

# ESTABLISHING DEMOCRATIC AND CIVIL CONTROL OF SECURITY SERVICES

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**Abstract:** At the beginning of the 21<sup>st</sup> century, a change of global security environment in modern states has given rise to increase of threats, such as proliferation of weapons of mass destruction, terrorism, international organized crime, human trafficking and illegal trade of goods subject to control, mass migrations, money laundering, etc. These threats produce new challenges with regard to functioning of national security systems, and this naturally reflects on new complexities in establishing valid mechanisms for their control. In such circumstances security and intelligence systems must adjust to new situations to improve their efficiency.

This paper deals with the ways for establishing necessary mechanisms for democratic and civil control of security services.

**Key words:** state, democracy, national security, security services, security challenges, civil control

## INTRODUCTION

Terrorist attacks conducted at the beginning of the new millennium, especially those “from September 11 2001, have intensified discussions concerning tendencies leading to a decrease of transparency of security services and weakening of the already too obscure and unclear system of public control”.<sup>1</sup>

Concerning the work they are doing, security services should be subjected to appropriate democratic and civil controls. The analysis of this complex social phenomenon quite justifiably raises the following question: Is there a universal, generally acceptable and applicable model for their control? Many researchers have tried to find the answer to this question. Still, almost all of them agree on one thing: there is no unique or generally applicable model for democratic and civil control of security services.<sup>2</sup> In principle, there are only general models and starting principles which may be common for all security services of the world.

For effective control and oversight, laws are not sufficient. Efficient and clear ways and procedures must be established for interpretation and implementation of adopted laws, as well as a defined relation between the normative and the real.

Regardless of the dominant form of control in democratic societies, most scientists and researchers agree that executive and judicial authorities control security services activities in most countries. Each control segment has its specific role and makes just a part of the system of control, responsibility, supervision and oversight, whose purpose is to ensure legality,

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1 Andrzej Karkoszka, “Security Sector Reform - the Concept, Its Political Usefulness and Growing Importance”, in: *Setting the 21<sup>st</sup> Century Security Agenda*, Peter Lang publ., Bern, Switzerland, 2003, p. 84.

2 More about this: *Intelligence Practice and Democratic Oversight - A Practitioner's View*, Occasional Paper 3, DCAF-Intelligence Working Group, Geneva, July 2003, p. 37.

proportionality and integrity of activities which security services by the nature of their work performed secretly.

Based on constitutional and legal powers, elected authorities are responsible for functioning of security services. The main problem appearing in this chain is the “transparency-secrecy relation”. Hence the question: How to ensure efficient democratic and civil control over security services without violating the “principle of secrecy” as one of the main postulates their activities are based on?

Because of the very activities these services perform, which are of sensitive nature, responsible structures try to isolate them from political abuse, especially from abuse by executive authorities. Generally, solutions adopted by most democratic countries deal with this problem in two ways - first, by balancing of rights and obligations, and establishing of the system of responsibilities between security services and ruling political elites, and second, by creation of effective mechanisms and ways for control and checkup outside the domain of executive powers.

## PROCESSES WHICH CONTRIBUTED TO STARTING OF REFORMS

It could be reliably said that up until mid-70s of the 20<sup>th</sup> century there was no control over security services in most European countries, as well as the U.S.A., Canada AND Australia, by legislative and judicial authorities. Indeed, in almost all democratic countries of the time it was believed, and was so in practice, that that was the exclusive right of executive authorities.

Such services have in many countries, such as the U.S.A., Canada, Australia, Great Britain, FR Germany, France, and even SFRY, functioned based on enactments or decrees of executive authorities (most frequently of confidential character).<sup>3</sup>

For instance, the implementation of parliamentary oversight of national security services in FR Germany began in 1978,<sup>4</sup> while in most other West European countries (apart from Holland, where a kind of external oversight was introduced as early as 1952), as well as in Canada and Australia it was introduced in the 1980s, in Great Britain only in 1994.<sup>5</sup>

The end of the Cold War and the disappearance of bipolarity in international relations present a new phase in the development of control mechanisms and oversight of security services which began to be implemented in post-communist and post-conflict societies. It especially related to the countries which appeared through dissolution of the former Soviet Union. Many of them, especially those in East and South-East Europe, have reformed their intelligence and security services with encouragement and support by western democracies putting them, some of them for the first time, within legal framework under the oversight by executive, legislative and judicial authorities.

These processes brought about new dilemmas in redefining the concept of security, since they have moved security and security studies in Europe and the U.S.A. from the principal care for survival of the state (hard-line approach) to the care for economic welfare and overall prosperity and, most importantly, putting an individual in the centre of attention (soft-line

<sup>3</sup> In SFRY that was the Regulation on the work of State Security Service.

