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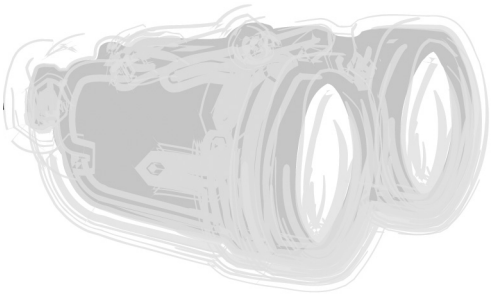

THIS ISSUE`S THEME:

Security Sector Reform in Serbia in 2009

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Contents

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The **Centre for Civil-Military Relations** promotes the open and responsible participation of civil society towards increasing the security of both citizens and the state, based on the principles of modern democracy, The Centre also endeavours to support security cooperation with neighbouring countries and Serbia's integration into the Euro-Atlantic community.

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Editor's Word

The reform of the Serbia's securities sector in 2009 was very dynamic, at least concerning the standards of security sector. Namely, the national parliament of Republic of Serbia adopted the set of laws for regulating the defense and security of Serbia. Those laws are: Law on Military-Security Agency and Military-intelligence agency, Law on Participation of Serbia in Multinational Operations, Law on Amendments of Serbian Army Law, Confidentiality Law and Civil Service Law. Serbian Parliament has also adopted several strategic documents – National Security Strategy, Strategy of defense and The National Strategy on the fight against Organized Crime. By adopting aforementioned laws and strategies, Serbia has finalized the first generation of security sector reforms. The remaining laws to be adopted are the ones referring to the new law on BIA (the Security Intelligence Agency) and law on private security. However, despite the fact that these documents will have the positive influence on the overall security sector, it is important to mention that certain solutions have caused the great public concern. For example, Article 14a Law on amendments of Serbian Army Law banes military professionals from: participating in the activities of organizations which deal with: the reformations of defense system and Serbian Army, compliance of regulations with European Union standards, creating the Serbian defense strategy and Serbian Army Doctrine; participating in multinational operations and Serbian Army internal relations. In addition, in the process of creating these regulations, the attempt of propounders, to lower the standards of democratic civilian control, established by the previous laws, was obvious.

However, pressured by the public, many problematic resolutions, drafted in laws, were removed from the proposal. Thus, they did not appear in the adopted laws. Finally, it is important to mention that during the process of adopting these documents, there was a tendency of state institutions to avoid public disputes about these laws. Subsequently, the majority of these documents were brought to the public attention before the Christmas and New Year's holidays and/or during summer holidays. These are the reasons for dedicating this issue to the abovementioned documents and the process of their adoption.

Centre's researchers present the readers with the key solutions of the newly-adopted documents as well as with their

questionable parts. Further, various state institutions and civil organizations organized public disputes on those documents. Those disputes and their analyses are also presented here. Further, Adel Abusara presents the readers with the European Union Report on the Western Balkans progress in 2009, in which the progress of security reformations in Serbia in 2009 was evaluated. Eventually, in this issue the readers are introduced to a number of other texts referring to topics other than the main one. Such as Adel Abusara and Marko Savković's text on the announcement of forming the centre for the emergency situations in Niš, as well as the text, by Nataša Hroneska, on the Macedonian Law of Energetic. Also, there is a text on the Swiss neutrality signed by Véronique Panchaud, as well as Bard Knudsen's text on enforcing the competency of Norway on the international security issues. Finally, in this issue you can read presentation of Kieron O'Haraa and Nigel Shadbolt's *The Spy in the Coffee Machine – The End of Privacy as We Know it*, by Igor Novaković. The authors of the book reveal the ways in which the citizens' privacy is violated by the modern technology, hence they warn us that it can all lead to brave new "digital"world.

Predrag Petrović

Commentaries on the Law on Classified Information

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Category: Academic Overview

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Abstract

Adopting the Law on Classified Information finally rounds out the legal portfolio regulating the classification and access to information in the public interest, but whose public disclosure would jeopardize the vital interests of the state. Until the time this Law was passed in Serbia there were no clear criteria for classifying information. Therefore, this matter was regulated by a large number of different regulations, thus setting the stage for arbitrary decision-making and significant abuse. Adopting this law was preceded by a comprehensive debate; many original solutions were disputed by the experts, and the text of the law itself has undergone several amendments. The following text is an analysis of both legal document itself and the main problems accompanying its adoption. This text also represents the next sequence in the problematics of the aforementioned portfolio, which has commenced by a backgrounder titled What May and What May Not be a Secret in State Security Sector that the Centre for Civil-Military Relations published back in 2008.

Key words: *secret, classification, access to classified information, classification levels, legal procedures.*

The necessity to protect information

There is information that mustn't be publicly disclosed. This classified information pertains most frequently to national security and the need to protect such information seems unquestionable. Nevertheless, things are not as simple as that. One of the significant problems of all democratic societies is finding the balance between the fundamental human right of each citizen to have access to information in the public interest and the right of a state to protect information it deems essential for its own functioning. The reason for

establishing this balance is primarily pertaining to power. Being in possession of classified information about the citizens, the state bodies are at the same time in possession of dangerous power, which in addition to being in possession may also be liable to (ab)use. Putting the classification seal on certain information may serve to hide information not being vital for the state, but hiding thereof may be convenient to political elite. Moreover, if awarding a classification seal to a document serves to hide certain illicit activity, then the threat is even bigger.

Due to the possibility of abuse, it was necessary to pass the law such as the Law on Classified Information, preventing possible arbitrary disposition of the political elite. This Law sets forth which information may be classified, what is the procedure to pronounce them as classified, who and under what circumstances may be approved to have access to classified information, as well as a manner in which classified information is kept and for how long. Thereby adopting the Law on Classified Information the legislation dealing with this matter has been rounded out, which has, beside this law, also been reinforced by the Law on Free Access to Information of Public Importance and the Law on Personal Data Protection.

In Serbia in July 2009, as proposed by the Government, the Law on Classified Information entered the parliament procedure. Adopting this long-awaited document was preceded by a wide-scope public debate, and at one point, it was withdrawn from the procedure and amended. Finally it got on the National Assembly's agenda as late as November. It is interesting to mention that the parliamentary procedure also included one more Draft Law on Classified Information, submitted to the Parliament back in December 2007 by a group of civil society organizations, gathered in a Coalition for a Free Access to Information, upon collecting 70,000 citizens' signatures. After that, this document has simply vanished and to date there is no explanation why two years upon its entry into the parliament it has not been included in its agenda. [1] The topic discussed in this paper will be the law proposed by the Government, which has caused strong public reaction, as well as a series of criticisms, and which has been adopted in December 2009.

What information may be classified

Not all information deserves to be classified. The need to classify some of the information primarily stems from its content. The content of this information is such that the interest to protect it takes precedence over the citizens' interest to have insight into some infor-

[1] More about this Draft Law at www.spikoalicija.org

mation of public importance. Such information, in everyday practice, mostly pertains to national security in the broadest sense – from a threat of violating homeland security through the possibility of uncovering a crime. To date, in Serbia, there hasn't been a clear procedure of classifying such information. There was a classification as to state, military, and professional secret, but these secrets were not defined by law. The definitions of these secrets were developed from the essence of the crimes set forth in the Criminal Code as to their disclosure (Art. 240, 316, 415). Also, the procedure to classify a document as secret was not regulated by law, leaving a lot of room for arbitrary interpretations and abuse.

The Government Law sets forth that secret information is such information in the interest of the Republic of Serbia, whose disclosure to an unauthorized person would entail damage, provided that the need to protect the interest of the Republic of Serbia has precedence over the interest to have free access to information of public importance. The Law sets forth that this information may most frequently pertain to: 1) national security, public safety, defence, foreign policy, security and intelligence affairs of the public administration bodies; (2) relations of the Republic of Serbia with other states, international organisations, and other international bodies; (3) systems, devices, projects, plans, and structures pertaining to the aforementioned information, and (4) scientific, research, technological, economic, and financial affairs relative to the aforementioned information (Art. 8).

Based on damage caused to the interests of the state resulting from its disclosing, the Law sets forth that all secret information are classified as per confidentiality levels as follows: (1) top secret – whose disclosing would cause irreparable damage for the interests of the state; (2) secret – whose disclosing would cause severe damage for the interests of the state; (3) confidential – whose disclosing would cause damage for the interests of the state; (4) restricted – whose disclosing would cause damage for the operations of public administration bodies (Art. 14). The Law leaves up to the Government to draft bylaws to define the criteria for classifying information, in consultation with the National Security Council as to top secret and secret levels, and with the competent Minister and/or top management of the competent public administration body as to confidential and restricted levels.

The aforementioned classification of secret information as per confidentiality levels is a classification established by NATO Alliance in its standards, and considering these standards as the best in the world for the protection of classified information. The European Union adopted them as well. Adopting such solution in Serbian leg-

islation has been one of the requirements for its accession to the European Union. This has also been one of the requirements for Serbia's possible accession to NATO Alliance; But even if this never happened, having this kind of classification in place has been the requirement for the implementation of Security Agreement on the Exchange of Information that Serbia signed with NATO Alliance, such agreement being prerequisite for a more significant participation in the Partnership for Peace program.

Leaving insiders unprotected

It is very important to mention that in practice there shouldn't be room for arbitrary interpretations and classifications of information as secret. Information pertaining to criminal investigation, science, research, technology, economy or finance should not be classified as secret unless it has a direct impact on national security (Banisar 2007). Nevertheless, the Law sets forth that secret information is not such information which is classified as secret in order to conceal a crime, overstepping of authority or abuse of professional capacity or some other illicit action or activity of the public administration bodies (Art. 3). It is a pity that the Law failed to regulate the position of so-called "whistleblowers", i.e. the persons who have disclosed certain information which was classified as secret in order to conceal some illicit activity. Such persons, even though they uncovered illicit activity, nevertheless disclosed secret information and the question is which interest should take precedence. International experience has pointed out to a standpoint that such persons should not be held responsible for disclosing a secret since the information they disclosed should not have been classified as secret in the first place. Having not adopted such solution the legislator has made the position of the aforementioned persons much more difficult, hence making them less likely to disclose illicit activity. This hampers the prevention of possible incidents of abuse, which exist in all societies and which are not likely to be eradicated fully even with the best of legal solutions.

In order that certain information would be properly classified as secret, it is necessary to have a clear procedure to carry out in the process. The existence of such procedure precludes any possibility of a discretionary decision-making by those who are in power about what information must be deemed as secret. Discretionary decision-making may be deceptive, and it has also been evident that this kind of decision-making has been the main source of abuse when classifying secret information (Fund for an Open Society 2006). Unfortunately, the Law doesn't set forth a clear procedure for classi-

fying secret information either. It sets forth that information is classified as secret by an official who is in charge of a public administration body (Art. 9). Therefore, the Law does not remove the threat of abuse of discretionary decision-making, which remains realistic.

Commissioner and Ombudsman may still do their job

The fact that some information is classified as secret does not mean that no one will be able to have access thereto. Certainly there are persons who *ex officio* have a right to have access to classified information, of course, having at the same time an obligation to keep that secret. These are usually the most important decision-makers in the country such as the President, Prime Minister, or Speaker. These persons have a right to have access to classified information *ex officio* without any permission (Art. 37). Other public servants, as well as individuals and legal entities, may have access to classified information upon being given permission (Art. 38).

Awarding the right to have access to classified information is a part of the Law, which has given rise to the majority of the criticisms among the experts in the public. The most common criticisms were pertaining to some of its provisions being contrary to the Constitution, decreasing the achieved level of the protection of human rights, and demolishing the fundamental principles of the administrative law. The initial Draft Law had set forth the possibility that the Commissioner for Information of Public Importance and Personal Data Protection and the Ombudsman have restricted access to certain information classified as top secrete and secret. This provision was not in accordance with Article 138 of the Constitution and Article 17 of the Law on Ombudsman which regulate the competence of the Ombudsman. These legal documents set forth that Ombudsman may not have oversight of the work of the National Assembly, President of the Republic, Government, Constitutional Court, courts of law, and Public Prosecutors' Offices. All other public administration bodies must be supervised by these bodies and any subsequent narrowing of the competence of these two bodies would represent decreasing the achieved level of the protection of human rights, which is contrary to Article 20 of the Constitution of the Republic of Serbia. Hence, it is good that the legislator has abandoned the initial solution.

The legislator has also abandoned one other solution that was problematic. Namely, the Draft Law had foreseen that the Commissioner and the Ombudsman may be denied access to certain classified information by a body which is keeping this information.

This provision was quite ambiguous since it practically meant that it could be any of the bodies. In addition, this provision was contrary to the basic principles of the administrative law pursuant to which the first-degree body may not rule upon the decisions of the second-degree bodies. One ought to point out that the Commissioner and the Ombudsman as second-degree bodies have authority to control all of the first-degree public administration bodies, including those keeping classified information. What made the situation even more complicated was the provision stating that the Commissioner and the Ombudsman may appeal to the Presiding Judge of the Supreme Court of Cassation as regards the decision denying them access to classified information. This was yet another illogical provision, since the Presiding Judge of the Supreme Court of Cassation is not a judicial body, representing solely the first among equals and may not decide on behalf of the court. Such provisions reflected significant deficiencies of the legislator and it is good that after a rather fierce reaction, primarily on the part of the experts, such solutions were abandoned.

Security check

Security check of the persons who may have access to secret information represents a very important area which is regulated by this Law. The Law sets forth that the persons applying for the issuance of certificate must be subject to a security check contingent upon the confidentiality level that they require to have access to (Art. 53). Security check will be performed by the Security Information Agency (BIA) and the Ministry of Interior (MUP), which are generally competent to perform such checks, with the exception of the members of the Serbian Armed Forces, the security check thereupon being performed by the Military Security Agency (VBA) (Art. 54). BIA performs security checks relative to information classified as top secret and secret, while the MUP performs this check relative to information having lower classification levels. Nevertheless, this Law hasn't set forth the mode of control for preserving information acquired through the security check, which is a significant deficiency of this act. The Law sets forth that the bodies performing security checks are competent for preserving such information and that gathered information may not be used for other purposes (Art. 80). On the other hand, it is a notorious fact that, not so long ago, such rules were not being adhered to and that the aforementioned information was a source of frequent abuse, much of it leaking to the media, and thus being publicized. Therefore, it seems that the legislator ought to have

set forth a controlling role of the competent parliamentary committee or some of the independent supervisory bodies for the application of these provisions.

If a person requesting access to classified information has passed the security check then the Office of the National Security Council for Protection of Classified Information gives them permission therefor, as it also takes care of the application of this Law. This Office is a government service and this is in line with the existing practice in most countries in the world. Nevertheless, the oversight of the application of the Law should not lie solely with this Office. It must also be entrusted to the Parliament. Parliamentary oversight of this body would be entrusted to the Committee for Defense and Security, or a specially appointed Inspector General for the protection of classified information, elected by the Parliament (Fund for an Open Society 2006). Thus elected Inspector General would be responsible for periodic verification of the content of classified information, as well as declassifying thereof upon expiry of a certain period upon which it may no longer be deemed as secret. Such solution existed in the Draft Law by the Coalition for a Free Access to Information, but the Government gave it up.

Classification expiry

It is very important to stress that there is no information that may continue to be secret indefinitely. Any classified information, no matter how important it may be for one particular state, ceases to be classified upon expiry of a certain period of time. Today's trend in the international law indicates that a timeframe must be determined upon which certain information shall be deemed as secret, this time frame ranging between ten through twenty years. The Law has set forth a time frame upon whose expiry information ceases to be classified. For information classified as top secret the period is 30 years; for information classified as secret the period is 15 years; for information classified as confidential the period is 5 years; while the information classified as restricted ceases to be secret 2 years upon its classification (Art. 19). In exceptional cases, information classification may be extended upon expiry of the period foreseen for its protection. One of the instruments for preventing abuse is a rule, which should be legally prescribed, that the extension of the classification period may be carried out only once. This rule has been set forth by the legislator and this should certainly be commended (Art. 20).

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Adopting the Law on Classified Information finally provides a legal framework regulating this complex and sensitive matter. This will enable the citizens to know all information which, being the agents of sovereignty and the tax payers, they have a right to know, while at the same time, the state will be protected, namely its vital interests. This is the only way to achieve the juxtaposition of these two opposing rights and this is the only way to create a setting for the consolidation of a modern democracy in Serbia. Nevertheless, what remains vague and which aught to have been regulated by this Law are detailed criteria for classifying information, as well as foreseeing protection for the insiders, i.e. persons who have uncovered illicit activity by disclosing classified information, where classification was used to conceal this activity. It is only by adopting these norms that we will be able to establish that the classified information matter in Serbia is regulated in a democratic and transparent fashion.

References

1. Banisar, David (2007) *Komentari na hrvatski Prijedlog zakona o tajnosti podataka.* OEBS.
2. Centar za unapređenje pravnih studija (2007) *Model zakona o tajnosti podataka.* Beograd.
3. Fond za otvoreno društvo (2006). *Primena Zakona o slobodnom pristupu informacijama od javnog značaja: izveštaj o monitoringu.* Beograd.
4. Milenković, Dejan (2007). Donošenje Zakona o tajnim podacima kao preduslov reforme sektora bezbednosti. *Revija za bezbednost*, Br.2, Beograd.
5. Republika Srbija. Narodna skupština Republike Srbije (2005) *Krivični zakonik.* Beograd.
6. Republika Srbija. Narodna skupština Republike Srbije (2005, 2007) *Zakon o zaštitniku građana.* Beograd.
7. Republika Srbija. Narodna skupština Republike Srbije (2008) *Zakon o zaštiti podataka o ličnosti.* Beograd
8. Republika Srbija. Narodna skupština Republike Srbije (2006) *Ustav Republike Srbije.* Beograd.
9. Republika Srbija. Vlada Republike Srbije (2009) *Predlog zakona o tajnosti podataka.* Beograd.

Commentary on the Law on Military Security Agency and Military Intelligence Agency

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Abstract

Adopting the law regulating the military security-intelligence agencies serves, another gap is bridged in the security-intelligence system of Serbia, created by its partial regulation in 2007. This Law has amended the deficiencies of the previous Law on Security Services of the FRY pertaining to the effectiveness and efficiency of the operations of the Military Security Agency (VBA), so it now exercises special investigative powes predominantly with regard to prevention. Thus the VBA was given back one of the instruments for carrying out one of the principal functions of a security-intelligence agency – prevention. Nevertheless, what causes concern is that certain solutions in the Law are mildly disrupting the juxtaposition of the civil-military relations, at the expense of democratic and civil control. Thus the Parliament has no competence in the process of appointing the Director and Inspector General of the military agencies; at the moment only the military may be Directors of the agencies; citizens have no right to have access to information if special investigative measures have been directed at them; and the financial transparency of the military agencies is also questionable. The aforementioned deficiencies represent backsliding as compared to democratic principles and standards incorporated in the Law on Security Services of the FRY.

Key words: *military security agencies, VBA, VOA, security-intelligence services, security-intelligence system of Serbia, parliamentary oversight, financial transparency, citizens' rights, preventive wiretapping, efficiency, effectiveness.*

* * *

Upon achieving (unwillingly) independence in 2006, Serbia got the chance to shape the national security system (hence also the security-intelligence system) in a thorough way and in accordance with societal and state needs, in other words according to challenges, risks and threats that exist in Serbia today. Instead, "in order to schedule and carry out presidential elections"[1], at the end of 2007, the National Assembly adopted the Law on Basic Principles of the Organization of the Security Services of the Republic of Serbia[2], regulating the position and the work of the National Security Council, map all of the security services in the Republic of Serbia. It also defined the manner of guiding and coordinating the activities of the security-intelligence services, as well as the mechanisms of their control. Nevertheless, this Law has set forth that the operations, objectives, competence, and other questions essential for the operation of the security services will be regulated subsequently, via special laws on civil and military services. [3] Thus, in the words of the proposer of the Law "the specificities of civil and military security affairs are recognized"[4]. So, almost two years after adopting the Law on Basic Principles of the Regulation of the Security Services and seven years after passing the Law on Security Services of the FRY, the Ministry of Defense prepared a Draft Bill on Military Security Agency and Military Intelligence Agency, and offered it for public discussion.[5] The National Assembly of the Republic of Serbia adopted this Law on 26 October 2009.

The following text will try to identify the main changes that the Law on VBA and VOA brings as compared to the previous Law on Security Services of the FRY, as well as the solutions which are, in our opinion, problematic. Legal solutions, as well as the criticism thereof are reviewed from the standpoint of the democratic civil control of the security services as well as the protection of human rights.

Two military agencies instead of one

The Law on VBA and VOA has kept the current organizational structure of the military security-intelligence system. So, there are still two military agencies: Military Security Agency (VBA) whose competence includes counterintelligence affairs and safety and security of the Ministry of Defense and the Serbian Armed Forces[6]; and Military Intelligence Agency (VOA) whose competence includes intelligence and other affairs essential for the defense system[7]. This was a departure from the idea of joining the competences of the VOA and VBA and thus forming a single agency, which the Defense Strategic Review

[1] Chapter V of the deposition of the Bill on the Principles of Organization of the Security Services of the Republic of Serbia, Internet: http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=583&t=P#

[2] Law on Basic Principles of the Organization of the Security Services of the Republic of Serbia, „Official Register of the RS", No. 116/07.

[3] Provisions of the Law on Security Services of the FRY and Law on Security and Intelligence Agency, which are not contrary to Law on Principles of Organization of the Security Services, are still in effect despite the fact that they were passed at the time when the common state of Serbia and Montenegro existed.

[4] Chapter III of the deposition of the Bill on Principles of Organization of the Security Services of the Republic of Serbia , Internet, http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=583&t=P#

[5] For more information about public dialogue organized on the occasion of adopting the law and strategies in the area of defense and security, please see the text of Maja Bjeloš, Lack of quality public dialogue when passing the laws pertaining to defense and security areas.

[6] Articles 5 and 6 Law on Military Security Agency and Military Intelligence Agency, Official Register of the RS 88/09, internet: http://www.parlament.gov.rs/content/lat/akta/akta_detalji.asp?Id=697&t=Z#

[7] Articles 24 and 25 of the Law on Military Security Agency and Military Intelligence Agency, Official Register of the RS 88/09, internet: http://www.parlament.gov.rs/content/lat/akta/akta_detalji.asp?Id=697&t=Z#

from 2007 envisaged would take place in the period from 2008 through 2010.[8]

Anyway, the idea of merging intelligence and counterintelligence role in one agency (civil and military) was present in expert circles in the public for a number of years now, and many governments of the post-socialist countries applied it as a universal recepy in the reorganization of the security services. The following security-intelligence agencies were thus formed: the Slovenian SOVA (Slovenska obveščevalno-varnostna agencija), Croatian SOA (Sigurnosno-obavještajna agencija) and VSOA (Vojna sigurnosno-obavještajna agencija), Bosnia-Herzegovina OSA/OBA (Obavještajno sigurnosna/bezbjednosna agencija), etc. Those advocating this solution maintain that joining intelligence and counterintelligence services is an optimal solution for smaller countries having a distinct defensive character of the national security strategy. Also, the advantage of this model lies in overcoming the problems of coordination of the filed activities between the two services, stemming from the transnational nature of the modern challenges, risks, and threats. For example, when a suspect leaves the country, they are not within the competence of the counterintelligence service any more, and they now fall under the competence of the intelligence agency, which may entail certain problems pertaining to coordination of the services.

Nevertheless, the deficiencies of this model lay in the fact that counterintelligence and intelligence activities, event though related, require that staff possess different knowledge and skills, providing for different profiles of the members of the counterintelligence and intelligence agencies. Therefore, many opponents to this solution (notably those who work or had worked in security-intelligence services) maintain that it is not good to merge these agencies, pointing out that some of the states that had accepted this solution now consider (re)dividing the counterintelligence and intelligence activities, for that very reason.

Therefore, in this case there is no typical ideal model but the success of one model depends of the specific conditions and heritage existing in the country in which the model is being applied. Hence, operational practice of the military security services will show if the authors who have written this Law were wrong when not merging the VBA and VOA in one agency.

Preventive wiretapping and surveillance

One of the significant novelties brought by the Law is that now the VBA gathers information through the application of the special measures and procedures "predominantly for preventive purposes, i.e. for

[8] Defense Strategic Review, pp. 10-11, internet: http://www.ccmr-bg.org/upload/document/strategija_odbrane_rs.pdf

the purpose of preventing the threats directed at the Ministry of Defense and the Serbian Armed Forces…."[9] The VBA may apply the following special measures and procedures for the purpose of prevention: covert cooperation with physical entities, operative infiltration into organizations, groups and institutions; covert gathering and purchase of documents and objects; covert access into personal and related information; covert following and surveillance of the persons at large and at public venues with the use of technical equipment; covert electronic surveillance of the telecommunications and information systems for the purpose of gathering information on telecommunication exchange and user's location, without insight into its content; covert recording and documenting conversations at large and inside buildings with the use of technical equipment; covert monitoring of the content of the letters and other means of communication, including covert monitoring of the content of telecommunications and information systems; covert surveillance and recording of the interior of the buildings, confined spaces, and objects.

Since the last three measures of covert gathering of information significantly infringe on human rights, to carry these out it is necessary to obtain permission by the Serbian Supreme Court of Cassation (now Supreme Court of Serbia), and they may last for maximum six months with the possibility to extend them once more. Nevertheless, the problem here is that the Bill did not set forth additional conditions for the extension of the measures applied to the same person for additional 6 months. E.g. a council consisting of several certified judges should rule on the extension of the measures, their being authorized to seek additional explanations from the Directors of the Agencies pertaining to grounds for the extension.

One may justifiably suppose that the authors of the Law endeavored to overcome the deficiencies of the previous Law on Security Services of the FRY, according to which the VBA did not have a right to apply the special measures and procedures for the purpose of prevention, but only for the purpose of court procedure regarding certain criminal activity as set forth in the law. Namely, one part of the experts, as well as the representatives of the VBA have voiced an opinion on several occasions that it is inconceivable that a security-intelligence agency has no right to wiretap for the purpose of prevention, which is challenging the very reason for the existence of a security service. Without attempting to dispute this argument, one must mention the reasons why the so-called preventive wiretapping and surveillance may be questionable from the standpoint of human rights.

Namely, generally speaking, there are two purposes of covert gathering of information carried out by great many security-intelligence agencies in their operations. The first one implies that security services gather information with a view to pressing criminal charges in the

[9] Article 11, paragraph 2, Law on Military Security Agency and Military Intelligence Agency, Official Register of the RS 88/09,, internet: http://www.parlament.gov.rs/content/lat/akta/akta_detalji.asp?Id=697&t=Z#

courts of law, i.e. for the identification of suspects and gathering evidence for the criminal proceedings.[10] Information thus gathered is available to the judicial bodies and the indicted, and most frequently, upon court ruling it does not have to be preserved any more. Another purpose for covert gathering of information is rarely related to the need to press charges, and far more frequently related to the necessity for the security services to prevent the threats coming from the terrorist and extremist and/or foreign states' activities. As based on information thus gathered and by carrying out different activity, the security services may eliminate security risks and threats without pressing charges. Nevertheless, the problem here is that the information gathered secretly for the purpose of prevention is not available to the courts, and is being stored in the archives of the security services, thus being hidden away from control (Milosavljević: 2008).

Therefore, preventive wiretapping and surveillance will give a greater operational autonomy to the VBA, this being more in line with the essential reason for the existence of the security-intelligence service. On the other hand, it opens doors for possible infringement on human rights, since it includes forming of data bases, which may be preserved even when the real need for them will have ceased. [11]

Parliament detracted

The National Assembly, i.e. the parliamentary committee on security and defence is excluded from the procedure of appointing Directors of the Agencies and Inspector General. Thus, "Directors of the VOA and the VBA and their Deputies are appointed and relieved of duty by the President of the Republic of Serbia issuing a decree, as based on the proposal by the Minister of Defense, in case of professional military personnel, or by the Government, as based on the proposal by the Minister of Defense, in accordance with the law regulating the position of the civil servants" (Article 37, paragraph 3). Inspector General is appointed by the Government as based on the proposal by the Minister of Defense and with the opinion of the National Security Council (Article 54, paragraph 2). Having in mind that the parliament is the most important instrument of the democratic civil control and oversight of the security sector, and that these are the appointments to very important positions in the security system, this is a very serious deficiency of the Law that the parliamentary committee competent for the security area does not have a right to review the candidacy for the aforementioned positions, interview the candidates, and voice its opinion thereof. Of course, pleading in favor of this solution, we are aware of all current deficiencies in the functioning of the parliament and its committees in Serbia. Nevertheless, this analo-

[10] This purpose of covert gathering of information is often called "policing" as it is characteristic of the police work. Nevertheless, due to the changes of the nature of the modern challenges, risks, and threats and the "mix-up" of organized crime, terrorism and extremism, the security services today gather information secretly with a view to preventive action as well as pressing charges for criminal acts before the courts.

