PRIF **HSFK**

Peace Research Institute Frankfurt

Hessische Stiftung Friedens- und Konfliktforschung

PRIF-Reports No. 94

Democratic Security Sector Governance in Serbia

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Summary

On 5 October 2000, the citizens of Serbia toppled Slobodan Milošević in what came to be known as the "Bulldozer Revolution". This watershed event symbolizes not only the end of a decade of authoritarian rule but also the beginning of a double transition: from authoritarian rule to democracy, on the one hand, and from a series of armed conflicts to peace, on the other. This transition has thoroughly transformed Serbian politics in general and Serbia's security sector in particular. This October, Serbia's democracy celebrated its tenth anniversary. The jubilee is an appropriate opportunity to reflect on the past decade. With this aim in mind, the report will seek to analyse the impact of democratization on security sector governance in Serbia over the period 2000-2010.

In order to do so, in the first part of the report we have developed an analytical framework for studying democratic security sector governance, which is defined as the transparent organization and management of the security sector based on the accountability of decision-makers, respect for the rule of law and human rights, checks and balances, equal representation, active civic participation, public agreement and democratic oversight. Thus defined, democratic security sector governance can be analyzed through its five dimensions: horizontal accountability, vertical accountability, rule of law, representativeness, and transparency.

In the second part, the report discusses the wider context in which both democratization and security sector reform have taken place. As is shown, a set of structural, institutional and ideational factors have been constraining fast and comprehensive democratic security sector reforms. In the third part, the paper analyzes both the achievements made and the challenges faced by Serbia in the five dimensions of democratic security sector governance over the past decade. It concludes that formal mechanisms of democratic security sector governance have largely been established, albeit slowly and imperfectly. Additionally, it shows that the implementation of both the letter and the spirit of the newly introduced democratic norms have yet to be consolidated in practice. The biggest achievement has been made in the establishment of civilian executive control, while weak parliamentary oversight remains the central challenge.

In the final part, we offer several policy recommendations. First, we argue that it is of the utmost importance that both domestic policy-makers and the international community begin to pay more attention not only to the establishment of a formal institutional framework but also to the question of the practical implementation of democratic security sector reforms. It is argued that the EU has a key role to play here through its conditionality policy. Second, we call for a set of constitutional and legislative changes which could improve the institutional framework for democratic security sector governance in Serbia. Third, the report proposes that more space and capacities should be created so that the National Assembly and other oversight bodies can control and oversee the rest of the security sector autonomously and effectively. Fourth, we propose ways to intensify the active participation of civil society in security and defence matters.

Contents

1. Introduction

The end of the Cold War marked the beginning of democratic transition and European integration for most of the Central and Eastern European countries.[1] In contrast, the Western Balkan region experienced the violent breakup of Yugoslavia and another decade of post-communist authoritarianism. In Serbia, Slobodan Milošević established a regime which was formally a democracy but in practice the opposite. Although a multiparty system was formally introduced in 1992, it only served as a façade to hide the true authoritarian nature of the regime. Slobodan Milošević and his regime relied heavily on the powerful security sector inherited from the Socialist Yugoslavia.[2] Its military, police and intelligence services played an important role in supporting Serbs in the Bosnian and Croatian wars. But from March 1991, when battle tanks were taken out onto the streets of Belgrade to suppress the rally against Slobodan Milošević, up until the war with the KLA and NATO in 1998/1999, their central role was inside Serbia. Throughout the 1990s, their main task was to keep in power one of the last authocracies in Europe.

On 5 October 2000, several hundred thousand people gathered in the streets of Belgrade to protest against the fraudulent presidential elections held by the regime of Slobodan Milošević, at the time still President of the rump Yugoslavia composed of Serbia and Montenegro.[3] This event, often nicknamed the 'Bulldozer Revolution', is a watershed event in Serbia's recent history. It marked the end of Milošević's decade-long authoritarian rule and the beginning of a process of double transition, from authoritarian rule to democracy, on the one hand, and from a series of armed conflicts to peace, on the other. Nevertheless, although the experience of Central and Eastern European countries suggested that security sector reform was a necessary precondition for democratization; in Serbia it only took place in a partial and very slow fashion. Serbia's new democratic elites had to cope with a far more complex set of challenges than their Central and Eastern European counterparts, including but not limited to exceptionally strong nationalist forces in society, war crimes, the unresolved relationship with Montenegro and Kosovo,

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1 The report will draw on two projects that the author has participated in. The first is Mapping and Monitoring of Security Sector Reform conducted by the Centre for Civil-Military Relations (Belgrade) in 2007 and 2008 and presented in Hadžić/Milosavljević/Stojanović/Ejdus 2009. The second is The Image of the Democratic Soldier: Tensions Between the Organisation of Armed Forces and the Principles of Democracy in European Comparison organized by Peace Research Institute Frankfurt from 2006 to 2010 (book forthcoming). I am grateful to Dragana Đurašinović, Dušan Pavlović, Sabine Mannitz, Bruno Schoch, Thorsten Gromes and other colleagues from PRIF for their comments on the earlier drafts of this paper.

2 In 1990, Yugoslav People's Army was 180,000 strong (IISS 1990: 95). By 1999, the military of the rump Yugoslavia shrank to 108,700 (IISS 1999: 102). Milošević also maintained a strong and highly militarized police, estimated to also have around 100,000 men.

3 Milošević resigned two days later recognizing the victory of his counter-candidate Vojislav Kostunica. In December 2000, a coalition of opposition parties (DOS) won a landslide majority in the parliamentary elections.

armed rebellion in South Serbia in 2001, and the assassination of the first democratically elected Prime Minister Zoran Đinđić in 2003 in an attempted *coup d'état* resulting in the state of emergency. Moreover, deep divisions within the new democratic elite on both personal and ideological grounds slowed down and at times even paralyzed progress on any of the key issues.

Serbia's democracy is celebrating its tenth anniversary this fall. The jubilee is a convenient opportunity for a reflection on the first decade of democratization. This report will ask to what extent the process of democratic reforms has influenced security sector governance in Serbia. This question is important for several reasons. First, democratic security sector governance is a key to the consolidation of democracy. Unless the security apparatus on which the former repressive order relied is brought to democratic accountability, it will remain a constant threat to democracy. Second, democratic security sector governance is also crucial for a sustainable peace in the region. As democratic peace theory suggests, democracies do not fight each other. Put differently, as long as states in the Western Balkans region and their security forces are governed in a democratic fashion, the chances are very small that there will be a resurgence of armed conflict.

The main argument presented in this report is twofold. First, despite the enormous challenges that Serbia has faced over the past decade, the new institutional framework for democratic security sector governance has been slowly and gradually put in place. Second, it will be argued that there is still a huge gap between the newly established norms and institutions, on the one hand, and how things are getting done in practice, on the other. Although the security sector no longer represents a threat to democracy, democratic practices have yet to become consolidated and acquire validity and stability. The report will consist of three parts. In the first, the concept of democratic security governance will be introduced. In the second part, the wider context in which the democratic reforms took place will be discussed. Against this backdrop, the third part will analyze the democratization of security sector governance in Serbia during the period between 2000 and 2010. The conclusion will go on to summarize the main findings and offer several policy recommendations.

2.   Democratic security sector governance: a framework for analysis

Democratic governance has acquired the status of a norm in the international system in the course of the last two hundred years (Franck 1992). Several waves of democratization, more intensive international security cooperation, and the gradual professionalization of the armed forces have led to an increasing interest in the democratic civilian control of the security sector in old and new democracies alike (Born 2002). It has been argued that the more the legitimate use of coercive force is controlled, managed and scrutinized in a democratic fashion, the higher will be the level of socio-political cohesion within a state and the more effective will be its foreign policies (Russett 1990; Sorensen 1993). Furthermore, Democratic Peace Theory argues that the democratic governance of the security sector contributes positively to the peaceful resolution of international conflicts (Doyle

1983; Russett 1993). Finally, the democratic management and oversight of the security sector proved to be a central aspect of transformation in both post-authoritarian and post-conflict societies.

It became evident that neither democracy nor peace can become consolidated without comprehensive democratic security sector reforms for two main reasons. First, the corporate interests of certain institutions in the security sector were often opposed to democratic transformation due to the pivotal role these institutions had by default in both maintaining autocracy and during armed conflict.[4] Second, their monopoly over the legitimate use of force meant that these institutions were potentially a powerful veto player that could slow down or even block democratic transition entirely. Therefore, one of the first goals of new democratic regimes in Central and Eastern Europe was to place security sectors under their democratic civilian control. However, it soon emerged that this was a necessary but not sufficient step. Neither the legislative nor judicial branches of government possessed sufficient expertise to effectively manage and oversee operations within the security sector. In addition, civil society was concerned with economic and social issues and showed no interest in participating actively in security and defence matters.

The concept of 'democratic security sector governance' has been increasingly used in recent scholarly and practitioners' debates in order to capture this reality (Cottey/ Edmunds/Forster 2002; Hänggi 2003; Ball 2005; Ghebali/Lambert 2007). For the purpose of this report, 'democratic security sector governance' will be defined as a transparent organization and management of the security sector based on the accountability of decision-makers, respect for the rule of law and human rights, checks and balances, equal representation, active civic participation, public agreement, and democratic oversight.