<sup>4</sup> Based on the Law on Control of Intelligence Activities and the Law on Control Bodies from April 11 1978. For more on this see: Andreja Savic, Mladen Bajagic, *World Security - From Secrecy to Public Character* (second amended and supplemented edition), College of Internal Affairs, Belgrade, 2005, p. 180-181.

<sup>5</sup> *Intelligence Service Act 1994*, Chapter 13, 10, 26, May 1994

approach).<sup>6</sup> Asymmetric threats to security, such as terrorism and organized crime, i.e. social instability, economic problems, problems regarding migrations, environmental threats, pandemics of contagious diseases and other phenomena and processes have especially contributed to actualization of the “soft-line” approach to security; in the traditional concept of “hard-line” approach to security they were not recognized as security processes and phenomena.

In most East-European countries partial reforms<sup>7</sup> were implemented in extremely difficult circumstances of post-communist transitions. Newly established political regimes and institutions, as well as democratic values and norms which corroborate them were fragile. Comprehensive and speedily implemented political changes and the performed lustration processes mainly recruited non-professional staff not able to implement the started changes. A special focus in these processes related to loyalty to post-communist authorities and animosity toward the previous regime. In many cases this resulted in a loss of institutional capacity, internal divisions in security services and deep and often non-constructive politicizations among employees. In order to ensure legal basis, legal provisions were often copied in an uncritical, unsystematical and even contradictory way, or they were unprofessionally improvised from the legislature of developed democracies.<sup>8</sup> These problems were even more aggravated by the lack of a democratic culture. A number of previous members of security services who lost their jobs found jobs in private companies dealing with security activities. These phenomena resulted in forming a parallel security sector,<sup>9</sup> which created serious problems for newly-formed services in these countries.<sup>10</sup>

Transition was in process in post-communist countries of Central and East Europe in the late 90s of the 20<sup>th</sup> century, and one of its priorities was depoliticization of political power instruments and introduction of democratic and civil control of intelligence services. At the same time the processes linked with post-conflict stabilization and reconstructions were going on in the Third World countries, where attention was turned to issues concerning functioning of the system. A joint trait of such developments is the creation of structures and mechanisms via which legitimate political authorities should be able to govern security institutions.

The terrorist attack on the U.S.A. targets from September 11 2001 may be marked as another important moment for further development and reform of security-intelligence services. Because of the terrible U.S. experience, most countries had to reorganize their security systems including intelligence services according to new security threats (terrorism and the increasing organized crime, proliferation of weapons of mass destruction, human and drug trafficking, migrations). In such circumstances, security services were granted broader powers, especially in implementation of measures, methods and procedures which are in direct collision with the proclaimed principles of human rights and freedoms.<sup>11</sup>

6 For more on this see: Richard Cohen and Michael Mihalka, *Cooperative Security - New Horizons for International Order*, George C. Marshall Center, 2005.

7 The term “Reform of the Security Sector” was first used in 1998 in the British Parliament by Clara Short, Labour MP and the Minister of Development. This concept was later elaborated by British scientists from the Royal College in London and the Bradford University (Michael Clark, Anthony Forster, Owen Green, Timothy Edmunds, Malcolm Chalmers, Dylan Hendrickson, et al.).

8 Baltic countries may be taken as an example, since they have taken over the model for full legislative solutions in the security sector from western democracies. Still, they had serious problems, since most of these solutions could not have been applied and fit into their national framework.

9 There were such examples in Bulgaria, Romania, Checkoslovakia and some countries from the former USSR.

10 This is also discussed, under para 63, in the Venice Commission’s Report, adopted at the 71<sup>st</sup> plenary meeting in Venice on June 1-2, 2007. It is available at: [http://www.venice.coe.int/docs/2007/CDL-AD\(2007\)016-e.asp](http://www.venice.coe.int/docs/2007/CDL-AD(2007)016-e.asp).

11 For instance, citizens of Switzerland, at the referendum held on September 25 2016, supported the law on eavesdropping and surveillance of electronic mail in that country, while German Bundeswehr adopted on October 21 2016, a set of laws relating to the reform of BND, and larger powers in surveillance of electronic communications, and also establishing of new control mechanisms.