[11] Pursuant to Article 32 of the Law "types of registries, personal information records, as well as archives of VBA or VOA, the manner of their keeping, access, handling, and protection, timeframes for keeping, archiving and destruction, are regulated by the Minister of Defense, as proposed by the Director of the VBA or VOA, and upon receiving the opinion of the National Security Council." Law on Military Security Agency and Military Intelligence Agency, Official Register of the RS 88/09, internet: http://www.parlament.gov.rs/content/lat/akta/akta_detalji.asp?Id=697&t=Z#

gy may be applied to any other area of the public life; hence no laws should be passed that adhere to all of the modern democratic principles. Among other things, the laws are indeed passed in order to regulate and change certain areas of the public life.

Directors of the Agencies must be military personnel?

The Law sets forth that "for the position of Directors of the VBA and the VOA and their Deputies only such persons may be appointed having finished the War College and having minimum 9 years of work experience in the area of intelligence and security affairs within the defense system" (Article 37, paragraph 6). We are not aware of the fact that any civilian has so far finished the War College; therefore no civilians might be Directors either of the VBA or the VOA at the moment. Comparisons of different experiences indicate that it is not necessary that the positions of Directors of the security and intelligence agencies be filled by persons having many years of experience in this area, since the main task of the Agency Director is to implement and oversee the implementation of the security and intelligence policy of the Government. Of course, different countries have different practices. Appreciating the efforts of the authors who have written the Law to stress the criteria of professional competence as the most important one, it seems that the requirements for the position of the Agency Directors, as set forth in the Bill, are too rigid.

Possibility of recording the agents' interviews with the citizens – a good solution?

One of the important ways of gathering information by the security services is through the interviews that its officers have with the citizens conducted within the official premises. Thus, the Law sets forth that the VBA may gather information from the citizens with their consent, "with a written consent of the person with whom the interview is carried out, the interview may be recorded by audiovisual means. Physical entity certifies by putting their signature on the record that the interview is voluntary and that the recorded interview is genuine and complete."[12]

Even though a solution that the person may choose to be recorded or not – appears to be a "democratic" option, the experience of the neighboring Croatia indicates that this doesn't necessarily have to be so. Namely, Croatian public is quite familiar with the "Puljiz Scandal", a case when the agents of the Croatian civil counterintelligence agency[13] interviewed a journalist, Helena Puljiz, for several hours. The interview of the journalist by the agents was recorded even

[12] Article 8, paragraph 2, Law on Military Security Agency and Military Intelligence Agency, Official Register of the RS 88/09, internet: http://www.parlament.gov.rs/content/lat/akta/akta_detalji.asp?Id=697&t=Z#

[13] Then it was the Counterintelligence Agency (Protuobavještajna agencija - POA).

though she did not give her consent, pursuant to the requirements of the Law on Security Services of the Republic of Croatia from 2002, which was then in force. It is due to that case that the new Law on Security and Intelligence System of Republic of Croatia from 2006 sets forth that all interviews of citizens by the agents must be recorded, and that the security services shall preserve them, and make them available to judicial and supervisory bodies.

Not wanting to draw a parallel between Croatia and Serbia and without attempting to suggest the answer to the indicated dilemma, there is grounds to pose the question if it would be better still that all interviews of the citizens by the security agents are recorded, and that they are made available to competent judicial and supervisory bodies. Would that prevent possible abuse of the content of these interviews as well as the rights of the citizens?

Military Agencies inform neither Prime Minister nor Speaker

One of the important phases in the intelligence cycle is the dissemination of information gathered by the security and intelligence services. According to the Law "the VBA and the VOA shall regularly, as needed, and as requested send the reports, information, and assessments from their sphere of competence significant for the defense to the President of the Republic, Minister of Defense, and the Chief of the General Staff" (Article 34, paragraph 1). It is not quite clear why the authors of the Bill have omitted from the list the Prime Minister and the Speaker. This is even more surprising if we take into account that according to the Law on Security Services of the FRY the aforementioned institutions (meaning Federal institutions) were among the users of the information of the military security services. Also, comparing experiences indicates that the Prime Minister and the Speaker ought to receive reports, information, and assessments of the military agencies.

Finances of the military services are secret?

The Law in Article 59 sets forth that information about the financial and material operations of the VBA and VOA "constitutes secret information in accordance with the legislation regulating the area of secret information protection." There is no such provision in the Law on Security Services of the FRY, and since 2006, the budget of Serbia includes also the budgets (certain items) of the military security services, thus they have become available to broader public. We are not aware of any instances that the budget transparency of the VBA or VOA had a negative impact on their operations; therefore it is not

clear to us why the authors who have written the Law have chosen this kind of solution. Since the operations of these agencies are being financed from the state budget of the Republic of Serbia (Article 59, paragraph 1), a certain degree of public insight into spending of these funds is necessary. For example, it is necessary to know what part of the budget goes to military agencies operations, as well as the level of certain general expenses (e.g. salaries as compared to activities, etc). We do not advocate that it is necessary to present a detailed budget to the public, reflecting all incomes and expenses of the security services, but we maintain that it is necessary to identify general budget items indicating how the funds are spent.

Inspector General's hands are tied?

It is not possible to regulate by law each particular detail pertaining to the operations of the security-intelligence agencies. Something like that would be unacceptable, as it would entail revealing too many details about the operational modalities of the agencies. Hence it is necessary to have solid internal control mechanisms in place. The most reliable information about illicit activity of a security or intelligence service is most probably going to come from the service itself. Therefore, mandatory reporting and remedying illicit activity is very important. "At the same time it strengthens the position of the officers within the agency since it encourages their concern about illicit activity" (Born 2005: 46).

The Law sets forth that the members of the agencies (as well as the citizens) perceiving any violation of either constitutionality and legality, human rights and freedoms, professionalism, appropriate use of authority, or political and ideological neutrality may directly approach the Inspector General, without any consequences as to their status. Inspector General is the main body of the executive and internal control of the operations of the agencies. Inspector General, among other things, supervises: the application of the principle of political and ideological neutrality and impartiality in the activities of the VBA and the VOA and their members; lawful application of special procedures and measures for covert gathering of information; lawful spending of budgetary resources and other assets; establishes facts pertaining to perceived illegitimate or irregular operations of the VBA and the VOA and their members.[14] On the other hand, it is not clear how will the Inspector General carry out all of their stipulated duties.

Namely, for the Inspector General to carry out effectively all of the aforementioned duties, they must have comprehensive insight into reports and documents of the agencies, to have a right to inter-

[14] Article 54, Law on Military Security Agency and Military Intelligence Agency, Official Register of the RS 88/09, internet: http://www.parlament.gov.rs/content/lat/akta/akta_detalji.asp?Id=697&t=Z#

view senior officers and officials of the security and intelligence services, the agencies having an obligation to facilitate the aforementioned control procedures and activities. Nevertheless, the Law has not set forth anything like this; therefore this gives grounds to wandering if the Inspector General will be able to carry out their duties effectively. On the other hand, the Law sets forth that "the manner in which internal control of the VBA and the VOA is carried out, as well as other important aspects of the work of the Inspector General are regulated by the Minister of Defense".[15] This leaves room for solving the problem eventually. However, having in mind comparative practical experiences[16] (e.g. Croatia), as well as the solutions from the Law on Amendments and Supplements to the Law on Serbian Armed Forces, pertaining to the Military Police Inspector (Article 15) it would be good to regulate this issue by law.

Who may be Inspector General?

According to the Law, "a person having minimum nine years of work experience in this profession may be appointed as Inspector General (paragraph 1, Article 55). Appreciating the intent of the authors who have written the Law to make sure that this position is filled in by a competent and experienced person, there is grounds to pose a question what does this general reference "in this profession" actually means? Must a future Inspector General be a person who has worked for minimum nine years in the military security-intelligence services, or could it be a person who is a professor in the area of security? Or, could a researcher from an institute dealing with security themes for nine years become Inspector General?

This problem generates the following dilemma. If Inspector General is a person who has worked for minimum nine years in the military security-intelligence services, they will have substantial knowledge and experience pertaining to the operations of the military agencies, but the question is whether they will have the will to control their former colleagues.

Citizens do not have a right to know if they have been examined by the security services

The former Law on Security Services of the FRY sets forth an obligation of the security services to "inform the citizens, upon their written request, about whether any measures for gathering information were applied towards them, or if the Services have records on their personal information, and at their request, make the documents on gathered information available to them. The services have an obliga-

[15] Article 56 of the Bill on Military Security Agency and Military Intelligence Agency

[16] See e.g. the Law on Security-intelligence System of the Republic of Croatia, (Narodne novine 79/06), Article 107, internet: http://www.morh.hr/images/stories/morh_sadrzaj/pdf/zakon%20o%20sigurnosno-obavjestajnom%20nn79-06.pdf, downloaded: 01/07/2009.

tion to give the required information and/or produce the document, as mentioned in paragraph 1 of this Article, making it available within the period of 60 days since such day the request was received".[17] The Services are not obliged to comply with the aforementioned provisions if this information would jeopardize the performance of the assignments of the Services, or if this information might threaten the safety of another person. [18]

In implementing these provisions in day-to-day practice there were no problems or abuse, hence it is not clear why there was no room for this solution in the newly adopted Law. This way, the citizens were denied the right to be informed about whether their privacy was jeopardized by the application of special measures, i.e. to be informed about the measure applied and the results of its application, which is departing from the European standards (Milosavljević 2008).

A step in the right direction in filling the blanks in the security-intelligence system

It is important to mention that the Government has removed certain controversial provisions which were previously included in the Draft Bill and amended those which were poorly defined.[19] To mention just the most important ones: the most controversial provisions are surely those giving the VOA a right to gather secret information in Serbia (Article 26), despite the fact that this is an intelligence agency, hence it should work abroad. Likewise, the clause enabling the VOA to gather information from telecommunication providers about the traffic, location of the user, and other information having significance for the performance of the duties within its competence was eliminated (Article 28). Also, the clause which was in the Draft Bill, giving the VOA a right to perform checks on physical and legal entities while carrying out activity within the competence of the VBA was also rephrased, hence the Law sets forth that these checks are to be carried out by competent security services. The threat of the military intelligence agency turning into a counterintelligence and security service, obscuring the clear lines between the VOA and the VBA was thus diverted.

Also, the issue of who appoints the Directors of the Agencies is clarified. According to the Draft Bill "Directors of the VOA and the VBA and their Deputies are appointed and relieved of duty by the President of the Republic of Serbia issuing a decree as based on the proposal by the Minister of Defense, i.e. the Government as based on the proposal by the Minister of Defense (Article 38). However, this provision in the Draft has been rephrased, hence it is now clear that the President of the Republic of Serbia, as based on the proposal by

[17] Article 34, paragraphs 1 and 2, Law on Security Services of the Federal Republic of Yugoslavia ("Off. Register of the FRY", No. 37/2002 and "Off. Register of the S&M", No. 17/2004).

[18] Article 34, paragraph 3, Law on Security Services of the Federal Republic of Yugoslavia ("Off. Register of the FRY", No. 37/2002 and "Off. Register of the FRY", No. 17/2004)

[19] The reason for this should be seen in the strong pressure by one part of the exerts in the public, as well as the representatives of the Security and Intelligence Agency, which they voiced in the public discussion on Military Security Agency and Military Intelligence Agency.

the Minister of Defense, appoints the Directors of the military agencies if they are professional members of the Serbian Armed Forces.

Nevertheless, it is good that the government has removed significant deficiencies of the Draft Bill as indicated by the experts. On the other hand, several ambiguities and problematic solutions remained in the Law. It is especially alarming that the parliament has been detracted in the process of appointing the Directors of the Agencies and the Inspector General. It is also not good that the authors who have writhen the Law have not brought certain solutions which were included in the previous Law on Security Services of the FRY into this new Law, despite the fact that the expert community has given them very good reviews and that they were functioning very well in the practice. The Law augments the effective power of the military and security-intelligence services, but at the same time it also decreases democratic civil control thereof.

In any case, adopting the Law regulating the military security-intelligence agencies will further fill the blanks in the security-intelligence system of Serbia, which was created by its partial regulation in 2007. In order to properly shape the security-intelligence system of Serbia it is necessary to also adopt a new Law on the Security and Intelligence Agency and the Law on Classified Information. One can only hope that it will not take years to finally have these laws.

Literature:

1. Born H. i Leigh I. (2005) *Pravni standardi i najbolji načini nadzora obaveštajnih službi*. Oslo: DCAF.
2. Bruneau Th. (2001) 'Controling Intelligence in New Democracies.' *International Journal of Intelligence and Counter-Intelligence.* 14, (3).
3. Caparini M. (2002) *Challenges of control and oversight of intelligence services in a liberal democracy.* Geneva: DCAF.
4. Gil P. (2003) *Democratic and Parliamentary Accountability of Intelligence Services after September 11th*. Geneva/United Kingdom: Liverpool John Moores University.
5. Milosavljević B. (2008) Ovlašćenja policije i drugih državnih organa za tajno prikupljanje podataka: domaći propisi i evropski standardi. *U*: M. Hadžić i P. Petrović (ur), *Demokratski nadzor nad primenom posebnih ovlašćenja*. Beograd: CCVO.
6. Petrović P. (2006) 'Promene u bezbednosno-obavestajnom sistemu Hrvatske.' *Bezbednost Zapadnog Balkana. 1,* (1).

The Law on Serbia's Participation in the Multinational Operations

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Category: Academic Overview

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Abstract

National Assembly of the Republic of Serbia has passed, in its autumn session, a parcel of 5 laws, 2 strategies, and amendments to 2 laws from the area of security. This significant and, in terms of numbers, commendable effort had its deficiencies, though, and this text deals with the problematic solutions of the Law regulating the engagement of the defense forces in multinational operations. This text offers the arguments featuring the discussion about the context of passing the laws and the legality of the new Law is being questioned and problematicized. The sequence in which these great many documents were adopted is equally important, which could have had (overlooked) consequences for the functionality of the defense system, due to a possible insufficient harmonization between the documents. Tracking down the process of creating and passing the Laws the readers are offered an insight as to problematics of the participation of the players whose participation has been detracted (MFA) or, perhaps, made more prominent with regard to the Draft Law (MoI). Detracting the Parliament has also been perceived, as well as the deficiency of the mechanisms of the democratic and civil control. Some of the solutions in the aforementioned Law are compared to the solutions in the legislation of the countries in the region, and a special emphasis is put on positive results of the Law pertaining to the protection and exercising of the rights of the participants in the missions.

Key words: *law, multinational operations, democratic civil control, strategy, army, the police*

* * *

In October 2009, the Serbian Assembly has voted to adopt the *Law on Participation of the Serbian Armed Forces and Other Defense Forces in Multinational Operations Outside the Borders of the Republic of Serbia*[1]. This Law regulates the area of participation of the armed forces outside the territory of the Republic of Serbia, formerly regulated by the *Law on Participation of the Professional Members of the Armed Forces of Serbia and Montenegro, Civil Defense Personnel, and Ministerial Council Administrative Bodies Staff in Peacekeeping Operations,* which was passed in 2004. In addition to different terminology, the rights and duties of the participants in multinational operations (hereinafter: MNO*)* are set out in detail, and also some new acters have been included under the umbrella of the new Law. It is these changes that made some of the solutions in this Law problematic.

The analysis of this law included consulting the laws of the countries in the region, the previous law that had been in effect, as well as tracking of the amendments of the aforementioned Proposal and the Draft itself. Hereinafter the context of passing the Law and the legal base of this legislative solution will be discussed, while the greatest attention will be devoted to democratic civil control and oversight.

The context in which the Law was passed and questionable acters

The Law that was previously in effect has lost some of its relevancy when the State Union of Serbia and Montenegro ceased to exist. This is the reason that some of the solutions and the terminology have been vague or irrelevant; also, bringing competence from the Federal down to the Republic (Serbian) level was not followed by passing amendments to the Law or passing some kind of bylaw legalizing such transfer of competence in the activities relative to the peacekeeping, i.e. multinational operations. It is necessary to mention that the Law on MNO is only one of five laws and two strategies that the National Assembly of the Republic of Serbia had been adopting as a parcel. Some of the criticisms of this Law may be applied to other laws and strategies as well. The principal objections voiced pertained to the lack of public debate and feeble (if any) coordination with other relevant Ministries. The procedure of passing

[1] Hereinafter an operative term *Law on MNO* will be used

the Law on MNO has gone without public dialogue introducing amendments to the Law. Also, the impression remains that there wasn't a timely consultation with other relevant Ministries in its preparation.

MFA

The formal proposer of the Law is the Ministry of Defense, while the Law also mentions the Ministry of Interior. The Ministry of Foreign Affairs is not mentioned in the provisions of this Law explicitly, unless implied under the wording "the staff in other public administration bodies"[2]. The absence of the MFA was crucial for drafting both Defense Strategy and National Security Strategy; hence the MoD had undertaken the task to define the foreign policy objectives. The Law on MNO, thus, overlooks the functional role of the MFA, still leaving the door open for engaging the members of this Ministry under the quoted clause referring to public administration staff, which is clearly a broad interpretation. As comparison, in Croatian and Montenegrin law the mandate of the participants in the MNO has been extended to include the function "activities relative to encouraging the development of democracy, legal security, and protection of human rights within the international organizations and alliances"[3], which provides for the engagement of the members of the Ministry of Foreign Affairs in the civil component of the mission.

MoI

The engagement of the police in MNO has been regulated so far only by the Law on the Police[4], while the new Law on MNO includes the members of both Ministry of Interior and the Police. The Draft law on MNO mentions the police only twice, while in the proposal itself, since it was adopted by the Government and sent to the Parliament, one might notice a stronger presence of the Police. Also, for the purpose of harmonization with the existing regulations, the participation and dispatching of the members of the police and other defense forces to MNO is decided upon by the Government, and as for the Army, the Parliament is deciding thereupon.

[2] Ministry of Defense (2009) *Law on Participation of the Serbian Armed Forces and Other Defense Forces in Multinational Operations Outside the Borders of the Republic of Serbia,* Belgrade, Off. Register 88/2009 Article 2, paragraph 2

[3] Ministry of Defense of the Republic of Croatia (2002) *Law on Participation of the Members of the Armed Forces of the Republic of Croatia, the Police, Civil Defense, and Civil Servants and Staff in Peacekeeping Operations and Other Activities Abroad* Article 2, paragraph 5, i.e. Ministry of Defense of Montenegro (2008) *Law on Using the Units of the Armed Forces of Montenegro in Multinational Forces and Participation of the Members of the Civil Defense, Police, and Staff of the Public Administration Bodies in Peacekeeping Missions and Other Activities Abroad* Article 2, paragraph 4

[4] Ministry of Interior (2005), *Law on the Police,* Belgrade, Off. Register 101/2005 Article 19, paragraph 5

Legal foundations

The proposal appeals to the Constitution[5], as well as to the regulations pertaining to defense. The regulations pertaining to defense that are currently in effect are the Law on Armed Forces and the Law on Defense from December 2007. Having in mind that the Law on Defense[6] mentions multinational operations only in the form of "participation in ….", which will be regulated by a special enactment, the opportunity had not been seized (whether intentionally or not) to reach a clear definition in this Proposal (and subsequent Law) as to what collective security systems Serbia is ready to participate in and in which ones it isn't. Such a broad definition, as provided in this paragraph[7] of the Law, gives the politicians a possibility of deciding on each mission respectively. While legislator (Ministry of Defense) provided room technically for a broad interpretation of this provision, without overstepping its authority, which does not include designing of the foreign policy, at the same time the Government, as proposer, has not availed itself of the opportunity to define this area clearly. The Law sets forth that defense forces may be used in the following missions:

1) Operations of peacekeeping, peace maintaining, and peace building in the world;

2) Conflict prevention and peace-enforcing operations;

3) Joint defense operations in accordance with the regulations on defense;

4) Operations providing assistance in removing the impact of the international terrorism and large-scale terrorist attacks;

5) Participation in humanitarian operations in cases of large-scale natural, technical – technological, and ecological accidents and assistance in crisis situations.

The previous Law that was in effect mentioned only the missions under subsections 1) and 5) and partly subsection 3),[8] while the subsections 2) and 4) are new providing for the engagement in combat missions. Of course, this may also apply to subsection 3), if the public knew what would the provision "joint defense operations in accordance with the regulations on defense" mean. As a reminder, the Laws on Defense and Armed Forces do not set forth precise joint activities[9], that is, they are referring to the Law on MNO[10].

[5] Ministry of Defense (2009) *Law on Participation of the Serbian Armed Forces and Other Defense Forces in Multinational Operations Outside the Borders of the Republic of Serbia,* Belgrade, Off. Register 88/2009 Article 3, paragraph 1, subsection 1 and Article 5, paragraph 1

[6] Ministry of Defense (2007), *Law on Defense,* Belgrade, Off. Register 116/2007 Article 4, paragraph 1, subsection 23

[7] Ministry of Defense (2009) *Law on Participation of the Serbian Armed Forces and Other Defense Forces in Multinational Operations Outside the Borders of the Republic of Serbia,* Belgrade, Off. Register 88/2009 Article 2, paragraph 1, subsection 3

[8] "in other activities that Serbia and Montenegro committed to as based on concluding a special international contract " Article 2, paragraph 3, *Law on Participation of the Professional Members of the Armed Forces of Serbia and Montenegro, Civil Defense Personnel, and Staff of the Ministerial Council Administrative Bodies in Peacekeeping Operations and Other Activities Abroad*, Off. Register of S&M", No. 61/2004

[9] Ministry of Defense (2007), *Law on Defense*, Belgrade, Off. Register 116/2007, Article 22

[10] Ministry of Defense (2007), *Law on Armed Forces*, Belgrade, Off. Register 116/2007, Article 2, paragraph 3

Faux pas in the process of passing the Law

Article 7[11] defines the Annual Plan for the use of the Serbian Armed Forces and other defense forces in multinational operations, as based on which decisions are made about the use of these forces. It is questionable if this Plan has its basis in the strategic documents. Namely, the legislator refers to the National Security Strategy of the Republic of Serbia, Defense Strategy of the Republic of Serbia, and Strategic Defense Review of the Republic of Serbia. The aforementioned Strategies were passed in the same parcel as the Law on MNO, and the Draft Defense Strategic Review hasn't been available to the public. In case of amendments to the strategic documents it is questionable if the Members of Parliament would be able to respond timely and professionally to the necessary amendments to the Proposal on MNO. In a hypothetical situation of substantial amendments to the strategic documents, this Proposal may be directly opposed to them. The Law on MNO and both strategies have been adopted in the Assembly with minimum amendments, and the Strategic Defense Review, as opposed to the previous one (draft from 2006 was available to the public via Ministry of Defense internet web site) has still been unavailable to the public, hence an impression is formed of a *faux pas* in the process of passing these legal and strategic solutions. The most logical sequence in adopting these documents is according to the precedence thereof: National Security Strategy, then Defense Strategy, and then the Laws on Defense and Armed Forces which are stemming from them, as well as an operative document Strategic Defense Review. Then other laws ought to be adopted (such as the Law on MNO) regulating the specific segments of the defense system. Thus, Serbia has a Constitution, which does not mention Strategies, thereby the existing Laws on Armed Forces and Defense the strategic solutions have been (hypothetically) adjusted, instead the other way around, and on top of that, the laws were being adopted whose basis was in (at that time) still non-existent strategic documents. Thus, for example, in the Law on MNO, a principle of democratic civil control was sacrificed due to adjustments to the provisions of the Law on the police[12].

Parliament detracted in the process of democratic civil control and oversight

The Proposal sets forth that the National Assembly reviews and adopts the Annual Plan, passes decisions on the use of the Armed Forces and other defense forces (including the police), and also

[11] Ministry of Defense (2009), *Law on Participation of the Serbian Armed Forces and Other Defense Forces in Multinational Operations Outside the Borders of the Republic of Serbia,* Belgrade, Off. Register 88/2009, Article 7, paragraph 2, subsection 1

[12] Law on the Police is a senior law in terms of its significance, but it also had to be amended in its Article 19, due to the provision on democratic civil control.

approves the participation of the members of the Armed Forces and other defense forces, which are not set out in the Plan when the "security and humanitarian situation in the world gets remarkably worse"[13]. The Annual Plan is prepared by the Ministry of Defense and the Ministry of Interior and they present it to the Government. The National Assembly reviews and adopts the Annual Plan, and then decides on the Serbian Armed Forces participating in the MNO. As based on this decision, the President decides on dispatching to MNO. On the other hand, the Government decides on participation and dispatching of the members of the police and other defense forces to MNO. This has generally been a prevailing practice in the region, while the B&H procedure is a little more expedient. There, the Council of Ministers makes assessment if the participation in the mission is justified, based on the request by the Presidency, within the period of 60 days. Based on this assessment, the Presidency decides on dispatching to MNO and informs the Parliamentary Assembly of B&H, which has an obligation to confirm this decision within the period of 60 days since the day such decision has been passed. If the Parliamentary Assembly of B&H does not confirm the decision, all activities of dispatching to MNO are stopped[14].

Nevertheless, according to the Law, the National Assembly has competence only in adopting the Annual Plan for all participants in the missions, but it only decides on the use of the Armed Forces[15]. It is the Government that decides on the use of the Police and other defense forces. [16] The Law on the Police[17] that is currently in effect sets forth only that the Government gives permission for the participation in international missions, which has probably been the reason for the same solution in this Proposal. Thus the control role of the National Assembly has been detracted, otherwise the amendment of the Law on the Police would be necessary, and therefore we believe that this has had influenced the proposer. In a word, the Bill should be harmonized with the existing Law and not the existing Law with the Bill, the latter still having not passed the Assembly procedure at that time. In any case, the Assembly may perform oversight of the activities of the police within the competence of its Committee for Security and Defense, including the participation thereof in the MNO.

The National Assembly has, through the amendments to the Proposal, in a few other places therein lost its oversight competence. Thus, Article 10 of the Draft Bill sets forth that in case of "urgent remedying of the impact of the natural, technical – technological,

[13] Article 8, paragraph 3 of the Draft Bill

[14] Article 4, 5, and 6 of the Law on Participation of the Members of the Armed Forces of Bosnia and Herzegovina, Police Officers, Civil Servants and Other Staff in the Peace Supporting Operations and Other Activities Abroad, adopted 22/2/2005.

[15] Ministry of Defense (2009), *Law on Participation of the Serbian Armed Forces and Other Defense Forces in Multinational Operations Outside the Borders of the Republic of Serbia,* Belgrade, Off. Register 88/2009, Article 8, paragraphs 3 and 4

[16] Ministry of Defense (2009) *Law on Participation of the Serbian Armed Forces and Other Defense Forces in Multinational Operations Outside the Borders of the Republic of Serbia,* Belgrade, Off. Register 88/2009, Article 10

[17] Ministry of Interior (2005), *Law on the Police,* Belgrade, Off. Register101/2005, Article 19, paragraph 5

and ecological accidents…." the Government may approve the use of other defense forces and immediately submit the request to the National Assembly for a subsequent confirmation of the decision. The Law does not set forth that there is an obligation to inform the Assembly subsequently, the latter thus losing its controlling role. Since this is about the activities, which are not set out in the Annual Plan[18], the financial means to carry them out would be provided from the budget, hence we believe informing the National Assembly is an important step. In accordance with that, in Article 37, paragraph 2, which speaks about the means for the execution of the Annual Plan and other activities in the multinational operations, the Assembly has also been excluded as compared to the Draft. Since there are special activities, which depart from the framework of the Annual Plan whereon the National Assembly (except for the Armed Forces) is not deciding, it is necessary to restore the solution from the Draft whereupon the Parliament must approve the Annual Plan and all activities. Especially because the actives outside the Annual Plan are not set out in the budget, and are probably being financed from the budget reserves, thus informing the Parliament may make the process of rebalancing the budget more transparent and efficient.

Article 29 of the Law on Armed Forces sets forth a democratic and civil control of Armed Forces. The Article 17 of the Law on MNO sets forth in detail reporting to the National Assembly on the multinational operations at the end of the fiscal year. This would provide a legal basis for a more efficient democratic and civil control harmonizing it with the existing regulation (Law on Armed Forces), thus such control would be carried out throughout the mission, and it could also be carried out by other legally defined players[19], beside the National Assembly. An example of different practice is the case of legislation in B&H according to which the Presidency and the Council of Ministers submit regular reports twice a year to the Parliamentary Assembly of B&H, while a special report is being submitted at the Parliament's request[20].