The concept of 'democratic security sector governance' is at the same time an analytical and normative concept. It not only helps us to understand what is going on in the security sector, but also indicates what should be done. Democratic security sector governance should be distinguished from 'security sector reform', which has a wider meaning and refers, as Timothy Edmunds puts it, to "the process through which security sector actors adapt to the political and organizational demands of transformation" (Edmunds 2007: 25). Security sector reform is also not a value-neutral concept but one that was developed by the international donor community within normative discourses about the connection between development and democracy (Brzoska 2003). Its aim is, in the words of Heiner Hänggi, "the efficient and effective provision of state and human security within a framework of democratic governance" (Hänggi 2004: 4). Therefore, democratic security governance can be seen as one of several possible goals of 'security sector reform'.

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4   Security sector will be defined as comprising all the institutions and actors whose responsibility is the application, management, control and oversight of the legitimate use of coercive force.

However, democratic security sector governance should also be distinguished from democratic civilian control. Civilian control denotes a form of horizontal accountability and refers to the subordination of security forces to civilians who are, nevertheless, not necessarily endowed with democratic credentials.[5] 'Democratic civilian control' is a wider concept than civilian control but narrower than democratic security sector governance. It refers to the accountability of security policy and decision-makers – be they in the military, police, governmental ministries, intelligence services or private security companies – to citizens (i.e. vertical accountability) and to other state institutions (i.e. horizontal accountability).

Dimensions of democratic security sector governance

Against this backdrop of terminological clarifications, the report will now advance a framework for the analysis of 'democratic security sector governance' that incorporates five basic dimensions: *horizontal accountability, vertical accountability, the rule of law, representativeness, and transparency.*

The first dimension of democratic security sector governance is *horizontal accountability*. According to Guillermo O' Donnel, who coined the term, horizontal accountability is "the existence of state agencies that are legally enabled and empowered, and factually willing and able, to take actions that span from routine oversight to criminal sanctions or impeachment in relation to actions or omissions by other agents or agencies of the state that may be qualified as unlawful" (O'Donnell 1999: 60). Applied to the security sector, horizontal accountability refers to the ability of state institutions to control, manage, oversee and scrutinize security policy and decision-making processes, actors and institutions responsible for the application of the use of force. Horizontal accountability can be exercised through civilian executive control, parliamentary oversight, judicial review, and oversight by independent regulatory agencies.

Vertical accountability of the security sector is the second dimension of democratic security sector governance and refers to the ability of civil society to influence, oversee and scrutinize the legitimate use of coercive force. Civil society is usually defined as being placed between the state and the market. It encompasses all voluntary associations and organizations which profess a public interest but do not intend to run for elections such as NGOs, syndicates, professional associations, social movements, educational institutions, faith-based communities, pressure groups, etc. According to a wider

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5 Samuel Huntington distinguished between the subjective and objective civilian control of the armed forces. "The essence of objective civilian control", he argues, "is the recognition of autonomous military professionalism; the essence of subjective civilian control is the denial of an independent military sphere" (Huntington 1967: 83). One special form of subjective control is politicization when civilians turn the security apparatus into a political instrument of the ruling regime or class. Since a certain level of politicization is unavoidable even in consolidated democracies, following Edmunds this report will use the term "partification" to describe "partisan cooption of security sector actors to a particular political party or personality"(Edmunds 2008: 26, 2007: 30).

definition, civil society is everything outside of the state and thus may also include the business community (Baker 2002). The basic form of vertical accountability is exercised through elections. But civil society needs to have the opportunity to be involved in security affairs beyond elections. It should conduct continuous oversight of policy-making and implementation processes, create alternative sources of information and expertise and serve as a channel for steering different societal interests in the security sector (Caparini/Fluri 2006). Special attention should be paid to those organizations which are directly engaged in security affairs such as think tanks, research institutes and advocacy groups.

The *rule of law* is the third dimension of the democratic governance of the security sector. Although the term rose to a status of orthodox acclaim within the western democratic discourse, due to its multiple meanings some authors claim it to be an "exceedingly elusive notion" or even an essentially contested one (Tamanaha 2004; Waldron 2002). According to a definition widely accepted in the literature, the rule of law exists "when the rules defining permitted and forbidden actions are not discretionary decisions of an individual, but rather take the form of laws that discipline every citizen, regardless of his or her power or status" (Smulovitz 2003: 168). Nevertheless, it is well known that laws can be general, mutually harmonized, equal for all and predictable but still not protect human rights and civil liberties. In order to encompass this moral dimension too, the formalist definition discussed above which equates the rule of law with the law state (German: *Rechtsstaat*) will have to be amended. Hence, we turn to Ronald Dworkin who claimed that the idea of the Rule of Law "assumes that citizens have moral rights and duties with respect to one another, and political rights against the state as a whole. It insists that these moral and political rights be recognized in positive law […]" (Dworkin 1978: 262). By the same token, the rule of law in the security sector can be regarded as a function of two elements: the regulation of the sector in positive law, on the one hand, and the full respect of human rights and civil liberties by and within the security sector, on the other.

The fourth dimension of democratic governance is the pursuit of equal *representation* of different social groups in the security sector. Representativeness is important both for the state's strength in terms of its socio-political cohesion and for its overall democratic legitimacy. Different ethnic, religious or tribal communities should be represented as proportionally as possible in the security sector. Furthermore, women were traditionally excluded from participation in both decision and policy-making bodies and from security forces as such. In 2000, the UN Security Council adopted resolution 1325 on women in peace and security that recognized the hitherto neglected role that women can play in bringing peace and stability into the world. The resolution urged member states to "ensure increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict" (UNSC 2000: 2).

The fifth dimension of democratic security governance is *transparency*. In the most general sense, "it means that information is freely available and directly accessible to those who will be affected by decisions or actions" (Hänggi 2003: 11). Still, it is unreasonable to

expect the same level of transparency in the security sector as in the rest of the public sector. For instance, tactical and operational information in the possession of the police, military or intelligence service cannot always be made publicly available without jeopardizing the latter's efficiency and effectiveness. However, the process of data classification needs to be well regulated in order to prevent arbitrariness and a tendency towards bureaucracy, which is found all too often in the security sector as a way of hiding from accountability behind a wall of secrecy and alleged national security interests. By the same token, under no circumstances should citizens be denied the right to receive accurate and timely information about the general assessment and strategy when it comes to national security issues (Ekovich 2009). In addition, statutory actors in the security sector should make their spending transparent so that both other state organs and citizens can hold them accountable.

So far, we have developed a framework for the analysis of what democratic security sector governance represents (table 1). In the following chapter, the report will firstly discuss the context of reform and then apply this analytical framework to the case study of Serbia.

1. Horizontal accountability	2. Vertical accountability	3. Rule of Law	4. Representation	5. Transparency
Executive civilian control	Elections	*Rechtsstaat*	Ethnic representation	General transparency
Parliamentary control	Alternative expertise			
Judicial review	Policy evaluation	Human rights and civil liberties	Gender representation	Financial transparency
Oversight of independent bodies	Public oversight			

Table 1: Dimensions of democratic security sector governance

3. Context of democratization and security sector reform in Serbia

3.1 Democratization and security sector reform

The President of Serbia, Boris Tadić, recently described the democratic transition in Serbia since 5 October 2000 as "the highest level of democratic progress in the country's history" (Dedeić 2010: 2). Serbia has had several rounds of free and fair elections and peaceful transfers of power over the past decade. Yet, it still has to pass the "two turnover test", or the question of whether the old elites that ruled prior to democratization will be prepared to transfer power peacefully after their next comeback (Huntington 1991: 266). Nonetheless, the return of autocracy is highly unlikely, since the political parties that ruled Serbia during the 1990s have mostly abandoned the reactionary discourse and embraced the democratic rules of the game and the goal of EU membership.[6]

Nevertheless, ten years after the democratic changes, Serbia is still not a *consolidated* or *full* democracy, but rather an *under-consolidated* or *flawed democracy*.[7] Political parties are stronger than state institutions, while the executive power still dominates over the legislative and judicial branches. As Timothy Edmunds argues, despite democratic reforms, "illiberal interests, actors and networks of governance have found new ways to adapt, survive and even thrive" (Edmunds 2009: 129). These informal networks, corruption, clientelism and illiberal political culture may not necessarily jeopardize the newly established democratic rules of the game but can prevent them from being institutionalized and consolidated.

Compared with the 1990s, the overall security environment in Serbia became stabilized after 2000 with two exceptions. The first was a lingering conflict between Serbian security forces and Albanian insurgents in South Serbia. The conflict came to an end in May 2001 when the Končulj peace agreement was brokered with the help of the international community. The second exception was the assassination of Prime Minister Zoran Đinđić in an attempted *coup d'état* conspired by the Special Operations Unit (JSO), the State Security Agency (RDB) and the Zemun clan (organized crime group) in March 2003. The state responded by declaring a state of emergency and launching police Operation Sabre. In the course of this operation, which lasted for 40 days, more than

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6   The first shift occurred when Slobodan Milošević's Socialist Party of Serbia (SPS) led by pragmatic Ivica Dačić supported the minority government of Vojislav Koštunica in 2004. The SPS has been part of the current government of Mirko Cvetković since its formation in 2008 and is controlling some of the major ministries such as internal affairs, infrastructure, energy and education. The second shift occurred in 2008 when the top leadership of the ultra nationalist Serbian Radical Party (SRS) decided to split and form a centre-right Serbian Progress Party (SNS).

7   Serbian political scientists Dušan Pavlović and Slobodan Antonić coined the term under-consolidated democracy (Pavlović/Antonić 2007). According to the Economist's Index of Democracy, Serbia ranked 62nd and fell under the category of a flawed democracy. Available at: http://graphics.eiu.com/PDF/Democracy%20Index%202008.pdf (13.9.2010).

