight over the security sector. Nevertheless, cooperation of parliamentary committees with executive bodies, and especially cooperation of the Joint Committee for Oversight over the Work of OSA with the Council of Ministers of Bosnia and Herzegovina, is currently below the required level and should be improved.

Analysis of the work of parliamentary committees indicates that their work has altogether reached a satisfying level, especially considering the complicated constitutional system of the state, which often appears as an obstacle to their work. It is necessary to improve the public image of parliament, since the public is rarely informed of the Parliamentary Assembly's work and achievements. Cooperation of parliamentary committees with civil society organizations and the media has not yet reached a satisfactory level. Improving this cooperation could increase public perception of parliament's work.

Recommendations:

- In order to improve the legal framework, the Parliamentary Assembly of BiH needs to adopt the Law on Parliamentary Oversight, currently in parliamentary proceedings.
- Improve cooperation between the Parliamentary Committee for Oversight over the Work of Intelligence – Security Agency BiH and the Executive Intelligence Committee of the Council of Ministers.
- Enhance parliamentary committees' administrative capacities and increase their numbers of expert staff, especially on the entity level.
- By deepening co-ordination with civil society organizations, strive to improve the public image of parliamentary committees in charge of overseeing security actors.

GENERAL TRANSPARENCY — grade: 2.5

Executive Summary

Bosnia and Herzegovina is a state with a fair amount of complex administrative structures. As a result, this complexity has a negative impact on the transparency of public administration, where, in spite of a very progressive Freedom of Access to Information Act, there have been no decisive steps taken to enhance accessibility of public institutions. No steps are being taken to enhance accessibility of officials dealing with requests coming from the public and nongovernmental sector. In a large number of cases, access to information held by public administration is either not allowed or is limited due to the ignorance of public officials and institutions to proper rules and procedures.

The Freedom of Access to Information Act, existing in three somewhat different version at the state and two of the entities levels, was adopted in 2001 and

Bosnia and Herzegovina	reveals deficiencies in legal provisions. For example, public institutions are not obliged to respond to a requester with a decision, removing the possibility for the requester to formally file an appeal. Also, there are no sanction provisions for those institutions which fail to respond to a request. The Institution of the Ombudsmen, mandated by the Act to monitor the overall implementation of legal provisions, has no authority to pass decisions that would be binding for public authorities. Annual reporting from the Ombudsmen reveal that a large number of public institutions completely failed to uphold the provisions of the Act. The criminal code of Bosnia and Herzegovina recognizes the criminal offence of "unauthorized processing of personal data." The Law on Protection of Personal Data, enacted in 2001 and updated in 2006, regulates the processing and transfer of data and applies to all authorities. The level of actual compliance remains low, in particular with regard to law enforcement agencies. An independent personal data protection agency, mandated by the law, was set up to monitor legal enforcement, oversee the process of complaints and report regularly to the Parliamentary Assembly BiH. However, limited progress has been made by this agency, as it is understaffed and does not operate fully independent of political influence. The Law on Protection of Classified Data stipulates provisions for classification and categorization of data which can fall under a high or low degree of classification, depending on the government institution. It is interesting to note that the degree of classification can vary from institution to institution, due to instances where government officials independently award differing levels of classification to different information. As such, this law has a negative impact on overall transparency and accountability. The Ministry of Security BiH has been mandated to monitor implementation of this law. Its legal implementation requires further modalities and, at the present moment, amendments are being debated. In terms of values for the three legal provisions outlined above, there has not been a significant shift of perception or raised awareness amongst the general population. All three legal provisions have been promoted in the media and through different NGO projects but apprehensions are still present. The administrative mechanisms in place for monitoring and oversight of implementation are still not independent or completely functional and are understaffed. Finally, in terms of identifying the most responsible amongst the security institutions in terms of freedom of access to information, the state-level agencies such as Ministry of Defence, Ministry of Security, State Investigation and Protection Agency and Border Police are among those institutions who have been forthcoming with information. On the other hand, the Intelligence-Security Agency of BiH has lagged behind. **Recommendations:** • Initiate changes to provisions of legislation passed subsequent to the Freedom of Access to Information Act, to remove obstacles which restrict the rights and obligations set out under it. This refers in particular to the Law on Tax Administration and Criminal Procedure Code in the Federation of BiH. • Through the media and parliament, advocate to the government to fulfil its obligations to implement the FoAI by appointing information officers, developing an indexed register and guide, and report information as set out under the legal provisions.

- Encourage the Ombdusman BiH to undertake further activities to raise awareness and educate citizens on the Freedom of Access to Information Act and to achieve a greater level of implementation.
- Raise awareness of the government on the need to harmonize state and entity FoAI legal provisions to include sanction on public institutions who fail to deliver information to requestors. (The state-level FoAI Act already contains this provision, but the entity FoAI laws do not).

FINANCIAL TRANSPARENCY grade: 2.5

Executive Summary

Security actors began implementing significant reforms in planning and managing public finances in 2005, with the introduction of a quality legislative framework and the establishment of modern mid-term planning processes. The Ministry of Finance and the Treasury BiH are responsible for preparing and financing the budget consumers, while security actors organize this in more detail in their rule books and decisions. The legislative framework was further improved in 2008 with the Law on Internal Audit in Institutions in BiH and the Law on Fiscal Council BiH. The significance of the enactment of these laws, which are in great measure harmonized with European standards, is shown by the fact that security sector actors take part in almost 40% of budget expenditures at the state level and around 10% at the entity level, mostly related to expenses of entity and cantonal police forces.

Certain legal measures to improve transparency, such as internal control systems, are implemented in multi-year phases, thus the results of their application are expected in the coming period. For many years, the practice in place has been to perform annual external annual audits of financial reports of security sector actors, gradually introducing order into the financial dealings of institutions and ensuring their transparency. Still, some actors, such as the Ministry of Defence BiH, continue to repeat omissions in budget expenditures each year. Mostly, these omissions concern various personal benefits, representation, travel fees, public procurement or the organization's internal control system. Actors responsible for ensuring transparency and parliamentary control over public resources expenditure are still under equipped and lacking political motivation to perform their necessary financial oversight function..

Features of financial control of the security sector in BiH rely on outdated practices of traditional oversight inspection, while active financial control is less frequently applied. Findings and opinions of the Audit Office for Institutions of BiH relate only to describing situations and giving recommendations to security institutions. Further procedures are within the competence of parliamentary committees, which have failed to take concrete steps to track down directors of institutions where financial discrepancies were noted. Civil society has pointed out the lack of transparency in budgetary expenditures on several occasions, but these efforts have had limited impact.