The scope of the Law

As compared to the previous legal solution from 2004, the new Law incorporates many novel solutions in the area of participation in MNO. Namely, the practice according to the old law was a voluntary[21] participation of the professional members of the Armed Forces of S&M in MNO, while this principle

[18] The purpose of the Annual Plan is also of financial nature – namely the MNOs are financed by the means from the budget of the RS, and not from the budgets of the respective Ministries. Thus, at the beginning of the year the necessary financial means are being rounded out for that year in the area of activities in the MNO. Consequently, any activities beside the Annual Plan may have an impact on the changes in the budget.

[19] Ministry of Defense (2007), *Law on Armed Forces*, Belgrade, Off. Register 116/2007, Article 29, paragraph 3

[20] Article 16 of the Law on Participation of the Members of the Armed Forces of Bosnia and Herzegovina, Police Officers, Civil Servants, and Other Staff in the Peace Supporting Operations and Other Activities Abroad, adopted 22/2/2005.

[21] Article 3 of the *Law on Participation of the Professional Members of the Armed Forces of Serbia and Montenegro, Civil Defense Personnel, and Staff of the Ministerial Council Administrative Bodies in Peacekeeping Operations and Other Activities Abroad*, Off. Register S&M", No. 61/2004 – the Law itself does not mention voluntary participation, but in that way the personnel for observer and medical missions is recruited.

has now been defined by law. The Law sets forth that only professional members of the Armed Forces may participate in the missions (in accordance with the proclaimed goal of professionalizing the army), while conscripted recruits may not. Another requirement for the participation in the missions is the possession of a certificate[22] about completing the training at home or aboard. Before dispatching them to a multinational operation, the Ministry of Defense concludes contracts[23] with each respective member of the Serbian Armed Forces to the effect of engaging them in accordance with this law[24], and based on the content of that contract, they have an obligation to report when summoned to go to a mission within thee years upon concluding the training.

Another aspect of the new Law is pertaining to the rights of the participants in the missions, these rights being elaborated in detail, thus effectuating a drastic increase of the number of pages of the new Law as compared to the old one. Namely, the practice has shown that many stipulations in the old Law required bylaws, which was not passed in a timely fashion, thus a number of participants in the MNO have suffered damages caused by inadequate regulations. This technical problem has been prevented in the new Law via a somewhat odd provision[25] stating that "requests for exercising the rights and duties of the participants dispatched to MNO without a decision of the competent body until such date this Law has gone in effect, shall be resolved in accordance with the regulations according to which they have been acquired, or if more favorable for them, according to the provisions of this Law." The functionality of this provision lies in the avoidance of resorting to legal suits and creating a poor image of the participants in the MNO.

The Law on MNO that the National Assembly adopted in October 2009 represents quality progress as compared to the previous Law. It incorporates solutions which are proved to be good, experiences from the region, and in turn prevents the examples of poor practice manifested under the stipulations of the previous law. Since the engagement in the MNO is an important guideline in the foreign policy of the country, representing one of the three missions of the Serbian Armed Forces, it's good that this law has been passed at this time, since it provides adequate response to the challenge of the increase in the participation of the members of the defense forces of Serbia in the operations outside the borders of our country.

[22] Ministry of Defense (2009), *Law on Participation of the Serbian Armed Forces and Other Defense Forces in Multinational Operations Outside the Borders of the Republic of Serbia,* Belgrade, Off. Register 88/2009, Article 12

[23] "Rights, duties, and responsibilities of the members of the Serbian Armed Forces, civil defense personnel, and staff of the Ministerial Council administrative bodies who are being prepared and trained for the participation in multinational operations are regulated by a contract concluded with the competent Ministry", Ministry of Defense (2009), *Law on Participation of the Serbian Armed Forces and Other Defense Forces in Multinational Operations Outside the Borders of the Republic of Serbia,* Belgrade, Off. Register 88/2009, Article 30, paragraph 1

[24] Ministry of Defense (2009) *Law on Participation of the Serbian Armed Forces and Other Defense Forces in Multinational Operations Outside the Borders of the Republic of Serbia,* Belgrade, Off. Register 88/2009, Article 30, paragraph 2

[25] Ministry of Defense (2009), *Law on Participation of the Serbian Armed Forces and Other Defense Forces in Multinational Operations Outside the Borders of the Republic of Serbia,* Belgrade, Off. Register 88/2009, Article 41, paragraph 2

Literature:

1. *Zakon u učešću profesionalnih pripadnika VSCG, osoblja civilne zaštite i zaposlenih u organima uprave Saveta ministara u mirovnim operacijama i drugim aktivnostima u inostranstvu*, Beograd, Sl. list SCG", br. 61/2004
2. Vlada Srbije (2009) *Predlog Zakona o učešću Vojske Srbije i drugih snaga odbrane u multinacionalnim operacijama van granica Republike Srbije,* available at http://www.srbija.gov.rs/extfile/sr/111667/pz_upotreba_vojske_van_granica_srbije0110_cyr.zip (accessed 5/12/2009)
3. Ministarstvo odbrane (2009) *Zakon o učešću Vojske Srbije i drugih snaga odbrane u multinacionalnim operacijama van granica Republike Srbije,* Beograd, Sl. Glasnik 88/2009, available at http://www.parlament.gov.rs/content/lat/akta/akta_detalji.asp?Id=694&t=Z (accessed 5/12/2009)
4. Ministarstvo odbrane (2007) *Zakon o odbrani*, Beograd, Sl. Glasnik 116/2007, available at http://www.mod.gov.rs/cir/dokumenta/zakoni/Zakon%20o%20odbrani.pdf (accessed 5/12/2009)
5. Ministarstvo odbrane (2007) *Zakon o vojsci*, Beograd, Sl. Glasnik 116/2007, available at http://www.mod.gov.rs/cir/dokumenta/zakoni/Zakon%20o%20odbrani.pdf (accessed 5/12/2009)
6. Ministarstvo odbrane RS (2009) Nacrt *zakona o učešću Vojske Srbije i drugih snaga odbrane u multinacionalnim operacijama van granica Republike Srbije*
7. Ministarstvo odbrane BiH (2005) *Zakon o sudjelovanju pripadnika oružanih snaga Bosne i Hercegovine, policijskih službenika, državnih službenika i ostalih zaposlenika u operacijama potpore miru i drugim aktivnostima u inozemstvu,* available at www.mod.gov.ba/files/file/**zakon**i/**Zakon**-mirovne-misije-hr.pdf (accessed 5/12/2009)
8. Ministarstvo odbrane Republike Hrvatske (2002) *Zakon o sudjelovanju pripadnika oružanih snaga Republike Hrvatske, policije, civilne zaštite te državnih službenika i namještenika u mirovnim operacijama i drugim aktivnostima u inozemstvu,* available at http://www.morh.hr/images/stories/morh_sadrzaj/pdf/zakon%20o%20sudjelovanju%20pripadnika%20osrh%20u%20inozemstvu%20nn33-02.pdf (accessed 5/12/2009)
9. Ministarstvo odbrane Crne Gore (2008) *Zakon o upotrebi jedinica vojske Crne Gore u međunarodnim snagama i učešću pripadnika civilne zaštite, policije i zaposlenih u organima državne uprave u mirovnim misijama i drugim aktivnostima u inostranstvu,* available at http://www.gov.me/files/1233666582.doc (accessed 5/12/2009)
10. Ministarstvo unutrašnjih poslova (2005) *Zakon o policiji,* Beograd, Sl. Glasnik 101/2005, available at http://www.parlament.gov.rs/content/cir/akta/akta_detalji.asp?Id=296&t=Z (accessed 5/12/2009)

The Return of the "Internal Enemies"[1]

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Category: Academic Overview

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Abstract

Recently the members of parliament were presented with several suggestions and two strategies for the area of security and defence. Among the important documents there was a proposal law on the amendments of Law of Serbian Army, that seemed of a less importance. In this proposal it was demanded, among other things, to insert the article 14a into law of Serbian Army, by which it was forbiden for the army professionals to be in contact with any of the numerous organisations in Serbia, that deal with European integrations or issues of security and defence. This article has no grounds, since it is not complied with the Constitution or law of Serbian Army, and it has political reprecussions. By adopting Article14a we return to the very begining, to the nineties, when the security sector treated citizen associations as "insiders."

Key words: *Serbian Army, citizen association, democratic and civil control of the securities sector, security sector reforms,insiders*

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By the end of last year, the MPs at the National Assembly have been served several draft laws and two strategies in the sphere of defense and security. The greatest attention of the MPs was invoked, quite justifiably, by the National Security Strategy and Defense Strategy, as well as draft bills on military security services and the use of armed forces in multinational operations. These are extremely important documents and their adoption had been long awaited. Despite certain deficiencies that plague these documents, they will, without doubt, contribute to legal regulation of the security sector and provide at least some type of guidelines for the security policy of Serbia. Nevertheless, overshadowed by far by these important

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[1] First version of the text was published on the web site Pescanik, 08.10.2009. Internet: http:// www.pescanik.net/content/view/3783/1207/ accessed: 10.12.2009.

documents, there is a Law on Amendments and Supplements of the Law on Serbian Armed Forces, which only at the first glance appears to be less important. Among other things, this Law proposes to include Article 14a in the existing Law on Serbian Armed Forces. Due to far reaching consequences that may occur if this article is adopted, it is quoted here in entirety:

> "Professional members of the Serbian Armed Forces are not allowed to participate in the activities of the associations aiming to achieve the following goals: reform of the defense system and the Serbian Armed Forces, harmonization of the regulations with the generally accepted standards and regulations of the European Union, development of the defense strategy and the Serbian Armed Forces Doctrine determining the composition, organization, and formation of the Serbian Armed Forces; operational and functional capability, the Serbian Armed Forces' use and recruiting; readiness and drafting; combat equipment and material; commanding and reporting in the Serbian Armed Forces and the defense system management; participation in the multinational operations and internal relations in the Serbian Armed Forces."

If I understand Article 14a right, it forbids any contact between the professional members of the Serbian Armed Forces and civil society organizations directly or indirectly dealing with the issues of defense and security, and there are 40 of them in Serbia. This number is even higher when we ad associations dealing with European integrations having in mind that they, too, are "blacklisted". Professional soldiers is forbidden to, e.g. participate in the round tables, expert discussions, and panels organized by these associations. Moreover, they would not be able to publish papers in the scientific magazines and professional publications edited by these associations. Finally, any possible cooperation between the civil society organizations and the Army, constituting an integral part of the modern democratic civil-military relations, would be precluded at the very beginning.

The criticism of the Article 14a has both legal and political dimension. As for its lack of a legal basis, one must point out that the existing Law on Serbian Armed Forces, in Article 14, has already deprived the professional military personnel of a right to membership in political parties, as well as a right to a strike. These solutions have been adopted with a view to depoliticizing the Army and they

stem from the Serbian Constitution itself, which in article 55 sets forth that "members of the army may not be members of political parties". Nevertheless, the Constitution does not restrict anyone – professional members of the Army inclusive – when it comes to participating in the activities of the citizens' associations as foreseen by the proposed Article 14a. In addition, this article is also contrary to Article 141 of the Constitution, which says that the "Serbian Armed Forces (are) placed under democratic and civil control", as well as Article 29 of the Law on Serbian Armed Forces, which sets forth that "democratic and civil control of the Serbian Armed Forces is carried out by the National Assembly, Ombudsman, and other public administration bodies according to their competence, the citizens, and the public". The question is how can the citizens exercise control over the military, if their associations are forbidden to have contact with the professional members of the army? In addition, if Article 14a is implemented, this will create a paradoxical situation where the military may become members of foreign professional associations (Article 50 of the Law on Serbian Armed Forces), but in turn they are forbidden to participate in any of the activities of the local associations.

Even more important than the lack of its legal basis are the political consequences of this Article. The oversight function of the public and civil society is one of the several pillars of the democratic/civil control of the security sector (in addition to parliamentary control, executive power control, internal control, judicial inquiry, and independent institutions control). The communication between the independent research centers and the public security sector is both achieving a democratic character of the debate on security policy through the inclusion of a large number of stakeholders therein and, as a rule, leading to better quality, smarter policies. It was back in Thucydides' time, that he perceived that the democracies are much more successful in waging war than autocracies. This is supported by historical statistics showing that the states having democratic systems were winning in as much as 80% of the wars they waged, which is far more than the states having other types of systems. One of the reasons for such outcome lies in a very simple fact that more people are smarter than fewer people. Finally, the modern military sociology also warns against the perils of alienating professional army from the broader societal values. Isolation of the professional members of the Serbian Armed Forces from the civil society will definitely not help in living up to this challenge, which we must face in the future.

In the nineties, the citizens' associations were treated by the security sector as "internal enemies". After the year 2000 their status has been promoted to "inevitable nuisance" – an unpleasant, but still an integral part of the democratic transition and reform of the security sector. Ten years later, instead of celebrating the citizens' associations being promoted to a "useful resource" for the security sector, the Article 14a brings us back to the starting point. In the last several years, a lot of effort has been put in on both sides, to establish communication channels and sustainable forms of cooperation. Article 14a threatens to undermine this cooperation, or even demolish it by a single blow, by way of outlawing it. The best solution would be to remove the discussed article from the Law. However, if this is not possible at this moment, then the Law better should not be implemented. Although it would be bad to fully implement the article 14a, the worst case scenario would still be selective implementation as a tool for dealing with disobedient parts of civil society.

References:

1. Born, H., Caparini, M. and Fluri, P. (eds.) (2006) *Security Sector Reform and Democracy in Transitional Societies.* Geneva: DCAF
2. Caparini, M. (2004) Civil Society and Democratic Oversight of the Security Sector: A Preliminary Investigation. *In:* P. Fluri, M. Hadžić, eds. *Sourcebook on Security Sector Reform.* Belgrade: DCAF, CCMR, pp. 171-192.
3. Hadžić, M. (2001) *Demokratska kontrola vojske i policije*. Beograd: Centar za civilno-vojne odnose
4. Law, D. (2008) *Democratic Control of Armed Forces*. DCAF Backgrounder. Geneva: DCAF
5. Mouffe, C. (2004) *The Challenge of Carl Schmitt*. London: Verso.
6. Williams, N. (2003) September 11: NÍw challenges and problems for democratic oversight. *In:* W. N. Germann, T. Edmunds *Towards Security Sector Reform in post- Cold War Europe: A Framework for Assessment.* Geneva: DCAF /BICC, pp. 46- 58.

A step in the Right Direction Commentary of the Law on Civil Service

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Category: Commentary of Law

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Abstract

For the past six years, Serbian recruits have had a right, guaranteed by the Constitution, to approach the civilian military service by laying a complaint of conscientious objection. During that period, the civilian service was attended without the adequate law, on the grounds of regulation, which is the act of the lower legal power. By implementing the new law, the proposing authorities tried to set the standards of the international organizations, which deal with the issues of the civilian military (alternative) service with no arms. They also tried to suggest solutions for the potential problems that occurred in practicing that right. Further, there is a minor number of solutions that are not detailed enough or which are not complied with the modern approach to civilian service. Therefore, our goal is to point here to the public experts the advantages and disadvantages of the aforementioned law.

Key words: *army, recruiting system, civilian service, conscientious objection, human rights*

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The conscientious objection right represents the right of people who abide the military duty i.e. recruiting, to refuse the military service with arms and to be released from the mentioned service, based on their religious, ethical, moral, humanitarian, or philosophical beliefs and convictions.

The conscientious objection right was recognized for the first time in the Constitutional Charter of Serbia and Montenegro, and

guaranteed in December 2003 by the regulation of the amendments of the law on military service. The first subjects to military obligation were sent to perform their duties in the relevant public institutions in December 2003.

It is not an easy task to estimate the outcome of six years of civilian service in Serbia. There was a constant tension between the obvious subject's need, to endure the whole process as painlessly as possible, and the needs of system to exploit the subject's abilities. From the initial problems, such as misinterpreting the rights and duties of recruits regarding the civilian service, over the abusing of the conscientious objection right, we came to the issue of problematic efficiency of the implementation of the very civilian service institute in most optimal ways.

Still, the biggest number of recruits upon their admitting to the civilian service apprehended that it did not mean avoiding the military obligations, i.e. the way to avoid serving the army. Moreover, they mentioned that duties they performed during the civilian service were not easy. An illustration for this is the fact from the 2004 research in the area of Novi Sad military district (Vojvodina), where every second recruit expressed their wish to perform the easier duties from the ones they were performing. (Babić, 2009:230)

Thus, one of the initial problems was the fact that the planned training was not conducted in compliance with the plan and programme of the trainees with the specific qualifications. Therefore, the "Plan" and "Programme" of training of soldiers for the country's defence was amended, in order to provide the qualified subjects for performing specific tasks and duties. (Babić, 2009:238)

Approving a law represents a step forward in avoiding the negative praxis of inappropriate regulation of important issues, namely civilian-military relations in Serbia that are of a high social relevance. At the very start of our analyses, we would like to point out that the purpose of law is not to eliminate potential abuses and problems in praxis. The purpose of law is to: set the foundations for the effective application of civil service institute; to ensure that recruits' rights are respected, also to ensure that all the subjects to this process approach the assigned duties responsibly.

Within the law, there are disputable resolutions. Further, there are resolutions that represent the direct implementation of the European Council standards. Finally, there are resolutions interpreted as an attempt of authorities to solve the problem of the specific law loopholes, which allowed the abuse of the right of complaint of conscientious objection, both in the cases of directing the subjects-

recruits and during the civil service. We shall commence from the standards set by the European Council (EC). The European Council is an international organization that has been dealing with the problematic issues regarding the alternative ways of serving the army (without weapons) for four decades. The praxis of the EC has instigated the actions, for solving the named issues, of other international organizations, such as the United Nations and the European Union (through actions of the European Parliament). We shall focus on the resolutions that we consider adequate and leave the disputable issues for the final part of the analyses.

The right of complaint of conscientious objection as the basis of civilian military service and relevant standards of the international organizations

The right of complaint of conscientious objection is in the direct connection with the rights of freedom of thought, conscience, and religion. This connection was established for the first time by the resolution No. 337 of the EC in 1967. At the same time, it was proclaimed, as a responsibility of each member of the EC that the subject-recruit pleading a complaint of conscientious objection has to be enabled to serve in an alternative way. The content of the resolution, slightly altered, has been rephrased, in the recommendations of the EC parliament No. 816 in 1977 and 87 in 1987.

Named resolution and two recommendations include the following principles of the fundamental value to the comprehension of the modern concept of civil military service:

- The authorities have the responsibility to inform the subject-recruit about their right to express the conscientious objection, using the available means of communication.
- In case of rejecting the request for a conscientious objection right, a subject-recruit must be provided with a possibility of legal remedy, i.e. the right to appeal.
- The authorities in charge of considering the appeal and making a decision have to be separated from the military authorities, i.e. they have to be established in a way that their independence in work is not compromised.
- Work of the entities in charge of appeal, in its final stage, has to be controlled by court.
- Each subject-recruit has to be enabled with a conscientious objection right at all times during the military service.

- The alternative service has to be practiced in a civil institution.
- The alternative service must not appear as a form of punishment, in the context of its duration. Any alternative service one and a half times longer than a regular service will be considered as such form.

The United Nations human rights committee officially approved the right of a conscientious objection on 10th March 1987.

The compliance of Law with the Council of Europe principles

Two out of seven named principles have been accepted in law: the first is referring to obligations of recruits and the second refers to enabling the independent work of the second-instance committee that decides on the appeal. Article 4, in law, supposes the obligation of the territory authorities to deliver, to a subject-recruit, the notification about the right of conscientious objection, and process of implementing the right, along with the request for enlisting in the military records, medical examinations and duties regarding serving the army. Further, article 12, includes the resolution that nominates the vice president and members of the second-instance committee, by the Ministries in fields of social welfare, justice and health, as well as the units of local self-government, and according to the proposal of the authorized ministries and units of local self-government.

Responses to problems that occurred in practice

The proposing authorities focused on the issues of abusing the rights to conscientious objection, i.e. rights of recruits directed to civilian service. As it was mentioned before, the named abuses have been identified by the Ministry of Defence (MoD). Still, there is no data on the process of the analyses nor is the analyses itself available to the public. Therefore, we are forced to make deductions by thorough reading of the adopted resolutions.

The first problem that occurred, refers to the honesty of the recruits pleading the right of conscientious objection, is not and cannot be subject to this law, concerning the fact that it is an act of a free will. However, when examining the research conducted on the territory of Belgrade in 2008, it was clear that the motifs of questioned subjects were: a wish to preserve their jobs, possibility of not leaving their homes, inability to adopt the army life and work conditions, as well as the fact that the civilian service does not include 24 hours serving like the regular service. Every eight questioned sub-

ject admitted that they "despised war as a way of dealing with human conflicts." (Kuzmanović: 2009, 219)

Another problem is sending the recruits to certain institutions by "pulling the strings". Namely, recruits, or people closely related to them, "pull the strings" in order to be directed to certain institutions, supposing they will have the privileged status there. The praxis showed that the resolution left enough space for informal influences on the committee members and other subjects engaged in the process of directing the recruits. Therefore, article 15 was introduced to prevent a subject from serving the army in the organisations or institutions: they already work in (or they used to work), the close family member (spouse, brother, sister or parent) works in or to an organisation they are studying in.

It was also identified, that in specific relevant public institutions certain workers rights were violated by admitting the civilian service recruits to their positions. Srećko Kuzmanović, also took a notice if this and said that it was realistic to expect: "that a process of intensive lobbying would start in order to get on the list of institutions (that made an agreement with the Ministry of Defence, as the institutions of public relevance author's comment), since it is very rare that anybody would refuse the opportunity to hire the cheapest workforce on the market and to have the opportunity to conscientiously conduct their work obligations at the same time as their obligations towards their country.(Kuzmanović: 2009, 225) As a result, in the same article it has been determined that a subject cannot be admitted to the civilian service if that entails dismissal of workers in an institution to which a recruit was directed to.

Further, in the article 31, it is stated that it is strictly forbidden to use the regular, rewarded or excess leave in order to shorten the duration of civilian service, at the end of their service, since this was happening on the regular basis in the past six years.

Finally, in order to decrease the oscillations concerning the troop strength, article 16 adopted the resolution, which states that the appeal submitted to the first-instance committee does not direct to performing military duties in civilian service. Simultaneously, the status of regular army and civilian army serving is being equalised. According to the facts brought up by Karanović in his work in 2008, a soldier serving the regular army or the Serbian army spends 4,320 hours there, and a soldier serving the civilian army spends 2,160 hours or 50% of the time that solider spends in the army. Also, soldiers serving the regular army are exposed to greater psycho-physical strains and life and health risks than soldiers serving the civilian army. (Karanović: 2008, 193)

Observed from the proposing authorities' perspective, the main problems in work were: "the poor quality of work, unpunctuality and not presenting the current state realistically in the monthly reports, not delivering the work lists, from which the presence of soldiers on their work places could be seen." (Babić: 2008, 129) Despite the mentioned problems, the issue of controlling the civil service, although apparently important, does not seem to be tackled enough by the law. Articles 42 and 43 of this law, as support to the control issues, denote the Center for civil service and Committee for civil service. However, the decision for establishing the Center for civil service is still waiting to be approved by a minister's signature.

Correct solutions

In article 21, paragraphs 4 and 5 express the understanding for the recruits who started their work in the meantime. If they are accepted as trainees, their service is postponed until their training is finished. If they are accepted to work temporarily, and have a valid proof that they will be accepted permanently, service is postponed for a year.

This resolution has been complied with the Law of labour. However, it is necessary to define what is considered a valid proof.

The right to be transferred defined by the law, was not treated by the regulation. In article 29 it is stated that a person can be transferred in some other institution when the authorised institution decides that the current place for serving is harmful for their health.

The transfer can also be realized in cases of changing the place of residence, in course of service. Finally, transfer can be result of a breach of contract between the Ministry of defence and organisation or institution, i.e. a recruit can be transferred if the institution or organisations he was serving in terminate their work.

The flaws

In article 11 the principle of independent work of the first-instance committee, by which directing of recruits is determined, is questioned. In article 4 it is stated that"the tree committee members are chosen from the territory unit: one from the local self-governing unit in the area of labour and social policy, the other from a health institution from the local self-governing unit territory. " By applying this solution the first instance committee will be dominated by sub-

jects who work in the defence system, i.e. they will outnumber the rest of members by 3:2, that guarantees success if it comes to voting.

Additionally, the resolution, that states civil service to last longer than a regular one, is also inadequate for the modern standards. Certain countries like Germany (*Zivildienst*) and Italy (*servizio civile*, until the complete professionalization in 2004), were decreasing the duration of civil service gradually, until it was equal with the duration of the regular army serving. Since the service that lasts one and a half times longer than a regular service is considered to be punitive, it can be stated that the adopted resolution is almost correct. Therefore article 23 contains the solution that is punitive: "two days in civil service count as one in the regular service."

It is even harder to justify the resolution that contains article paragraph 5, article 25 of Law in which it is stated that "a subject from paragraph 1, points 1, 3, 4 and 5 of this article is directed to serving the army without weapons in the Serbian army unit." It is not sensible to observe serving the army as a form of punishment. What does it say about all those who have chosen to serve the regular Serbian army? Are they being punished for something? Further, the right of conscientious objection can include refusing to serve in any form of army formation. The proposing authorities of the named law gave themselves a significant amount of freedom by interpreting that a subject "unjustifiably absent from civil service "(point3) or that "violated their work duties" (point 4) actually renounced their right of conscientious objection. Instead, directing to the already existing punishment orders in articles 62–66 chapter VII of the law proposal would have been more right.

Article 26 treats, partially, the right of scientists and top sports players to stop their service in case of professional obligations that can occur in the meantime. It is necessary to clarify the named definition, by specifying the deadline for Ministry of defence to respond to a request of the "authorized subject of the ministry department", in order to stop the civil service for the "scientific workers and researchers, in case of participating the science, research and development projects (that are significant for the Republic of Serbia), top sportsmen and members of the sport representation of the Republic of Serbia, (for participating in the world, Olympic or European championships) and to an artist, (for participating in events significant for the Republic of Serbia), until the named reasons are valid or until a subject turns 27." It is disputable whether the possibility of an appeal should be discussed here: it is highly possible that "a project, a championship or an event" will be over by the time this procedure is ends.

By Article 36, subject is banned from organising strikes and participating in them during their service. Hereby, the civil service subjects are equal to the professional subjects of Serbian army, who are also not allowed to do so (article 15, Law of Serbian army). Establishing such a resolution, subjects serving the civilian army are put into a position in which they can be observed as the "strike-breakers" or, even more problematic, it can be the way by which the state protects itself from the potential strike outbreaks in the public sectors.

When speaking about the penalties supposed by law, a specific problem arises from the Article 66. According to this article, if an official subject in the institution or organisation in which a recruit is serving civil army, treats a recruit without dignity or inhumanely, they can only be monetary penalised. The articles 63 and 64 already suppose the option of penalising subjects on civil service by prison in the cases of: "leaving the service, training or exercise without an approved reason or if they reveal business, i.e. official confidential data"(up to 60 days), i.e. if they "make some material damage on purpose or by being utterly careless […] if they behave irresponsibly or violently towards the official subject or other employees of an institution […] if they organise, prepare or participates in strikes"(up to 30 days). Therefore, we consider it would be only fair to introduce the possibility of warning an official subject, that behaves with indignity, inhumanely or humiliating towards the recruit, that they can also be penalised by prison.

However, plenty of issues remained in the jurisdiction of minister of defence. Some of the most important decisions that have to be made in the upcoming period refer to the education of the Civil service centre (Article 8), conditions, ways and steps for subjects in civil service travelling abroad (Article 40), programmes, steps and methods of trainings of subjects in civil service (Article 41), as well as the form of the request for the civil service (Article 7). These paragraphs separately, according to Article 69, have to be adopted by the Minister of Defence in 90 upon the taking effect of law.

There are, however, problems, that occur in practice, caused directly by recruits' lack of motivation for work. Law cannot be applied to these types of problems, to which Babić also focused in his work (in 2008). They refer to cases of highly educated recruits being inadequately engaged, cases of decreased activities or responsibility in the final stages of service, when soldiers do not respect the working hours, or cases of working with recruits, whose close relatives or parents work in those institutions or organisations, who asked for the certain privileges for themselves. One way to solve this is to introduce the

final, generally accepted form of community serving, whilst the other way could be establishing stricter control. With the upcoming professionalization, it seems that civil service has been put aside, despite the significant potential to contribute to increasing the capacities of Serbian society to respond to specific social demands.