10,000 people were apprehended among whom, apart from criminals, were also high officials from the security and judicial sector, politicians from opposition parties, journalists, lawyers, and even pop stars. In spite of some dire prognosis, Serbia reacted peacefully both to the separation of Montenegro in May 2006 and to the unilateral declaration of independence of Kosovo in February 2008.

All the Serbian governments formed since 2000 have proclaimed security sector reform as one of their top priorities. In practice, per contra, their deeds have not always matched their words. Defence reforms only gained momentum after the dysfunctional State Union of Serbia and Montenegro (SCG) dissolved in 2006 and when each republic assumed responsibility for its own military. The looming unilateral declaration of independence of the Provisional Institutions of Self-Government of Kosovo provoked the Serbian National Assembly to declare military neutrality in December 2007, thus halting the future integration into the Euro-Atlantic structures.[8] The Serbian Armed Forces (SAF) increased their participation in peacekeeping operations, although it is still modest in comparison to other countries in the region. Moreover, mechanisms for the democratic control of the armed forces have been established. Lastly, full professionalization and the abandonment of obligatory military service (announced in 2006) will be accomplished by 2010.

Police reforms, which were blocked by the protracted constitutional limbo of the State Union of Serbia and Montenegro, started shortly after the democratic changes. These changes were at first symbolical and encompassed the introduction of new police uniforms to replace the old camouflage ones, international re-integration and a gradual opening to civil society. An important reorganization step was the detachment of the secret service from the Ministry of Interior (MUP) and the establishment of a separate Security Information Agency (BIA) in 2002. Initially, the police reforms were not systematic but unfolded without any coherent plan or strategy (Stojanović 2007/8). By and large, their pace and direction were dictated by the poorly harmonized priorities of the international donor community. The assassination of Prime Minister Zoran Đinđić in 2003 moved police reforms up the political agenda and certain structural reforms soon started to take place. In the following years capacities for criminal investigation were strengthened at the expense of the uniformed police. The police ceased to be a repressive apparatus and became a service of the citizens, and a new normative framework was established (Stojanović 2007). Likewise, the intelligence reforms have been partial and incomplete.[9] The enthusiasm of the oppositional political parties for investigating the involvement of intelligence services in violations of human rights and for opening secret dossiers waned soon after they came to power. On a more positive side, a new normative

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8   Resolution of the National Assembly on the Protection of Sovereignty, Territorial Integrity and Constitutional Order of the Republic of Serbia, adopted on 26 December 2007.

9   Currently Serbia has three intelligence services; one civilian, the Security Information Service (BIA), and two military, the Military Intelligence Service (VOA) and the Military Security Agency (VBA).

framework was adopted and the intelligence services were put, at least formally, under democratic civilian control.

Lastly, one cannot discuss the security sector in Serbia without taking private security companies into consideration. Although the first such companies (mostly detective agencies) started to emerge in the early 1980s, the first real boom occurred during the 1990s. State collapse, armed conflict and international economic sanctions opened up space for the rise of private security. The three most important clients of the private security sector at the time were (1) "economic entrepreneurs" who may not have been able to obtain police protection for their 'grey economy' activities; (2) opposition political parties threatened by the state security apparatus and (3) organized criminal groups. The privatization of security was given an additional boost following the democratic changes in 2000. The downsizing of the Serbian police and military resulted in a huge number of people prepared to offer their experience cheaply on the market. In parallel to this, a small number of companies emerged and organized themselves in an Association of Companies for Physical and Technical Security, which was established in 2005. According to some estimates, there are currently around 3,000 private security companies in Serbia, which employ around 30,000 people and possess up to 47,000 pieces of arms (Unijat et al. 2008: 48; Hadžić et al. 2009: 333). They offer all possible services ranging from body guarding to private intelligence work with the sole exception of providing private military services. However, in spite of its size, the private security sector has been completely ignored by political decision-makers and has so far been left to market forces.

3.2   Obstacle to reforms

Both democratization and security sector reform in Serbia have been facing a set of structural, institutional and ideological obstacles. The first structural obstacle that significantly impaired democratic security sector reforms were the unresolved questions of statehood such as the armed rebellion in South Serbia (2000-2001), the uncertain relationship with Montenegro (until 2006) and the unresolved final status of Kosovo, which unilaterally declared its independence in February 2008. For example, following 5 October 2000, the crisis in South Serbia served as the pretext for the then President of Yugoslavia, Vojislav Koštunica, not replacing the Chief of Staff Nebojša Pavković and the Head of the State Security Agency Radomir Marković.

The second structural obstacle was the fractured political scene, which prevented the emergence of political consensus and clear political visions (Edmunds 2007: 84). The political scene was fragmented both between republics (until 2006) and within them. For example, the first democratic government in Serbia was run by a coalition of 18 political parties and was paralyzed by bitter rivalry between the two strongest ones – Zoran Đinđić's Democratic Party (DS) and Vojislav Koštunica's Democratic Party of Serbia (DSS). This blocked the formation of a national consensus on any of the key political challenges of the time such as security sector reform, cooperation with the International Criminal Tribunal for the Former Yugoslavia in the Hague (ICTY), Euro-Atlantic integration, the future of the federation with Montenegro and policy *vis-à-vis* Kosovo.

The third and the final structural obstacle to the democratization of the security sector in Serbia has been the lack of strong incentives from the international environment. While NATO integration drove security sector reforms in the case of other CEE countries, there was no such impetus in the case of Serbia since the country proclaimed military neutrality. International organizations like the OSCE, UNDP and DCAF as well as many Western states provided significant assistance to security sector reform on a bilateral level in the form of education, expertise, training and funding (Edmunds 2007: 213-234). Nevertheless, it was only the EU which really had a leverage to push for certain aspects of reform through its conditionality policy. This has been amply demonstrated by effective reforms related to the visa liberalization regime, which entered into force on 1 January 2010. Nevertheless, the EU has so far not paid sufficient attention to the democratization of security sector governance. This subject has received only marginal attention in the annual progress reports published by the European Commission and the focus has mostly been on the adoption of various legislation measures (Abusara 2009). Such a 'ticking the box' approach has in fact moved the legislative agenda in Serbia, but it has been completely ineffective when it comes to the problems of implementation.

In addition to this, we can identify two institutional obstacles that have constrained the democratization of the security sector in Serbia. The first institutional obstacle is the historical legacy carried within the security sector institutions themselves. Generally speaking, institutions in the security sector of Serbia are burdened with two parallel legacies: The first is an authoritarian legacy dating from both the communist (1945-1991) and the nationalist (1991-2000) eras. The second is a more recent legacy from armed conflicts as Serbia's security sector has directly or indirectly been one of the main protagonists in five armed conflicts: Slovenia (1991), Croatia (1991-1995), Bosnia and Herzegovina (1992-1995), Kosovo (1998-1999) and South Serbia (2000-2001). Both legacies, though each in its own way, have left a strong organizational and normative imprint on the security sector institutions (Edmunds 2007: 89, 2008: 41). On the one hand, the authoritarian legacy is characterized by the repressive and secretive organizational culture, the clientelist relationship with the civilian authorities and an entrenched belief in a privileged status among other branches of the public administration. On the other hand, the legacy from the Yugoslav wars encompasses militarization, wartime connections with organized crime, and involvement in war crimes. The fact that Serbia lost all the wars could have been a mitigating circumstance for a fast, comprehensive reform following 5 October 2000. However, no advantage was taken of this mitigating circumstance because the new political elites did not have enough courage to face citizens with this bitter reality.

The second institutional obstacle was the very pacted nature of the democratic transition in Serbia. The peaceful transfer of power in October 2000 was made possible by pacting the top security sector leadership into the new democratic regime. While Vojislav Koštunica, the new President, co-opted Chief of General Staff Nebojša Pavković, Zoran Đinđić, the future Prime Minister, struck a deal with Milorad Luković *Legija*, commander of the Special Operations Unit (JSO). Although this may have prevented bloodshed on the streets of Belgrade, it also hindered a swift security sector reform. After the introduction of democratic changes, the new political elites did not make a decisive break with the past

but rather decided to co-opt its top management and reform these institutions in a piecemeal way. This enabled the old institutions (police, military, secret services, etc.) to continue their path-dependent life and conduct business-as-usual under the new democratic system.

Finally, the establishment of democratic security sector governance in Serbia faced one important ideological obstacle. Ever since the breakup of Yugoslavia, the Serbian polity has been deeply divided between national-liberational and civic-democratic discourses, commonly referred to as "the two Serbias". While the former draws on the narratives about the 'external liberation' from foreign powers, the latter builds on narratives about the 'internal liberation' or social emancipation. These two discursive orders, which largely came into existence in their current form during the 1990s, are producing divergent conceptions of collective identity and national interests, but also two different images of what the security sector and security policies should look like (Ejdus 2010). On the one hand, the national-liberational discourse constructs the national self in ethnic and spatial terms (as opposed to territorial 'Others') while its representations of dangers are related to the external realm. Consequently, the security sector, especially the military, should be developed primarily for the defence of territorial integrity and state sovereignty. The civic-democratic discourse constructs national identity not only in civic spatial terms but also in temporal terms (as opposed to the past 'Self'). Its dominant security concerns are related to internal affairs such as crime, corruption and right-wing extremism. Consequently, the military should be decreased in size, professionalized and adapted to the new missions.