Concerning public procurement, almost all security sector actors garner similar complaints from audit institutions and oversight agencies. The Law on Public Procurement BiH does not specify a separate system for monitoring public procurement in security institutions, but special provisions exist to account for the particularity of needs and procurements of security actors. In its application so far, the law is harmonized with EU legislation, but its implementation has not yet reached an adequate level. Public procurement sections have been

Bosnia and Herzegovina	established in all security institutions but their personnel are not adequately qualified for the responsibilities their positions entail and their independence is questionable. Administrative capacities of the Public Procurement Agency and Procurement Review Body are insufficient for the work they perform. Both institutions are insufficiently staffed.. The Audit Office BiH's reports indicate certain improvements in the public procurement system of the security sector, while also warning that full application of the Law on Public Procurements is not ensured in some instances. The improvement of information availability, through presentations of the Agency for Public Procurement to government institutions, led to a higher degree of transparency and engagement of the public in this process. The establishment of an electronic database on public procurements would further contribute to transparency in this sector. **Recommendations:** • Security actors and other public institutions must project their budgets based on actual employment dynamics. Currently, budgets are often projected based on full employment implementation, which results in surpluses in payment resources, and these surpluses are then able to be used for other purposes. • Stimulate the establishment of specialized nongovernmental organizations in charge of monitoring and oversight of budgetary expenditures of security institutions • Strengthen administrative capacities and provide training for personnel working in public procurement sections within security institutions. • Simplify the procedure of public procurement of small value items and establish an electronic database on public procurement within the framework of the Agency for Public Procurement. • Strengthen the administrative capacity of the Agency for Public Procurement and the Procurement Review Body, as well as the capacities of contracting bodies and their ability to implement the Law on Public Procurement.

Croatia	PARLIAMENTARY CONTROL AND OVERSIGHT	grade:	4
	Executive Summary: Competences for control and oversight of budgetary planning and spending are fully regulated by laws, harmonized vertically and horizontally, and in line with international standards. There is a decade-long track record of regular oversight and control over budgetary planning and spending which during this period has been substantially improved. Oversight of compliance with laws and respect for human rights has also improved during the last ten years. This includes an ever improving track-record of regular and effective oversight and control over the use of special measures and coercive means as well as the state of human rights. Abuses related to the use of special measures and coercive means are few and far between and occur strictly on an individual level, while perpetrators are dealt with effectively. In the case of violations of the compliance of work with laws and human rights, parliament uses adequate mechanisms to initiate procedures for establishing political responsibility and changes to existing policies. Oversight and control over the implementation of government policies is fully regulated by the constitution and laws. Adequate mechanisms to initiate procedures for establishing political responsibility and changes to existing policies are in place and in extensive use whenever there is a reason to do so.		

Croatia

Oversight of the state's Bilateral and Multilateral Security Cooperation and Integration is firmly established within the legislative branch, parliament and its related committees. There is also a ten year long track-record of regular oversight and control over security cooperation. Parliament is reviewing and approving sending troops abroad, ensuring all the policies are in line with the principles of the UN charter and declarations and international laws. CSOs are consulted in the process of the revision of budgetary planning and spending and cooperate in dealing with human rights protection.

Competences within all the fields of observation are fully regulated by laws and by-laws that are harmonized - vertically and horizontally - and in line with international standards. There is a significant track record of regular oversight and control within all the fields of observation, with only budgetary spending and public procurement activities slightly lagging behind. There is practice of asking questions in parliament, conducting hearings and asking for additional reports. In the case of violations of the compliance of work with laws and human rights, parliament uses adequate mechanisms to initiate procedures for establishing political responsibility and changing existing policies. Parliamentary control and oversight is fully accepted by all security sector actors and MPs and there is serious awareness of its importance. Citizens are regularly informed about the results of the control and oversight, and as a result of the significant changes within the society, they are demanding ever more information and exerting more influence through the media and CSOs.

Recommendations:

- Develop a political culture that would further foster and stimulate as few restrictions as possible regarding the presence of the media and all interested parties in sessions of the parliamentary committees.
- Create even stronger and more frequent programmes aimed at education of the members of the security related parliamentary committees in matters of the national security.
- Change the practice present in the parliament now and create strong staff, properly equipped, educated and trained to pursue research and analysis in order to advise and support members of the committees in their work.
- Change the regulation in order to establish the right and authority of parliamentary committees not only to check the legality of actions of the security structures, but to go one step deeper and check operational procedures and standards, and their execution. An improved level of knowledge is a prerequisite for improvements in effective oversight functions and the existence of a strong staff is a prerequisite for reviewing operational procedures and standards.
- Change the process of passing strategic documents. The executive branch should be responsible for drafting, passing and implementing strategic documents as a basis for respective policies. The legislative branch in such a framework would still have all the instruments necessary for the oversight of policies. It would even be possible to arrange a system where the legislative branch would pass certain national security principles in the form of a very short declaration and then let the executive branch do the rest.

Croatia

GENERAL TRANSPARENCY	grade:	4

Executive summary:

During the last few years no serious and substantiated occasions of personal data abuse were reported by citizens. Most complaints, mainly on conceptual levels, arrived from NGO's. In all the fields of observations values related to them are being accepted and pursued by society and by state structures.

Having firmly established a legal framework, and annually improved implementation of the acquired legal and democratic standards, the most important part of the organized state structure's activities in the next few years will concentrate on improving the organizational resources and further internalizing democratic values.

Legislative acts exist to suit the need of better transparency and are generally in line with international democratic standards and laws on actors.

The process of institutionalization is finalized and thoroughly rooted in the implementation phase of all the relevant state security agencies related to all the fields of observation. Roles, procedures, competences and obligations are clearly defined and available resources allotted, while state agencies are reasonably well equipped and manned. A visible track record of sanctions strengthening their effectiveness in implementation of the primary and key actors' laws is in place and during the last five years has shown results.

Implementation, including follow-up of results of possible complaints, is also improving on an annual basis. For at least five to seven years it has been possible to note improvements in implementation. The amount of classified data is declining. Also, personal data is collected, stored and distributed in due manner in line with legislation. Violations are not widespread and not systematic. There are significant efforts to change the organizational culture of secrecy in state security institutions and state officials receive adequate training. There is an established procedure to challenge the classifications before the courts. Sanctions are deterrent, effective (due to harmonization of laws), and track record of implemented sanctions timely, updated regularly and transparent. Information given to the public in the form of some repeating brochures is timely and informative.

What is more important, there is significant improvement in internalizing these values by employees of security structures and the wider state administration. Also, there is a serious program of training and education of state employees and fostering of their understanding that misdeeds are at the end always connected with some sort of sanctioning. Finally, the value achieved by ever better and more deeply informing citizens, done regularly by the state institutions and organizations, help in confidence building, creating public opinion and improving public perception.

Recommendations:

- Improve the level of knowledge on both sides (government and civil society) in the field of protection of classified data in order to improve the efficiency of the existing system. This should be lead by security sector institutions and the state administration.
- The restricted information category should be constantly reviewed and the

scope of this type of information diminished on an annual basis. This should be carried out by parliament, its committees and security structures.
- All restricted information and data should be reviewed on an annual basis to ensure it still merits classification. To be done by security sector institutions and the state administration.
- More balance is needed between laws protecting privacy of personal data and information and freedom of access to information. This should be addressed by the legislature.