Conclusion

Apart from the flaws that are consequences of incomplete understanding of contemporary nature of civil service and its existence, and the fact that Serbian defence system is still in charge of it (which is no longer the case in developed countries) it seems that proposed act still represents the quality progress in comparison to the current state. Firstly, the regulation on the amendments of regulation of military serving has been replaced by abovementioned law in 2003, since the existing regulation insufficiently defined the steps for appeal, transfer and penalties. Afterwards, upon pointing out all the advantages of the named law, the authors tried to resolve the problems they encounter during the six years of praxis of civil service in Serbia, basing their work on the previous analyses.

References:

Babić, M. Branko. 2008 *Služenje vojnog roka u civilnoj službi: možemo li drugačije? [Civilian army serving: can it be done differently?]* Vojno delo, year 59, issue 3, p 122–142

Babić, M. Branko. 2009 *Istraživanje stavova vojnika i regruta o služenju vojnog roka u civilnoj službi [Research on the attidudes of soldiers and recruits towards the civilian army service]* Vojno delo, year 60, issue 2, p 223–238

Council of Europe, 1967, Resolution 337 (1967) on the right of conscientious objection, http://www.ebco-beoc.eu/page/1uside/document/doc3coe.htm#Resolution%20337 (acessed 14th Jan 2009)

Council of Europe (1977) Recommendation 816 on the right of conscientious objection to military service, http://www.ebcobeoc.eu/page/1uside/document/doc3coe.htm#Recommendation%20816 (acessed 14th Jan 2009)

Kuzmanović, Srećko. 2009 *Etički aspekt služenja vojnog roka u civilnoj službi [The ethical aspect of civilian army service]* Vojno delo, year 60, issue 1, p 206–226

Karanović, Nikola. 2008 *Vojna, radna i materijalna obaveza, prigovor savesti i civilna služba u budućim zakonskim rešenjima [Military, labour and material obligatins, the conscientious objection and civilian service in the future legal regulations]* Vojno delo, year 59, issue 4, p 175–205

Strategic Response of Serbia to Organized Crime

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Abstract

Preparation of the National Strategy to Fight Organized Crime has featured only the first step in the suppression of organized crime, which needed to be taken after the 5 October changes. In order to efficiently fight organized crime it is necessary to develop cooperation and confidence between government bodies, private sector, and civil society. A positive and quite commendable development is that the authors of the Strategy have stressed the need for cooperation between the aforementioned players. The application of the three principles of the Strategy – developing preventive, repressive action and seizure of property acquired through crime constitutes an effort to achieve a more efficient suppression of organized crime. The objective of this paper is to analyze and thus feature positive elements and dilemmas of the Strategy and Action Plan, and to stress the importance of a strategic approach to fighting organized crime; feature current status and an alarming side to certain types of crimes; stress the role of the National Assembly of the Republic of Serbia and the civil society organizations in fighting organized crime.

***Key words*:** organized crime, strategic approach, strategy, civil society organizations, National Assembly of the Republic of Serbia, seizure of property acquired through crime

Introduction

The Government of the Republic of Serbia has adopted the National Strategy to Fight Organized Crime on 29 March 2009 (hereinafter: Strategy).[1] This is only the first step and beginning in suppressing security threats coming from organized crime, which needed to be taken after the 5 October changes. The second step is

[1] Strategy is available at: http://www.srbija.gov.rs/extfile/sr/106769/strategija_protiv_organizovanog_kriminala 0077_lat.zip.

the implementation of the Strategy. Notably, the Strategy becomes even more significant when we take into consideration the consequences of the transitional process in Serbia and its being "animated" by the growth of the crime rate. Nevertheless, one must refer again to a belated adopting of this document and to raise a question: "would there be a strategic plan for fighting organized crime, had that not been one of the requirements for Serbia's association with the European Union (EU)"?

The adoption of the Strategy has meant that additional effort was put into rounding out the so-called "first generation of reforms" in the security sector and one requirement has been fulfilled for Serbia's association with the EU and the so-called white (positive) Schengen list.[2] Within the prescribed deadline, that is, after six months, an Action Plan for the Implementation of the Strategy has been adopted. Action Plan has explained more specifically the implementation of the identified objectives in the Strategy: developing a proactive approach and increasing efficiency in fighting organized crime; strengthening human capital and material resources in fighting organized crime; harmonization of national legislation with the international standards in the area of fighting organized crime; strengthening cooperation at national, regional, and international levels; strengthening cooperation between government bodies, private sector, and civil society (Action Plan, 2009).

The objective of this paper is to analyze and thus feature positive elements and dilemmas of the Strategy and Action Plan and to stress the importance of a strategic approach to fighting organized crime with a special focus on an important measures in such fighting – seizure of property acquired through criminal activity. Before that, the current status and alarming side to certain types of crimes will be discussed. At the end, the role of the National Assembly of the Republic of Serbia (hereinafter: Assembly) and the civil society organizations in fighting organized crime will be discussed, taking into consideration two things. Firstly, there is no mention of the Assembly in the Strategy. Secondly, in the Action Plan, the lack of financial means and insufficient interest of the private sector and civil society is identified as one of the risks in the strengthening of cooperation between government bodies, private sector, and civil society. Overcoming the aforementioned risk is very important in the prevention of organized crime, since such player as civil society may represent a "support pillar" of the new ideas when it comes to fighting organized crime.

[2] The "first generation of reforms" comprises the adoption of a legal framework in the security sector reform, regulating the area of organization and activities of the security sector, as well as introducing the mechanisms of civil control. For more information please see: Timothy Edmunds, *Security Sector Reform in Transforming Societies: Croatia, Serbia and Montenegro*, Manchester University Press, Manchester, 2007, pp. 89-101.

Is current status alarming?

According to the last Report on the Work of the Ministry of Interior of the Republic of Serbia (hereinafter: MoI) a total number of crimes committed in 2008 in Serbia was 105,332. Compared to 2005, a mild increase of the crime rate is noticeable, amounting to a little less than 2,000 crimes.[3] What is especially causing concern is the increase of crimes perpetrated by juvenile offenders in the last ten years, even though 2008 registered a drop as compared to 2007. Namely, in 2005, according to the research of the Faculty for Special Education and Rehabilitation, the number of crimes perpetrated by juvenile offenders amounted to 2,945. In 2007, according to the statistics of the MoI such number amounted to 7,983 and in 2008 it has decreased for over 9%, i.e. 7,263 crimes (Politika Online, 22 February 2009). The increase of juvenile crimes that more than doubled in the last three years is more than a sufficient cause for concern. A similar problem is registered also in neighboring Croatia. According to the statistics in Croatia there are about five times more homicides, homicide attempts, inflicting serious injuries, and acts of violence by juveniles as compared to 2000 (Globus, 10 November 2009). This problem needs to be dealt with strategically, preventively through adequate practical measures and activities of all players in removing the causes and conditions leading to the occurrence of crime, as well as repressively through identifying and solving criminal cases.

One should also refer to the last EUROPOL report, mentioning the Balkans as a well known route used by organized criminal groups. The so-called "Balkan route" is still operative, which is considered convenient for organized crime due to trade liberalization, geographical location in relation to the EU as the final destination, and already formed criminal hubs in this region. The report point out that this route has long ago proved to be a low-risk route for organized criminal groups, where the port of Constance in Romania, as well as the channel Rhine-Main-Danube are the main entries into EU (EU Organized Crime Threat Assessment – OCTA 2009, 2009: 56).

The increase of the prison population is also evident, not only in Serbia but in all countries of the Western Balkans as well, with the exception of Montenegro. According to the reports by the International Centre for Prison Studies from United Kingdom, in Serbia in 2005 there were 7,487 and in 2008 there were 8.978 inmates.[4] The increase of the prison population is the result of the

[3] See: Obim, struktura i dinamika kriminaliteta u Srbiji, Fakultet za specijalnu edukaciju i rehabilitaciju, Univerzitet u Beogradu, http://www.fasper.bg.ac.rs/nastavnici/NikolicRistanovicVesna/index.html.

[4] Reports of the International Centre for Prison Studies are available at: http://www.kcl.ac.uk/depsta/law/resear ch/icps/worldbrief/.

increase of criminal activity, as well as the efficiency of the police. The results of a research by the Centre for Civil-Military Relations also support this. According to the the CCMR Reform, the police is on the second place, right after the army.[5] Nevertheless, one of the key deficiencies in the prevention and suppression of crime is the lack of strategic planing for the police reform, even though this has been set out in the Law on Police from 2005.[6] Hence, sectoral strategies such as National Strategy for Fighting Organized Crime or National Strategy for Fighting Money Laundering and Financing of Terrorism are of paramount importance both for fighting organized crime and police reform. But the absence of the police reform strategy as the "umbrella" strategy opens the door for the existence of discrepancy between the strategy elements – goals and priorities.

Statistical data is presented with a view to understanding the seriousness of the problem stemming from security threats by organized crime. In addition, organized crime in Serbia is at the "stage of legalizing acquired gains" (Fatić, 2009: 25), while the problem of corruption, as the Strategy points out, has its greatest impact on key players in fighting organized crime – justice, customs, and the police (Strategy, 2009: 5). Likewise, the last Report of the European Commission the last Serbia's Progress says that the Action Plan for the Implementation of Anticorruption strategy is not being fulfilment and that there isn't a clear plan for the implementation of ratified international conventions (Portal Argus, 30 October 2009). Anti-Corruption Agency should have a significant role in fighting corruption. Nevertheless, there is a ground for wondering about the scope of the results of the Agency having in mind the initial "material (financial) problems". In its Memorandum on the Budget for 2010 the Government of the Republic of Serbia has planned to decrease the finances for the Agency's operation for almost 18 times (Media Center, 23 July 2009).[7] Finally, public opinion polls from 2008 tell us that the problems that threaten the safety and security of citizens the most are the problems pertaining to crime and drug abuse, as well as violence and corruption. Moreover, 43% of the citizens maintain that crime is a main threat to safety and security (Public opinion on the police reform, 2008: 5).

It was the National Strategy for Fighting Organized Crime that identified the aforementioned problems. This is reflected in the basic principles of the Strategy: developing preventive and repressive action, as well a seizure of property acquired through crime

[5] See: Hadžić, M., Milosavljević, B., Stojanović, S. Ejdus, F. (eds.) (2009) *Godišnjak reforme sektora bezbednosti u Srbiji*, Beograd: Centar za civilno-vojne odnose, Dan Graf.

[6] Zakon o policiji, "Službeni glasnik RS", br. 101/05, član 7.

[7] Memorandum on the Budget is a mid-term macroeconomic and fiscal framework, based on which budgets and financial plans of the organizations of mandatory social security are passed. General Balance Sheet in which total revenues and expenditures of the Republic are balanced is an integral part of the Memorandum

(Strategy, 2009: 1). Thereby we recognize one of the positive elements of the Strategy. Nevertheless, the Strategy lacks a more detailed explanation of a proactive approach to organized crime.

Significance of a strategic approach to tackling organized crime

The purpose of any strategy is to provide both planning and action with a view to using the existing skills and resources for an effective implementation of the identified objectives (Smith and Salerno, 1970: 102). In our case, the objective is fighting organized crime. Having in mind that the existence of organized crime had been denied for a long time and that the "real fighting" started shortly before the assassination of the former Prime Minister, and that it was only then that it was admitted that "organized crime is deeply rooted in the system" (Petrović, 2008: 34), the Strategy has shown that key political actors are "aware" of the seriousness of the problem pertaining to organized crime or was that only "one of the requirements" for a full membership in the EU? What lies ahead of us is the implementation of the Strategy, i.e. specific action for a systematic suppression of organized crime. The law enforcement bodies are not the only ones who have a principal role in that part of the job, but the disposition of the political elites in Serbia as well.

Comprehensively, the strategic approach can be defined through three steps, preparation of adequate policies, strategy as a document, and gathering of human capital and material resources for the implementation of the identified objectives (Davies, 2000: 25-28).

Policies serve to define the vision, objectives, and priorities of the state, as well as the legal framework. At the first glance, it seems that the vision having been proclaimed by the Strategy – "society with a highly developed and most sufficient system, which is bringing about the best results in fighting organized crime in the region, with a tendency to its full eradication" is pretentious and isn't bound in time. Smith and Salerno (1970: 104) maintain that setting a pretentious and broad goal, as well as multifaceted character of the strategy, do not necessarily have to come across as "muddled" if there is a clear definition of the objectives, context, and if there is adequate knowledge about organized crime. One must stress that the implementation of the Strategy requires further development of criminal investigation and intelligence activities, improving horizontal cooperation of the government bodies participating in fighting organized crime, full implementation of the international standards in prevent-

ing and fighting crime, as well as to enhance and broaden regional and international security cooperation. This would confirm the opinion of Smith and Salerno (1970: 104) that a usable strategy is the one which may establish cause-and-effect link between criminal investigation and intelligence, subsequent activities and measures, public support and state resistance to corruption. In our case, the Strategy sets out the objectives clearly. The implementation of the Action Plan and identified objectives represents a "step in the right direction" in fighting organized crime.

Strategy as a document which represents a plan for the implementation of the identified objectives. Compared to the first step of a comprehensive strategic approach having a legislative role, the second step has an executive function. The plan defines an institutional framework, i.e. identifies key organizational units for the implementation of the plan, as well as specific activities. Even though the Strategy noticeably reduces the implementation part, i.e. it only provides a general framework, the Action Plan makes up for that deficiency. Thus, in our case, the second step in a strategic approach to fighting organized crime has been the Strategy and Action Plan. For a complete understanding of the "plot" it is necessary to take into consideration both documents.

According to the Strategy, the principal factors in fighting organized crime are as follows: MoI, Security and Intelligence Agency, Military Security Agency, Ministry of Justice, and Ministry of Finance (Strategy, 2009: 8).[8] The Strategy also mentions two new organizational units as a logical outcome stemming from the adoption of the Law on seizure of Property Acquired through Crime".

Seizure of property acquired through crime as one of the key principles in fighting organized crime

The application of the Law on Forfeiting of Property Acquired through Crime represents an additional effort in the implementation of the Strategy. The creation of two organizational units, such as mentioned in the Strategy, has represented the rounding out the institutional framework for tackling organized crime. The first one operates within the MoI and its competence comprises financial investigation identifying property acquired through crime. The second unit, Directorate for Managing the Seizured Property, operates within the Ministry of Justice and it has started its operative functioning on 1 March 2009. One of the first accomplishments of the Directorate has been a *temporary* (italics put by author) forfeiting of

[8] Other state bodies important for fighting organized crime are as follows: within MoI there is a special department – Special Unit for Tackling Organized Crime (SBPOK); at the Ministry of Finance – Department for the Prevention of Money Laundering, Tax Office, Customs Office; Special Prosecutor's Office within the District Prosecutor's Office in Belgrade; Special Department of the District Court in Belgrade, as well as a special remand ward at the District Prison in Belgrade.

one part of the house of Milorad Ulemek Legija, who has been sentenced, with the verdict having gone in effect, for the assassination of the Prime Minister Zoran Đinđić at the end of November 2009. The application of the law and the operations of the Directorate will definitely accomplish much in the preventive and proactive suppression of organized crime.

Originally, the idea of seizure of property acquired through crime is the fruit of the labor of Giovanni Falcone, Italian judge who had been assassinated on 23 may 1993 by Italian mafia because of his "intolerance" for organized criminal groups. The passing and further implementation of the law in Serbia improves fighting organized crime. The National Plan for Fighting Organized Crime of the Republic of Croatia from 2004 also points out to the significance of forfeiting of property acquired through crime as "the most important and most effective measure in fighting organized crime" (National Plan for Fighting Organized Crime, 2004: 18).[9] The law will be applied to criminal activity pertaining to organized crime, economy, abuse of official capacity, pornography, international crime, distribution of narcotics and public law and order (Law on Seizure of Property Acquired through Crime, Art. 2).

Nevertheless, there are a few dilemmas. According to the opinion of Vladimir Todorić, Director of the Legal Forum and Editor-in-Chief of Serbian Law Review "the way in which fighting is carried out may, unfortunately, create more problems than benefits, making the criminals entitled to indemnity that the citizens will have to pay from the budget" (Politika Online, 22 October 2009). This has been reflected in the vacillation about a clear definition of criminal activity pertaining to organized crime. This makes the application of the Law on Seizure of Property Acquired through Crime difficult, and thus the implementation of the Strategy as well. Different solutions set forth in the Law on Organization and Jurisdiction of Government Authorities in Suppression of Organized Crime and the Law on Criminal Procedure create problems in day-to-day practice of the law enforcement and justice bodies, since in practice both definitions or a combination thereof are used, which is rather a controversial solution (Petrović, 2008: 36). Todorić (Politika Online, 22 October 2009) mentions the double arbitrariness of the prosecution as well, which is contrary to the Constitution of the Republic of Serbia, as well as the European Human Rights Convention. Perhaps the new Law on Criminal Procedure will solve the aforementioned controversies and that the working group that has been formed will find an adequate solution.

[9] National plan is available at: http://www.vlada.hr/hr/content/download/6321/49011/file/41-01..pdf.

If the Law on Seizure of Property Acquired through Crime is implemented fully it achieves a twofold benefit. The property of a person who is a legal successor of the person whose property has been acquired through crime may also be seized. The application of a clause pertaining to persons against whom criminal charges have not been pressed because they have deceased, and for whom it has been established, in the proceedings against other persons, that they committed crimes with such other persons, their property thus having been acquired through crime (Ljudska prava u Srbiji 2008, 2009: 258).

The defining of the principles for seizure of property acquired through crime in the Strategy has provided a good initial framework for an efficient suppression of organized crime. Having in mind that there has barely been nine months since the beginning of the application of the law, it is too early to forecast the outcomes or make any assessments.

The role of the Assembly and civil society in fighting organized crime

Adopting the National Strategy to Fight Organized Crime has taken place without having public dialogue. Regardless of the fact that there is no legal obligation to have a public dialogue when it comes this Strategy, the Government of the Republic of Serbia should have organized a "hearing" at the National Assembly, as well as adequate public dialogue, having in mind that this is a very significant document.[10] An obvious contradiction is reflected in the fact that during the adoption of the National Strategy to FightCorruption there was a discussion at the Assembly. It is logical to ask a question why hasn't the Government of the Republic of Serbia done the same thing on the occasion of the adoption of the National Strategy to Fight Organized Crime. Moreover, the Strategy includes the corruption in the "visible forms of organized crime". It is evident that these two "plagues" of the society are "inseparable", while at the same time representing two respective phenomenona.

Regardless of all vacillations, there is a general opinion that the participation of the representative bodies in fighting corruption and crime is relatively modest (Cajati, 2007: 2, Meier, 2002). Hence, it is necessary for appropriate Assembly Committees to participate more in fighting organized crime. Efficient fihting comprises more than presenting annual reports of the MoI and security and intelligence

[10] According to the Government Rules of Practice ("Official Journal of the RS", No. 51/06) public dialogue is mandatory when preparing laws, and according to the Government's Decision on Amendments and Supplements of the Rules of Practice, public dialogue may be organized when it comes to development strategies. It is necessary to introduce the changes of the Rules of Practice and bind the Government of the Republic of Serbia to organize public dialogues, in the true sense of the word.

services, or adoption of adequate legal acts with regard to suppressing crime. Having in mind that the MoI has launched an initiative to develop National Strategy for Crime Prevention, it is necessary to include both the Assembly and the appropriate committees in drafting of this document.[11]

There is a widespread opinion that criminal activities influenced by modern social trends "have no limits". Hence, efficient tackling of organized crime requires a more substantial cooperation of the regions, in our case, the countries of Southeast Europe. This cooperation is not limited merely to law enforcement or justice bodies, but it pertains to representative bodies as well. It is necessary for the members of parliament, representing an expression of a sovereign will of the citizens, to initiate different "hearings" or meetings with the representatives of the executive power, international organizations, regional initiatives being actively involved in the area of justice and home affairs, civil society organizations, in order to get an insight into the status and possible solutions for fighting e.g. human trafficking. This might have been the reason that the MPs at the National Assembly of the Republic of Serbia should have initiated a public dialogue on the occasion of adopting the National Strategy to Fight Organized Crime.

Civil society organizations are an important player in fightingorganized crime. It is commendable that the authors of the Strategy stressed the significance and the role of the civil society organizations and media in tackling organized crime. According to the Action Plan the role of the civil society is reflected in informing the public about the results of fighting organized crime; raising the awareness on the part of the citizens about the perils of the organized crime; creating reliable mechanisms to protect the citizens reporting crimes pertaining to organized crime; joint participation in the implementation of the projects having significant role in the realization of the objectives set out in the Strategy.

Civil society organizations may have a significant role in promoting the concept of community policing (the good practices of New York City and Boston are often referred to as success stories); organization of different police trainings with a view to raising awareness of the police officers pertaining to respecting human rights; developing mechanisms for the protection of witnesses and victims; modalities of the internal investigation and external oversight in order to increase transparency and achieve greater accountability of the law enforcement bodies (Cavallaro, 2005: 46-50).

[11] Initial framework of the National Strategy for Crime Prevention is available at: http://prezentacije.mup.gov.rs/Deca/dl/Polazni_okvir_Nacionalne_strategije_prevencije_kriminala_lat.doc

The situation nowadays is much different than the one existing before the 5 October changes. Departing from the status of public enemy and mistrust a relationship was established with more mutual understanding. Nevertheless, there is still "more space" for cooperation.

In lieu of conclusion: an appeal to make cooperation more substantial

On the overall, the Strategy depicts very well the current situation in Serbia, especially when it explains the types of crime representing a threat and that organized crime is a threat for national security. Having in mind that several different Ministries have participated in the preparation of the Strategy, it gains in quality. Nevertheless, the absence of a quality public dialogue and the preparation of the Strategy "behind closed doors" and its publication with "appropriate" political timing, due to European integration, create different dilemmas. It has previously been mentioned that the second step, also being the most important one, is the implementation of the Strategy and the application of the three main principles.

Efficient fighting of organized crime requires the establishing of cooperation and trust between government bodies, private sector, and civil society. The authors of the Strategy have stressed that. This is the only way to suppress the modern "threesome" consisting of illegal trafficking in drugs, human beings, and arms. This "threesome" together with corruption, committing violence, and finances acquired through crime make one of the greatest diseases of modern society, creating a "sense of unsafety" with the state and respective individuals.

Bibliography:

Babić, J. (2009) *Deset najopasnijih maloljetnih zločinaca, Globus*, [Online] Available at: http://globus.jutarnji.hr/hrvatska/10-najopasnijih-maloljetnih-zlocinaca [10 November 2009].

Cajati, R. (2007) *The Role of the Italian Parliament in Promoting Transparency and Fighting Corruption*, Rome: IPALMO [Online] Available at: http://www.ipalmo.com/shared_docs/PAPER_CORRUPTION.pdf.

Cavallaro, J. (ed.) (2005) *Kriminal, javni red i ljudska prava*, Beograd: Fond za otvoreno društvo.

Davies, W. (2000) "Understanding Strategy", *Strategy and Leadership*, Vol. 28, No. 5, pp. 25-30.

Dobrković, D. (ed.) (2009) Ljudska prava u Srbiji 2008 – Pravo, praksa i međunarodni standardi ljudskih prava, Beograd: Beogradski centar za ljudska prava.

Edmunds, T. (2007) *Security Sector Reform in Transforming Societies: Croatia, Serbia and Montenegro*, Manchester: Manchester University Press, pp. 89-101.

European Police Office, EUROPOL (2009) EU Organized Crime Threat Assessment – OCTA 2009, [Online] Available at: http://www.europol.europa.eu/publications/European_Organised_Crime_Threat_Assessment_(OCTA)/OCTA2009.pdf.

Fakultet za specijalnu edukaciju i rehabilitaciju Univeziteta u Beogradu (2008) *Obim, struktura i dinamika kriminaliteta u Srbiji*, [Online] Available at: http://www.fasper.bg.ac.rs/nastavnici/NikolicRistanovicVesna/index.html [24 November 2009].

Fatić, A. (2009) "Formulisanje strategije borbe protiv organizovanog kriminala u svetlu evropske integracije Srbije", *Revija za* bezbednost, Godina III, broj 3, mart 2009, pp. 17–26.

Medija Centar (2009) *Budžet bez javnosti – Povodom usvajanja Zakona o budžetskom sistemu*, [Online] Available at: http://www.mc.rs/code/navigate.asp?Id=4&eventId=7108 [23 july 2009]

Meier, D. (2002) *The Future Role of Parliaments in the Prevention of Trafficking in Human Beings*, Berlin and Brussels: Miller und Meier Consulting, [Online] Available at: http://www.belgium.iom.int/StopConference/Conference%20Papers/13.%20Meier%20-%20STOP%20Conference.pdf.

Ministarstvo pravosuđa Republike Hrvatske (2004) *Nacionalni plan za borbu organiziranog kriminala*, Zagreb, 13 September 2004.

Ministarstvo unutrašnjih poslova (2009) *Izveštaj o radu Ministarstva unutrašnjih poslova Republike Srbije i o stanju bezbednosti u Republici Srbiji u 2008. godini*, Beograd, March 2009.

Nenadić, N. (2009) Šta *je Evropska komisija zaista rekla o korupciji?*, Portal Argus, [Online] Available at: http://www.portalargus.org/sr/blog/nenadic/10819.html [30 October 2009].

Petrović, A. (2008) "Problem definisanja organizovanog kriminala u zakonodavstvu Republike Srbije", *Revija za bezbednost*, Godina II, broj 12, decembar 2008, pp. 34-39.

Simić, M. i ostali (2009) *Banalna čarka u trenu se preobrati u ubistvo*, *Politika Online*, [Online] Available at: http://www.politika.rs/rubrike/Tema-nedelje/maloletnicki-kriminal-usrbiji/Banalna-charka-u-trenu-se-preobrati-u-ubistvo.lt.html [22 February 2009].

Smith, D. and Salerno, R. (1970) "The Use of Strategies in Organized Crime Control", *The Journal of Criminal Law, Criminology, and Police Science*, Vol. 61, No. 1, pp. 101-111.

Strategic Marketing Research (2008) *Javno mnjenje o reformama policije* [Online] Available at: http://arhiva.mup.gov.rs/domino/mup.nsf/Javno%20mnjenje%20o%20reformama%20policije.pdf

Todorić, V. (2009) *Neustavno oduzimanje imovine, Politika Online*, [Online] Available at: http://www.politika.rs/pogledi/Vladimir-Todoric/NEUSTAVNO-ODUZIMANJE-IMOVINE.sr.html [22 October 2009].

Vlada Republike Srbije (2009) *Akcioni plan za sprovođenje Nacionalne strategije za borbu protiv organizovanog kriminala*, Beograd, 24 Septembar 2009.

Vlada Republike Srbije (2009) *Nacionalna strategija za borbu protiv organizovanog* kriminala, Beograd, 26 March 2009.

Zakon o oduzimanju imovine proistekle iz krivičnog dela, „Službeni glasnik Republike Srbije“ br. 97/2008.

Lack of Quality Public Debate in the Process of Passing the Laws in the Security Sector

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Abstract

Adopting two strategies and several bills in the area of defense and security has marked the closure of the legislative reform of the security sector in Serbia, thus creating a legal framework for the next steps in the reform process. Nevertheless, despite the fact that adopting these strategies and bills has perhaps been a step forward in the security sector reform, the problem remains that a quality public debate has not taken place thereon. The opinion of the author being that the lack of quality public debate was due to tight deadlines for public discussion, as well as an insufficiently proactive attitude of the Ministry of Defense (MoD) in the discussion itself and finally the absence of a longer tradition of carrying out public debate with the participation of citizens and their associations in public oversight of the the security sector. Due to identified deficiencies, the article also comprises recommendations to the party proposing the bill, in order to improve the existing practice of organizing public debate.

Key words: *public debate, strategies, laws, Ministry of Defense (MoD), security, civil society, NGO*

Introduction

Both local experts and the general public have waited far too long for the adoption of strategic documents and laws significantly changing and/or amending the defense and security system of the Republic of Serbia. The proposals of the National

Security Strategy and Defense Strategy of the Republic of Serbia have recently been sent to the National Assembly for discussion, and a set of "military" laws have been included in the agenda of the second session of the National Assembly, in the beginning of October 2009, namely the laws on amendments and supplements of the Law on Defense and on amendments and supplements of the Law on the Serbian Armed Forces.-Also included was the Bill on Military, Labor, and Material Duty, about civil service, as well as the use of the Serbian Armed Forces and other defense forces in multinational operations outside the borders of the Republic of Serbia. Draft Bill on the Military Security Agency (VBA) and the Military Intelligence Agency (VOA) that entered the Assembly procedure together with the set of military laws, is also to be reviewed by the MPs. Adopting the aforementioned draft bills is to mark the end of the legislative reform of the security sector in Serbia and will simultaneously create a legal framework for the next steps in the reforms.