This ideological struggle between the first and the second Serbia prevented the creation of national consensus, but on a deeper level than the fragmentation of the political scene. The absence of consensus, in this ideational account, is not a function of fracturing the political scene into many small actors each with their own interests and ideas about the future of Serbia, but of a deep symbolic rift within the Serbian polity. Against this backdrop, we now turn to the analysis of democratic security sector governance in Serbia using the conceptual framework developed in the first part of the report.

4.   Democratic security sector governance in Serbia 2000-2010

4.1   Horizontal accountability

Over the past decade, Serbia has, for the first time in its history, established institutional mechanisms for horizontal accountability. Intelligence services and the Serbian Armed Forces were nominally put under democratic civilian control in 2002 and 2003 respectively.[10] The new Constitution adopted in 2006 as well as all other subsequent security and defence laws contain similar provisions.

Executive civilian control

Control by executive civilian authorities is the first form of horizontal accountability.[11] In the main, the military was under the control of civilian executive authorities throughout the 1990s, albeit authorities without democratic legitimacy. Moreover, this was rather a subjective type of control due to the high level of partification and instrumentalization of the security apparatus for the purpose of regime survival. When Milošević's regime collapsed, the armed forces regained a degree of professional autonomy and new laws were adopted regulating civilian supremacy in the chain of command. The General Staff was subordinated to the Ministry of Defence (MoD) in 2004, while the President of Serbia acquired the title of supreme military commander from the Supreme Defence Council in 2006.[12]

Another important step in the development of the civilian chain of command was the establishment of the National Security Council. Since it could not be established at the federal level due to deep political rifts, the Government of Serbia established its own State Security Council in 2002. Formally, this body was nevertheless not authorized to control the Military of Yugoslavia (VJ), including its two intelligence services (Military Security Service and Military Intelligence Service), as well as two intelligence services attached to the Ministry of Foreign Affairs (Security Service and Service for Research and Documentation). As the assassination of the Prime Minister in March 2003 proved, the Council was not able to control security institutions that were formally in its remit. The government of Serbia re-established the National Security Council in 2006 with formal competence to control and coordinate all five intelligence services and with the main goal of completing cooperation with the International Criminal Tribunal for the Former Yugoslavia in The Hague (ICTY), that is the arresting and extraditing the remaining

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10   Law on Security Services of Federal Republic of Yugoslavia (2002); The Constitutional Charter of the State Union Serbia and Montenegro (2003).

11   We prefer the term executive civilian control to the term civilian control because it is more precise and enables a clear delineation from parliamentary oversight and judicial review which are also forms of control by civilian authorities.

12   The Supreme Defence Council was the body at the State Union level which ceased to exist after its dissolution in 2006.

indictees to the Hague. This body, which was supposed to be co-presided by the President and the Prime Minister, has never met since President Boris Tadić did not want to share this position with then Prime Minister Vojislav Koštunica. In the meantime, the Constitution of Serbia was adopted but it failed to mention this body since there was no political agreement over who would be its chair. The deal over its composition was struck in May 2007 after the new government was formed. Following the elections, the balance of political power tilted in favour of President Tadić and his Democratic Party so that he formally assumed the entitlement to chair the Council.[13]

In December 2008, the system of civilian control was put to the test when Chief of Staff Zdravko Ponoš publicly accused Minister of Defence Dragan Šutanovac of violating professional military autonomy and of meddling with the operational management of the armed forces.[14] The dispute was resolved by the President and supreme military commander Boris Tadić, who dismissed the Chief of Staff for violating military rules and breaching the civilian chain of command. Although this case demonstrated the effectiveness of executive civilian control, it also revealed its deeply subjective character.

An executive civilian control of the military intelligence services was almost inexistent until recently. Although their operations were traditionally hidden behind a cloud of secrecy, over the past decade these services were under the spotlight in numerous public scandals, including unauthorized surveillance, mysterious deaths of soldiers and speculations about the support of persons indicted for war crimes. Minister of Defence Dragan Šutanovac even admitted in July 2009 that "there is not a single way, not a single instrument at the minister's disposal to obtain information about what is really going on in these agencies" (Jovanović 2009: 2). Shortly after, the institution of Inspector General was formally introduced into the legal system as the mechanism of internal control.[15] However, since nobody has been appointed to the post it has yet to be implemented in practice.[16]

In contrast to the military intelligence services, which are organizational units within the Ministry of Defence, the Security Information Agency, which is a civilian intelligence service, is a separate agency. The director of the Agency is appointed by the government, which holds him accountable. The agency reports to the government twice a year and has to comply with general guidelines set by the government. Nevertheless, the Security Information Agency is under strong political influence. The question of which political

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13 The National Security Council is composed of the President of the Republic, Prime Minister, Minister of Defence, Minister of Interior, Minister of Justice, Chief of General Staff and directors of intelligence services. Interestingly enough, the Minister of Foreign Affairs as well as representatives of the Assembly do not participate in the work of the Council. Source: Law on the Basic Organization of the Security and Intelligence System of the Republic of Serbia, adopted in December 2007.

14 He also criticized the MoD for failure to devise defence policy and for irresponsible procurement.

15 The Law on VOA and VBA, articles pp. 54-56

16 According to the Law, the Inspector General, who is recommended by the Minister of Defence, is appointed by the Government for a period of five years.

party will gain control over the agency remains one of the most important topics of all coalition discussions. All past directors were loyal party henchmen rather than independent professionals, which enabled the 'partification' of the Security Information Agency's operations. The best case in point is the arrest of war crime suspect Radovan Karadžić only four days after the change of the Agency's Director on 17 July 2008. This leaves little doubt that the Security Information Agency had already known his whereabouts for some time but did not apprehend him due to the lack of political will within the Democratic Party of Serbia that had a grip on the Agency.[17] On the other hand, many believe that the Security Information Agency still exerts strong influence on democratically elected politicians. For example, there is often talk about "the register" of the Security Information Agency's informers which mysteriously disappeared in the months following 5 October 2000. It allegedly contained incriminating information about many politicians from the democratic opposition at the time.[18] A former Security Information Agency official, Zoran Stijović, even says that "hope, faith and future of our citizens were at one point entrusted to people who could have been blackmailed by the Service. Once the pillar of the *ancien régime* and wallowing in crime and corruption, the Service did many things in its own right and for its own interests" (Pejović 2009: 12).

As far as the police are concerned, basic political and legal preconditions for de-politicization and executive civilian control have been met since 2000. The *Law on Police*, which was adopted in 2005, distinguished operational/organizational components from political and supervisory ones. This was supposed to reduce the meddling of politicians in the operational management of the police. Some competences of the Minister of Interior are still too extensive (e.g. the right to appoint heads of regional police directorates, the discretionary use of special forces, total command over internal control, etc.). In the past, political changes at the top of the Ministry of Interior were by default followed by a purge of politically unfit policemen at high and mid levels. The biggest purge so far took place in 2004 when most of the members of staff involved in Operation Sabre were sacked.[19] According to the latest public opinion poll on police reforms, 84% of citizens believe that politicians exert too strong an influence over operational police activities (SMMRI 2008: 18). According to the same poll, most people believe that the police are often used to

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17 According to some unverified sources, it was the outgoing head of BIA Rade Bulatović who actually decided to arrest Karadžić either because he was trying to undermine the recently signed post-election coalition agreement between SPS and DS (on 4 July) or because he wanted to secure certain benefits from the incoming government.

18 The head of the State Security Service (RDB) Radomir Marković, one of Milošević's closest cronies, managed to stay in his position until January 2001. This provided him with enough time to possibly 'clean' the incriminating evidence. In 2005, he was sentenced to 15 years in prison for numerous state-sponsored assassinations. The verdict was altered to 40 years of imprisonment in 2008.

19 The current Minister Ivica Dačić took office in 2008. He merely replaced the Head of the Service for the Fight against Organized Crime and promised that the times of political purges in the Ministry are over. Whether this will be the case remains to be seen (Veljković 2010: 14).

protect the interests of the government (75%) and political parties (66%) while only 36% believe that the police work in the interest of the citizens.

Parliamentary control

Parliamentary control is the other form of horizontal accountability, albeit poorly practiced in Serbia. To start with, the National Assembly of the Republic of Serbia traditionally occupies a weak position in the political system, especially *vis-à-vis* the executive branch. During the first three years of transition (2000-2003), the executive had a complete legislative monopoly; disobedient members of parliament were deprived of mandates while parliamentary rules and regulations were often violated (Pavlović/ Antonić 2007: 91-97). The situation improved with the new composition of the National Assembly in 2004 and especially after the new Constitution was adopted in 2006, strengthening parliamentary prerogatives.[20] Nevertheless, its Article 102 stipulates that MPs can voluntarily sign blank resignations which can be activated by their political parties at any time. This reinforced the domination of political parties and executive power over MPs and the legislative power in general. On a more positive note, the formal competences of the parliamentary Defence and Security Committee are quite extensive.

Unfortunately, parliamentary control is still quite modest in practice because the Committee does not have either the capacities or the will to use its competences. So far, its role has boiled down to routine meetings, the adoption of reports submitted by the Ministry of Interior, the Ministry of Defence and intelligence services, as well as to discussions about mundane political affairs. Proposals of legal acts in the field of security and defence have most often been adopted in emergency procedures without any thorough discussion either in the committee or in plenary sessions.[21] Most worryingly, the Defence and Security Committee has so far not exercised its probably most powerful weapon, namely budgetary control or so called 'purse power'. Parliamentary control of the intelligence sector is limited to discussions and the adoption of its periodic reports. Members of the Committee have made very few field control visits to the intelligence services. Traditionally, the Chair of the Committee has been a representative of the strongest opposition party.