FINANCIAL TRANSPARENCY	grade:	3.5

Executive summary

In the Republic of Croatia, political steering of the budget cycle process is fully accomplished and implemented, with all the state administrative services fulfilling their tasks in supporting a proclaimed set of societal values. One of the most important social values is transparency of budgeting and public procurement, which is gaining both from an ever increasing political understanding of its importance and the influence of civil sector organizations. On the other hand, attempts to implement the multi-annual strategy of state expenditures have not been very successful so far, mainly because of the protracted economic crisis. Financial accountability, as a result of continually improving levels of transparency of security sector institutions and organizations, is fully in line and at the level with other state administrative services and agencies. Furthermore, because of the importance of security sector institutions and organizations, they are among the most scrutinized parts of the state structure by the media and independent civil society organizations. All necessary regulations which provide instruments for more substantive democratic oversight in terms of financial accountability are at hand and regularly implemented in practice. Systemic laws are in place and in line with relevant international standards on financial transparency.

The security or military budget is not separated from the overall state budget and does not have any special treatment compared with budgets of other state institutions and organizations in terms of its secrecy or lack of civil sector scrutiny. Public procurement in the security sector, by its very nature, is faced with much interest from the general public and the media. Relevant secondary legislation is in place and in line with international standards. All of the organizational units proscribed by the systemic laws are in place, although some of the competences are unclear and do overlap. Resources necessary for the work of organizational units are provided, but due to the general economic crisis there are still some areas not fully covered. General instructions for handling expenditures and procurement are provided. The legal framework has been harmonized. All relevant secondary legislation has been adopted. Other non-state actors are not only tolerated, but are invited to become part of the process of budget oversight.

The public procurement system underwent a number of significant changes at the beginning of 2008, including the entry into force a new Public Procurement Act (PPA) and a new institutional set-up with main secondary legislation. The Public Procurement Act is nearly fully compliant and harmonised with EU directives. Croatia intends to develop its electronic procurement capacities as well.

There is a multi-year track record of procedures and deadlines imposed by the systemic law and secondary legislation. Most of the beneficiaries prepare and

Croatia	
	contribute to the planning of expenditures by sending their plans in advance. Some of them also have developed their own internal set of instructions and regulations on handling procurement. Bad practice is discouraged and regularly sanctioned. Information on procurement is rarely classified and where access to information is denied, justification is reasonable, legal and timely, and mostly related to matters of national security. Decisions and rulings made by independent oversight authorities are generally respected, with some exceptions. Procurement contracts are generally available to the public. The right to deal directly with the bidder is defined only for rare cases of great urgency and very low overall value. Confidentiality applies on a case by case basis, yet it is precisely defined and followed by a clear legal procedure for execution. Values are generally accepted and there is no resistance. Internalization of values is being ensured through just and timely sanctioning of bad practice. Citizens are fully aware of the value of budgeting transparency. In general they understand the importance of the budgeting process and are prepared to get involved in order to guarantee it. **Recommendations** Budget: • The Ministry of Finance should improve the comprehensiveness of the executive's budget proposal through better and more efficient coordination of all the state institutions and organizations involved; • The Ministry of Finance should try to produce and publish a citizen's budget and a mid-year review, although all the relevant data are visible in the Budget structure for anyone wishing to analyse it; • It would be possible for parliament to think about placing more importance on involving citizens and members of NGOs in taking an active role at legislative hearings on the budget. Public Procurement: • The government should raise the level of its staff's education related to the public procurement procedures, especially focused on how to obtain value-for-money rather than focus predominantly on correct execution of laws; • The Ministry of Finance should improve and further develop the new Public Private Partnership and concessions system in order to increase the trust of economic operators and their capacity to participate in the process; • The government should also implement the latest amended EC Remedies Directives into Croatian legislation. The Ministry of Finance should lead this task on behalf of the government and it should involve parliament. • The government should strengthen implementation capacity at the DKOM in particular; • The Ministry of Finance should make a serious attempt to prepare what is necessary for the introduction of electronic procurement.

Kosovo

PARLIAMENTARY CONTROL AND OVERSIGHT	grade:	2

Executive Summary

The principles of parliamentary control and oversight are introduced by the Constitution and have been followed up by the primary laws and secondary legislations. The constitutional provisions guarantee a prominent role for the Assembly in overseeing the budget and policies of the security institutions as provided by law.

The consolidation of parliamentary oversight developed at the same time as the security sector meaning that in the pre-independence period (before 2008) the Assembly of Kosovo had limited practice in overseeing the aspects such as: budgetary expenditures, implementation of human rights and implementation of government security policies of the state actors. There are a limited number of professional staffers supporting the relevant parliamentary committees. The gradual reduction of external funds to fund those staffers and secretariat policies, which cannot guarantee that non-political staffers are selected, further threaten that parliament receives sufficient expert support. This research found out that parliament is constrained by constitutional provisions and the Ahtisaari package in scrutinizing the performance of the international military and civil presence in Kosovo.

Overall, the legislation for the parliamentary oversight of the security sector is in place. The constitution explicitly refers to parliamentary oversight and also primary laws on security actors include principles of democratic control. The practice showed limited track record of the assembly in reviewing the budget. There is also limited practice in discussing human rights issues though a specific parliamentary committee has been established for this purpose. Research could show that discussions on the implementation of some laws and amendments (such as Law on Police) have taken place; however, there is no evidence of discussions on the security policies.

Recommendations:

To the secretariat of the assembly:

- Design generic policies for recruiting and envisaging the budget line for additional local staffers to support the security related committees to make up for the reduction of the foreign support;

To the parliamentary committees:

- The relevant parliamentary committees on security as well as the budgetary committee needs to periodically review the budget for security institutions;
- The Committee on Internal Affairs, Security and Kosovo Security Force should also oversee the protection of the human rights of security sector employees. This applies also to the violation of human rights in private security industry;
- The security related committees should also start discussing security policies and invite civil society representatives to these discussions.

Kosovo

GENERAL TRANSPARENCY	grade:	1.5

Executive Summary:

Transparency of public institutions in Kosovo is limited and is far from being in line with best European practices. Several reports of internationally and locally based organizations repeatedly criticize the conservative approach of the government in refusing to disclose certain official documents. The tendency to refer to a document as being 'classified' runs contrary to the Law on Classified Information having in mind that this law has not started to be applied, yet. Concerning the security sector, the findings showed that the police were more efficient in responding to requests for access to the official documents, whereas there are no substantial records for the situation with either the Kosovo Security Force (KSF) or the Kosovo Intelligence Agency (KIA), as these institutions are in the process of consolidation. There are limited capacities among the public institutions and, overall, the current Law on Access to Official Documents is only partially implemented.

The Constitution guarantees the right of citizens to access official documents; it also highlights the right of data privacy protection, and considers the need for classifying information requiring regulation by specific legislation. The Law on Data Privacy Protection was approved in April 2010 and its implementation is still in its infancy. There is lack of awareness amongst citizens on the right to privacy protection.

Recommendations:

Access on Official Documents:

- The public administration in general and the security institutions in particular need to immediately start implementing the new Law on Access to Official Documents (2010);
- Security institutions shall refrain from refusing access to official documents under the excuse of 'national and public security" unless the document is classified.

FINANCIAL TRANSPARENCY	grade:	2

Executive Summary:

Transparency of public institutions is embedded in the legal framework of Kosovo - in the security related legislation, procurement and public financial management laws. The legal framework on the financial management and procurement is in place, though the procurement has been widely criticized for not being compatible with some European directives.