However, despite the fact that adopting a set of laws represents a step in the right direction, in the security sector reform, a big problem is that a quality public dialogue has not yet taken place. The bills entered the Assembly procedure without adequate public-discussion with the legal obligation of the proposer, pertaining to implementing public debate in the process of the preparation of the aforementioned laws being fulfilled by placing the draft bill on the Internet Homepage of the Ministry of Defense - this being of course far from what public debate should comprise. It is necessary to stress that public debate ought to ensure other forms of presenting draft documents contributing to direct exchange of views about proposed solutions. In order to indicate the lack of of this debate, we will first discuss the significance and the need for organizing a public debate on security issues and the participation of the citizens therein. After that, we intend to describe the way in which the proposer of the law, in this case the Ministry of Defense, carried out said public debate. Then, we will attempt to determine the quality of the discussion, and whether meaningful debate was missing, then proceeding to offer and explain the reasons for such situation. To conclude, we intend to briefly discuss the manner in which we believe a public debate should be carried out when passing laws in the area of security and homeland protection.

The significance and the need for organizing public debate and providing incentives for the participation of citizens and civil society at large

Public debate represents a form of citizen participation in creating security and defense policies, thus offering the opportunity to all stakeholders (media, civil society organizations, professional associations, academic community, political parties, etc) to discuss the proposed legal solutions, as well as to contribute, if necessary, to the improvement of the proposed bills and draft strategies. It should be organized with a view to offering to the proposer and the members of the working group - the participants in drafting the law and strategies - an opportunity to explain their standpoints in proposing and drafting thereof, as well as to hearing the comments and specific suggestions put forth by the representatives of other government and/or civil society institutions. If one observes the public debate within the security sector reform, then one may say that, beside the aforementioned meanings, public debate also represents one way in which the civil society institutions may achieve democratic civil control over security sector. And it is precisely through the democratic civil control that accountability - of the security sector to the society for which it exists - is achieved.

Security is a common good since it pertains both to the security and safety of the citizens (human security), their rights and property; not being exclusive to certain groups, parties, regime or to the state. Hence, this draws the conclusion that the citizens and their associations represent equally important actors in the security sector that need to be included in the discussion when passing laws and strategies. Should this group of actors not be included, it will be impossible to fully express the diversity of the needs for security in a pluralist society, and therefore impossible to reform it thoroughly and permanently (Ejdus, 2009: 67).

The significance of public debate is manifold. Public debate is a form of two-way communication between government institutions in the security sector and the citizens. Dialogue between government institutions and citizens about security is especially important since it builds the citizens' confidence in government institutions. In addition to building confidence, communication provides a democratic environment to the debate on security policy, through the inclusion of a large number of stakeholders therein and, as a rule, leading to better quality and smarter policies (Ejdus, 2009). If state authorities themselves cultivate it, public debate may increase transparency in

so far as laws are not only a narrow circle of interests and people, but that the process of their creation takes into consideration the opinions of the citizens as well. Public debate is not merely needed by the citizens but by the authorities as well, the latter having an opportunity to thus secure the necessary support and legitimacy for the laws. Moreover, public debate facilitates a broader social consensus between real security needs, and the interests of the citizens and the state of Serbia - thereby also securing democratic stability in society (Public appeal to the Minister of Defense of Serbia, 2008). In addition, through public debate the citizens and their associations perform a certain public oversight of the security policy, which may be defined as public oversight and assessment of the activities of the armed forces and the state institutions participating in security policy (Atanasović, 2008).

However important, the so-called systemic documents - which will bind both the state and its citizens in the long-term, and which will produce numerous economic, political, and security consequences - shouldn't have entered the parliamentary procedure without comprehensive public review.

Public debate in the sphere of security and defense – existing practice in Serbia

Of all the documents, the ones which attracted the greatest attention by the parliamentarians, during the assembly session in October 2009, were two strategies – *The National Security Strategy of the Republic of Serbia and The Defense Strategy of the Republic of Serbia*. Given that these two documents represent umbrella documents of the security and defense systems, and also having been of crucial importance for the security orientation of Serbia, this sequence of events will be followed in this discussion as well. The Ministry of Defense submitted the draft of The National Security Strategy and the draft of The Defense Strategy of the Republic of Serbia, to public discussion, in December 2008. In the period of fifteen days, the Ministry of Defense (Department for Strategic Planning of the Defense Policy Sector of the Ministry of Defense) organized two "round tables" themed "National Security Strategy of the Republic of Serbia" and "Defense Strategy of the Republic of Serbia", with the participation of representatives of civil society organizations (CSO).

However, the period of fifteen days wasn't enough to organize a comprehensive discussion about the security matters. Under the pressure of the civil society associations led by the Centre for Civil-Military Relations, the established period for carrying out the public debate was extended from 15 to 45 days, creating conditions for a better quality and substantial public debate. In January 2009, the Centre for Civil-Military Relations organized a round table aiming to further encourage professional debate about the most important strategic pieces of legislation to be put into law, in Serbia since becoming a sovereign state. In addition to this initiative, there were two panel discussions organized by the Forum for Security and Democracy and the Academy for Diplomacy and Security in which were also present representatives of the Ministry of Defense. Subsequently, it became evident that the citizens' associations, in spite of all of their comments and suggestions - on the drafting of the strategies - did not manage to improve these documents, since the texts of the strategies did not change significantly upon their adoption by the Assembly.

On the occasion these **draft bills**, were made available for public review by the Ministry of Defense which thus established a precedent – which is in contrast to earlier practice. The draft bills were publicized at the web site of the competent Ministry, offering a possibility to send comments and suggestions in writing via electronic mail. This hence exhausted the organization of public debate by the proposer of the law. As there was no alternative way to present these draft bills (e.g. in the form of organizing a round table) and additional invitation to all stakeholders to voice their opinions, civil society organizations took it upon themselves to organize a public discussion about the proposed documents. It is evident that the media, being a part of CSOs, have took a special interest and got involved in the discussion about security issues. Reporting in the daily press about the laws and strategic documents during the public debate, was raised to a significant level. On the other hand, the research for articles in the Serbian dailies (dailies: Blic, Borba, Danas, Novosti) dealing with the issues pertaining to the aforementioned laws, has shown that analytical texts contributing to the improvement of the public debate, were lacking. The majority of the news articles were only transmitting information, i.e. reporting merely about the content of the drafts itself, thus creating a gap when it comes to a deeper analysis of the proposed solutions. Nevertheless, it is evident that there was a significant interest by the media in these

issues, even though the competent ministries did not deem appropriate to organize a better quality public debate.

From the aforementioned process of public debate pertaining to two strategies and several draft bills from the sphere of defense and security, one may conclude that in the formal sense, public debate as part of the process of adopting laws has been carried out. Nevertheless, the quality of public debate wasn't sufficient due to three reasons: Carrying out quality debate on proposed legal solution was precluded by **short time periods set out for organizing public debate.** The timeframe of one month, which was set out for almost all drafts, is not enough for discussion, for the reviewing of all consequences of the legal solutions, or for the possible proposing of measures for the amelioration of the texts of the drafts. Surely the quality of the discussion would be better if the public was given more time to participate in the public discussion and find alternative solutions. Instead, it seems that strategies and laws have been adopted in a hurry. Also, it seems that the authorities are often in a hurry to adapt and harmonise national legislation to EU requirements and regulations, often forgetting or disregarding the significance of public debate (Buldioski, 2009: 56). Setting timeframes for a more in-depth insight of the public into the proposed legislation and an effort to have them adopted quickly and without quality public debate, sets the stage for various abuses of power by the authorities - mostly political ones. In Serbia it is difficult to bridge the existing gap between the requirements to pass a certain number of laws necessary for EU accession, and the requirements by the public to be included in their adoption. In order to bridge that gap it is necessary to set aside reasonable time for public discussion, keeping in mind that the more sensitive the topic, the greater the need to have a discussion of this sort. The proposed minimum time could be one month, and in certain cases, even longer than that, in order to review all aspects of the laws and find the best possible solutions.

Another reason affecting the quality of public discussion is an **insufficiently proactive attitude on the part of the Ministry of Defense** in terms of public debate, reflected chiefly in the fact that the Ministry - as the proposer - has not encouraged the participation of citizens and their associations, in the discussion of security issues. This could be remedied if the state bodies used their public appearances to invite all civil stakeholders to voice their opinions on the proposed legal solutions. A frequent hin-

drance to this lies in the fact that it is the state bodies themselves - the Ministry of Defense not being an exception - who are not accepting the citizens as legitimate and useful partners in the discussion on security policy. The explanation for this kind of attitude partly lies in the fact that during the nineties, associations of citizens were treated by the security sector as an "internal enemy". After the year 2000, their status was raised to "inevitable nuisance" – an unpleasant, but still an integral part of the democratic transition and reform of the security sector (Ejdus, 2009). In addition, in our society **there isn't a long tradition for organizing public debates** or for the participation of citizens and their associations in the security sector's public oversight. The reasons for this situation may be found in the political heritage of Serbia, dominated by a long-term survival of a non-democratic political regime, largely characterized by intolerance in regards to different opinions, especially those being different than official ones.

The process of adopting laws in such a system was based on a limited number of subjects participating in it. Many enactments, such as those regulating the application of special authorizations (secret gathering of intelligence), were classified as secret documents. Therefore, the public was completely detracted in the course of passing important documents, and diverse opinions and views were not only not taken into consideration, but the public review and criticism of the authorities and of the respective documents it created, was not welcome. Hence, in such a system one may not expect a public debate, due to the fact that the space for public review of the legal solutions is limited, if not altogether non-existent. The initial normative bases for the participation of the citizens and their associations in the creation, implementation, and evaluation of the security policy were created in 2006. Namely, the 2006 Constitution of the Republic of Serbia guarantees the citizens' right to participate in the administration of public affairs (Article 53). The Law on Public Administration sets forth that all state bodies are obliged to inform the public about their work through public information channels (Article 76), as well as to "carry out public debate in the preparation for laws significantly altering an issue of a particular public interest" (Article 77). Based on the aforementioned, one may conclude that the initial political, legal, and social bases for the participation of citizens in the public debate were created only upon the demise of the Milošević's rule.

Towards a real public debate

In most cases, there hasn't been a real participation of the public in the discussion. The proposer of the law has not to date complemented the presentation of legal solutions with additional initiatives (e.g. organizing round tables) encouraging both citizens and associations to voice their opinions about the proposed legal solutions. In order to remove these deficiencies, we propose that the existing practice is amended with the following:

- Organizing round tables gathering all stakeholders to participate in the public discussion about the existing legal solutions;
- Publicizing all commentaries and proposals arriving through e-mail at the web site of the competent Ministry. In addition, all comments and input arriving by fax and regular mail could be scanned and publicized at the web site. This would help achieve greater transparency in the process of preparing laws;
- Obligation of the Ministry of Defence to answer all incoming comments and input. This should be regarded as important since this is about two-way communication as opposed to one-way communication;
- Publicizing minutes and/or audio recordings of the round-table discussions at the web site of the competent Ministry;
- Even though the law does not specify the timeframe in which public debate is to be carried out, based on the existing experience it has been identified that the stakeholders are not provided enough time for a more detailed analysis of the legal solutions. In order to carry out quality debate on the proposed legal solutions, it is necessary for a public debate to go on for one month minimum, or more than that in certain cases, in order to be able to review all aspects of the law and find the best possible solutions;
- Existing practice might also be enhanced by the state actors' encouraging the citizens to participate in the public debate about security issues. The way to implement this would be through a public invitation by the Ministry of Defense to all stakeholders to voice their views;
- In our opinion, the debate between the state actors and civil society organizations might be enhanced by creating (legal) basis for cooperation between the civil society organizations and the security system insiders. We believe that the CSOs represent one of the sources of civil expertise and that they may offer professional support to government institutions when creating and implementing the security policies.

The case of the Ministry of Telecommunications and Information Society (MTIS) indicates that the aforementioned, on the whole (or in part), is not a utopia. In this instance, the Ministry of Telecommunications and Information Society carried out a public debate on the Draft Bill on Electronic Communications. On that occasion, this Ministry prepared a detailed Activity Plan to be implemented during the public debate. In addition, this Ministry identified the rules that all stakeholders need to adhere to, in this debate. It is not our intention to compare the laws prepared by the MTIS with those by the Ministry of Defense, since it is obvious that they are not from the same fields of expertise, but we wanted to point out this method for organizing public debate, as an example of good practice. Hence, we propose that forthwith, examples like this are taken into consideration in the process of passing laws in the sphere of defense and security.

References:

1. Atanasović, Z. (2006) 'Političke partije Srbije i stavovi o vojsci Srbije i Crne Gore.' U Javnost i vojska, ur. Hadžić, M. i Timotić, M., pp. 133-155. Beograd: Centar za civilno-vojne odnose.
2. Atanasović, Z. (2008) 'Javni nadzor politike bezbednosti.' Pojmovnik. Beograd: Centar za civilno-vojne odnose.
3. Buldioski, G. (2009) 'Kako razmrsiti Gordijev čvor istraživanja praktične politike na Zapadnom Balkanu?' *Bezbednost Zapadnog Balkana,* 12, pp. 53-67.
4. Centar za civilno-vojne odnose (2008). *Javni poziv ministru odbrane Republike Srbije*. Beograd: Centar za civilno-vojne odnose. Available at: http://www.ccmr-bg.org/Vesti/3100/Javni+poziv+ministru+odbrane+Republike+Srbije.shtml
5. Hartl, J. (2006) 'Značaj javnog mnjenja u kreiranju bezbednosne i odbrambrene politike.' U Javnost i vojska, ed. Hadžić, M. i Timotić, M., pp. 11-23. Beograd: Centar za civilno-vojne odnose.
6. Ejdus, F. (2009) 'Koncept reforme sektora bezbednosti.' U Godišnjak reforme sektora bezbednosti u Srbiji, ed. Hadžić, M., Milosavljević, B., Stojanović, S. i Ejdus, F., pp. 65-71. Beograd: Centar za civilno-vojne odnose.
7. Ejdus, F. (2009) 'Povratak unutrašnjih neprijatelja.' 8 October 2009, online. (accessed 26 October 2009) Available at: http://www.filipejdus.net/2009/10/da-li-se-unutrasnji-neprijatelji.html
8. Ministarstvo odbrane Republike Srbije. (2008) Vesti. 'Javna rasprava o Strategiji odbrane i Strategiji nacionalne bezbednosti.' Available at: http://www.mod.gov.rs//novi_lat.php?action=fullnews&showcomments=1&id=1699 (accessed 26 October 2009)

9. Ministarstvo odbrane Republike Srbije. (2008) Vesti. 'Okrugli sto o nacrtima Strategije nacionalne bezbednosti i Strategije odbrane Republike Srbije.' Available at: http://www.mod.gov.rs//novi_lat.php?action=fullnews&showcomments=1&id=1701 (accessed 26 Oktober 2009)
10. Orlović, S. (2007) 'Nadležnosti parlamenta.' U Dileme i izazovi parlamentarizma, pp. 141-147. Beograd: Konrad Adenauer Stiftung.
11. Petrović, P. (2009) 'Glavni nalazi istraživanja' U Godišnjak reforme sektora bezbednosti u Srbiji, ur. Hadžić, M., Milosavljević, B., Stojanović, S. i Ejdus, F., pp. 65-71. Beograd: Centar za civilno-vojne odnose.
12. Popović, Đ. (2007-2008) 'Komentar nacrta Zakona o odbrani i vojsci.' *Bezbednost Zapadnog Balkana,* 7-8, pp.120-132.
13. Narodna skupština Republike Srbije. *Ustav Republike Srbije*. Službeni glasnik Republike Srbije, br 98/06.
14. Narodna skupština Republike Srbije. *Zakon o državnoj upravi.* Službeni glasnik Republike Srbije, br. 79/05, 101/07.

What is it that Europe really wants: Analysis of the Progress Reports for the West Balkans' countries for 2009 in the case of civil and democratic control

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Abstract

This text is dealing with the Progress Reports for the West Balkans' countries, i.e. their form, language which is used, and of course, the essence thereof. The first part of the text is an "introduction" for the reader as to what this document is and where and how it is created, and what is its role in the Stabilization and Accession Process. In the following part, the reader has an opportunity to find out what is the overall assessment of the Report on Serbia for 2009, as well as why the reaction by top Government officials to its text was to some extent unsuitable. Finally, the last part of the text analyzes part of the Report dealing with the scope of democratic and civil control or the Armed Forces to explain more thoroughly the way the European Union uses these documents to "communicate" with the states participating in the Stabilization and Association Process, as well as with the candidate states for the membership.

Key words: *Progress report, European Commission, civil control of the armed forces*

What are the Progress Reports

Starting with March 2002, the European Commission (hereinafter: Commission) reports once a year, in the course of Stabilization and Association Process, to the European Council and the European Parliament about the progress in the one-year period made by the countries of the West Balkans region and Turkey, that is, the candidates and potential candidates for membership in the

European Union. The first reports were published in March (2002) and February (2003), but then the current practice has been to publish them in mid-October or beginning of November. So, once again, the reports are basically sent to the European Council and the European Parliament (the Commission informing the latter about the progress made by a particular country in the period of one year), but they are also eagerly received and analyzed in the countries themselves that they are pertaining to. The reason for that is that they represent an overview of all the good things (and bad) done within one year in the area of rapprochement to the EU standards, as well as a list of all those things that have yet to be done on the road towards it. In other words, these reports are an extraordinary review, summarized in one document, of the way that Brussels administration evaluates the fulfillment of the "European" criteria and the success of the reform process in each of these countries.

Therefore, the progress reports analyze in detail the political situation in these counties in the field of democracy, rule of law, human rights, protection of the minorities' rights, and regional cooperation. These documents also provide the analyses of the economic situation, as well as "evaluation of the capacity…." of the country which is the subject of the report "….to implement European standards, gradually harmonizing its legislation and policies with the legal heritage of the European Union (*acquis*), in line with the Stabilization and Association Agreement and the priorities of the European partnership[1].

The report is written in the DG Enlargement, which is (same as all other DGs) divided in Directorates. One Directorate (Directorate B deals with candidate countries and Directorate C with potential candidates) is divided in Units – one for each country. Thus, a certain number of experts divided in sectors are responsible for each one of the West Balkans countries. Thus the information on the progress of one particular country in the course of one whole year is "pooled" into a proper place, sorted, and analyzed, in order to compile the report, based thereon, evaluating the success of the reforms of each one of the policies.

Those who are not dealing intricately with the European Union usually believe that literally each information, sentence, and evaluation in the report is "cooked up" in the Commission's kitchen. Nevertheless, this is not true – even though the responsibility for the accuracy and precision of all information lies in the end with this supranational EU institution, its experts are getting in the course of one year lots of information from the governments of the states themselves that are being evaluated, local authorities, EU Member States,

[1] European Commission, (2009) *Progress Report on Serbia for 2009,* SEK(2009)1339 available at: http://kzpeu.seio.gov.rs/dokumenti/Godisnji_izvestaj_sa_statistickim_aneksom_2009_cir.pdf (accessed 15 October 2009)

European Parliament, international organizations, as well as local civil society organizations. Having in mind that this is a tremendous amount of information that needs to be analyzed, mistakes are not uncommon – both material and essential. Still, this deficiency may not in any respect diminish the overall value of the Reports, which from the moment they are published for the first time to date, provide very clear landmarks for the activities, or simply put, explanations about "what is it that the European Union wants from us".

Progress Report for Serbia from 2009

The new Progress Reports for 2009 were published on October 14th this year. Even though the overall assessment of the Commission is definitely positive and for the most part for all states in the region (with the exception of Bosnia and Herzegovina which is evidently in a tough political situation, and which is in turn affecting the economy), it appears that certain members of the Government in Belgrade went overboard a bit expressing exaltation, and assessing this year's Progress Report on Serbia as "the most positive report of the European Commission that Serbia ever got"[2]. Such assessment is definitely factual, but the explanation relying on common sense would be that each year at least something is done; therefore each subsequent report will definitely be more positive than the previous ones. Except if the state in question is completely dysfunctional, such as B&H. On the other hand, a pretty ecstatic assessment of the highest officials had been explained away by the recommendation of the Commission to unfreeze the provisional trade agreement with the EU, as well as the proposition for abolishing visa requirements for the citizens of Serbia. Even though abolishing visas is a consequence of "the significant progress in the areas of justice, freedom, and security"[3], and the fulfillment of "the majority of the benchmarks from the Road Map"[4], a possible way out of the "spin" around the Provisional Agreement is more a result of the strong pressure by other EU Members (and as speculated US as well) on Holland then the merits of the Serbian administration evaluated in the Report.

Having in mind that the majority of the citizens of Serbia (even those who are interested in the issue) haven't read the Progress Report, and with a view to (via avoiding the extremes) achieving a balanced insight into where is. according to this document Serbia's place , in the process of European integrations, we will analyze briefly the parts of the Report pertaining to civil control of the armed forces. Even though they are part of the armed forces, we will not analyze herein the evaluation of the police by the Commission, since that

[2] Statements by Minister of Foreign Affairs Jeremić and Deputy Prime Minister for European Integrations Djelić

[3] European Commission, (2009) *Progress Report on Serbia for 2009,* SEK(2009)1339 available at: http://kzpeu.seio.gov.rs/dokumenti/Godisnji_izvestaj_sa_statistickim_aneksom_2009_cir.pdf (accessed 15 October 2009)

[4] *Idem*

would make this paper excessively long indeed. Thus, we will demonstrate that the "findings" of the EU is that Serbia is generally on a good path and that last year it achieved significant progress, but that it is only now, in the waiting room for being given the status of a candidate, that the hard times begin, requiring serious answers from all relevant players in Serbia.

Civil control and oversight of the armed forces in the Report from the European Commission

Comparing the reports from 2008 and 2009 in this area (comprising respectively the developments in the period October 2007 – October 2008, and October 2008 – October 2009), the first impression is that they are succinct. The reason for this is not so much a feeble interest on the part of the EU for the control of the armed forces, as a fact that it was only in the last two years that this problem has been approached in a more or less appropriate way. It was only upon passing the new Constitution of the Republic of Serbia (2006) that the issue of placing state actors in the security sector under democratic civilian control got a clearer basis in the law providing grounds for its further implementation. The previous Progress Report makes assessment that passing of the "basic" laws on the Armed Forces, defense, and organization of the security services at the end of 2007 was positive, as well as the fact that therein the primary role in the civilian control was given to the Parliament. Still, the criticism for the legislators is that other systemic laws and strategies in this area have not been passed, thus making the overall regulation of the security sector incomplete. Also, already in previous Report the Parliamentary Committee for Defense and Security, which is the first level of control of the security sector, especially the intelligence services was mentioned in a negative context.

The next report speaks in a more positive tone about this topic, quoting that in April 2009 the Government adopted the Defense Strategy and National Security Strategy (which was erroneously called Military Strategy in the Report), being key reform documents. Still, the proof that one cannot capitalize forever on the "old merits" comes further down in the document. Namely, discontent is expressed that upon conclusion thereof (beginning of October) the Strategies have not been adopted in the Parliament, together with a set of reform laws in this area. Even though these laws, in the same package with the Strategies, have shortly after that passed the parliamentary procedure and have been adopted[5], the very form of the Report in this case indicated the intent on the part of its authors in

[5] Detailed analysis of these laws may be read in other articles in this number of „Western Balkans Security Observer"

each of the areas being evaluated: in a politically impartial fashion (as much as possible) the Report provides an overview of the current status, evaluates, and gives recommendation about further direction. Thus, each subsequent report includes a new number of recommendations on how to continue to achieve success detected in the previous one, i.e. how to initiate progress if things were not functioning at all previously. Therefore the exaltation about the achieved success is mostly short lived, since progress must be achieved *continually.* That is the only guarantee that the process of association will gain momentum.

An excellent proof for the previous claim is the operation of the Committee for Defense and Security. In the last report, it is firstly mentioned that, as compared to the previous period, the Committee has started to hold regular discussions with the civil and intelligence services and has carried out the first field visits with the intelligence services. These distinctly positive changes as compared to the previous reporting from the Commission are, however, supplemented at the bottom of the page with a statement that the Committee is lacking specialized staff, as well as that it "mostly held *routine* periodic sessions and it *recently* introduced field visits with the security services"[6] (italics by author). Therefore, there are positive changes, but they are lacking in substance, weight, in other words – mission accomplished, on to the next one. Nothing is done nor finished completely and this is how it is going to be until the accession to the EU (and even then, things will not be "done" or "finished", as indicated by the examples of Bulgaria and Romania).

In the segment of the Report that we have chosen to analyze, no matter that it appears to be small and generalized, it is exactly the concentration of information provided in it (and a significant number of that which is omitted) that gives us a possibility to review properly the methods used by the Commission when evaluating the level of the reforms of the state institutions it monitors. Thus the sentence in which the Commission officials inform us that the Ministry of Defense had demonstrated "greater openness for consultation with the civil society about the preparation of new strategies" tells us that the administration in Brussels generally decided to take a more *lenient approach* in its assessment. Of course, this sentence sounds very positive to a lay person, as a significant achievement in the state institutions' attitude towards the civil society as regards this very sensitive issue. However, a more meticulous analyst of the security sector of Serbia will inevitably remember that the public dialogue about the strategies was very conveniently organized precisely at the end of 2008, during the New Year's and Christmas holiday season, and that only at the initiative of a large number of civil society organizations

European Commission, (2009) *Progress Report on Serbia for 2009,* SEK(2009)1339 available at: http://kzpeu.seio.gov.rs/dokumenti/Godisnji_izvestaj_sa_statistickim_aneksom_2009_cir.pdf (accessed 15 October 2009)

it was extended onto the period after the holidays. The initial decision of the competent officials at the Ministry of Defense testifies to the lack of trust, which is still prevalent therein in relation to civil society organizations, as well as (inherited) notion to adopt significant decisions in a narrow circle of people, without the corrective role of the public. Nevertheless, the Commission has commended in one sentence the progress in communication.

There are several explanations for this approach – one of them is certainly a general intention of the Commission not be too harsh in assessment, since that can be counterproductive. If in any given situation one would get a negative assessment, one might lose any desire to strive for further progress. This political and to some extent psychological decision is followed by a pragmatic explanation that it is not realistic, in some 70 pages of the report, which is the average volume for each country, to be able to mention every minute deficiency (even though we are not trying to say that this is a "small" deficiency). This kind of "communication" by the Commission has evoked open discontent in one part of the Serbian public this year as regards the Law on Media, a very controversial one in Serbia. The Commission has expressed its concern over certain provisions of this Law very mildly, in only one sentence, while the majority of media professionals in Serbia consider this Law unsatisfactory and potentially dangerous. But, at the very moment when a country becomes a candidate for EU membership, the situation changes drastically – negotiations, divided in (currently) 35 chapters, implies getting into details, not leaving room for doubt that the Commission has insight into everything that happens in certain candidate countries. Therefore, the luxury it avails itself of in this phase of the association process is quite logical and justified.

Comparison with the Progress Reports for the countries in the region

Comparing the Progress Report on Serbia for 2009 with identical wording of the Commission about the countries in the region (and Turkey), in the area of civil and democratic control of the armed forces, we may see significant differences as based on which we may come to several interesting conclusions about the concept of writing and formulating the Reports. Namely, from one country to another, the analysis of the democratic and civil control of the armed forces is largely different – while, for example, in Croatia in three sentences it is concluded that the reform of the defense system and the intelligence system has continued and the control thereof has improved, but also

that "…. a proper juxtaposition has still not been achieved between a legitimate interest of the state to keep certain information and the right of the public to have access to information…."[7], in the report on Albania, Montenegro, and Macedonia, there is not a single word about this problematics. There is not one paragraph about the control of the armed forces. On the contrary, in Turkish report a detailed explanation of the current status and (mostly) serious accusations about non-existence of a clear civilian control of the armed forces, army primarily, have taken one and a half pages.