In March 2010, a decision was made to abandon this practice because, as one of the MPs from the ruling coalition argued, "the opposition did everything but what it had to

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20 The right to interpellation was introduced while the confidence motion was better regulated.

21 For example, a set of security and defence laws was put into parliamentary procedure at the beginning of December 2007. On 3 December, the Defence and Security Committee started its first session which was supposed to consider the laws at 9:20 am. However, the plenary session of the Assembly with the same bills on the agenda began on the same day at 10:00 am. The Committee met only once more on 5 December before the laws were adopted on 11 December. The reason behind such an emergency procedure was the Law on Implementation of the Constitution of the Republic of Serbia (2006). The law stipulated that security and defence laws should be adopted at the latest within a year from the day the constitution was adopted, which was also a precondition for the announcement of the presidential elections.

do, exercise democratic civilian control of the security sector" (Stanković 2010: 3). Finally, the new parliamentary rules of procedure adopted in July 2010 stipulated the breakdown of the Defence and Security Committee into the Committee for Defence and Internal Affairs and the Committee for Security Services. This move should be able to increase the human, material and time resources of the National Assembly and hence improve parliamentary oversight of the security sector. Still, certain parts of this sector, such as private security firms, customs administration, prison guards, the administration for the prevention of money laundering, and the tax police remain by and large outside parliamentary control.

Judicial review

The third form of horizontal accountability is judicial review, which is about the control of the legality of operations, especially concerning respect for the human rights of ordinary citizens and security sector employees alike. On the positive side, the formal preconditions for the judicial review of the security sector have been in place in Serbia over the last decade (Mirčić 2008). Military courts were abolished in 2004 and their mandate and responsibilities were transferred to civilian courts. In most cases, judicial review in the military domain refers to administrative disputes regarding soldiers' rights and duties. Military Disciplinary Courts, formed within the Serbian Armed Forces and the Ministry of Defence, are responsible for dealing with the disciplinary transgressions of professional soldiers, including those related to human rights. When it comes to police and intelligence services, the judicial review is mainly about the control of the legality of the use of force and special investigative measures. According to article 41 of the Constitution, state institutions are obliged to seek the courts' permission in order to conduct secret surveillance. However, the *Law on Electronic Communication* that was adopted in 2010 allows certain infringements of privacy without explicit permission from a court. This was heavily criticized as unconstitutional (Janković 2010).

Although it is formally established, in practice the judicial review still suffers from a range of shortcomings. First, courts are over burdened, slow and do not have sufficient capacity to function normally. For example, since they lack the capacity to keep private data which has been collected secretly, such data is left within the Ministry of Interior. Second, the executive power is still exerting excessive pressure on the judiciary, especially on the public prosecution authorities. It has been quite passive in filing complaints against policemen suspected of the disproportional use of force against citizens and the violation of human rights (Ilić 2010: 14). Finally, there are clear indications that prosecution is still strongly influenced by the executive. A case in point is an incident involving six youngsters who threw a Molotov cocktail at the Greek Embassy in August 2009 out of solidarity with Greek anarchists. Although the damage they caused was estimated at just 18 Euro, they were still charged with international terrorism and faced an unfair trial raising serious doubts about the political background to the trial (Pešić 2010: 7). Another example is the case of the controversial arrest of Milorad Ulemek Legija, who turned himself in in May 2004. Two years later, one opposition party initiated criminal charges against the then Minister of Interior Dragan Jočić and the Director of Security Information Agency Rade Bulatović for forging the official record of

conversations that they had with Legija on the night of his arrest; but the investigation was soon dropped. The prosecutor responsible for the case, Zoran Jakovljević, revealed in 2010 that this step was directly ordered by the Ministry of Interior.[22]

Oversight of independent regulatory agencies

The last but not the least important form of horizontal accountability is the oversight conducted by independent regulatory agencies. During the last decade, a number of independent regulatory agencies have been established such as the Ombudsperson, the Commissioner for Information of Public Importance and Personal Data Protection (the Commissioner), the Anti-Corruption Agency and the State Audit Institution. The Ombudsperson is responsible for the protection of human rights and civil liberties and conducts oversight of public institutions in this respect. Apart from his regular activities monitoring respect for human rights by the security apparatus, the Ombudsperson also conducted his first "preventive-control" field visit to the Security Information Agency in January/February 2010.[23] The Commissioner exercises public oversight in the domain of access to information and private data protection. He regularly responds to citizens' demands and can make binding decisions. The State Audit Institution has so far not controlled institutions within the security sector, although it has the formal authority to do so.

From day one of their existence, all these independent regulatory agencies faced tremendous obstacles ranging from the lack of minimal material preconditions for their work to complete ignorance of their decisions by other governmental institutions. The Commissioner recently warned that "decisions of the government to establish these institutions should not serve as a façade just because the EU wants them. However, it is not a rare occasion in Serbia that the institutions which are meant to exercise control are facing enormous problems" (Janičijević 2010: 20).

4.2   Vertical accountability

Security sector reform has not been among the top issues in Serbian elections. These have been dominated by economic, social and political concerns (Atanasović 2007). According to the opinion polls, the military in Serbia has traditionally enjoyed strong public support. During the Milošević rule, public support for the military seemed to correspond positively to the perceived intensity of the external threat and varied between 43% in 1997 and 83% in 2000 (Hadžić/Timotić 2006: 97). This support started to decrease, however, after the

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22 Source: www.b92.net/eng/news/crimes-article.php?yyyy=2010&mm=09&dd=02&nav_id=69451 (21.9.2010).

23 His conclusion was that the BIA fully conforms to legal provisions about using special investigative measures. The report is available on: www.ombudsman.rs/index.php/lang-sr/izvestaji/posebnii-izvestaji/791-2010-03-13-14-29-30 (30.8.2010).

democratic changes (Ibid: 98).[24] This tendency only began to reverse in 2009, which is seen clearly both in public opinion polls and in the increasing number of applications of prospective cadets for places at the Military Academy.[25] In contrast to the military, the police by and large lost the public's support during the 1990s due to their strong political instrumentalization and repressive methods of operation. Public support for the police began to rise again after 2000 and especially during Operation Sabre in the spring of 2003.[26] In the following years, although the legitimacy of the democratic institutions in general was plummeting, the police remained one of the most popular institutions, after the Serbian Orthodox Church and the Serbian Armed Forces. To our knowledge, no surveys of public support for the intelligence agencies have been conducted to date.

When it comes to active participation by civil society, the picture is improving but is still far from perfect. During the rule of Slobodan Milošević, the CSOs were regarded as the "fifth column", especially if they dealt with security and defence issues. Following 5 October 2000, these organizations were elevated to the status of a "necessary evil", or unavoidable nuisance that needs to be tolerated for the sake of minimum democratic legitimacy. Nevertheless, the security apparatus still does not regard civil society as a partner but rather as a challenge if not a threat (Ejdus 2009). At best, they consider NGOs as a source of democratic legitimacy but not yet as a source of independent expertise or democratic oversight. To make things worse, even the public at large is sceptical about the role of NGOs. For example, according to one poll in 2006, 47 % of citizens had negative associations regarding NGOs.[27]

On the positive side, the number of NGOs interested in security affairs has increased significantly in the past decade, although most of them are located in Belgrade. This development has been followed by an increase in their capacities for public oversight and participation (CCMR 2008). The legal status of NGOs is regulated by the Law on Citizens' Associations adopted in 2009. So far, these organizations have been funded mostly by international donations through bilateral financial assistance from Western countries, foreign private foundations or through multilateral organizations. The most important role that civil society has so far played was to influence the legislative process. Some of the success stories in that respect have been the legislation on the right of conscientious objection, the right of free access to information, private data protection, classification of data, etc. The Ministry of Defence opened the public discussion about legislation in the

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24 72.8% in June 2003, 57% in April 2004, 40.8% in April 2005.

25 In 2004 only 21 candidates applied for 240 places at the Military Academy while 1259 candidates applied in 2010.

26 According to a survey conducted by Medijum Galup in April 2003, 50% of citizens had confidence in the police (Bjelovuk 2003:6). According to a survey conducted by CESID, public confidence in the police was 44% in 2005 (Jevtović 2005: 5).

27 See: www.smartkolektiv.org (30.8.2010). Similar results were reached in a longitudinal survey of public support for NGOs conducted by the Institute of Social Sciences. www.idn.org.rs (30.8.2010).

defence field for the first time in 2007 and this has become the usual practice ever since. Recently, some political parties are also slowly beginning to recognize the usefulness of independent expertise within NGOs. For example, in October 2009 the opposition Liberal Democratic Party contacted the independent think tank Centre for Civil-Military Relations for an opinion on a set of draft security and defence laws which were undergoing parliamentary proceedings at the time.