The Law on Public Financial Management and Accountability clearly set up the procedures of budgetary proposal and reporting including deadlines. Procedures related to budgetary circulars remain transparent and the external actors (such as non-governmental groups, journalists, citizens) can have access to the budget. The administrative capacity in the budgetary departments and procurement raises an issue of concern. In particular, research showed a low level of professionalism amongst the budgetary departments as well as internal control mechanisms.

Kosovo	
	The security institutions consolidated procurement and internal control units; however, their performance is far from satisfactory. While the Kosovo Police (KP) procurement department and internal audit unit has been praised of being more functional and effective, the Kosovo Security Force (KSF) mechanisms are still in the early stages of development and have not yet managed to perform efficiently. The Kosovo Intelligence Agency (KIA) structures are undisclosed and the research found difficulties in evaluating the internal capacities, though the appointment of Inspector General of KIA marks the initial step for consolidating the internal control mechanisms in the field of finances and procurement. This research has found that single source tendering[239] procedures highly constrain the efforts to maintain transparent, clear and open procedures in the procurement. In the fiscal period of 2009 alone the KSF and KP procured through negotiated procedures to the amount of € 1,113,788.46 which makes up between 1.7 - 2% of the total budget for these two institutions for the respective year. In addition to that, the argument of applying the undisclosed procurement bids and announcements using the legal disclaimer, "in case of national and public security" cannot stand, since the Law on Classified Information and Security Clearance was approved in June 2010 and no vetting mechanisms have so far been created to classify either procured information on services or goods. The overall culture of involving non-governmental actors and citizens in the development of the budget and disclosing the procurement procedures is improving. However, the high level of public mistrust in financial and procurement management in Kosovo is indicative of the shortcomings in this regard. The procurement system is one of the country's most criticized sectors by the civil society organizations and international community since the high level of corruption is predominantly affiliated with public financial management and procurement. Overall, legislation for financial management and procurement is in place. However the latter is being repeatedly criticized for only partly aligning with EC directives. While there are solid administrative capacities in the Ministry of Economy and Finances (MEF) and Department of Treasury, the financial procurement and internal auditing units of the security institutions are still consolidating and do not seem to be very efficient or effective, especially those in the Ministry of KSF. There is bad practice especially in the procurement and the frequent application of single source tendering. The transparency of tenders and expenditures is partially in place. **Recommendations:** Budgetary transparency: • The hearings of the budget proposal review should be transparent and announced in advance, in order to allow the interested parties to take part; • The security institutions should immediately consolidate their control and auditing units, in order to improve efficiency and effectiveness in scrutinizing the financial and procurement management in these institutions;

239 Single source tender is award for supply of a good or service that can only be purchased from one supplier because of its specialized or unique characteristics. For more details see http://www.business-dictionary.com/definition/single-source-procurement.html

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Procurement transparency:

- The government of Kosovo in general, and security institutions in particular, should seriously reduce single source tendering and avoid applying closed tendering procedures;
- The security institutions should ensure that call for bids are also announced in the newspapers or other communication mechanisms in order to increase the scope of transparency;
- The financial statements of the KIA need to be audited by the Office of Audit General as soon as possible;
- The budgetary organizations in the security sector need to consider urgently the recommendations of the Office of Audit General for the auditing of the previous years.

Macedonia

PARLIAMENTARY CONTROL AND OVERSIGHT	grade:	3

Executive Summary:

The Macedonian Parliament continuously performs basic control and oversight of security sector institutions. Still, current legislative gaps and lack of political will very often transforms parliament into a "government agency." Lack of material, financial and administrative resources continue to hamper the process of thorough oversight. Parliamentarians must begin to treat the exchange of confidential data and the arms trade with greater scrutiny.

In terms of budget spending, parliament does a fair job of exercising control. Budget proposals and the final budget bill are analyzed both by the relevant parliamentary committee as well as on a plenary level. Parliamentarians receive final audit reports from the State Audit Office. Once per year a final audit report on the state's budget is also presented to parliamentarians. Still, members of the Parliament do not discuss separate institution audit reports.

Considering parliament's role in overseeing the use of special investigative measures, coercive means and human rights, it tends to provide good oversight. A specialized committee for oversight of the work of the Intelligence Agency and the Security and Counter Intelligence Unit is in place. Since 2008 there has been an additional committee dealing with the supervision of the application of communication – interception techniques. Both of the committees are headed by an opposition party member who contributes to greater autonomy and increased pro-activeness. In practice though, the two committees face continual obstructions by the parties in power through various means (frequent change of the members of the committee, unanimous voting, etc).

Macedonia	
	Apart from their role of voting to determine participation in peace support operations, parliament lacks political will to become engaged more actively in discussing issues such as budget implications, purposefulness or mandates. As an illustration, the budget devoted to peace support operations grew from around one million EUR in 2003 to nearly 11 million in 2009.[240] In the view of the parliamentarians, participation in operations abroad is a prerequisite for successful EU and NATO integration, something that a significant proportion of the population identifies as a priority. The legal relationship between the government and parliament is well defined. There is a good legal framework which provides basic control and oversight mechanisms over the executive branch. Parliamentarians regularly use the right of initiating interpellations and parliamentary questions. On committee level there seems to be good coordination between parliament and the government. When introducing a new draft law, government ministers are almost always present at the sessions explaining the need for such a law. Parliamentarians also tend to ask for irregular and ad-hoc reports by state security institutions. There is basic cooperation with civil society organizations (CSOs), which is reflected through parliamentarians' attendance at events organized by civil society. Sporadic involvement of experts at parliamentary hearings is present as well. So far there have been no cases where a security sector law proposal was examined in a public debate organized by parliament. **Recommendations:** • Form a parliamentary working group tasked to look into final audit reports issued by the State Audit Office. • Parliament should adopt an action plan for establishing the Parliament Research Unit, which should tackle the question of lack of administrative and management capacity. • The parliamentary committees tasked to follow the work of the Intelligence and Counter Intelligence Agencies, in coordination with relevant ministries (Ministry of Interior, Ministry of Defense and Intelligence Agency), should develop an annual training plan to fill the gap that exists in the competences of the parliamentarians to practice oversight. • The Law on Classified Information should be amended with a legal provision requiring the Directorate for Security of Classified Information to report annually to parliament on the number and nature of the controls they have conducted, as well as the implementation of the law. • Parliamentarians within the Committee for Security and Defense should undergo specialized training on peace support operations oversight. • The Committee for Security and Defense and the other relevant committees should insist on organizing public debates on draft laws, especially those on systemic laws (i.e. police, Ministry of Interior, Intelligence Agency, etc.)

240 Словенците штедат на членарина, Македонија плаќа се [Slovenians save on membership fees, Macedonia pays it all]; Nova Makedonija [online]; 21.10.2010. Available at: http://www.novamakedonija.com.mk/NewsDetal.asp?vest=102110109429&id=9&prilog=0&setIzdanie=22113

Macedonia

GENERAL TRANSPARENCY	grade:	3

Executive Summary

Perceived as a byproduct of democracy, the increasing openness of state institutions towards citizens in Macedonia has been strengthened and normatively organized with the adoption of the Law on Free Access to Information of Public Character in 2006. The country needed 16 years to adopt a comprehensive legal solution enabling citizens to freely access information, even though the constitution has recognized it as a right since 1991. Management of private data and classified information has also been put on the agenda in recent years with the adoption of relevant normative acts.