Besides, many countries faced with the new forms of security threats and the fact that they cannot confront them in previous fashions were forced to start a broad exchange of operative intelligence data and information with countries from all over the world. International cooperation in the field of timely identification of potential security threats has, after the above mentioned terrorist acts, received a brand new and extremely important dimension. However, the data obtained through the cooperation with foreign partner services are subject to appropriate rules based on respect of adopted agreements and procedures on exchange of such data and information.<sup>12</sup>

If intelligence services are given too much power for acting in the interest of “ensuring peaceful and prosperous life and welfare in a certain social community”, then quite justifiably, the need arises for establishing new and even more efficient procedures and mechanisms for control of such powers.

In order to be effective, services use secret means and methods. Democracy, however, strives for transparency in performing of public offices and requires strict respect of human rights and freedoms. “Although they exist to protect security and property of citizens and their political communities, in such circumstances there is a risk for the services themselves to become a potential source of threat”.<sup>13</sup> In order to prevent this, the governing political elites establish a complex and complementary system of procedures and control mechanisms.

This is aimed at ensuring subordination of security services to civil authorities and the public interest. Such a system of democratic and civil control has today been accepted as a necessary attribute of a democratic regime. It is incorporated in constitutions of modern states<sup>14</sup>, and relies, beside own legal acts among other things, on numerous international documents.<sup>15</sup>

## IMPORTANCE OF DEMOCRATIC AND CIVIL CONTROL

Through history there were many cases of power abuse by institutions of state authorities. Most often this relates to armed forces, as the strongest instrument of power which “broke away” from control. Modern age has brought about gradual strengthening of other institutions, such as the police, and especially security services. Parallel with this strengthening, there was a threat that the said institutions may perform abuses; for instance, violent overthrowing of governments is an extreme demonstration of mingling of power instruments into state functioning. There are also other typical cases, such as influencing the political life, discrediting of internal opponents, or realization of special financial or economic benefits.

12 For instance, thus obtained data may not be passed on to other security services. Their keeping is regulated by certain laws and by-laws. In some countries parliamentary boards for control of work of services are not allowed access to such data, such as in Canada and Australia. The members of the Security Services Control Committee of the National Assembly of the Republic of Serbia, based on the Law on Bases for Regulation of Security Services, cannot “ask for data and information obtained via exchange with foreign services and international organizations” from security services. For more on this see: The Law on principles of regulation of security services of the Republic of Serbia, “Official Gazette of RS”, no. 116/07 and 72/12; Radojica Lazic, *Control of Security Services in Serbia*, National Security Academy, JP “Sluzbeni glasnik”, Beograd, 2014, pp.88-91.

13 Hans Born, *Democratic and Parliamentary Oversight of the Intelligence Services, Practices and Procedures*, Working Paper Series, no. 20, Geneva, May 2002.

14 See: Article 99, para 1, item 6 of the Constitution of the Republic of Serbia.

15 See the review of the most significant international documents on this topic in: Hans Born, Ian Leigh, *Making Intelligence Accountable: Legal Standards and Best Practice for Oversight of Intelligence Agencies*, DCAF, University of Durham, Parliament of Norway, 2005.

The dominant role of some institutions in the political system has given rise to social crises and spreading of negative phenomena such as corruption and “clientelism”.

Democratic and civil control and public oversight of governmental bodies is a prerequisite for a democratic system and functioning of market economy. The first crucial task of these mechanisms is to prevent manipulation of power instruments by political groups trying to realize their particular interests. The second crucial task is to disable potential abuses of these institutions by their members or their heads and leaders. Based on these facts, civil society and democratic state create a complex of formal relations and informal rules in order to ensure accountable and transparent functioning of the total power apparatus. In traditional democracies and countries which are in process of democratic transformation, one rule applies - mechanisms of political control and public oversight of armed forces, the police and security services, are prerequisites for an efficient state governing and for the development of a civil society.

In the past forty years one question has constantly been raised: how to establish democratic and civil control of security services. In principle, there were two main reasons for these changes.

In countries of the so-called “old” democracies (North America, West Europe, and Australia), the principal incentives for changes of security services way of work were scandals involving their abuse of powers and rights. Indeed, this served as the motive for parliamentary and judicial enquiries, which have resulted in adoption of new laws and establishing of new mechanisms for control of national security services.