Even though it is understandable to focus on the problems that Turkey has with the "disobedient" military apparatus that considers itself an exclusive guardian of the secularity of the state and the Ataturk's heritage, it is very interesting that this problematics has been excluded from the analysis of the success and failure when it comes to the states in the region. There are two possible explanations of the way in which the Commission reasoned: one would be that it has simply "handed over" dealing with this issue to the NATO. The justification would be that when it comes to Croatia and Albania, these are the member states of the North Atlantic Treaty, Macedonia is one veto (by Greece) away from the membership, while Montenegro has clearly indicated its intent to access therein, and soon it will continue the procedure of accession. On the other hand, the case of Turkey would be a departure from such thinking, but it is well-known that the Turkish accession to NATO was political, and that establishing full control of the army has been a sore spot in Turkish society.

Another, less far-fetched and therefore more probable explanation of this phenomenon is that the Commission harmonizes the Progress Reports with the EU Enlargement Strategy, a document written every two years, which is giving direction to the EU integration, as well as with the framework for the analysis of the current status in the candidate states and potential candidates. The Strategy has, of course, been based on the Copenhagen criteria. Nevertheless, this doesn't mean that each criterion will be evaluated in all reports. Whether and in what scope a criterion will be evaluated depends on several factors: firstly, depending on how much things have changed from one October to another in that aspect in a given country. In that context, Serbia couldn't have been left without evaluation on civil and democratic control of the armed forces, if anything, because of the dispute between the Minister of Defense and the Chief of the General Staff at that time. On the other hand, we have already mentioned that the Commission has, to some extent, relied on the reports by other organizations, among other things the organizations from that particular country as well. The more these organizations are active in promoting the problems

[7] European Commission, (2009) *Croatia 2009 Progress Report*, SEC(2009)1333 available at: http://ec.europa.eu/enlargement/pdf/key_documents/2009/hr_rapport_2009_en.pdf (accessed 16 October 2009)

pertaining to certain sectors and more detailed in the analysis thereof, there is more chance that a certain problem may appear in the Report.

Having in mind all of the aforementioned we may conclude that the Progress Report of the candidate states for the EU membership and potential candidates are extremely important documents both for the EU Member States themselves and for those that they are pertaining to. Both to the former and to the latter they give a largely realistic and balanced overview of the current status in the most important areas, set out primarily in the Copenhagen criteria, and then operationalized in the Enlargement Strategy. It is the same in the area we chose as an example in this situation, civil and democratic control of the armed forces. Even though it is somewhat subdued when we talk about the progress and deficiencies in this area in Serbia, the Report correctly identifies the deficiencies and practically points out to the road that the officials should take in the next year, i.e. until the next report.

The commission has a similar attitude towards other states that the reports are written on, while an unequal level of reviewing the civil and democratic control of the armed forces indicates that the approach which the EU has been advocating for a while is truly practiced, meaning that it treats each state as one particular entity, without "copying" problems any more and not looking for universal solutions. In the end, one ought to conclude that, even though all optimism is advisable and welcome (in the end, Serbia has done a huge job in the rapprochement to the European standards across different levels in this one-year period), one ought to be cautious in expressing it: the real challenges and the real job still ensue in the years ahead, and above all, when the negotiatons on EU accession start. Then the opening but also closing of each chapter of the *acquis* shall depend directly on the progress in the areas relative to that chapter.

Refrences:

1. Aldis, A. i Drent, M. (2008.) *Opšte norme i dobra praksa civilno-vojnih odnosa u EU,* Centar za evropske bezbednosne studije
2. Evropska komisija (2009.) *Izveštaj Evropske komisije o napretku Srbije za 2009. godinu*, Brisel
3. Evropska komisija (2008.) *Izveštaj Evropske komisije o napretku Srbije za 2008. godinu,* Brisel
4. Evropska komisija (2009.) *Strategija za proširenje i glavni izazovi 2009 – 2010.*

SERBIA AND RUSSIA

Emergency Centrr for Emergency Situations

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Category: Academic Overview

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Abstract

From the moment of signing the agreement of founding the Serbian-Russian centre for the emergency situations in Niš, in Serbia and the region, there have been speculations about its real purpose. The bravest conclusion has been made by the consulting agency STRATFOR. According to them the Niš center could become the logistics base for the Russian army operations. In the following text we shall define why STRATFOR's conclusion does not correspond to the real circumstances, by enlisting the factors that distract the expansion of any Russian influence, except the economic one. We shall explain the purpose of EMERCOM and analyze its capacities, as well as the capacities of the Ministry that presents Serbian government's parter in this project. Finally, we shall explain the connection of founding the centre and one other, strategically more important, Russian project on the Balkans.

Key words: *emergency situations, Shoigu, EMERCOM, Niš, basis, Serbia, Russia*

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Featuring the visit of the President of the Russian Federation Dmitry Medvedev to Belgrade, an agreement was made, among other things, about establishing a common Serbian-Russian Emergency Center in Niš. Ever since the signing of this agreement, there has been an on-going debate in the professional circles as well as among the general public, both in Serbia and in the region, about its future purpose.

In his interview to "Politika Daily" of 22 October, the Minister of Interior of the Republic of Serbia (MoI) Ivica Dačić, explained

that the concluded agreement has set forth its objectives as "putting out massive fire and participation in dealing with the consequences of other emergencies, such as floods, earthquakes, technological-chemical incidents, *terrorist activities* (italics applied by author), demining, (dealing with the consequences, NB by author), pandemics…." The Centre would operate all year round. It would comprise the "warehouses and storage rooms for keeping immediate material reserves, which are necessary for the protective and rescuing activities". Thus equipped the Centre would provide "constant repair and servicing, overhauling and maintenance of the emergency protective and rescuing equipment". This common project of the Russian Emergency Control Ministry (abbrev. EMERCOM) and Emergency Sector of the MoI of Serbia would function "absolutely in accordance with the EU standards", clarified Dačić. Finally, Dačić openly invited all countries in the region to participate in the establishing and operations of the Centre, which would thus become the "Balkan or Southeast European Emergency Centre".

At the first glance, there is nothing either controversial or covert in the intention of the two Ministries. Still, the same day, the influential consultant company STRATFOR has sent to their subscribers an analysis, which may lead to a different conclusion. Therein, the EMERCOM has been identified as the "unofficial wing of the military intelligence service, one of the most mysterious and most powerful institutions in Russia". In addition, it says therein that this Ministry avails itself of the paramilitary troupes, which were used in suppressing armed uprising on Caucasus, but without precise indication of which armed uprising, the one in Chechnya or some other one.

The thesis causing the greatest attention is certainly the one saying that the Center in Niš, "whether this is intended or not" might become a logistical base for the operations, which may also have a military character, carried out by the Russian Army. At the same time, it would be the first such base outside the former soviet domain. On the other hand, the analysis points out to the significance of the location and the fact that in Niš, nowadays as well as in the period of the Former Yugoslavia, there has been significant military infrastructure. Therein is the base of the elite (as STRATFOR points out, at the regional level) 63nd Airborne Battalion, the biggest airport in the Southeast Serbia, conveniently located alongside the Corridor 10. In another analysis, even a more daring thesis is asserted, in which this, still non-existent "base" is opposing Bondstill, one of the largest American bases in Europe.

Singing of the contract has attracted attention of the experts in Bulgaria and Romania as well. The analysts have immediately warned the public in these countries that 1999 can recur to them, when they were put in a position to prove their loyalty to NATO on a strategic seesaw (and prove their animosity to Russia), refusing to grant overflight permission to Russian cargo airplanes. These airplanes carried backup for 120-strong airborne troops that took control of the airport of Slatina in a spectacular and unexpected fashion upon departure of the Yugoslav Army.

It is equally interesting how the STRATFOR analysis portrays the Minister Sergey Shoygu. It is speculated that Shoygu, as well as the Ministry which he is managing, are both the artifacts of the all-powerful military intelligence service. He has been entrusted to lead the Ministry having significant resources, which may be used, as needed, for the military purposes, especially to carry out paramilitary tasks: forceful deportations, prevention of humanitarian aid etc.

In its conclusion, the STRATFOR analysis says that the establishing of the Emergency Center in Niš may represent Russia's clandestine attempt to achieve its military presence in the region, upon withdrawing its last solider from Kosovo in 2003.

In fact, the analysis of STRATFOR is brimming with insinuations and unsubstantiated information.

A frequently quoted thesis that Russia strives to increase its influence beyond economics in the Western Balkans has never been fully construed. The Western Balkans has become, upon the conclusion of wars relative to the SFRY heritage, a NATO sphere of influence. The neighboring countries: Bulgaria, Romania, Croatia, Albania are all members of the NATO Alliance. Macedonia has not become one back at the NATO Summit held in Bucharest in April 2008 only due to the problems relative to its name, while B&H and Montenegro have clearly stated their position that they want to become members in the near future. In Kosovo (nominally being the territory of Serbia) the NATO soldiers are the last line of defense against a possible re-escalation of ethnic conflict. It is quite legitimate to pose a question as to what interest could Russian Federation possibly have to be present on the territory, which is without doubt already in the NATO sphere of influence.

Also, another question is whether Russia would really want any kind of influence in the area of the Western Balkans beside the economic one. Its defeat in the Cold War has put the global ambitions of the Soviet Union successor on the shelf for a long period of time. In the nineties, on the territory of the Former Yugoslavia, Russia has

chosen to be a constructive ally of the principal players mediating between the sides in the war conflict. This has changed during the war in Kosovo. Upon Putin's rise to power and the increase of the prices of the fossil fuels, Russia's profile in the international relations has become more prominent. Despite all that, nowadays Russia has been a regional power, if anything, focused on securing its dominance in the post-soviet domain. For Russia, the red boundary lies not on Danube, but on Dnepr.

Keen on bringing the perspective down from the level of high politics and strategies to a more practical level, we will discuss briefly what EMERCOM is and what it can or cannot do.

The activities of this Ministry, listed on its Internet Homepage, include the protection of civilian population from the natural catastrophes, preparation of the legal framework for the activities in the sphere of civil defense and protection and finally, managing the system of civil defense and protection. EMERCOM emerges in 1990 on the eve of the decomposition of the Soviet Union, when the entire infrastructure of the civil defense was transferred into its competence, except for those subterranean shelters and bunkers that the Ministry of Defense had kept for its purposes. Its creation, according to the Minister Shoygu himself was triggered by two catastrophes, nuclear incident in Chernobyl and devastating earthquake in Armenia. In addition to the infrastructure, EMERCOM gets its staff, more precisely all 23.000 of them.

In fact, the missions of the EMERCOM are very similar to those of the US Federal Emergency Management Agency (abbrev. FEMA), as well as some of the missions of the American National Guard. EMERCOM is engaging its human and material resources outside the Russian borders as well, but exclusively at the invitation of the government of such country facing a natural catastrophe. During the war in Chechnya, EMERCOM convoys were the only ones the Chechnya rebels were allowing to pass, convinced that they carry humanitarian aid. This agency was engaged to carry out the same task of delivering humanitarian aid in the war-ridden B&H. Finally, in 2006 two EMERCOM cargo airplanes delivered humanitarian aid to the population struck by the hurricane "Katrina" in the USA.

The results of the analysis of the capacities the EMERCOM has at its disposal are in support of the statement that this Ministry is not designated for the organization of the combat activity after all, as implied in the analysis of STRATFOR, so it may not be defined as a counterpart of, say, NATO force in Kosovo. Namely, this Ministry's troops carry only light weapons and they don't have any heavy-

armed units as backup. Nevertheless, the fact is that the Ministry has at its disposal the aircrafts from the inventory of the Russian armed forces. For example, EMERCOM borrows Ilyushin Il-76, which is strategic cargo airplane, as well as the helicopter Kamov Ka-32, developed as based on counter-submarine helicopter Ka 25/27. Still, these are the aircrafts adapted for transporting manpower and material, and putting out forest fire. In fact, one of these helicopters was used in the summer of 2008 for the some purpose Montenegro.

It is surprising that no one attempted to analyze the establishing of this Centre in the context of the (tangible) interest of Russia in the Balkans, that is, the successful shaping of the project "South Stream", which is now facing significant challenges. This project, together with its Northern counterpart, will be given priority in Russian foreign policy in the following period. Due to the fact that it is located almost precisely alongside the route of the future gas pipeline, the Centre could provide for the oversight of its effective functioning, as well as an instant reaction in case of any contingency. If we look at the current relations of Russia with the countries in the region, Serbia and Niš stand out as the only available location. Even though this thesis is also speculative in nature, it is still more realistic from the imaginary "batushka" sitting on a tank.

References:

1. Thomas, Timothy L. (1995) EMERCOM: Russia's Emergency Response Team. *Low Intensity Conflict and Law Enforcement*. Vol. 4, Autumn 1995, No. 2, pp. 227–236.
2. Streltsina, Milanna (2004) Russian EMERCOM: Participation in Internal and External Conflict Resolution. In: Nikitin, Alexander (ed.). Peace Support Operations, Parliaments and Legislation. Geneva: DCAF/CIPS.
3. Stepanova, Ekaterina (2005) The Use of Russia's Security Structures in the post-conflict environment. In: Schnabel, Albrecht and Ehrhart, Hans-Georg. Security Sector Reform and Post-Conflict Peacebuilding. Tokyo, New York: United Nations University Press.
4. Renz, Bettina (2010) Crisis Response in War and Peace: Russia's 'Emergencies' Ministry and Security Sector Reform. World Defence Systems Issue 16, pp. 148–152.

Need for Reforms of the Legal Framework as Precondition for a Functional Energy Market - the Law on Energy in Republic of Macedonia

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Abstract

As a member of the Energy Community Treaty, Macedonia has committed itself to open its electricity and natural gas markets until 2015. This requires drafting a clear, sound and comprehensive legal framework that will transpose the EU aquis communautaire and integrate Macedonia into the regional and EU energy markets. The Law on Energy from 2006 was the first step towards reforming the Macedonian legislation in order to comply with the EU directives in the sector of energy, gradually preparing the country for future accession to the EU. After being in force for three years and seeing two sets of consecutive amendments, in 2007 and 2008, implementation of the Law on Energy has not gone as smoothly as was suggested on paper. The aim of this review is to identify major disadvantages and flaws of the current Law on Energy in Macedonia in regulating the energy market, and to address the raising voices that propose a new, sounder law on energy, in compliance with the EU legislation.

Key Words: *Law on Energy, legal framework, energy security, Macedonia, energy market, Energy Community Treaty*

EU conditionality and reforms in energy legislation

Signing the Treaty of Energy Community in Southeast Europe in 2005,[1] Macedonian Government undertook an obligation to transpose EU directives on the energy market into the

[1] Information about the Energy Community of Southeast Europe available at: http://www.energy-community.org

Macedonian legislation. The aims of the Energy Community Treaty are to create a sound framework among the countries of the Southeast Europe for cooperation on rebuilding their energy networks, to ensure stability vital for investment, and to create conditions in which their economies can be rebuilt effectively. Besides support for the promotion of regional cooperation to achieve energy security in the countries of this region, a comprehensive legal framework should lay the energy sector in the country on a firm basis and adjust the national legislation to the legislation of EU. Accordingly, one of the most important commitments of all signatory countries is to develop legislation that allows for full liberalization of their energy markets.

As a signatory country and a member of the Energy Community Treaty (ECT), Macedonia is committed to open its electricity and natural gas markets starting from 2008 for the wholesale energy consumers and from 2015 for all consumers, including households. Bearing in mind that the Macedonian energy system possesses many relics from its predecessor and had suffered from the burden of the transition period, full market liberalization requires extensive reforms and strong political commitment from all stakeholders in the country. This includes firstly drafting a clear, sound and comprehensive legal framework that will transpose the EU *aquis communautaire* and accommodate the unique conditions of the Macedonian energy market.

The Law on Energy from 2006 (Law on Energy, *Official Gazette of Republic of Macedonia* No.63/06) was the first step towards implementation of legal and institutional reforms in the Macedonian legislation in compliance with the European energy sector principles, gradually preparing the country for its future accession to the EU. Hence, the Law on Energy has set the basis for a new energy policy in the country and has outlined the reform priorities. It includes provisions for the releasing of energy generation, transmission and distribution, and opening of the market to third party access. The law lays down necessary legislation for an independent energy regulatory institution, and establishes the legal and institutional structure for the promotion and implementation of the energy efficiency and renewable energy strategies.

After being in force for three years and seeing two sets of consecutive amendments, in 2007 and 2008, the amended law has been heavily criticized by the international community, the Energy Community Treaty and domestic experts for discriminating in favor of new investors, underscoring in opening the wholesale electricity market and failing to liberalize the natural gas market. Furthermore, the implementation of the Law on Energy has not gone as smoothly as suggested on paper.

The aim of this paper is to review the current Law on Energy in Macedonia, to identify its major disadvantages and flaws in regulating the energy market in the country, and to address the rising voices proposing a new, sound law on energy, in compliance with EU legislation.

What are the main provisions of the Law on Energy?

The Law on Energy is part of the legislation that regulates the energy market in Macedonia. It is the pivot of burdensome reforms for liberalization of the energy market and institutional (re)structuring of the energy sector. The Law on Energy first enforced in 2006 (amended in 2007 and 2008) has been the primary legal document for development of the overall energy policy in Macedonia. The Law on Energy is a generator for breeding a climate of investment in Macedonia's energy sector. Embracing the non-discrimination principle, in support to a sound investment framework favorable to foreign investment, the Law on Energy (2006) endorses a national treatment clause stipulating the same rights and obligations for both Macedonian and foreign companies that have license for generation, distribution or trade with electricity, natural gas and thermal energy, granted by the Energy Regulatory Commission.

The aim of the Law on Energy is to set provisions for safe, secure and quality energy supply to all consumers. This can be achieved by establishing an efficient, competitive and financially sustainable energy sector in the country that encourages market competition in respect to the principles of nondiscrimination, objectivity and transparency, and promotion of energy efficiency, renewable energy, and sustainable environmental development. (Law on Energy, Art. 2) In the installation, we will outline the main provisions for regulation of the energy markets

and the EU directives, with which these provisions comply. The provisions for security of supply, including promotion of energy efficiency and renewable energy will be underlined; being an important part of the energy security. Problems which can arise from a faulty law after the enforced consecutive amendments will be pointed out at the end.

Important provisions in the Law on Energy are those that regulate the energy market in Macedonia: electricity, natural gas, oil and thermal energy market. With these provisions Macedonian legislation is making the first step to comply with the EU regulations and values of free and liberal energy markets. Moreover, setting a market-based approach for the country's energy sector has been one of the most praised arguments in support of the Law on Energy in the first place.

In the electricity market, the Law on Energy has transposed most of the provisions of the EU directives on organization of the electricity market: Directive 2003/54/EC concerning common rules for the internal market in electricity; Directive 2005/89/EC concerning measures for safeguarding security of electricity supply and infrastructure investment; and Regulation (EC) 1228/2003 regulating the access to the network for cross-border exchanges and principles of the cross-border congestion management. An important feature in the Law is that ownership unbundles the electricity generation, transmission and distribution system. The unbundling process facilitates independent transmission and distribution system operators (TSO/DSO), and unbundling of the electricity generation and supply activity. The latter provides for genuine cost-transparency and avoids market concentration that encourages incumbent companies to operate and distort the competition. On the other side, instead of transposing state policy and priorities into rules for using the networks, independent TSO and DSO can provide more effective use of the networks, in favor of a competitive market.[2] Accordingly, in the first Macedonian Law on Energy from 2006, the legislation prohibits energy undertakings responsible for the operation of the electricity system to participate at the same time in the electricity generation, distribution and trade with electricity. They have to keep separate accounts for the different energy activities. (Official Gazette 63/06, Article 73)

[2] Implementation Report, *Development of the Electricity Market*, Energy Community Secretariat, 13th PHLG Meeting, 25 June 2009, Sarajevo.

For the market of natural gas, the provisions of the Law on Energy have been drafted according to the EU legislation, regulating the natural gas market: the Directive 2004/67/EC, concerning measures to safeguard security of natural gas supply; Directive 2003/55/EC concerning common rules for the internal market of natural gas; and the Regulation 1775/05 that regulates the condition for access to the natural gas transmission network. In the Macedonian Law on Energy provisions for both unbundling and access to accounts are included (Official Gazette 63/06, Article 90). Rules for monitoring the security of supply are provided in the Law, as well as provisions for the drafting of secondary legislation such as market rules for natural gas, which include detailed rules for operation of the natural gas system, grid rules, tariff systems and other rulebooks. [3]

An important legal prerequisite for liberalization of energy markets is the guarantee of third-party access to the market under fair and transparent conditions. The latter includes safe and easy access to all energy networks in the country, avoiding any restrictions that may arise from a selective and cumbersome bureaucracy. According to the Law on Energy, the system operator is responsible to provide a safe and timely connection of third parties to the electricity and natural gas grid; according to established Grid Rules and under previously developed methodology for calculation of the connection fee. (Official Gazette 63/06, Article 114)

In the institutional setting, in order to allow an independent monitoring of the activities on the energy markets and to provide fair and transparent implementation of the energy policy, the Law on Energy includes provisions for the competences and an independent functioning of the Energy Regulatory Commission (ERC). (Official Gazette 63/06, Article 18) Accordingly, the aim and obligations of the ERC include: monitoring the market operation and proposing measures for non discrimination; effective competition and efficient market operation; to protect energy consumers' rights; to specify tariff systems for different types of energy; to issue or withdraw licenses for energy producers or providers of energy services; to legislate provisions for price formation for different energy sources and for regulated energy activities; etc. (Official Gazette 63/06, Article 19)

[3] Rulebook on the method and conditions for regulating prices for transport, distribution and supply with natural gas; Rulebook on the conditions, method and procedures for obtaining and ceasing the status of eligible customers of natural gas; Tariff System for transport of natural gas; Tariff system for selling natural gas to tariff consumers.

According to the Law, the ERC approves the price of the supplied energy and service under a special price methodology. For the electricity there is a regulated retail tariff that is below the wholesale electricity price and below the level at which new entrants would be able to enter the market and to compete effectively.

In the area of security of supply, the Law on Energy guarantees all consumers connected to the respective grid an uninterrupted, quality and safe supply of electricity, natural gas, geothermal and thermal energy, under balanced prices. As a part of the energy security, the Law on Energy prescribes the criteria and conditions for regulation of the energy supply in crisis situations. It is a legal responsibility of the Government to act in a way that will cause minimum disturbance in the functioning of the energy markets in the country. (Official Gazette 63/06, Article 17) Being an important part of the energy security the Law encourages electricity production by renewable energy sources, and stipulates the way for the development of the renewable energy market; closely regulating the work of the Ministry of Economy, the Energy Regulatory Commission and the Energy Agency in the field of electricity generation by renewable energy sources.

In line with the above, the Law on Energy provides legislative support for drafting several policy umbrella documents in Macedonia: a new Strategy for development of the energy sector; Strategy on Energy Efficiency; and Strategy on promotion of Renewable Energy. (Official Gazette 63/06, Article 10, 125, 133) The Strategy for Development of the Energy Sector should be an umbrella document for the development of the entire energy sector in Macedonia in the following decade. It will be the basic document for drafting separate energy programs and action plans for specific energy areas. The other two strategies are foreseen as *sine qua non* for improved energy security and sustainable energy development of the energy sector. With the Strategy on promotion of Renewable Energy, the inclusion of the renewable energy sources for energy production, as a domestic, cheap and clean source should decrease Macedonia's dependence upon imports, particularly of electricity. Second, the updated Strategy of Energy Efficiency should lead to diminishing energy poverty in the

country by setting a legal framework for implementation of energy efficiency regulations and measures, both for energy producers and energy consumers.

However, two sets of amendments to the Law on Energy from 2006 brought changes to the legal framework and undermined the liberal concept of the Law. This is most visible in the regulation of the electricity market. In Article 2 of the amended Law on Energy in 2007 (Official Gazette, 36/07), the quantities of electricity that the wholesale supplier has an obligation to procure for the tariff customers directly connected to the transmission network, determined by a decision from the wholesale electricity supplier. The purchased electricity that exceeds this amount, tariff customers directly connected to the transmission network are required to purchase and record each such electricity purchase agreement according to the market rules.

In September 2008, after a second set of amendments, a new Law on Energy took effect in Macedonia, and has led to future changes in the underlying conditions for energy procurement. With the amendments to the Law on Energy in 2008 (Official Gazette 106/08) the supply and the generation of electricity are bundled and the wholesale supplier is given a dominant position in the market. With these amendments, the electricity generation company is granted responsibility for managing the national energy pool and is obliged to provide the distribution system's operator with a specified quantity of electricity defined by the regulatory authority on the basis of customer requirements and recognized network losses. Electricity supply volumes exceeding the recognized network losses must be acquired by the distribution company on wholesale electricity markets. (Official Gazette 106/08, Article 12, Article 17)

From paper to implementation - failure to enforce provisions

The Law on Energy from 2006 (with amendments in 2007, 2008) is the first effort in the Macedonian legislation for liberalization of the energy market in compliance with the EU

requirements. Even though on paper, the Law on Energy (2008) has not been a failure *per se*, the experience of its implementation has not always been easy or just; its accomplishments until present have been only partial.

In the legal framework, there are several requirements of the EU directives and regulations that apply to the access to and functioning of the electricity and natural gas markets, which are missing in the law. The Directive 2003/54/EC, Directive 2003/55/EC, Regulation 1228/2003 and Regulation 1775/2005, have not been properly transposed into Macedonian legislation. The Energy Community Secretariat in its latest Implementation Reports on Macedonia[4] has identified some of the main issues in the area of electricity and natural gas market and security of supply that need further attention for proper implementation of the requirements of the Energy Community.

- The market structure is not established in a functional way. An improved market model needs to be adopted and implemented, addressing market concentration, bilateral contracts and monitoring.
- Unbundling rules and access to accounts' provisions are not fully in compliance with the Natural Gas Directive 2003/55/EC.
- In the market of electricity management, unbundling is prescribed in the effective Law, but reporting on compliance is not explicitly required.
- When it comes to third party access, the provision in the Law on Energy for energy undertakings to keep separate accounts for different energy activities is not fully respected.
- Applicable methodology to establish distribution network tariffs for electricity and distribution network tariffs through adequate allocation of costs on tariff element and customer classes are not yet developed. There is a lack of cost-reflectivity in ERC's current Rulebook on the Method and Conditions for Electricity Price Regulation. Therefore the ERC should amend its Rulebook in order to comply with the Directive on the Internal Market in Electricity.

[4] Energy Community, *Implementation of acquis on electricity*, June 2009, Available from: http://www.energy-community.org/portal/page/portal/ENC_HOME/AREAS_OF_WORK/ELECTRICITY/Implementation/FORMER_YUGOSLAV_REPUBLIC_MACEDONIA/Jun_2009%20(FYROM) and *Implementation of acquis on gas*, June 2009, Available from: http://www.energy-community.org/portal/page/portal/ENC_HOME/AREAS_OF_WORK/GAS/Implementation/former_Yugoslav_Republic_Macedonia/Jun_2009

- The competencies of the regulatory authority are not entirely in accordance with the requirements of the respective directives. The powers given to the Energy Regulatory Commission with the Law on Energy have to be enhanced to fulfil the minimum requirement of the EU directive. Partiality of the ERC which appoints people with desirable political affiliation on managerial positions is a current issue that needs to be solved in the future.
- Public Service Obligations and Customer Protection are not well developed. General provisions in the law that will guarantee drafting of new legislation for protection of vulnerable customers are needed.

The European Commission has also assessed Macedonia on the progress of its energy sector. According to the EU there are many reforms that need to be undertaken in order for the country to properly advance and fully meet the EU objectives. The EU Progress Report from 2009 has identified many areas where the government failed to implement the energy legislation. The country has been assessed as not sufficiently prepared with regard to the opening of the internal energy market, partly meeting the objectives of security of supply, and moderately advanced if not at an early stage with the promotion of renewable energy and energy efficiency. (EU Progress Report, 2009: 48-50)

In the reality of the day-to-day functioning of the energy market in Macedonia, the amended Law on Energy (2008) has failed to guarantee the implementation of provisions in three particular areas.

First, in the opening of the wholesale electricity market, with the amendments to the Law in 2008, the state-owned electricity generation company ELEM was given a dominant position in the market. The amended Law allowed ELEM, the dominant generation company, to be bundled with the wholesale supplier company in charge of supplying electricity to and importing electricity on behalf of the regulated market, which is against the EU directives.

Second, in the electricity supply of the generation company, the distribution system operator is left to cover the commercial electricity losses by itself on the regional market. According to the ECT, the regulated distribution prices that ELEM charges EVN

do not take into account the cost of buying electricity necessary to cover losses. From September 2008 onwards, after the new Law on Energy's entry into force, EVN Macedonia, as a distribution system operator, has an obligation to cover losses in the network of over 11 percent of supplied electricity by market prices, which are more than twice higher than the regulated prices of ELEM. Unofficially it is a sum of over 50 million Euros annually.