The main finding of our research suggests that, normatively speaking, all three areas (access to information, protection of classified data and protection of private data) have appropriate laws which are further operationalised into secondary legislation and that there is no major disharmony between them. A feature of all three is the establishment of commissions/directorates tasked to follow the implementation of the laws. As such they report irregularities and act upon them while affirming the benefits of these laws and the obligations of security institutions among the wider public. All have adequate competences which give them solid ground to monitor and act upon irregularities. In practice, sanctioning remains sporadic as a result of the novelty these legal solutions. In the case of free access to information, the time required for full adoption and recognition of this public right by state institutions has been considerable. A possible role model is the Directorate for Security of Classified Information, where regular inspections are taking place.

All three Commissions/Directorates lack appropriate funding and, to a certain degree, administrative capacity. This makes implementation of the legal provisions a difficult endeavor. These shortcomings are especially highlighted in areas such as trainings and sanctions. In such circumstances, where training remains limited, politicization of the public administration hampers the quality of implementation, since frequent rotations of employees occur.

On the other hand, the public shows a lack of awareness, especially about free access to information,thus leaving the state institutions without any pressure for better performance. A major issue that has been identified in promoting freedom of access to information is the possibility for state institutions to categorize certain document under "restricted use," which does not represent a level of classification but still prevents information from being released to the public.

In order to prevent officials from withholding information, amendments to the Law on Free Access to Information introduced a "damage test" which made mandatory an assessment of whether releasing certain classified information would benefit the public more than keeping it confidential. .. In the case of the former, such information is then open to the public. Unfortunately the test is not used frequently and rulebooks and procedures need to be adopted to guide its implementation. The relationship between parliament and the Directorate for Security of Classified Data is problematic, as the directorate (being a government body) does not report on its activities to parliament, leaving parliamentarians without an oversight role.

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Recommendations:

- Amend the Law on Classified Information (Art.10) so that it no longer allows documents to be classified under restricted use and unavailable to the public, thus leaving state institutions no opportunity to refuse a request for free access to information on such grounds.
- Amend the Law on Classified Information so that the Directorate for Security of Classified Information must report once per year to parliament about parliament's ability and competences to follow the implementation of legal provisions that stem from the Law on Classified Information.
- Prepare and adopt a rulebook and procedures for implementing the damage test. The Commission for Free Access to Information of Public Character should organize a set of trainings for state institutions, informing them of the procedures for applying this test.
- The Committee for Free Access to Information of Public Importance should create an accessible handbook on ways to utilize the freedom of access to information and promote it in partnership with civil society organizations.
- Greater financial resources should be devoted to the Commissions/Directorate, especially targeting units tasked with control and sanctioning.
- The Ministry of Interior, due to its complex structure and large number of units/departments, should allocate greater funds and appoint more officials to deal with access to information of a public character.
- The Directorate for Protection of Private Data should, without any further delay, adopt and implement a plan for trainings in handling private data aimed at personnel within the Ministry of Interior, Intelligence Agency and the Ministry of Defense.
- The General Staff and the Intelligence Agency should appoint a personal data protection officer.
- At least two additional persons should be hired in the Macedonian Mission to the EU/NATO in Brussels and the headquarters of NATO in Mons (Supreme Headquarters Allied Powers Europe) for handling classified data.
- The Law on Free Access to Information of Public Character should be amended by incorporating a sanctions department that would enable them to directly impose sanctions.

FINANCIAL TRANSPARENCY — grade: 2.5

Executive Summary

This paper examines the level of financial transparency in the security sector in Macedonia, considering the budgeting and public procurement processes until 2010. Both in budgeting and public procurement, national legislation is solid and mostly in line with international and European standards. In addition to primary laws, most secondary legislation has been adopted, though there is a time lag in implementation due to the lengthy process of adoption of secondary legislation. Implementation of legislative provisions is patchy, with some aspects of financial transparency provisions better and more consistently implemented than others. Some innovative tools such as e-budget and e-procurement software have made headway in achieving financial transparency. Budgetary control in parliament is performed by the parliamentary committee on finance and budget; for security sector actors budgetary control is partly exercised by the committee on defence and security and the committee on oversight of intelligence agencies. The State Audit Office conducts independent audits over budgeting and procurement processes in the security sector.

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The state budget is based on programmes and sub-programmes, with cross references to each public body's budget. Violation of financial transparency provisions still occurs, but those responsible are increasingly prosecuted.

The administrative and management capacity of responsible bodies is variable. Some institutions, such as the Ministry of Finance, the Public Procurement Bureau and the State Audit Office boast solid organizational, human and material capacity. The financial transparency capacity in others, especially the ministries of defence and interior, especially at the local level, are still being built. The adoption of financial transparency values is the weakest point of the Macedonian public sector. Those democratic values are missing due to a weak track record of consistent implementation of financial transparency provisions and media disclosure of financial and procurement scandals in security sector institutions.

Financial transparency in the security sector in Macedonia is given an overall grade of 2.5. Analysis of the available on this topic suggests that both in relation to budgeting and public procurement, some basic standards of transparency are introduced in finance legislation and streamlined in security sector legislation and practice. Most institutions adhere to legal requirements, although the quality of implementation varies between institutions and most still need to show a sustainable track record of implementation and adoption of values in their work.

Recommendations:

Budgeting:

- Budgetary legislation should be updated so that the public is more involved in the budgeting process. This can be accomplished by introduction of a citizens' budget and input from civil society in the budgeting process.
- The role of the Parliament in budgetary oversight, through parliamentary committees, should be further strengthened to compensate for the lack of public access to budgetary information in the preparation stage.
- Security sector institutions (Ministry of Interior, Ministry of Defence, Intelligence Agency) should make their budgets more transparent by making them available to the public upon request or on their web-sites.

Public procurement:

- The entire public sector needs to make a sustained effort – through positive examples, respecting the law and prosecuting fraud – at promoting and internalizing values of financial transparency in public procurement to gain the trust of the population and strengthen institutional capacities.
- Public procurement officers in ministries and public bodies need to be trained to use advanced electronic tools of public procurement. The use of electronic procurement should be expanded to include more types of procurement calls.

Montenegro

PARLIAMENTARY CONTROL AND OVERSIGHT	grade:	2.5

Executive Summary

In the field of parliamentary oversight significant progress has been made in recent years, and certainly the most important step is the adoption of parliamentary oversight in the areas of security and defense.

Although effectiveness and implementation of the new Law on Parliamentary Oversight over Security and Defense are not to be seen in the nearest future, this law and its effects in the field are going to be considered in this text; in addition to the activities scrutinized before its adoption, when this area was regulated by Rules of Procedure and laws on Police, Army, National Security Agency, etc.

The number of sessions in 2009 and 2010 was the same, but in 2010, the duration of session significantly extended in working hours, and the number of agenda items under consideration has increased. The parliamentary committee has organized several hearings of managerial persons in the security sector.