4.3   The rule of law

Significant progress has also been made regarding the rule of law. The new Constitution was adopted in 2006 together with key legislation in the field of defence and security.[28] In 2009, the Serbian Parliament adopted the first *National Security Strategy* and *Defence Strategy* that, among other things, confirmed the values of democratic civilian control, professionalization, the rule of law, civil society participation, and transparency. Additionally, for the first time intelligence services were regulated by laws and not by secret governmental decrees and directives. Nevertheless, the legislation was adopted without a systematic plan and is not fully harmonized either horizontally or *vis-à-vis* the Constitution. Finally, Serbia remains the only country in South East Europe without a comprehensive law on the private security sector, which is still extremely under-regulated.[29]

Principles of human rights and civil liberties have been duly incorporated into the new normative framework. Regarding defence laws, the right of conscientious objection and alternative civilian service were introduced in 2003. In addition, the new *Law on the Serbian Armed Forces*, adopted in 2007, recognized the right of professional soldiers to form military trade unions, their freedom of worship as well as the right to access information. However, its article 14a bans them from participation in any activities organized by CSOs dealing with security and defence issues. This not only jeopardizes public oversight and civic participation in security and defence policies but is also an infringement of the constitutional freedom of association.

The new normative framework regulating police affairs was also harmonized with international human rights standards. The *Law on Police* (2005) established the Service of Internal Control responsible for the control of the legality of police work especially "with

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28   Some of the key legislation is: Law on Security-Intelligence Agency (2002); Law on Police (2005); Law on the Serbian Armed Forces (2007); Law on Defence (2007); Law on the Basic Organization of the Security and Intelligence System of the Republic of Serbia (2007); Law on Private Data Protection (2008); Law on Civilian Service (2009); Law on Participation of the Serbian Armed Forces and Other Defence Forces in Multinational Operations Outside the Borders of the Republic of Serbia (2009); Law on the Military Security Agency and Military Intelligence Agency (2009); Defence Strategy (2009); National Security Strategy (2009); Law on Data Secrecy (2009).

29   Nonetheless, the private security sector does not exist in a total legal vacuum. There is a huge number of more general laws and subordinate legislation that regulate certain aspects of their work.

regard to the protection of human rights in the execution of police tasks and implementation of police mandates".[30] The new *Code of Ethics*, adopted in 2003 in accordance with the European Code of Police Ethics, set the guidelines for the protection of human rights.[31] Intelligence services too are obliged to base their activities on respect for human rights and civil liberties. Members of military intelligence services can complain to the Inspector General should they have information about human rights violations.[32]

On the other hand, the new regulation covering the secret collection of private data has certain deficiencies from the human rights perspective. In addition to the *Law on Electronic Communication* already mentioned, one should also mention the *Law on the Security Information Agency* and the *Law on Criminal Procedure* which avoid obliging public institutions that collect private data to inform the individuals concerned, as is stipulated by Article 42 of the Constitution. Finally, the *Law on the Security Information Agency* does not stipulate the existence of internal controls that could hold employees of the Security Information Agency accountable for a potential violation of human rights.

Unfortunately, it is not possible to know to what extent the above-depicted normative framework guaranteeing human rights is being implemented in practice. Reports by the military-disciplinary courts to the President and Minister of Defence are not available publicly. A military trade union has still not been established. As one Major from the Serbian Armed Forces explains: "No one wants to have his career tarnished [...] everyone would rather have others do it. This right exists only on paper but doesn't work in practice".[33] Moreover, the introduction of religious service in the military was announced for 2010. Serbia does not have a military ombudsperson, but if the human rights of soldiers are violated in any way by a state institution, he/she is entitled to bring his/her grievance to the attention of the civilian ombudsperson. It is indicative that the number of complaints filed against the Ministry of Defence is small by proportion.[34] There is still no definitive proof that the human rights of soldiers are fully respected. As another military officer put it: "Formally, there are mechanisms for the protection of our human rights. The problem is that we don't use these mechanisms because we are trained to endure. That's the essence of the problem".[35] Finally, there is reason to believe that the problem of mobbing, workplace bullying by superiors, is widespread within the Serbian Armed Forces, especially within units. As one senior military officer put it: "Mobbing is difficult to prove and it is usually silenced in an organization that hinges on hierarchy. Victims

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30 Article 172 of the Law on Police.

31 The new Code of Police Ethics was adopted in 2006.

32 Article 51 of the Law on the Military Security Agency and Military Intelligence Agency.

33 Anonymous interviews conducted at the Military Academy in December 2009.

34 In 2007, 2008 and 2009 only 5, 26 and 23 complaints against the MoD were filed which was 1.23%, 2.52% and 1.22% (respectively) of the total number of complaints filed.

35 Anonymous interviews conducted at the Military Academy in December 2009.

would rather suffer and wait for a new boss than lose a few years of their career in efforts to prove they are right".[36]

Police torture and the disproportionate use of force are not occurring on the systematic level that was the case during the 1990s but instances still do occur. This has been highlighted both by local NGOs and international organizations such as the Council of Europe.[37]

What is more, cases of police torture and inhumane treatment are rarely investigated, and even more rarely prosecuted. When it comes to the intelligence services, the biggest challenge is the practical implementation of the human rights regulation concerning private data protection. The Commissioner for Public Information estimates that there are around 300,000 actors in the state, including intelligence services, who hold about a million different kinds of records, usually without any legal basis and without the approval of the individuals concerned (Šabić 2010).

4.4 Representativeness

The fourth dimension of democratic security sector governance is representativeness or the pursuit of the equal representation of different social groups within the security sector. In terms of ethnic representativeness, things improved during the last decade. According to the latest census conducted in 2002, Serbs accounted for 82.8%, Hungarians 3.9%, Bosnians 1.82%, Roma 1.44%, Yugoslavs 1%[38] while all the other groups together comprised 9.7% of the population in Serbia (without Kosovo).[39] However, the ethnic composition of the security sector does not reflect this diversity. During the nineties, the Military of Yugoslavia (VJ), which was a successor to the multiethnic Yugoslav People's Army (JNA), became almost purely Serbian. The situation has not improved much after a decade of democratic transition. According to data from 2008, 91.2% soldiers in the Serbian Armed Forces declared themselves to be Serbs (Hadžić et al. 2009: 147). Over the past couple of years, the Military Academy had virtually no cadets at all belonging to ethnic minority communities. This situation has begun to change in 2010. According to the Minister of Defence, "after many years a great number of national minorities will enrol at the Military Academy" (Didanović 2010: 12).

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36 Anonymous interviews conducted at the Military Academy in December 2009.

37 For local NGO accounts, see annual Human Rights Reports published by the Belgrade Centre for Human Rights available at: www.english.bgcentar.org.rs/ (21.9.2010). For the IO accounts, see the Report to the Government of Serbia on the Visit to Serbia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 19 to 29 November 2007. Available at www.unhcr.org/refworld/country,,COECPT,,SRB,4562d8b62,496daf432,0.html (28.8.2010).

38 Although Yugoslavia does not exist anymore, some people are still emotionally attached to it and declared themselves to be Yugoslavs.

39 Source: Statistical Office of the Republic of Yugoslavia http://webrzs.stat.gov.rs/axd/index.php (13.9.2010).

Serbian police shared the fate of the military with regard to ethnic representation during the 1990s. First progress was made with the creation of a multiethnic police force after the Albanian armed rebellion in South Serbia ended in May 2001. In the following years, ethnic representation in the police gradually improved. Back in 2001, there were only 118 Albanian, 496 Hungarian and 380 Bosnian policemen.[40] Five years later, these figures had increased to 296, 487 and 453 respectively. In spite of the increase in the absolute number of policemen from national minorities, they are still non-existent in senior positions. Members of the Roma community are particularly under-represented both in absolute terms and at a higher level of responsibility. Finally, it is difficult to speculate about ethnic representativeness with regard to the intelligence services, given the lack of any reliable and publicly accessible information.

Institutional mechanisms as well as policies for gender mainstreaming in public administration had been established at the local, provincial and national level by 2009 (Stojanović/Quesada 2010).[41] In spite of the fact that there are still no gender-sensitive policies within the police, military or intelligence services as such, the representation of women in these institutions has significantly increased in the course of the last decade. This change is particularly visible in operational posts, to which women had limited access prior to the onset of the democratic transition.[42] As the latest research on gender and SSR in Serbia concluded "most women in the security sector are still working in administrative, analytical and policy-formulating positions, and far fewer in operational jobs. Women are almost totally absent at management and command levels within security sector institutions that use coercive means (police, military, customs)" (Ibid: 14). For example, within the Ministry of Defence and Ministry of Interior, both ministers, all state secretaries (five at the MoD and one at the MoI), and all deputy ministers (two at the MoD and three at the MoI) are men.

The Ministry of Interior and the police already started to recruit women for operational posts in 2002 and have made the furthest progress so far (Hadžić et al. 2009: 166-172; Stojanović/Quesada 2010: 68). For example, back in the 2001, only 29 women were employed as uniformed police personnel. Seven years later, this number skyrocketed to no fewer than 2,909. This still accounts for only around 10% of the total number of uniformed police personnel, far below the goal of 30% set by the Platform for Action of the Beijing Declaration adopted by the UN in 1995. The ratio is even more modest when the number of women at a higher level of responsibility is taken into account. For

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40 This increase is much bigger in relative terms, given that the total number of policemen has fallen significantly in the meantime.

41 These policies at the national level are the National Strategy on the Improvement of the Position of Women and the Promotion of Gender Equality and the Road Map for the National Action Plan to implement the UNSCR 1325. The mechanisms are Gender Equality Council which is an inter-ministerial body, Gender Equality Directorate under the Ministry for Labour and Social Policy, the Deputy Ombudsperson, the Parliamentary Gender Equality Committee, the Commissioner for the Protection of Equality.