Third, the dispute-settlement procedure, opened in September 2008 by the Secretariat of the Energy Community, in the compliance with the amendments to the Law on Energy with the obligations stemming from the ECT, is seen as major setback both by the EU Commission and the ECT Secretariat. The Secretariat issued a reasonable opinion for noncompliance of the country with the ECT pointing in particular at the position and structure of the state-owned generating company that "discriminates against nondomestic electricity and forecloses the regulated market to the detriment of consumers, and the fact that regulated distribution tariffs breach the principle of cost-reflectivity" (EU Progress Report, 2009: 49)

Beside flaws in the provisions of the Law on Energy, there are external issues that have negative influence on the implementation of the law. They include limited institutional capacity and understaffing of the main ministries and agencies which are responsible for implementing the Law on Energy and the secondary legislation that derives from it, such as the Ministry of Economy, the Energy Agency, the Energy Regulatory Commission. Furthermore, there is a lack of cooperation and coordination among different ministries and between the Ministry of Economy and the Energy Agency. Lastly, political appointments to managerial positions and politization of the state administration have a negative impact on the transparency and independence of the state institutions responsible for implementation of the energy legislation, particularly the regulatory bodies.

New Law on Energy - conditionality for a sound legislative framework

It is an undisputed fact that a sound legislative framework is one of the most important elements of the EU conditionality approach towards the accession countries. Macedonia is not an

exception. Energy is one area where the country has embraced the conditions set by the EU and the Energy Community. The country's progress in compliance with the legal requirements is assessed accordingly. In Macedonia the legal framework in energy has failed to meet the EU requirements in several areas, such as: a timely opening of the electricity and natural gas market, proper unbundling of the electricity market, safeguarding full independence of the Regulatory Commission.

However, the process of EU integration has once again proved encouraging for implementation of the necessary reforms in the energy sector. After receiving many objections for being discriminatory and impeding the electricity supply, the Law on Energy (2008) will be changed. Further legislative and administrative actions will be undertaken in order to adjust the Law on Energy to the EU requirements, and bring the disputed amendments, like those on free flow of electricity and competition, in compliance with the provisions of the Energy Community Treaty.

In order to keep up the pace with the EU-driven reforms, the Ministry of Economy, which is in charge for creating energy policy in Macedonia, has obliged itself to introduce the recommended changes in the legislation in a new Law on Energy. The government has developed an Action Plan for Energy, which includes enforcement of new energy legislation, which among other things includes drafting and enforcing the new Law on Energy by June 2010, at the latest. The new Law on Energy would incorporate all legal and procedural requirements of the directives and regulations of the EU, as a precondition of the Macedonian EU accession process.[5] One of the changes addressed in the new law will be the relations between energy generation and distribution companies; the treatment of the dominant position of the state electricity generation company ELEM; pipelining legal provision for energy efficiency and renewable energy; strengthening of the position of the ERC; and framing sound legislation for state aid to socially vulnerable groups. Other provisions that the new Law on Energy should fine tune within the requirements of the EU directives and regulations are those on third party access; rules for new infrastructure in the electricity sector as well as in the gas sector; eligibility threshold and customer switching; and tariff reform in order

[5] "According to the energy Action Plan, and taking in consideration all procedures from the ECT, as well as the EU principles and directives, the new Law on Energy is expected to be in force in June 2010." Fatmir Basimi, Minister of Economy of Republic of Macedonia. http://alsat.mk/ekonomija/18054.html

to upgrade cost reflectivity of the electricity price. The legislative changes should secure stability of supply and transmission of electricity and natural gas nationally and regionally. Besides a Law on Energy, new secondary legal acts in the energy sector will be drafted. They should provide better monitoring and protection of confidential information, drafting and enforcing market rules for the electricity and natural gas, as well as an upgrade of the tariff systems and the electricity price methodology.

The anticipated legislative changes have already received a 'green light' from the EU and the Energy Community. According to the Energy Community with these ongoing legal reforms the Macedonian government "pledges to 'upgrade the model of the electricity market', to ensure 'fair treatment of all participants on the market', to clarify 'the responsibilities of the regulated companies in the energy sector' and to provide 'conditions for full electricity and natural gas market liberalization'."[6] The latter once again confirms the dedication from the side of the EU to remain a factor for the uninterrupted path of reform in the energy sector. Having a troublesome experience with the drafting and implementation of the energy legislation, the Macedonian government should finally take a firm stance on the EU norms, iron out the imperfections in the current legal documents and draft a new, sound and plausible Law on Energy.

Bibliography:

1. Alsat TV, http://alsat.mk/ekonomija/18054.html
2. Analytica (2008), *Natural gas – an energy necessity for Macedonia: Overview of the Macedonian energy potential* Available from: http://analyticamk.org/files/ReportNo15.pdf
3. Analytica (2008), *Renewable energy in Macedonia - Focus on 'green' electricity production* Available from: http://analyticamk.org/files/ReportNo20.pdf
4. Dnevnik, http://www.dnevnik.com.mk/default.asp?ItemID=91470F553C70D946B474C53E69CD5FE2
5. Energy Community for Southeast Europe, http://www.energy-community.org

[6] Case concerning the Law on Energy in the former Yugoslav Republic of Macedonia still unsettled Energy Community Treaty, Energy Community Press Release, October 2009, http://www.energy-community.org/pls/portal/docs/434178.PDF

6. Energy Community (2009). *Implementation of acquis on electricity*. Available from: http://www.energy-community.org/portal/page/portal/ENC_HOME/AREAS_OF_WORK/ELECTRICITY/Implementation/FORMER_YUGOSLAV_REPUBLIC_MACEDONIA/Jun_2009%20(FYROM)
7. Energy Community (2009). *Implementation of acquis on gas*. Available from: http://www.energy-community.org/portal/page/portal/ENC_HOME/AREAS_OF_WORK/GAS/Implementation/former_Yugoslav_Republic_Macedonia/Jun_2009
8. Energy Community Secretariat (2009). *Development of the Electricity Market*, 13th PHLG Meeting, Sarajevo. Available from: www.energy-community.org
9. European Commission (2009). *The former Yugoslav Republic of Macedonia 2009 Progress Report,* pp. 48-50. 10. Available from: https://webgate.ec.europa.eu/olacrf/20091014Elarg/MK_Rapport_to_press_13_10.pdf 11. Zakon za Energetika, *Sluzben Vesnik na Republica Makedonija*, 63/06. (Law on Energy, *Official Gazette of Republic of Macedonia*, 63/06.)
12. Zakon za izmenuvanje i dopolnuvanja na Zakonot za Energetika, *Sluzben Vesnik na Republica Makedonija* 36/07. (Law on Amending the Law on Energy, *Official Gazette of Republic of Macedonia*, 36/07)
13. Zakon za izmenuvanje i dopolnuvanja na Zakonot za Energetika, *Sluzben Vesnik na Republica Makedonija,* 106/08. (Law on Amending the Law on Energy, *Official Gazette of Republic of Macedonia*, 106/08)

Strengthening National Competence on International Security Issues: The Case of Norway

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Abstract

In the present article we are going to show the change of the approach and policy of the Norway's Ministry of Defence (MoD) in the research of social processes and conditions relevant for the creation of security and defense policy of the country. The change of the strategy of the MoD has been started in the beginning of the nineties, as a necessity to adjust to the changed International Relations after the Cold War. The first step for the creation of a new strategy was the shift of the focus of the research in social sciences. The emphasis has been put on the research of politically relevant issues for the foreign, security and defence policies of the country as well as for international security. In 1992 within the MoD the Department of Security Policy has been created. This Department is responsible for the creation and the implementation of the research policy of the international security problems. The Department of Security Policy managed to achieve continuous cooperation with the academic community and created transparent instruments to raise knowledge capacity and build long-term capabilities of the actors that create National Defence Strategy.

Keywords: *Norway, Ministry of Defence, Department of Security Policy, research of political and social processes, security and defence policy, international security problems.*

Background

Historically the Norwegian approach to the outside world may be characterised as a peculiar duality. On the one hand, the outlook has had an isolationist element of non-involvement,

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with Norway keeping the outside world at a distance. On the other hand, there has been a global outlook marked by an internationalist tradition in terms of shipping and trade, and a political enthusiasm for universal organisations like the United Nations.

As Norway shifted from a position of a poor and less developed country in Europe to become one of the wealthiest ones as measured in GNP per capita, the international or global outlook gained in prominence. The exception perhaps was Norwegian voters' rejection of membership in the EU in 1994. Nonetheless, measured in terms of international trade in proportion to GNP and the very high development assistance in proportion to GNP, there can be no doubt about Norway's international outlook today. The high level of contributions to international peacekeeping and peace support operations, in proportion to the size of the country, is yet another important indicator. While originally Norway's international outlook was commercial, today it is as much political and security-related.

Norwegian efforts and priorities in the field of social science research may be seen in the light of the historical roots and the evolution that has taken place. In the 1970s much money was devoted to the political catch-phrase of the day – "*a new international economic order*". In the 1980s research on international trade and development policy was given high priority. However, when the (dangerous) stability of the Cold War had ended and the international scene became characterised by dynamic change, a paradox appeared. With a new security situation in Europe, European integration moving into the realm of security and defence policy, emerging new security challenges, etc., there was a need for updated knowledge on a large variety of issues, concerning the impact of these processes of change on Norway. Academic research provides the backbone of such knowledge. The scope of Norway's relevant research and national competence, however, was rather limited.

An observer at the time formulated the paradox noted above as follows: *Norway had more knowledge and competence about Tanzania's agricultural policy than about French security and defence policy*. In fact, Norway did not possess proper research centres on the issues that were crucial to the country's foreign, security and defence policies. A book published in 1996 by the

Norwegian Institute of International Affairs (NUPI), with financial support obtained by the Ministry of Defence (MoD), was entitled *Norway in the Power-Triangle between the EU, Russia and the United States*.[1] Yet in 1990, Norway did not have any specialised academic research centre for any one of these three crucial international actors of such decisive importance for Norway's international position. And there seemed to be little change in the priorities of the Norwegian Research Council at the time, which was, and still is, the prime financial source for Norwegian research.

The MoD and Norwegian Research on International Relations

A key feature of Norway's research policy is the so-called "sector principle". This means that each Ministry is responsible for budgeting for, and funding of, research within its own fields of responsibility (its "sector"). This includes publicly funded research and development activities (R&D) in general but it is not limited to purely academic research. While the Ministry of Education and Research obviously plays a very dominant overall role, particularly in financing social science research, other Ministries still have their important roles to play. Until the early 1990s, however, the MoD merely had a "miscellaneous" budget line item that could be used on an *ad hoc* basis to support research projects of a limited scope (however, the MoD had large earmarked annual budgets for military R&D, and the main recipient of these funds, the Norwegian Defence Research Establishment (FFI), also did research on security and defence policy).

In summary, the MoD was in reality lacking a (consistent) R&D policy in the field of security and defence policy, including relevant aspects of international relations more broadly defined. The MoD funding of social science research simply consisted of responding to occasional applications for financial support as they were received. The situation was quite similar in the Norwegian Ministry of Foreign Affairs (MFA), although the amounts available for research on third world issues and development assistance were considerable.

In 1991, the MoD and MFA jointly proposed to help finance a research unit on Russia at the Norwegian Institute of International

[1] Oslo, Tano Aschehoug, 1996. ISBN 82-518-3496-1(in Norwegian).

Affairs (NUPI). Parliament agreed. The basic idea was to help establish such a research centre with the objective of getting it financed, within a few years, through the Norwegian Research Council and the general budget line for NUPI under the Ministry of Education and Research.[2]

Later in the 1990s, the Norwegian Research Council, in response to a Government initiative, established a Centre for European Studies at the University of Oslo (ARENA). It was initially meant to be a research programme for a limited number of years, but it was subsequently made into a permanent inter-disciplinary research centre.

Since 1980, a research centre on Norwegian military history was financed over the defence budget. In the early 1990s, the name was changed to Institute for Defence Studies (IFS). A decade later it was integrated into the Norwegian Defence University College as the latter's main research unit, together with the Norwegian Defence and Staff College and the Norwegian Defence International Centre.[3] In 2005, the MoD took an initiative to establish a Centre for Transatlantic Studies within IFS, with a prime objective of doing research on American foreign, security and defence policies and transatlantic relations.

To conclude, during a period of about 15 years, the paradox noted earlier – that Norway had not in any substantial way focused research on the parts of the world that played a decisive role for Norway's own security and international position – has largely been resolved. With dedicated research centres focusing on Russia, the EU and the USA, the Norwegian knowledge base for policy-making and higher education in areas crucial for Norway has made big strides forward. In parallel with that progress, however, there was a need for dedicated and more long-term funding of research on international security issues and international relations. And that gap is exactly what the MoD made an effort to bridge in the 1990s.

The MoD's pro-active research strategy on international security issues

In 1992 the MoD added a new line to its budget for non-military R&D. Having a Defence Minister who had been the director of NUPI was surely an advantage. Johan Jřrgen Holst had a

[2] NUPI is a national research institution established in 1960 after a decision by Parliament.

[3] Since 2006, the Norwegian Defence University College has been accredited the authority to confer Masters Degrees (2 years of research-based education at the Defence and Staff College).

keen understanding of the importance of an updated national knowledge base, after the Cold War had ended and the international scene – Europe in particular – was in flux. Parliament concurred. The responsibility for establishing and implementing a MoD research policy on international security issues was given to the MoD's Department of Security Policy, which also acquired a new Section for Policy Planning.

The Department of Security Policy decided to establish regular contact with the relevant Norwegian research institutes, both in order to obtain advice and to ensure transparency and an assurance that working with the MoD would not be seen as problematic or intrusive on the academic side. The principle of academic freedom had to be guarded and respected.

Except for the "D" part of the R&D equation, basically applied research and specifically requested research on particular issues, Norwegian ministries channel most of their research funding through the Norwegian Research Council. And that is where most applications for public research money are addressed, evaluated and funded. In addition to its own professional staff, the Research Council has various bodies with representatives from Norwegian research establishments, in particular the universities, but independent research institutes as well. Much good can be said about that system.

However, as already noted, international security issues and international relations, had been largely neglected for years, or had not been given the necessary priority. While the Research Council might set up a research programme on some aspect of international relations for a limited time period, with the appropriate funding, the likelihood was minimal funding for several years afterwards, once the programme had been concluded. This system, in short, did not ensure desired and needed *continuity* and long-term competence-building.

The MoD, therefore, made a decision to fund research projects and competence-building directly and to establish a management system for it. In the early autumn, the MoD defines and internally discusses the criteria for how the earmarked annual appropriation for R&D on defence and security policy issues should be spent during the next budget year. Subsequently, the criteria and the MoD's research policy are dis-

cussed in a meeting with representatives of the relevant academic research institutes, in order to get their input and proposals.

The Norwegian Research Council is also invited to these meetings. For years, the Council's representative claimed that the MoD's research policy was outside the established framework for Norway's general research policy. In response, the MoD's policy was fiercely defended by the present scholars who claimed that it was very important to have an alternative financial source for research on international relations outside the established NRC framework. A plurality of sources for funding ensures more flexibility and variety. Furthermore, a predictable and long-term MoD funding policy made long-term research and competence-building feasible. Hence, the MoD's policy generated a large amount of goodwill, also in research establishments with scholars critical of important aspects of Norway's security and defence policy.

After discussions of the criteria with the research institutions and after the evaluations and inclusion of received proposals, the criteria for project funding for the following year are submitted to the Minister of Defence for approval. The implementation of the policy, once approved, is then handled by the Department of Security Policy. Letters announcing the criteria for what kind of research the MoD is prepared to fund (general criteria and topics of special interest, see below) are subsequently sent to all of the relevant research institutions in Norway.

Strategy for spending the budget money and budgetary accountability

The MoD decided to divide the available budget money appropriated for social science research in two more or less equal shares: one half for the funding of annual project proposals (research projects over one to two years) and one half for more long-term competence-building. The latter consisted of a total of six full PhD fellowships over three years, which meant that two new fellowships were announced each autumn for the following three-year period. The selection process, as well as the announcements, is handled by a limited number of research institutes with a strong focus on international security issues,

according to a rotation system. Initially there were four of them: the Norwegian Institute of International Affairs (NUPI)[4], the Institute for Defence Studies (IFS)[5], the International Peace Research Institute, Oslo (PRIO)[6] and the Norwegian Defence Research Establishment (FFI) [7].

In order to make sure that the University of Oslo would develop expertise on the EU's Common Foreign and Security Policy (CFSP), of which the European Security and Defence Policy (ESDP) is an integral part, the new Centre for European Studies (ARENA)[8] was included in the MoD's fellowship programme in 2004. Once the MoD had decided that the Norwegian Defence Research Establishment (FFI, the main defence research institution in Norway and funded over the defence budget) should have its main focus on technological defence research and costing models for defence planning, FFI's "slot" was transferred to IFS. The newly established Norwegian Defence University College, through the Institute for Defence Studies (IFS), now has as its focus security and defence policy and international relations. A general criterion concerning the choice of participating institutions was that supervision of PhD candidates had to be a prominent part of their daily activities.

In addition to the PhD fellowships, the MoD once every three years has announced a Post-Doctoral fellowship for three years. The MoD's Department of Security Policy receives and evaluates these applications directly. All applicants with a completed doctorate are considered academically qualified and the focus, therefore, is limited to the relevance and quality of the research proposal. In 2007 the MoD learned that obtaining an academic position, once a PhD had been completed, had become a bottleneck for the intended long-term competence-building. Consequently, the number of Post-Doctoral fellowships was increased to two at any given time and the number of PhD fellowships was reduced from six to five at any given time.

A couple of observations should be added concerning financial aspects, including budgetary accountability. After a few years' track-record, the MoD decided to harmonize its PhD and Post-Doctoral fellowship stipend rates with those of the Norwegian Research Council. That put fellowships from the MoD on an equal footing with fellowships paid by the Research Council.

[4] http://english.nupi.no/

[5] http://www.mil.no/felles/ifs/english/start/

[6] http://www.prio.no/

[7] http://www.mil.no/felles/ffi/english/start/

[8] http://www.arena.uio.no/

Furthermore, from the very beginning, the MoD only transfers money to responsible research institutions, since they both possess professional financial management systems and are subject to public auditing. No money has been transferred directly to individuals, which means that all recipients of MoD research money must be affiliated with a research institution.

The MoD's accountability for the funding, consequently, is restricted to a clear and consistent record of what the money has been spent on and also the selection criteria used, including a reporting system that documents that the intention behind the financial support given has been fulfilled. All other monetary and administrative responsibilities are left to the research institutions, including employment issues, tax reporting of income, and payment of incurred research expenses like literature, travel, data collection, etc.

For the MoD, it is essential to ensure that the Office of the Auditor General is satisfied with the MoD's handling of its budget, including its research funds. All of the MoD's affirmative responses to fund research projects and fellowships, therefore, request the research institution concerned to confirm in writing that the work will be carried out in accordance with the conditions provided. Money is then transferred to the institution's account. For funding over more than one year, the institution has to confirm progression, in accordance with plans, before the next instalment is paid out. The Office of the Auditor General has been very satisfied with the accountability built into these procedures.

Once the funded research is completed, the MoD receives a concluding report about the project, including five copies of all published material. As part of the funding conditions, the MoD acquires the right to use information and results from the research funded internally in the MoD, and to circulate electronic copies of publications within the MoD and the Armed Forces.

After some years of experience, the MoD added a new requirement to the conditions for funding: once a research project is concluded, the researcher must submit a short memo (2 to 5 pages) in which s/he specifies the consequences of the findings for Norwegian security and/or defence policy, according to his/her personal evaluation. That move was received with

enthusiasm on the academic side. Many of the subsequent policy inputs to the MoD have proved very interesting and thought-provoking and the most relevant ones have been circulated widely within the Ministry. In fact, some of them have subsequently influenced MoD policies.

Frequently, a researcher also presents the results of his/her work at a seminar at the MoD, which has often resulted in fertile policy discussions. The principle on which these seminars are based specifies that all participants only represent their own personal opinions and that no participant should be quoted by name (the Chatham House Rule[9]). The Norwegian MoD, thereby, promotes a liberal and open-minded approach in its internal discussions.

Peace Operations and International Humanitarian Law

With Norway's increasing involvement in various peace operations since the 1990s – often referred to as international military operations – a series of political and legal issues in relation to International Humanitarian Law/the Law of Armed Conflict came to the forefront. The issues were not new, and Norway had already substantial experience from participation in many UN peace-keeping operations, but more "robust" Rules of Engagement (as they were called) were needed, including a right to actively use armed force (up to, and including, deadly force) to implement amongst others the objectives of the operation, if and when necessary. That made a number of crucial legal issues more pertinent.

One such issue is the responsibility of the MoD and the Norwegian government to make sure that all military units sent abroad are properly trained in International Humanitarian Law/the Law of Armed Conflict. Another issue is the challenge of dealing with civilian populations in situations in which the distinction between combatants and civilians might be blurred. Asymmetric warfare and civilians actively engaged in hostilities (with the result that they lose their protection as civilians for a certain period of time or for certain actions), as well as terrorism, add to that challenge. Hence, the need to make sure that Norwegian soldiers are well prepared to handle difficult situations and challenges in accordance with the Geneva

[9] http://www.chathamhouse.org.uk/about/chathamhouserule/

Conventions and their Additional Protocols and all the other sources of International Humanitarian Law/the Law of Armed Conflict has become even more paramount than before.

Although Norway has for many years possessed considerable competence in most aspects of international law, there was until 2005 no university position in the country specifically earmarked for International Humanitarian Law/the Law of Armed Conflict. The MoD considered this unfortunate and decided to try to help rectify the situation. In 2005 the MoD made a formal agreement with the Faculty of Law at the University of Oslo in order to finance a position as Associate Professor in International Humanitarian Law for three years, on the condition that the University make the position permanent and be responsible for financing it after the three years had passed. The position was covered over the MoD's R&D budget for security and defence policy from 2006 throughout 2008. In return, the new Associate Professor during that period devoted 20% of the annual teaching load to the Norwegian Defence and Staff College, and to the Norwegian War Academies (Army, Navy and Air Force).

Status: Criteria and some examples of supported research

The MoD's research policy in the field of security and defence, including major aspects of international relations more generally, makes currently use of *general criteria* for financial support supplemented by a list of some *topics of particular interest*. While the former over time developed into a rather stable set of basic criteria, the topics are subject to annual adjustments. The MoD makes clear that the topics of particular interest are indicative only and not exclusive, and that they aim at indicating areas in which there seems to be a particular need for more academic research. However, all funded research is required to fall within one or more of the general criteria.

In 2009 the general criteria are as follows[10]:

- Relevance for Norway's security and defence policy, by providing improved knowledge and understanding of Norway's challenges in the field of security and defence and the issues that are likely to be important today and in the years ahead.

[10] The criteria are announced on the MoD's web pages, in addition to being communicated in writing to the research institutions concerned.

- Relevance for the knowledge and understanding of Norway's international setting, and how that setting makes an impact on Norway's international position and security.
- Relevance for competence-building and the strengthening of Norwegian research institutions concerning state and non-state actors and evolving geopolitical constellations.
- Relevance for the development of international humanitarian law and international law in armed conflict, particularly in relation to international operations.
- Relevance for improved knowledge and understanding of changes in the concept of security (state security, societal security, human security) and the implications for Norway's Armed Forces.
- Relevance for the understanding of background factors, dynamics and cleavages in Norwegian politics in the field of security and defence.
- Relevance for the public discourse on security and defence issues in Norway.
- Relevance for doctrines and applied updated knowledge in Norway's Armed Forces.

Among the topics indicated as of particular interest in 2009 are:

- Challenges in the High North in the field of security, resources and the environment: consequences for Norwegian security and defence policy.
- UN reform and the UN's capacity to command and control a larger number of complex military operations.
- Integrated peace and stabilisation operations – the conditions for appropriate civil-military cooperation locally and internationally. What should and could be done?
- National security (sovereignty and territorial defence in particular) at the crossroads between globalisation, great power rivalry and intra-state conflicts. Consequences for Norway and NATO, including NATO's role and relevance.
- Proliferation of weapons of mass destruction and missile technology – consequences for NATO and for Europe?

- Developments in international arms control regimes – consequences for Norwegian and international security policy?
- In the context of weapons of mass destruction and risks of proliferation: Challenges related to changes in the concept of "actors", including state actors versus non-state actors, international organisations (intergovernmental as well as non-governmental) versus private military companies, and regular versus irregular military forces.
- The Armed Forces and civil society – from broadly anchored to cleavages: The public perception of Norway's defence policy and use of military force in the face of new security challenges.
- Expanded Nordic defence cooperation – opportunities and constraints.
- Afghanistan/Pakistan: How will the developments in Pakistan have an impact on the prospects of success in the area of stabilisation and reconstruction in Afghanistan? The role of the local population and the significance of winning "hearts and minds".
- Where is Russia heading? Russia as an international actor. How should, or may, Western countries handle Russian interests and Russia's actions?
- Asia: The growing role of China and India and Iraq/Iran/the Persian Gulf. The significance for how the United States will reposition its attention and resources eastwards. Implications for NATO and Norway.
- The development of international humanitarian law/law of armed conflict through military manuals, etc. Military ethics and military personnel as responsible actors according to international law.
- The implementation of UNSC Resolution 1325 about women, peace and the security sector: Challenges and opportunities – nationally and internationally.

The list of topics of the MoD's funded PhD dissertations during the past ten years provides a broad overview of the overall competence-building that has been generated since the turn of the century (some projects are still on-going). In comparison with the annual funding of specific project proposals, the PhD dissertations may be characterised as *basic* research, while some

of the annual research projects may also have a more *applied* profile or simply represent one element within more broadly based research. The following list covers the period 1999-2009:

- From national to international defence: Military power as an instrument in Norwegian security policy.
- Domestic political terrorism in established democracies, 1950-2000.
- Turkey's military elite at a crossroad: Paths to de-securitisation?
- International crisis management in the Balkans.
- Nationalism after imperial break-up.
- The foreign policy of privatised states – the cases of Russia and Ukraine.
- How can US influence on Norwegian security and defence policy be explained? What are the consequences of this influence on Norway's Armed Forces?
- Being a moral decision-maker in war.
- Al-Qaida's ideology.
- New wars? Regime change, legitimacy and security sector reform.
- Legitimacy and the question of European Foreign and Security Policy.
- The Petsjenga-Nikel cartel: From Finish-Canadian industrial bonanza to a Norwegian-Russian environmental problem.
- The acquisition of small arms and light weapons by armed groups in civil war.
- NBC threats after the end of the Cold War. A study of Iran, Iraq and Libya.
- A comparison of American and European intentions in the field of security policy.
- When global conflict fuels local war: The changing pattern of Chechen-Russian enmity.

Post-doctoral research projects funded by the MoD include:

- War and strategic thinking from the military revolution until the World Wars.
- Military intervention and post-conflict nation-building.
- Towards a post-modern European Security and Defence Policy? Implications for Norway as a non-member.

- China hedging against energy dependency: New dynamics and old dilemmas.
- Why did Jihad go global? Pan-Islamism and the rise of trans-national Islamist activity.

Conclusion

The MoD's pro-active approach in the field of security and defence policy research, and in related areas of international relations more generally, has been based on a conscious strategy with several key objectives. These objectives have largely been met, and may be summarised, as follows:

Firstly, the objective was to augment the domestic competence and knowledge base concerning politically relevant international security issues, with a specific focus on security challenges and trends that might have an impact on Norway's own security. By providing stable, predictable and ear-marked funding over a prolonged period of time, the MoD's objective has largely been fulfilled.

Secondly, through the results from MoD's funding of Norwegian decision-makers in the fields of foreign, security and defence policy have been able to draw on a much broader domestic knowledge base. The MoD has obtained intellectually based factual input, including political evaluations and critical comments and proposals, to which it would otherwise not have had access.

Thirdly, a more indirect benefit has been higher quality in Norwegian university education on international security issues. Many of the scholars who have received research funding from the MoD also lecture at universities and colleges.

Fourthly, the Norwegian public discourse, including the political discussion on national and international security issues, has been enriched by numerous articles and commentaries written by scholars with a solid factual background and keen interest in the topics being discussed. That has contributed substantially to a more enlightened public debate and frequently to an increased freedom of action for the Norwegian Government. With an amplified focus on important changes in Norway's international environment, and major international trends, it

has been easier to obtain public acceptance for the need to adapt established policies or to formulate new ones.