The new law expanded the framework for control over budgetary matters and the Committee has met its legal obligations. Only one MP of the Committee for Security and Defense is also a member of the Committee for financial issues. There is a need for expertise with regard to the specific budget transparency and public procurement in the security sector.

In addition to regular activities, such as the presentation of annual reports of state authorities or consideration of certain draft laws, the committee has: proposed appointment of a new Director of the National Security Council, actively participated in the tenth and eleventh Cetinje Parliamentary Forum but the most public attention was certainly occupied by meetings and hearings related to the case, "Saric." Also, the Committee considered a report on the use of units of the Army of Montenegro in international missions.

Collaboration with other working bodies of the Assembly and administrative capacity, bearing in mind the diversity of the area covered by the Committee, are not satisfactory. However, the Committee has demonstrated a commitment to further training of MPs and employees in professional services, promoting international cooperation, cooperation with interested organizations from civil society, etc.

Generally, citizens' opinion in regard to overall trust in the Parliament has been on a low level for a long period of time, which also stands for the political parties.
Constitutional and legal framework for parliamentary scrutiny over the security sector in Montenegro guarantees basic principles for civilian control of armed forces. However, there are considerable flaws. All the activities have not been undertaken and MPs did not use all the powers provided to them by law. Additionally, the administrative capacities, values of MPs, and public confidence in parliament are not at satisfactory levels. Therefore, the grade given for parliamentary oversight cannot be higher than 2.5.

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Recommendations:

- The Security and Defence Committee should start separate discussion on the finances of security sector actors, as mandatory practice. The Security and Defence Committee should also try to use the possibility to include or consult financial planning experts into the financial review and monitoring.
- To revise the Law on Budget in the part where it would leave more time for the Parliament to discuss the budget content.
- Establish closer cooperation between Security and Defence Committee, Committee on Economy, Finance and Budget and Committee on Human Rights and Freedoms in order to enhance monitoring and oversight over security sector.
- Improve administrative capacities of the Security and Defence Committee PCD by increasing the number of employees, so all the areas of Security and Defence Committee's PCDs' competence can be covered by at least one person.
- PCD should be more public in its work, especially by publishing short hands and notes from PCD sessions that are open for public.

GENERAL TRANSPARENCY	grade:	2

Executive Summary:

Despite the existence of normative framework, non-compliance between the laws that regulate the free access to information of public importance, as well as underdeveloped institutional mechanisms, have led to the relatively poor results, when it comes to overall transparency of the security sector in the period following Montenegro regaining their independence in 2006.

"The right of citizens to know" is guaranteed by the Constitution of Montenegro and the special law that was adopted in 2005. Although the assets on the law enforcement differ, there are significant shortcomings of the law that affect its effective implementation. The largest number of requests for free access to information comes from CSOs, while very few citizens use this mechanism. The high percentage of "silence of administration" in connection with the submitted requests is evident while the information is often classified as "confidential". Current practice indicated that the role of the Administrative Court, which is competent for judicial protection of the applicant for free access to information in administrative proceedings, was crucial. However, penalty policy framework is still inadequate, while the percentage of non-acting upon the decisions of the Administrative Court is quite high. The Police and Ministry of Interior are considered to violate the law the most, while the President of Montenegro is considered as a positive example. Initiatives arising from civil society to establish an independent body, such as the Commissioner that exists in Slovenia and Serbia that should ensure consistent implementation of the law concerned are becoming more and more common.

The legal framework regulating the field of personal data protection – the Constitution of Montenegro and a special law governing this matter – largely complies with international standards. The Agency for Personal Data Protection acts as a supervisory body. It has the Council, which has a president and two members appointed by the Parliament of Montenegro, and Agency Director. Although only 35 % working positions within the Agency's jurisdic-

tion have been classified, its performance has been positively assessed. Citizen's awareness on the importance of personal data protection is low and this is the greatest challenge placed before this newly formed body, together with its credibility.

The area of classified data protection is also regulated by the law that has been complied with the EU and NATO standards during the adoption process. Law on Secrecy of Data was adopted in 2008 and amended a year later. Many by-laws were also adopted. The Ministry of Defense supervises the implementation of this law through the Directorate for Protection of Classified Data, as its integral part.

It is very difficult to talk about the values in the area of general transparency. Perhaps the most problematic part in this regard is that the very few people exercise their right to be informed. In general, the public has poor knowledge on these rights, as well as on the institutions that are in charge of law implementation.

Given that the laws are not fully harmonized and that institutional capacities and legal mechanisms for protection are still weak, while the values, both of citizens and of those employed in the security sector institutions are rather at a low level, the grade for this criterion is two.

FINANCIAL TRANSPARENCY	grade:	2.5

Executive Summary:

In Montenegro, budget documents of the security sector are publicly available. This is related to the following institutions: Police Directorate, National Security Agency (NSA), Ministry of Defence (MoD) and Ministry of Interior and Public Administration (MoI). So far, the growing public availability of these documents has created the interest of many NGOs in different stages of budgeting, which led to more transparency in budgetary affairs.

However, there are certain drawbacks, as well. Although there are some legal institutional assumptions for transparency of the budget in Montenegro, yet, some important elements which belong to international standards do not exist, such as Citizens' Budget, which makes the entire process still very abstract for ordinary citizens. The budgetary cycle in developed countries is generally divided into nine phases, whereas the budgetary cycle in Montenegro is significantly shorter, more centralized and generally less transparent.

In Montenegro, spending on public procurements in 2010 amounted to about 433 million euro. The system of public procurements, although improved, still suffers from numerous shortcomings related to the untimely and non-realistic planning, incompatibility between contracts on procurement and requirements from tenders, as well as changes in the terms of procurement, and a lack of the control of the enforcement of contracts. The lack of transparency and control is especially significant in the phase following assignation of contracts, which provides the biggest incentives for corruption.

State Audit has conducted the audit for almost all actors in the security sector, and the Agency for National Security has remained an exception. Cooperation between the Directorate of the Public Procurement Commission for the Control