42 In contrast, civilian posts were open to women from the end of World War II.

example, in 2008, only 298 women held key management positions in the police (Hadžić et al. 2009: 170). This may be attributed to an unofficial human resources policy and a professional culture which favour men over women, but also to the admission quotas for female candidates at the Academy for Criminalist and Police Studies.[43]

The Ministry of Defence and the Serbian Armed Forces have also made significant progress, both in formal and in practical terms. Formally, men and women have equal rights and duties with regard to admission to the professional service, dress code, salaries, etc. One of the biggest steps forward was the opening of the Military Academy to female candidates in 2007. In 2010, around 40% of the civilian employees at the Ministry of Defence were female, most of them occupying administrative positions. However, less than 2% hold command or management positions (Ibid: 74). Additionally, there are currently only 330 professional female soldiers of whom 21 are officers. This number will increase when the first generation of 105 cadets who enrolled at the Military Academy in 2007 will graduate and will be promoted to the rank of Lieutenant-Sergeant in 2011. Finally, there are no female pilots in the Air Force, although some women have gained the necessary training qualifications.[44]

4.5   Transparency

The Yugoslav and Serbian security sector was wrapped in a cloud of secrecy for more than half a century. A sea of laws and subordinate regulations enabled the members of the security sector to arbitrarily classify even the most trivial information. In that way, the system fought against real or imagined security threats as well as against internal democratic criticism. Conversely, new legislation regulating the transparency of the public administration at large and the security sector in particular has been enacted over the past decade. The Constitution of Serbia recognized the right to access information (Art. 51). The new *Law on Free Access to Information of Public Importance* was passed in 2004 under heavy pressure from NGOs grouped within the Coalition for the Free Access to Information. The law obliged institutions to make public information accessible to citizens, publish a civil service handbook and update it at least once a year. The Law also instituted the Commissioner responsible for its oversight. Public institutions have a duty to report periodically on their activities undertaken with respect to the Law, while citizens have the right to file complaints to the Commissioner if they believe that they have been denied free access to public information. The Law is very liberal since it stipulates that it is not up to citizens to prove that certain information is of public importance but to the institutions to prove why certain information has to be kept away from public (Art. 4).

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43   For the undergraduate level the quota is 21%, and for the specialist studies it is 30%. Source: MUP.

44   Report of the Ombudsperson for 2009. p. 16.

The second important law which regulates this domain is the *Law on Confidentiality of Data*, which was also adopted under strong pressure from civil society and the EU in 2009. The Law stipulates four levels of protection: Top Secret, Secret, Confidential, and Restricted. Automatic access to classified information is granted to the President, the Prime Minister, and the Speaker of the National Assembly while other high functionaries have certain limitations.[45] The adoption of the law in this field should minimize the space for voluntarism and arbitrariness in the classification of data.

The situation with regard to the transparency of strategic orientation in the domain of national security has improved in formal terms since the National Assembly adopted Serbia's first National Security Strategy in 2009.[46] However, this document avoided clarifying the state's basic security and defence orientation. Thus, neither military neutrality, which is the official policy, nor NATO accession, which is privately preferred by the current Minister of Defence Dragan Šutanovac, are even mentioned in the document. This, however, does not mean that there is no policy at all, but rather that for political reasons the decision-makers are not ready to make it public. Similar confusion surrounds the government's approach to the Kosovo problem. The National Security Strategy stated that the "separatist tendencies of part of the Albanian national minority in Kosovo and Metohija, which culminated in the illegal and unilateral declaration of independence of Kosovo, are a direct threat to the territorial integrity of the Republic of Serbia and one of the most serious security challenges in the region".[47] However, the strategy does not elucidate how Serbia will deal with this threat and what its strategy toward the Kosovo problem actually looks like. On a declarative level, the Government hard-headedly reiterates that the independence of Kosovo represents the direst threat to national identity, security and regional and even global stability. On a practical level, it has recently become increasingly flexible and open to a constructive approach in concert with the EU.[48] Ambiguity and ambivalence regarding these main strategic challenges may be a part of the current Government's strategy. However, obscure foreign, security and defence strategies undermine the vertical accountability of the government and are in contradiction to the basic tenets of democratic governance.

Although the normative framework for a transparent governance of the security sector has largely been put in place, in practice there are still many problems on a more operative level. Since its establishment, the institution of the Commissioner has been

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45 In certain cases, functionaries appointed by the National Assembly and judges can only access secret information after being vetted. Art. 38.

46 Previous vision documents in the field of defence were the Defence Strategy (2004), Defence White Paper (2005) and Strategic Defence Review (2006). All of them were adopted during the period of existence of the State Union of Serbia and Montenegro.

47 Republic of Serbia, National Security Strategy, p. 8.

48 This is especially so since September 2010 when the Government submitted, jointly with the EU, a resolution to the General Assembly regarding the International Court of Justice's advisory opinion on the legality of the unilateral declaration of independence of Kosovo.

facing a set of obstacles. These range from too few staff and a lack of workspace to the resistance of other institutions to implementing its decisions and recommendations. According to the Commissioner's report, until 2008, the Security Information Agency had an "inadmissible, ignorant attitude towards the Law on Free Access to Information of Public Importance, civil and public rights and towards its own obligations under the Law as well".[49] Nevertheless, significant progress has been made following the change of management in July 2008.[50] The Security Information Agency publishes its civil service handbook in accordance with the Commissioner's guidelines. Furthermore, the Agency has started to respond positively to citizens' requests for access to public information. The Ministry of Interior also had a mixed record when it came to transparency. Since 2004, it has been publishing the civil servant handbook on its official website, although it does not fully comply with the guidelines set by the Commissioner. The Ministry of Interior also developed institutional capacities for the application of the *Law on Free Access to Information of Public Importance*. Nevertheless, until 2009 it stood out as one of the institutions which complied least with the Law.[51] Finally, its annual reports to the National Assembly are not available publicly. With regard to the private security sector, the Commissioner has so far not exercised any oversight. This is especially worrying given the sheer size of the sector and the fact that it offers private detective and intelligence services on the market without being accountable to any democratic institution.

The National Assembly has also made an important step forward when it comes to transparency. It has developed sufficient institutional capacities to provide information to the public, while complaints filed against it are very rare. Its sessions are broadcast live on the national TV channel and sessions of its Defence and Security Committee are recorded. The Assembly has a website where summaries of all sessions can be found.

Financial transparency

The public sector in Serbia is still not transparent financially in spite of a certain amount of progress made over the past decade. According to the Open Budget Index (OBI) survey of 85 countries, Serbia ranked 38th in 2008 with an OBI rating of 45% among those countries which provide only some information about their public spending. Bosnia and Herzegovina (44%) and Albania (37%) were the only two countries in the Western Balkan region with worse results.[52] Lack of financial transparency is particularly worrying when it comes to the

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49 Republic of Serbia, "Commissioner for Information of Public Importance, Report on the Implementation of the Law on Free Access to Information of Public Importance in 2008". p. 11.

50 Republic of Serbia, "Commissioner for Information of Public Importance, Report on the Implementation of the Law on Free Access to Information of Public Importance in 2008". p. 12.

51 Republic of Serbia, "Commissioner for Information of Public Importance, Report on the Implementation of the Law on Free Access to Information of Public Importance in 2008". p. 10.

52 Source: www.openbudgetindex.org/ (28.8.2010).

public security sector which makes up around 15% of the total government budget.[53] To what extent this important aspect of security sector governance has been neglected is best illustrated by the fact that during the past decade it has not been scrutinized either by the Defence and Security Committee or by the State Audit Institution. What is more, institutions in the security sector are by and large exempted from the system of public procurement. This has contributed to the lack of financial accountability in the security sector as illustrated by several financial affairs and scandals.[54]

So far we have seen that Serbia has largely accomplished the establishment of the institutional framework for the democratic governance of the security sector (table 2). A number of new institutions have been formally established but have yet to overcome serious obstacles in the practical implementation of their tasks. However, the biggest institutional changes have occurred within the existing institutions in the security sector. These institutional changes fit what Mahoney and Thelen called the *layering* when "new rules are attached to existing ones, thereby changing the ways in which the original rules structure behavior" (Mahoney/Thelen 2009: 16).[55] Some of these changes, such as increasing transparency or representativeness, have been occurring gradually. Others were brought about abruptly like the introduction of the Service of Internal Control into the Ministry of Interior or the Inspector General within the military intelligence services. Eventually, the small changes have yet to accumulate to make possible a "big change over the long run" (Mahoney/Thelen 2009: 17).

The institutional changes described have mainly been pushed exogenously, either by civil society, other public institutions or the international community (most prominently the EU and OSCE). The main reform actors have been political elites trying to create mechanisms that enable them to put formerly untouchable instruments of Milošević's power under their civilian executive control. Some changes, such as the recent abandonment of the practice of having a representative of the opposition as chair of the parliamentary Security and Defence Committee, are the result of ongoing struggles among political actors within the institutions. Still, it is one thing to introduce the new rules of the game; implementing them in practice is another matter. The new rules discussed above have yet to go through institutionalization, which Samuel Huntington defined as "the process by which organizations and procedures acquire value and stability" (Huntington 1968: 12).

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53 The total public spending for the security sector in 2010 will be more than 113.4 billion dinars (1.7 billion Euros) which is 14.87% of the total budget of the Republic of Serbia. The total spending for the security sector breaks down as follows: MoD – 67.5 billion dinars or 8.85%; MUP – 42.4 billion dinars or 5.56%; BIA – 3.5 billion dinars or 0.45%. Source: The Law on the Budget of the Republic of Serbia for 2010.