Finally, as a bonus, the MoD has increased its goodwill within an important segment of Norway's research community, including scholars who may have been, and may remain, politically critical of important aspects of Norway's security and defence policy and of policies pursued by NATO. The indirect effect has helped to improve the national dialogue on many politically difficult security issues and has sometimes helped to create a common understanding that difficult issues may not have easily available solutions.

An additional bonus effect has been to help make the MoD, and its Department of Security Policy in particular, a highly regarded place to work. As a result, applications for vacant positions are numerous and the MoD has the opportunity to pick candidates from the best and most committed students once they leave school and enter the work market. In summary, it seems fair to conclude that the MoD has received a solid return from its investment in social science research.

Neutrality of Switzerland: a Brief Introduction

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Abstract

This paper gives a brief introduction to the neutrality of Switzerland. After defining the Law of Neutrality and a policy of neutrality, we present the "Swiss neutrality", its functions and its history. We observe then that there are currently very divergent perceptions of the role of neutrality in the security and foreign policies of Switzerland. Those points of view diverge from neutrality as the pillar of sovereignty till neutrality as an instrument for an active foreign policy. The possible Swiss security policy activities are exposed with a focus on the international engagement of members of the Swiss Armed Forces in the framework of neutrality. Since the end of the Cold War, Swiss militaries are involved in peace support operations which do not have a peace enforcement component. We notice that the Swiss neutrality has been adapted slowly to the international context since 1989. A wide accepted reinterpretation of the "Swiss neutrality" and its role is still to be agreed among the Swiss population and politicians. Finally we have a look at the new neutrality of Serbia, whose strategic role is also to be determined.

Key words: *neutrality, security policy, peace support operations, Switzerland*

Definitions of neutrality

Neutrality as a legal notion

The Law of Neutrality is part of the International Law. It is defined in the **Hague Convention** from 1907 and applies **during international armed conflicts**. The Law of Neutrality is not relevant for internal armed conflicts and peace time. A neutral state has the duties of impartiality and non-participation in the conflict. The Law

does not allow belligerent sides to violate the neutral states' territory, but they must defend themselves in case of aggression. A neutral state may not export any military material to the belligerent sides, but has the right to maintain the other economic relations. Neutrality can be permanent or ad hoc.The belligerent parties must recognize the status of neutrality of neutral states and must not invade their territory. The Law of Neutrality (1907) is restricted by the UN Charter (1945). In case of conflicting provisions stemming from those two documents, the ones of the UN Charter prevail.

Neutrality as a policy

The policy of neutrality is the set of **political decisions and measures** a neutral state freely takes in peace times with the aim of securing the **credibility** and the **efficiency** of its legally binding neutrality. The policy of neutrality differs in neutral states and depends on their situation. Non-neutral states may consider neutrality either as peace contribution or as hypocrisy.

"Swiss neutrality"

According to the Swiss authorities, the "Swiss neutrality" is **self-determined, permanent** and **armed**. Neutrality is a corner stone of the foreign and security policy. It shall ensure the **independence** of the country and the **integrity of the territory**.

The Swiss Constitution states that the Federal Assembly (parliament) has the competences to take measures in order to safeguard the external security, independence and neutrality of Switzerland (Art. 175) and that the Federal Council (government) shall take measures to safeguard external security, independence and neutrality of Switzerland (Art. 185). Neutrality is then mentioned in the section "Federal Authorities" and not in sections about the aims of the Confederation or the principles of the foreign policy. The idea is to enlighten the role of neutrality as an instrument of foreign and security policy and not as an end for itself.

The Swiss policy of neutrality is presently based on 4 elements: the Law of Neutrality, the national interest, the international situation as well as tradition and history.

The current official tendency is to put forward "active neutrality", which principally should be active solidarity in the framework of the Law of Neutrality.

The policy of neutrality is **not a fundamental obstacle** to participation in **economic sanctions** or to membership in **non-military international organizations**. For example, the recent UN adhesion does not involve the obligation to take part in any military operations and is therefore neutrality-compatible.

Functions of the "Swiss neutrality"

According to Riklin (1991), neutrality had 5 functions for Switzerland:

- Integration: ensure the internal cohesion and peace among the different cultural and confessional groups
- Protection: possibility to stay out of the wars in neighboring regions and to remain independent
- Economy: continue business with all parties in conflict
- European balance: correspond to the geopolitical interests of the main continental powers
- Good offices: give the chance to offer mediation or negotiation services and demonstrate solidarity

History

The present Swiss neutrality is the result of a **long historical tradition** and of **numerous adaptations** to external and internal constrains. Neutrality was first the only way to preserve the Confederation. Than positive aspects of being neutral were progressively discovered and the Swiss learned to use neutrality for their interests.

As an additional consequence of this historical development, the **other states recognized** and trust the neutrality of Switzerland.

1515: defeat of the Confederates in Marignan against France, end of the expansion policy (functions: integration, protection)

1516: perpetual alliance with France

1648: sovereignty of the Confederation recognized in the Westphalia Treaty (European balance, economy (interest of main power in Swiss mercenaries))

1674: first official declaration of neutrality by the Diet, which was the representative institution of the Ancient Confederation

1789: attack from and defeat against France, end of the Ancient Regime's Confederation

1789-1815: Helvetic Republic till 1803 then Mediation Act and return to a confederative system, satellite of France, obligation to

join an offensive alliance Swiss territory as battle field and cross way for foreign troops [only period during which neutrality was not respected at all by Switzerland and its neighbors]

1815: restoration of an independent Confederation, perpetual neutrality recognized at the Vienna Congress (balance, protection)

1848: creation of the modern state of Switzerland, affirmation of neutrality important in the construction of a Swiss national identity and in the differentiation from the big neighbors (integration, protection)

1848-1914: development of the good offices (Red Cross 1863, Bourbaki Army 1871,…)

1914-1918: WWI, Swiss population, authorities and officers' sympathies strongly divided among linguistic groups, several breaks of the Law of Neutrality (integration, protection, economy, good offices)

1920: founder member of the League of Nations, recognition of "differential neutrality" (obligation to participate in the economic sanctions, but not in the military ones) (good offices)

1938: back to "integral neutrality", in order not to have to impose economic sanctions on Italy (economy)

1939-1944: WWII, "geistige Landesverteidigung" and "reduit national", strong breaks of the Law of Neutrality (protection, economy, good offices)

1945: considered as enemy by the Allies

1945-1989: neutrality as state doctrine, integral neutrality, non or late entering into the main international organizations, politically and economically part of western world, exclusive material contributions to some UN peacekeeping missions (economy, good offices)

1989- : wider interpretation of neutrality, less emphasis on independence, slowly reorientation on interdependence and security through cooperation, ad hoc participation in economic sanctions and peace support operations from the UN and OSCE, ad hoc support to UN military actions, UN membership 2002 (good offices)

Current Standpoint

The term "neutrality" is understood very differently within the Swiss population and political and societal actors. The points of view diverge from neutrality as the **pillar of sovereignty** till neutrality as an **instrument for an active foreign policy**. The big majority of Swiss citizens are very attached to neutrality (89% in 2004), which is a part of self-perception and national identity.

Since 2002, the Minister of Foreign Affairs is Mrs. Calmy-Rey, member of the SP party (left). She advocates **active neutrality** and public diplomacy. Mrs. Calmy-Rey emphasizes **solidarity and human rights**. She stated in various speeches that "neutrality does not mean to shut up in the four national languages", which has led to ardent discussions. There have been also reactions about some of her actions, like her wearing the veil during an official visit to Teheran.

Since December 2008, the Minister of Defense is M. Maurer, member of the SVP party (hard right). In June 2009, M. Maurer hold a speech during which he stated that **cooperation in security issues makes Switzerland dependant**. He ordered a very detailed assessment about every current engagement of the Swiss Armed Forces abroad and their exact costs. This report should present in which operations the Swiss militaries made differentiated high-values contributions and in which not. The aim of the Minister is to concentrate the participation of the Swiss Armed Forces in those specific high valued engagements, mostly in the humanitarian area.

The texts currently providing the framework for the policy of neutrality are:

Security policy report "Security through Cooperation" of the Federal Council, 2000

The context for the use of neutrality has tremendously changed. If the number of international armed conflicts sank, the civilian conflicts (for which the Law of Neutrality does not apply) are more frequent.

The feeling of security provided to the Swiss population by neutrality became illusory. **Neutrality alone is not sufficient to guarantee Switzerland's security** and does not provide orientation for policy related to internal conflicts. Switzerland will keep its traditional strict appliance of the Law of Neutrality and take advantage of the scope of interpretation of neutrality directed toward more participative foreign and security policies. Neutrality does not prevent Switzerland from acting with solidarity against global threats and from participation in a worldwide security system. Neutrality is incompatible with membership in any military alliance and with a commitment to participate in peace enforcement operations. It is compatible with participation in the OSCE, PfP and Euro-Atlantic Partnership. Security policy cooperation with international organizations and other states should be enhanced.

The **importance of foreign policy** as **part of the security policy** has significantly increased.

Annex 1 *"Neutralité"* of the foreign policy report of the Federal Council, 2007

Neutrality is a foundation of the Swiss foreign policy, along with universality and promotion of the international law. The impartiality of Switzerland is more credible thanks to the non-colonial past of the country. The UN is a very important instrument of the foreign policy. **The application of the UN Security Council resolutions is not in contravention with the Law of Neutrality** since the sanctions or actions decided have the aim of maintaining international peace and security and do not imply the state of war. The membership of Switzerland in the Security Council would not be against the Law of Neutrality. Neutrality should be used by Switzerland in order to **remain unassociated with States being involved (or likely to be involved) in an armed conflict**. If the peaceful conflict settlement efforts, based on the international law and the UN collective security system, failed and an international armed conflict breaks out, the Law of Neutrality applies.

However, effective conflict prevention would be the better way toward the goal of international peace and security. Switzerland wants therefore to enhance respect of international law and an effective collective security system.

Foreign policy report of the Federal Council, 2009

The recognized neutrality added to the renouncement to use force give Switzerland a **higher credibility in peace support engagement, humanitarian aid**, as well as in the activities in favor of non-proliferation, disarmament and arms control.The government is in the process of preparing and adopting a **new report on security policy**. The Minister of Defense had initially the lead in this process, during which the main national political parties, the cantons, the NGOs active in security issues, the economic associations, the churches, as well as domestic and foreign experts, took part in hearings.

The summary of the hearings for the security policy report 2010 shows that the **vast majority** of the institutions invited to the hearings are **in favor of the perpetuation of the neutrality**. However the **views and opinions about the scope and importance of neutrality are very different, even divergent**. A rational discussion about the function of protection of the neutrality does not

seem possible. The neutrality rhetoric is essentially exploited to legitimize specific positions about foreign or security policy.

The draft report was discussed by the whole government in October 2009. The government decided to endorse the responsibility for the security policy report due to disagreements with the M. Maurer and asked the Minister of Defense for some adaptations. The definitive report should be adopted in spring 2010.

Neutrality and security policy activities

According to the **Law on the Armed Forces,** Swiss military personnel can be deployed abroad only if the mission takes place under a **mandate from either the UN, the OSCE** or is **authorized by the conflicting parties** and is **compatible with Swiss neutrality**. The law expressly prohibits participation of Swiss Armed Forces personnel in combat activities for peace enforcement. For members of the Swiss Armed Forces, participation in peace support operations (PSO) is voluntary.

The security policy activities which can be taken by Switzerland (government, armed forces…) in the framework of the policy of neutrality are:

- economic sanctions: if imposed by a UN Security Council resolution or international actors
- peace support:
  - transit right for and participation in peace support operations: if operations are based on a mandate of the UN Security Council or are carried out with the consent of the conflicting parties
  - participation in peace enforcement operations with military means: according to the Law on Armed Forces: not allowed according to Annex 1 "*Neutralité*" of the foreign policy report 2007: possible if based on a UN Security Council mandate
- military international cooperation (training and armament): possible as long as no assistance obligation is entailed in the event of war
- participation in international programs or membership in international organizations: possible as long as neither military assistance obligation nor obligation to act against the provisions of neutrality

The biggest political parties about neutrality

Swiss People's Party - SVP (conservative right, 29% in the 2007 elections)

The Swiss foreign policy should be open without activism. It is shaped by neutrality and independence. The country should ensure its **security through independence**. Cooperation in security matters weakens the national security and independence and is a threat for the neutrality.

The **Swiss Armed Forces** should have an absolutely exclusive defensive function and **not participate in any interventions on a foreign territory**. Such interventions violate the neutrality. Nation Building with military means cannot be undertaken by a neutral state.

Liberal Democrats - FDP (liberal right, 16%)

The FDP acknowledges the fundamental changes in the international situation since 1989 and the impact of some distant conflicts on Switzerland. The country remains neutral, **concentrates** however on the **core Law of Neutrality**. An isolated security policy is neither appropriate nor feasible.It is necessary and positive to develop civil and military cooperation. **Participation in international stability operations** is **useful for the own security**. The military capabilities for peace support operations are to be enhanced particularly in the high value assets. However participation in peace enforcement activities remains excluded.

Christian Democrats - CVP (center right, 15%)

A foreign policy intending to remain uninvolved in any conflict is not feasible any more in an era of rapid globalization. Therefore, **neutrality should be defined in a new manner**. The passive policy of neutrality should be complemented by an active policy of international development and solidarity. **Cooperation with like-minded states in security matters is necessary.**

The armed forces should increase their engagement in peace support operations.

Social Democrats - SP (left, 20%)

Switzerland should contribute to **global collective security**. Failed states are one of the main threats to be addressed by Switzerland. The peace and security policies should be dealt with in multilateral structures.

The military capabilities for peace support operations should be enhanced. The pacifist group of the SP is opposed to it.

Green party (left, 10%)

As a neutral state, Switzerland should base its foreign policy on the needs of the world poorest countries and should be more active in the **peaceful conflict resolution.**

The armed forces are to be abolished.

Examples of Swiss decisions within the policy of neutrality

Iraq 1991: There was a UN Security Council resolution imposing economic sanctions and allowing a coercive military action. Switzerland participated in the economic sanctions and allowed transit flight with humanitarian purposes; it refused transit flight with military purposes.

Bosnia 1995: Switzerland authorized transit flights with military personnel and equipment for IFOR/SFOR and sent its peacekeepers.

Kosovo 1999: There was no UN Security Council resolution for a military action. Switzerland participated in the economic sanctions and transit flight with humanitarian purposes, delivery of humanitarian aid; it refused transit flight with military purposes. After the conflict, it participates in the KFOR.

Iraq 2003: There was no UN Security Council resolution for a military action. Switzerland allowed transit flights with humanitarian or medical purposes and participated in the delivery of humanitarian aid; it refused transit flights with military purposes and did not deliver or sale military material or services to any of the belligerents.

The Swiss Government approved participation in the European Union Mission NAVFOR Atlanta. The Parliament, however, refused it in September 2009. The parties closer to the center of the political spectrum (CVP, FDP, a part of SP) were in favor, the parties of extreme right or left were against (SVP, Green Party a part of SP). As a consequence, Switzerland will not participate in NAVFOR.

The participation in PSO is useful for the armed forces (possibilities of gaining experience and collaboration with other armies) and for the government (access to inside information, possibility of concrete cooperation). PSO engagements are problematic for their high costs, the difficulty of finding personnel and the limited role due to the framework of the "Swiss neutrality".

Perspectives for the "Swiss neutrality"

According to Riklin, the 5 functions of the neutrality lost relevance since 1989.

The reputation of neutrality may still be a trump for mediator role.

In the international scene, Switzerland has anyway an economical weight (however modest) more than a political one.

The policy of neutrality gives a big scope of action for Swiss foreign policy and has to be used to defend its interest. The Law of Neutrality is irrelevant for the main conflicts currently happening (internal conflicts with state and non-state actors). There is a need for different orientation in the Swiss foreign and security policies. The notions of "active solidarity" or "active neutrality" are still vague and not accepted in the whole spectrum of the politicians and population. The engagement of Swiss militaries in PSO is subject to disagreement. A widely accepted reinterpretation of the "Swiss neutrality" and its role is to be agreed among the Swiss population and politicians.

We notice that the Swiss neutrality has been being adapted slowly to the international context since 1989. The Law of Neutrality has been respected. Some actions like the delivery of humanitarian aid during conflicts and in cooperation with some belligerents is considered as a breach of the traditional neutrality or as active solidarity under the umbrella of the neutrality.

There are contradictions in the understanding of the neutrality, the aims of foreign and security policy and in the role of the armed forces. If a foreign policy report sees the possibility of a participation in peace enforcement operations with military means, the Law on Armed Forces still prohibits it. The opening shown in the report is possible in the framework of the Law of Neutrality due to the Swiss membership in the UN. No discussion (at least public) seems likely to take place on the adaptation of the Law on Armed Forces to the topic of participation in peace enforcement operations. It will be very interesting to see which debate will emerge on this topic in the case of a military intervention requested by a UN Security Council resolution.

Being perceived as neutral can be a trump in the context of terrorist threat and in possible future tensions over the water resources.

Switzerland in PfP

NATO launched the Partnership for Peace (PfP) program in 1994 with the aim to foster peace through greater cooperation with non-NATO countries. In addition to the 26 NATO member states,

20 other European states (including Switzerland) participate. They are all members of the Euro-Atlantic Partnership Council (EAPC) founded in 1997, which acts as a security policy forum giving the guidelines for the practical cooperation in the PfP. PfP seeks to intensify security policy and military cooperation in Europe and to look for common answers to existing threats.

Switzerland **joined PfP** in **1996**. Switzerland's participation in PfP is **compatible with neutrality** as there is **no requirement of NATO membership** and **no obligation to provide military support in the event of armed conflict**. It shows a change away from the integral policy of neutrality. The PfP is based on voluntary commitments. For Switzerland, the PfP is a good opportunity to take part in collective security and an instrument for military exchanges of knowledge and experiences as well as for information exchange. NATO invites Swiss personnel to participate in some courses and exercises, and vice versa. PfP allows Switzerland a direct contact to core actors of the European security (USA, France, UK).

The ministries of foreign affairs and of defense are involved in implementing the PfP commitments. The core areas are: improvement of interoperability, civil emergency planning and disaster relief, democratic and efficient security structures, humanitarian law and law on armed conflicts, small arms and light weapons training and IT. The main Swiss contributions and activities are: PSO, courses and training, regional cooperation projects, Geneva Centers, International Relations and Security Networks (ISN), PfP Consortium.

NATO expects more engagement of its partners in peace support operations. The Swiss-NATO relations will then depend more and more on the level of the Swiss participation in those engagements.

Positions of the political parties

SVP: the participation in the PfP program implies numerous military exercises of Swiss soldiers abroad and of foreign soldiers in Switzerland. This violates the neutrality. Switzerland should stop its involvement in PfP as soon as possible.

FDP: the Swiss engagement in PfP should be intensified, especially in the interoperability of the armed forces.

CVP: the Swiss engagement in PfP should be intensified, especially in the civilian areas and joint military exercises.

SP: the SP supports the engagement in PfP.

STRATEGIC ORIENTATION

Publications:

1. Ejdus Filip (2008), "Security, Culture and Identity in Serbia", in *Western Balkan Security Observer*, 3 (7-8), pp. 38-64.
2. Kovac Mitar (2009), "The Political or Military Neutrality of the Republic of Serbia", in *Business and Security*, Miroslav Hadzic and Jelena Radoman (Eds.), Belgrade, CCMR, pp.151-162.
3. Riklin, Alois (1991), „Funktionen der schweizerischen Neutralität", in *Passé pluriel. En hommage au professeur Roland Ruffieux*, Fribourg, Editions universitaires, pp. 361-394.
4. Riklin Alois, "Neutralité", article in the *Historical Dictionary of Switzerland*, stand 2009, www.hls-dhs-dss.ch
5. *Swiss Neutrality*, brochure from the Federal Department of Defense in collaboration with the Federal Department of Foreign Affairs, December 2004
6. *Swiss Peace Supporter,* journal of the Federal Department of Defense on Swiss contributions to PSO, 02/09

Official reports:

1. Security policy report "Security through cooperation" of the Federal Council, 2000
2. Annex 1 "*Neutralité* " of the foreign policy report of the Federal Council, 2007
3. Foreign policy report of the Federal Council, 2009

Papers:

1. Position paper of the SVP "Security through Independence – Away from Neutrality Incompatible Military Cooperation", June 2009
2. Position paper of the FDP "For Credible and Efficient Armed Forces", 16.07.2007
3. Party program of the CVP, 2007
4. Concept paper of the SP "Armed Forces Transformation instead of Simple Adaptations", 27.05.2005

Websites:

1. Federal Department of Foreign Affairs: www.eda.admin.ch
2. Swiss participation in the PfP: www.pfp.admin.ch
3. Green Party Switzerland: www.gruene.ch

Privacy and the Brave New "Digital" World

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O'Hara K. and Shadbolt N. (2008) *The Spy in the Coffie Machine – The End of Privacy as We Know it.* Oxford: Oneworld Publications
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Book Review

Privacy has always been influenced by technology. With the development of innovative concepts the notion of privacy and its derivatives (that is to say all the ways in which privacy can be understood) were forced to undergo certain changes and modifications. We only need think of the time when in large cities it became possible to have glass in your windows. Glass windows not only impacted the size of the window opening and the amount of light that could pass through, but they also affected the amount of "private" information that could reach the outside world. Now, if an ordinary glass window led to such a change, what are we to say about today's automated world of the Internet? Computers with Internet connections, combined with cell phones and digital cameras, are far more than a mere window to the outside world – these contraptions have become a window through which today's entire "global village" can peer. Today's technological achievements can record your movements for eternity, your habits, words that you use, and they can transmit them in less than a few seconds to the other side of the world to a person that you don't even know. How and in what way does this technology undermine or change your right(s) to privacy is the subject of a book written by Kieron O'Hara and Nigel Shadbolt.

Even before the era of Adam Smith and David Hume, the concept of privacy was accepted as one of the key pillars of liberalism and democracy in the western hemisphere, and of the very postmodern capitalist world as we know it. Privacy is a significant factor that gives impetus to freedom of speech, private initiative, and to inventiveness itself, which offers society the possibility of self renewal. O'Hara and Shadbolt take this perspective in considering issues, benefits, and dangers associated with accelerated development of new digital technologies that can be compared with the discovery of the printing press and the industrial revolution.

The authors start off their book with an analysis of the rationale for this subject, giving a handful of examples as the basis for a positive conclusion. Presenting the actual concept of privacy as it is understood and defined by law in western societies they recognise that the system, which was in place one century ago has undergone significant change, although they admit that we are still some distance away from the dangers of the Orwellian Big Brother. However, the danger is real, given that with all the positive aspects offered by these new discoveries, they can very easily be used for illicit purposes, such as surveillance, crime, and terrorism. In view of this, the authors consider ways in which our privacy can be protected against technological intrusions and ways how to fight technology with technology itself: operating systems on home computers, cryptography and possibilities offered by it; steganography, i.e. concealing information in places where it is hard to imagine that it could be found; "online walls" around "online personal space" and methods of continuous identification and authentication; and finally biometrics as a method of protection using technology in combination with something that is completely personal – your body.

O'Hara and Shadbolt go on to list real possibilities of modern information technologies for doing you harm. With the formulation in the early 60s of the so-called *Moore's Law* and the prediction of growth in the power and capacities of computers in the near future, the basis was created for general understanding of information progress and the

dangers ushered in by the new era. Although today's computers are miles away from any kind of artificial intelligence, they are capable of matching human intelligence using "brute force". These machines have become so powerful that they are capable of doing an incredible amount of simple and crude operations within a very short time where, for instance, they are capable of beating the world's best chess players. The capacities possessed by today's computers allow for better storage of information that someone has about you. Large databases can be linked now and therefore different information can be compared and interlinked. Also, computers permit the storage of a huge amount of information about anyone for a practically unlimited period of time. All of these possibilities offered by new computers mean that an end has been put to the "practical fuzziness" caused by the vast mass of information stored on paper that made the researcher's work difficult. This "practical fuzziness" at the same time protected privacy as we knew it up to now.

After considering the aspect of the possibility of modern technology for invading your privacy, as well as of defending it, the authors bring into play the Internet, a technological achievement that provides the practical basis for the assumptions that changed today's concept of privacy. They do not see danger in the Internet, but rather a large privatised space (a space that is neither fully private nor fully public), which gives rise to the renewed flourishing of democracy, freedom of speech and innovation. O'Hara and Shadbolt analyse the characteristics of the newly created type of virtual privacy "on the net" and everything that can invade it. Your privacy is far more exposed to others on the Internet than anywhere else. Your secure access to the Internet is threatened by various types of threats in the form of *spyware* and *phising*. At the same time, special segments are being developed in the architecture of the Internet that provide for better protection of information, where necessary, using the aforementioned techniques. The authors point to the greatest potential threat (and opportunity) as being in the phenomenon of the *semantic network* which permits improved searching and classification of informa-

tion in the network, separating important from unimportant information, and practically doing away with the possibility of "practical fuzziness". Of course, the opportunities provided by the Internet are immeasurable. The new kind of *private space* in the form of *Web 2.0* (blogs, etc) provides enormous possibilities for democratic expression and exchange of opinion. Everyone is able to express their opinions without an intermediary and mostly (at least in the western hemisphere) without censure, and to connect with others anonymously (if they wish). However, *Web 2.* is capable of destroying someone's real privacy, especially through social network sites, such as MySpace, Flicker or Facebook.

The Internet is also subject to censure, especially in societies whose principles are not based on freedom, democracy and privacy as basic tenets. The Muslim world, China or North Korea have developed systems of blocking and control of flow of particular contents on the Internet, based on ideological or religious reasons. Even western democracies are prone to monitoring information exchange because of the danger of organised crime and international terrorism. That is why the authors analyse ways in which control and censure function in these countries, as important factors of transfer of control of privacy from the real into the virtual world, as well as ways in which individuals guard against this.

And finally, O'Hara and Shadbolt introduce us to a world of "permeating information technology", interpreting it and explaining it such that with the assistance of "intelligent" networked machines we can simplify our existence in the real world. Such contraptions can be house appliances that are set to service particular habits we have, such as automatic coffee making at a particular time of the day or measuring blood pressure. As the authors point out, beside the immeasurable benefits offered by these systems, at the same time they are potential spies who can record information about our habits, movements, etc.

With the book *The Spy in the Coffee Machine* O'Hara and Shadbolt introduce us to the brave new "digital" world. Through convincing analysis of modern computer achieve-

ments they point to new social conditions that appear with the virtual world, some of which exist without our even being aware of them. Although the dangers are more than apparent, they conclude that the "digital" world should not be feared. The concept of privacy always changed with new technologies. The new digital world requires of us, in a way, much as the old world did: realistic action, accepting the rules of the game and keeping consistently informed, although it should never be forgotten that this is a world where the possibilities, like the dangers, are enormous.

Instructions for the authors

Western Balkans Security Observer is a magazine established by the academic community of the Belgrade School of Security Studies. The papers that we publish in this magazine deal with regional security issues, but they also focus on national and global security problems. The editors especially encourage papers which question the security transformations from an interdisciplinary perspective and which combine different theoretical starting points. A special column is dedicated to reviews of the newest sources from the fields of security studies, political sciences, international relations and other related scientific disciplines.

When writing the papers, the following criteria must be observed:

- Desirable text length: from 1.500 to 3.000 words
- Font: Times New Roman, spacing: 1,5
- he article should include the following:
  1. Title page that contains the title of the paper, first and last name(s) of the author(s), name of the institution(s) where the author(s) is/are employed, occupation, address and telephone number for the purpose of possible contact. Below the title of the paper, first and last name of the author should be written (and optionally his/her title), name of the institution where the author is employed and its address. The summary should be up to 120 words long and in it the author should point out the most important hypothesis on which the paper is based. Below the summary, the author should specify 4-5 key words.
  2. The text should be prepared in accordance with the following technical instructions:
     2.1 Use the Harvard citation system. At the end of the citation write the last name of the author, year of publication and the page number in brackets. Example: (Pichel, 1994: 28).
     2.2 In the footnotes, write only the accompanying comments.
     2.3 Leave the original spelling of foreign names.
  3. All used sources should be cited in the paper and stated as Bibliography at the end of the text in the Harvard style and in accordance with the instructions given here:

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- **For books:** last name and the first letter of the first name of the author, year of publication in brackets, title of the book (in italic), place of publication, name of the publisher.
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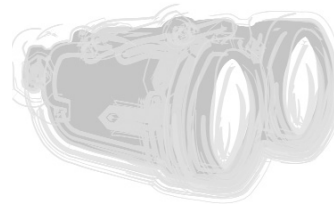

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