Montenegro	of Public Procurement, the State Audit Institution, the Police Administration and the state prosecution was not effective. This can be seen by the fact that DRI and the Commission (in spite of findings) have not filed criminal charges, while the Police Department independently applied only three criminal charges within three years, on suspicions of alleged abuse of official position in the procurement procedure. It is not well known amongst the public that the court has issued any final decision in this area. This argument is certainly not in favor of criminal responsibility when the security sector in question. Also, there are some omissions in political accountability. For example, the Government of Montenegro has made a serious omission when it comes to appointing members of the Commission for the Control of Public Procurement. As far as the public procurement is concerned, lower level of its transparency is related to the fact that the MoD, the MoI, NSA and the Police Directorate are exempt from legal procedures for public procurement. According to primary laws regulating activities of the security sector in Montenegro, acquisition of special technical equipment, armament and premises used for the security sector needs, are not subject to principles of compulsory public announcement. The fact that various legal provisions are not complete, that the public had no insight into the activities of actors in the security sector after reports and recommendations of the State Audit Institution, the relatively weak administrative capacity at almost all levels, are the main reasons why the grade for financial transparency in the security sector is 2.5. **Recommendations:** Budget Transparency: • Improvement of budgeting process and managing finances along with strengthening of capacities for preparation and implementation of the budget in order to establish priorities in the security sector. (MoF) • Enhancement of decentralization in the process of passing of the budget and developing communication with all relevant stakeholders. (MoF) • Introduction of compulsory practice that the entire budgeting cycle includes "Monthly reports". (MoF) • Although budgeting in the security sector in Montenegro is considered responsive and accountable to the public, Citizens' Budget as a non-technical, accessible version of the budget aimed at increasing public understanding of the Government's plans for taxing and spending, has to be introduced. The Institute of Citizens' Budget might be worked out by various external and independent watch-dog groups from the civil scene, advocating rational and transparent spending of public resources, as an alternative to the state budget, which would also advocate a new model of budget and finances. (MoF) • The State Audit Institutions (SAI) has to continue to be open for communication with the civil sector. (SAI) • The number of staff in the SAI should be increased.. Namely, due to the lack of sufficient human resources, the SAI is unable to perform annual audits of all entities. (SAI) • Establish closer cooperation between the SAI and jurisdictional bodies in order to get authorization for bringing criminal charges against subjects of revision. (SAI) • The SAI needs, in accordance with its legally regulated competencies, to perform an analysis of application and effects of adopted laws and initiate their amendments in order to improve the work of the public sector. (SAI) • Strengthening and developing the advisory function of the SAI especially to

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the Parliament of Montenegro. (SAI)
- Strengthening of SAI resources, i.e. the resources dedicated to supervision should be strengthened together with the responsibility of the institution. (SAI)

Public Procurement:

- Initiate revision of the current Law on or adopt a special law, which will regulate public procurement procedures within the security sector. (PPD)
- Initiate a revision of legislation in accordance with EU requests and practice. (PPD)
- Increase administrative and human resources capacities of institutions which are responsible for public procurement (authority to take the initiative to bring charges to the authorized bodies for established violation of legitimate procedures) and increase the number of employees with relevant qualification. (PPD)
- Develop a system of relevant data for all interested parties included in a PP procedure (guidelines, handbooks, comments on public procurement, web pages, etc.) and engage independent consultants who will help in developing monitoring programme.
- Simplify public procurement procedures. (PPD)
- Human capacity must be built by recruiting more staff and training them adequately for the activities of the PPD. It is also necessary to provide additional training to enhance knowledge of comparative legislation, analyse examples from practice, as well as exchange experience and study visits. (PPD)
- More staff must also be recruited and trained for the CCPPP to ensure that comparative legislation is examined, cases from practice is analyzed, and experience exchanged.

Serbia

PARLIAMENTARY CONTROL AND OVERSIGHT	grade:	2.5

Executive Summary:

Completion of the legal framework for parliamentary control and oversight of the security sector in Serbia was finally made possible in 2010, with the adoption of the Law on the National Assembly and the new Rules of Procedure (RoP). This legal framework provides MPs with an adequate set of mechanisms and instruments for effective control and oversight of the security sector. However, existing competences are not fully and regularly used. There is a lack of activities of the Parliament and its relevant committees in performing budgetary scrutiny of the security sector. Competences for control and oversight of the use of special investigative measures, coercive means and human rights protection are also rarely used. Similarly, control and oversight over the efficiency and effectiveness of work of security institutions is limited. Control and oversight is best practiced in the area of bilateral and multilateral security cooperation, although there is a lack of control and oversight of the exchange of confidential data and arms trade.

The Parliament's main activities related to the control and oversight of the security sector are review of draft laws, review of regular reports submitted by the security sector institutions and questions of MPs. There are no parliamentary hearings and interpellations related to the work of the security sector institutions. Field visits are rare, as well as requesting ad hoc reports from the security sector institutions. Lack of annual plan which would set the priori-

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ties of the DSC's work, clear procedures on reporting, performing field visits, organizing hearings of ministries and sending reports and recommendations to plenum are also hampering the work of DSC. Finally, there is a lack of political will of MPs to fully and regularly use all mechanisms and instruments at their disposal, since majority MPs are particularly reluctant to question government officials.

Recommendations:

- Parliament should be more active in 'agenda setting' of the security sector by initiating draft laws and proposing amendments to existing laws, while MPs should be more active in initiating parliamentary debates on security issues.
- Parliament (DSC) should be more active in the process of budgetary planning of the security sector institutions (in drafting financial plans) by ensuring MPs' access to all draft budget documents of the security sector institutions.
- DSC should use the existing competences and develop mechanisms for effective control of the legality and expediency of the budgetary spending of security institutions.
- Parliament should request the report from the Minister of Defence on the work of the Ministry (in accordance with the Law on the Government, art. 36).
- DSC should develop a mid-term and an annual work plan and priority areas, i.e. budgetary scrutiny and control over the work of the Ministry of Defence, control and oversight over the arms trade, etc.
- DSC should develop mechanisms for regular cooperation with different parliamentary committees (on finances, judiciary and international relations), such as joint sessions, exchange of information, consultations, etc.
- Parliament (DSC) should develop a mechanism for consulting and cooperating with independent financial experts, as well as experts in security and civil society organizations.
- of the number of staff at the Defence and Security Committee should be increased. MPs and the staff of the Defence and Security Committee should attend regular trainings and seminars in order to improve their capacity for effective control and oversight of the security sector, especially for budgetary scrutiny.
- A new law on arms trade, with clear provisions on the competences of the Parliament for control and oversight of the arms trade, should be adopted.
- Parliament (DSC) should start discussing issues of exchanging confidential and personal data.
- The Law on the National Assembly (art. 41) and the Rules of Procedure (art. 240) should be amended, in order to stipulate that: "Information and data that MPs (committee) requested from state institutions should be submitted to the committee with a delay of no more than 30 days. In the case the requested information or data are not submitted within this time, the committee informs the Parliament that it can start the procedure for establishing the responsibility of the public servants employed in the institution."

GENERAL TRANSPARENCY	grade:	2.5

Executive Summary:

Transparency in the security sector is diverse - different actors have different levels of transparency. Some ministries failed to publish or update their information booklets (MoD, MoI) and are very slow in responding on information

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of public importance. Others (MFA) are very responsible in providing required information. Non statutory actors (private security companies) fall under the competences of the Law on Protection of Private Data, but the lack of citizens' complaints to independent bodies could mean that citizens do not recognize the value of their privacy. The overall grade is 2.66 and the biggest discrepancy is between access to information of public importance and protection of secrecy of data. The first two fields of observation have all necessary laws and secondary legislation (access to information of public importance shows four years of practice). On the other hand, the protection of classified data is largely not functioning properly. Government institutions lack of necessary staff and equipment to deal with the classification of data and information of public importance.