54 The cases in point are the military financial scandals 'Satellite' and 'Bulletproof Vest' in 2005 and the police financial scandal involving the procurement of poor quality uniforms in 2008.

55 They identify three more institutional changes: displacement, drift and conversion.

1. Horizontal accountability	2. Vertical accountability	3. Rule of law	4. Representation	5. Transparency
Executive civilian control: - National Security Council (2006) - Inspector General in the military intelligence agencies (2009) - Principles of civilian control incorporated in defence and security legislation *Parliamentary control:* - Extensive formal competences for parliamentary control - Splitting of Defence and Security Committee into two separate bodies (2010) - Principles of parliamentary control incorporated in defence and security legislation	- Free and fair elections - Security sector declaratively opened to the civil society. - Law on Citizens' Associations (2009) - Capacities of CSOs to create alternative expertise significantly increased	*Rechtsstaat*: - Constitution (2006) - Major legislative packages were adopted in 2007 and 2009.	*Ethnic representation* - No formal obstacles to equal ethnic representation - No positive discrimination policies	*General transparency* - Law on Free Access to Information of Public Importance (2004) - Law on Confidentiality of Data (2009) - National Security Strategy (2009) - Defence Strategy (2009)
Judicial review: - Abolishment of military courts (2004) - Principles of judicial review incorporated in defence and security legislation *Oversight of independent bodies*: - Commissioner for Information of Public Importance and Personal Data Protection (2004) - Ombudsperson (2005) -State Audit Institution (2007)		*Human rights and civil liberties:* - Police Code of Ethics (2003) - Right to conscientious objection (2003) - Internal control of Police (2005) -Freedom of worship and of association in the military (2007)	*Gender representation* - Very few formal obstacles to equal gender representation - Military Academy opened to female cadets (2007)	Financial transparency - State Audit Institution (2007)

Table 2: Normative and institutional framework for democratic security sector governance in Serbia

5.   Conclusions and recommendations

The first part of this report developed a concept of democratic security sector governance based on five principles – horizontal accountability, vertical accountability, the rule of law, representativeness and transparency. In the second part, the wider context of democratization and security sector reform was discussed. It was shown that a set of obstacles have been hindering both democratization and security sector reforms in Serbia since 5 October 2000. The structural obstacles encompass the unresolved issues of statehood, the fractured political scene and the lack of international incentives. The institutional obstacles are related to the historical legacy and co-opted transition. Finally, a deep symbolic fracture within the Serbian polity between national-liberational and civic-democratic discourses has been an ideological obstacle to reforms. In the third part, the report applied an analytical framework with the aim of analysing the democratization of the security sector in Serbia in the period 2000 to 2010. Our main conclusion is that formal mechanisms of democratic security sector governance have largely been established in the period under observation, although they suffer from certain shortcomings. The implementation of both the letter and the spirit of the newly introduced democratic norms have yet to be consolidated.

The least problematic area so far has been the consolidation of civilian executive control over the security sector. It was by and large established following the assassination of Prime Minister Zoran Đinđić in March 2003. Regrettably, civilian executive control is too often characterized by an excessive meddling of civilians in the operational management of the security apparatus which has kept its clientelist status. A certain institutionalization and implementation of democratic security sector governance was achieved where it did not tie the hands of either the ruling elites or the security apparatus. The case in point is the improvement in gender balance and to a lesser extent in the ethnic representativeness of staff in the security sector. Least implemented were those norms of democratic governance which were potentially threatening either for those in power (e.g. public oversight), for parts of the security apparatus (e.g. human rights) or for both sides (e.g. financial transparency).

Several policy recommendations can be made for overcoming the implementation gap. First, it is crucial to increase awareness of the fact that the erection of a formal institutional framework is a necessary but not sufficient step towards a consolidated democracy. Without the institutionalization of democratic practices in the security sector, democracy in Serbia will remain flawed. Domestic policy-makers should continue to focus on building institutional capacities for democratic security sector governance on all levels, from local to national, in the private sector, in civil society and in state institutions. However, they should also foster the development of a democratic organizational and strategic culture which favours transparency, accountability, the rule of law and peaceful conflict resolution. The international community has a strong role to play here too. Since Serbia has declared its military neutrality, NATO cannot, for the time being, drive the reforms through its conditionality policy as it did with other CEE countries. The EU, whose conditionality policy proved to be very effective in other policy areas, could be an

effective substitute in the security and defence domain. The EU embraced the concept of SSR in 2006 but has yet to incorporate it properly in its conditionality policy. A good way to start is to pay more attention to SSR in the European Commission's Annual Progress Report. The EU should encourage Serbian civil society organizations and independent think tanks to monitor the practical implementation of newly adopted norms of democratic security sector governance.

Second, certain legislative and policy changes and improvements need to be made. Maybe most importantly, the position of the National Assembly in the political system of Serbia needs to be strengthened, especially the independence of MPs *vis-à-vis* their constituent political parties. The infamous Article 102 of the Constitution allowing for the practice of 'blank resignations' should be revoked. The same goes for Article 14a of the *Law on the Serbian Armed Forces*. Furthermore, the new *Law on the Security Intelligence Agency* could reinforce parliamentary control, public oversight and the internal control of the Security Information Agency. In addition, the adoption of laws on the democratic control of the security sector and private security companies would significantly improve the normative framework for democratic security sector governance. It is also essential to harmonize the existing laws which regulate the application of special investigative measures with the Constitution. Strategic documents should clarify the foreign, security and defence policy of Serbia. These documents should transparently present the strategic orientation of the government *vis-à-vis* key foreign, security and defence challenges such as Kosovo, NATO, EU, regional issues, etc. Additionally, secret political dossiers compiled by previous regimes should be made open to the public while the lustration process should be reconsidered. It is never too late for this as the case of late lustration in Romania shows. Finally, specific gender and ethnic-sensitive policies should be devised within the security sector institutions promoting not only the recruitment but also the advancement of women and members of ethnic minorities to higher decision-making positions.

Third, oversight mechanisms need to strengthen capacities in order to be able to properly scrutinize the operations of the security sector. It is of particular importance that the National Assembly and its two main oversight bodies (Committee for Defence and Internal Affairs and the Committee for Security Services) develop capacities and the necessary security expertise for effective oversight and control. Special attention should be paid to issues that are within their formal competence but that have so far remained outside their effective remit such as budgetary control, private security companies, customs administration, prison guards, the administration for the prevention of money laundering, the tax police and the military industrial complex.

Fourth, civil society needs to intensify its active participation in security affairs at all levels, from human and local, through national to international security. National and local media have an important role to play here. They could be assisted in developing genuine capacities for investigative journalism in the sphere of security and defence. Advocacy-oriented NGOs, which played a key role in passing various pieces of legislation, should be encouraged to develop capacities to also monitor its implementation. Research-oriented NGOs should be encouraged to evolve into think tanks with stronger capacities

for the sustained production of sound, empirically based policy analyses and proposals. Dialogue and cooperation should be fostered between governmental, non-governmental and university research communities in the field of security and defence studies. Smaller NGOs involved in security issues outside of Belgrade should be given assistance to build fund-raising capacities and better networks both nationally and internationally. New opportunities for domestic funding should be created both through the state and the private economy.

Ultimately, one should be patient. Democratic security sector governance cannot be established overnight. To begin with, however, it should be taken seriously.

6.   Bibliography

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7.   Appendix

7.1   List of abbreviations

BIA	Security Information Agency (Bezbednosno informativna agencija)
CEE	Central and Eastern Europe
CSO	Civil Society Organization
DS	Democratic Party (Demokratska stranka)
DSS	Democratic Party of Serbia (Demokratska stranka Srbije)
EU	European Union
ICTY	International Criminal Tribunal for the Former Yugoslavia
JSO	Special Operations Unit (Jedinica za specijalne operacije)
JNA	Yugoslav People's Army (Jugoslovenska narodna armija)
KLA	Kosovo Liberation Army
MUP	Ministry of Interior (Ministarstvo unutrašnjih poslova)
MoD	Ministry of Defence (Ministartstvo odbrane)
MP	Member of Parliament
NATO	North Atlantic Treaty Organization
NGO	Non Governmental Organization
OBI	Open Budget Index
OSCE	Organization for Security and Cooperation in Europe
RDB	State Security Agency (Resor državne bezbednosti)
SAF	Serbian Armed Forces (Vojska Srbije)
SCG	State Union of Serbia and Montenegro (Državna zajednica Srbija i Crna Gora)
SNS	Serbian Progress Party (Srpska narodna stranka)
SPS	Socialist Party of Serbia (Socijalistička partija Srbije)
SSR	Security Sector Reform
SRS	Serbian Radical Party (Srpska radikalna stranka)
SRJ	Federal Republic of Yugoslavia (Savezna republika Jugoslavija)
VBA	Military Security Agency (Vojnobezbednosna agencija)
VJ	Military of Yugoslavia (Vojska Jugoslavije)
VOA	Military Intelligence Agency (Vojnoobaveštajna agencija)
VSCG	Military of Serbia and Montenegro (Vojska Srbije i Crne Gore)

7.2   A note on pronunciation

c	is pronounced like	'ts' in cats
č	is pronounced like	'ch' in chop
ć	is pronounced like	't' in palatalized tune
đ	is pronounced like	'j' in juice
dž	is pronounced like	'j' in jeans
j	is pronounced like	'y' in yes
lj	is pronounced like	'll' in million
š	is pronounced like	'sh' in shop
ž	is pronounced like	's' in pleasure