Recommendations:

- For the public administration: Ensure enforceability of independent state institutions' findings and recommendations, especially in those cases where these institutions rely completely on the government (as in case of the Commissioner) or any other organ for the enforceability of their recommendations.
- For the public administration: Ensure that independent state institutions have more material and human resources in order to allow them to work efficiently within the scope of their competencies related to the control and oversight functions of the state security sector.
- For the Government: Adopt amendments to the Law on Data Confidentiality in order to include the protection of "whistle blowers". Also, adopt relevant secondary legislation so that the Law could be implemented.
- For the state institutions: Ensure proper training for employed personnel tasked with handling information of public importance.
- For state institutions: Ensure the provision of relevant (as prescribed in the relevant law) information booklets, timely updated with relevant information.
- For state institutions: Ensure the transparency of Chancellery of Council for National Security and Protection of Classified Data.
- For state institutions: Ensure that employees tasked with handling information of public importance perform only that duty and not others if the workload requires them to do so.

FINANCIAL TRANSPARENCY	grade:	2.5

Executive Summary:

Transparency of Budget

Budgeting priorities are presented publicly, yet space for the involvement of civil society remains limited. Deadlines set by the budget calendar are respected. Financial plans (projections of incomes and expenditures) are publicly available for all of the actors of the security sector, apart from security and intelligence agencies. Decision makers have shown no interest in explaining key spending priorities to the citizens. Because of the limited human and material resources available to the Ministry of Finance (Dept. of Budget, Dept. of Treasury, Internal Audit Division) and the SAI there is no credible system for monitoring the level of budget completion in practice. Failure to meet obligations is not sanctioned. The institute of internal audit is just being introduced to most

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	of the actors' organizational structure. Three important budgetary documents, the Initial Budgetary Statement, Citizens' Budget and Mid-year Report are missing, which makes monitoring Government's spending throughout the year difficult. Efficient monitoring is further prevented by the fact that Ministries have yet to move to program budgeting. The first audit of state finances was very limited in its scope, taking into account how finances are managed in only 18 out of almost 9,500 budget beneficiaries. *Transparency of Procurement* State institutions of the security sector calling for defence and security procurement are not obliged to explain their reasoning for declaring the process confidential. However, announcements of procurement for non-security related purpose are posted on the Public Procurement Portal, as well as published in the Official Journal. Bidders receive adequate information about the procedure and the criteria for selecting the best offer. However, companies from Serbia are still privileged, as is the case in other non-EU countries. Formally bidders' rights are protected in the second and third instance (two processes pending in the Administrative Court). Yet, appeals in the second instance take too much time. There is no credible system of monitoring the completion of public procurement. The role of the State Audit Institution in procurement remains unclear, since it neither decides on single procurement "value for money", nor monitors its completion. **Recommendations:** *Transparency of Budget* • Ministry of Finance has to prepare, and then make publicly available the Initial Statement, the Citizens' Budget and the Mid-Year Report. • All beneficiaries (ministries) must change from line to program budgets. • All beneficiaries (ministries) must incorporate internal audit. • Government of Serbia and the National Assembly should commit additional funds in equipping and staffing the State Audit Institution. *Transparency of Procurement* • Government and National Assembly must commit additional resources to staffing and equipping oversight institutions, most significantly the Commission in second instance. • Government has to finalize the strategy for upgrading the public procurement system. • All beneficiaries (ministries) must strengthen administrative capacity and coordination mechanisms to reduce the scope for corruption. • All beneficiaries (ministries) must adopt internal procedures for small value procurement. • The role of the State Audit Institution as the arbiter of "value for money" must be emphasized

Contributing organizations

Project Coordinators

BELGRADE CENTRE FOR SECURITY POLICY (BCSP)
Serbia

The Belgrade Centre for Security Policy (BCSP) is an independent think tank founded in 1997 to publically advocate national and human security based on democracy and respect for human rights. The BCSP works towards consolidation of security sector reform (SSR) and security integration of Western Balkan states into Euro-Atlantic community by creating an inclusive and knowledge-based security policy environment. It achieves these goals through research, public advocacy, education, bringing together relevant stakeholders and creation of networking opportunities.

See: www.bezbednost.org

Belgrade Centre for Security Policy

GENEVA CENTRE FOR THE DEMOCRATIC CONTROL OF ARMED FORCES (DCAF)
Switzerland

The Geneva Centre for the Democratic Control of Armed Forces

(DCAF) promotes good governance and reform of the security sector. The Centre conducts research on good practices, encourages the development of appropriate norms at the national and international levels, makes policy recommendations, and provides in-country advice and assistance programmes. DCAF's partners include governments, parliaments, civil society, international organisations and security sector actors such as police, judiciary, intelligence agencies, border security services, and the military.

See: www.dcaf.ch

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Research Consortium Partners

ANALYTICA
Macedonia

Analytica think tank is a Skopje based non-profit and independent policy analysis institution for fostering lasting improvement in democracy and governance in Macedonia and elsewhere in Southeastern Europe. It conducts research and advocacy in four programme areas: security, EU integration; energy and public administration. Research products include policy reports, policy briefs, books, newsletters, a journal (Analytical) and other occasional products, all published on Analytica's webpage.

See: www.analyticamk.org

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See: www.bezbednost.org

CENTRE FOR DEMOCRACY AND HUMAN RIGHTS (CEDEM)
Montenegro

The Centre for Democracy and Human Rights (CEDEM) is a non-governmental organization established as non-profit association of citizens, with a main goal of advancing and spreading awareness of the importance of proper democratic transition. CEDEM's activities include research, monitoring and analysis of processes of transition. Our goal is to influence the transitional process in Montenegro, strengthen civil society and advance the democratization process as a whole.

See: www.cedem.me

CENTRE FOR SECURITY STUDIES (CSS)
Bosnia and Herzegovina

The Centre for Security Studies (CSS), established in 2001 and located in Sarajevo, is an independent research, educational and training enterprise dedicated to encouraging informed debate on security matters and to promoting and sustaining democratic structures and processes in foreign and security policy in Bosnia and Herzegovina, and in the region of Southeastern Europe.

See: www.css.ba

KOSOVO CENTRE FOR SECURITY STUDIES (KCSS)
Kosovo

The Kosovar Centre for Security Studies (KCSS) is a non-governmental and non-profit think tank established in 2008 with the main aim of developing research studies in the security sector. KCSS conducts research and organizes conferences and seminars in the related fields of security policy, rule of law, justice, and monitoring of the security sector. KCSS activities contribute to strengthening the principles of democratic oversight of security institutions in the Republic of Kosovo.

See: www.qkss.org

INSTITUTE FOR DEMOCRACY AND MEDIATION (IDM)Albania

The Institute for Democracy and Mediation (IDM) is an independent, non-governmental organization, founded in November 1999 in Tirana, Albania. It works to strengthen the Albanian civil society, to monitor, analyze and facilitate the Euro-Atlantic integration processes of the country and to help the consolidation of good governance and inclusive policy making. IDM carries out its objectives through expertise, innovative policy research, analysis and assessment-based policy options.

See: www.idmalbania.org

INSTITUTE FOR INTERNATIONAL RELATIONS (IMO)
Croatia

The Institute for International Relations (IMO), in the framework of its scientific cross-disciplinary research activities and policy studies, contributes to applied research and debate on current economic, political and social issues of global importance, as well as to the development of the Republic of Croatia in the international environment.

See: www.imo.hr