The most famous investigations of illegal activity and violation of powers by security services in this period were the U.S. Congress enquiries in 1975 and 1976.<sup>16</sup> They investigated the violation of powers by U.S. security services (primarily the FBI and CIA). They resulted in forming of (previously non-existent) new control bodies both in the Senate and the House of Representatives.<sup>17</sup> The similar situation had in Canada given rise to the enquiry (1977-1981) on illegal steps of the Canadian security agency (RCPM - Royal Canadian Mounted Police), which was entrusted to McDonald's Commission.<sup>18</sup> In Australia, because of abuses and the violation of powers which were shaking this country in the 80s concerning the work of the national security service (1976-77, 1984-85), parliamentary enquiries were conducted.<sup>19</sup>

16 The Board presided by senator Church (Church's Board) tried to apply the “criminal standard” on domestic intelligence work limiting investigations by a domestic intelligence service to situations where the Law is violated or is about to be violated. The U.S.A. adopted the criminal standard after Church's Board established there had been many cases when the White House instructed the FBI to investigate U.S. President's political opponents. The report was never presented to the public. Pike's Committee (headed by senator Pike) was founded for the purpose of conducting public investigations on activities of the U.S. intelligence services relating to abuses and omissions in work. On June 19 1976, the Committee had adopted conclusions relating to omissions in the work of security services.

17 In the Senate, through the Senate Select Committee on Intelligence (founded in 1976) and the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities (founded on January 27 1975), and in the House of Representatives through the Permanent Select Committee for Intelligence Activities (founded on February 19, 1975).

18 The Commission was founded on July 6 1977. During its mandate (1977-81) the Commission made three reports: “Security and Information” (November 26 1979), “Freedom and Security according to the Law”, 2 volumes (January 23 1981), and: “Certain R.C.M.P. Activities and the Question of Governmental Knowledge” (May 15 1981). The addition to the third report was published on January 30 1984. The Commission's reports recommend obliging the police to abide by the Law, and previous judicial authorization for opening of private correspondence and mail. Its main recommendation was to remove intelligence activities from the Royal Canadian Mounted Police and to form a new civilian intelligence service. This recommendation resulted in founding of the Canadian Security-Intelligence Service at the beginning of 1984.

19 The enquiries contributed to adoption of new laws and establishing of firmer mechanisms for control of legality in actions.

These investigations resulted in adoption of new laws (Canada and Australia), dissolving of an intelligence service within RCPM (Canada), forming of new parliamentary control bodies (U.S.A., Canada, Australia) and establishing of new procedures for control of legality of operations by parliaments, governments and courts. In some countries (e.g. Canada) this process also accelerated forming of some other control institutions (independent commissioner for enquiries of security services actions), etc.

In other parts of the world this move was central and sometimes painful aspect of democratization of the previous authoritative civil and military regimes. For instance, Franco's death in 1976 had accelerated the process of democratization in Spain, which also implied demilitarization of security services. Military government in Brazil ceased to exist in 1985, while its National Intelligence Service (SNI) was within the framework of continual demilitarization process replaced only in 1990. In addition, a radical transformation of security services was performed in the South African Republic in 1993 and 1994. Since 1989, the main examples of this transition have been countries of the Warsaw Pact.<sup>20</sup>

While scandals and processes of democratization were incentives for changes in regulating operations and control of security services, the main accent in reform processes was on achieving a higher degree of legality in work. In this sense, the focus was on obtaining effective intelligence, while the general direction of changes was toward better control and increased accountability of services. Thus, a danger was avoided for them to be, as they previously were, oriented toward surveillance of political opponents.<sup>21</sup>

Democracy in this case implies civil prevalence in governing "the institutions entitled to use force" - anything less than this determines it as incomplete democracy.<sup>22</sup> But what does democratic and civil control exactly mean and how can we define it? Generally speaking, we regard the state system of democratic oversight as the product of its governing system, its politics, history and culture. Besides, since there are many different cultures and political systems, there are also many different norms and practices of democratic control. "Accordingly, be it good or bad, there is not just one normative model of democratic oversight. There are several models, of which some seem to contradict others."<sup>23</sup> Bearing this in mind, a question arises quite justifiably: how can the democratic and civil control be defined in term and in substance?

## DEFINITION OF TERMS "CONTROL" AND "OVERSIGHT"

In the last 20ish years a lot of literature has appeared on democratic and civil control of intelligence services with many different approaches and interpretations in defining of terms, which indicate the role of governmental and non-governmental actors in intelligence services activities, and thus establishing of democratic and civil control. All these concepts, no matter

<sup>20</sup> The Warsaw Treaty or the Warsaw Pact, officially named the Treaty on Friendship, Cooperation and Mutual Assistance, was a military organization of Central European and East European socialist countries. It was established on May 14 1955 to fend a potential NATO (created in April 1949) attack. Creation of the Warsaw Treaty was caused by inclusion of the again armed West Germany in NATO according to the Paris Pact. It was officially dissolved in July 1991. Its members were: USSR, Bulgaria, Romania, Hungary, Poland, Czechoslovakia, Albania (left in 1968), and DR Germany (left in 1990).

<sup>21</sup> See about this in: Piter Gill, *Democratic and Parliamentary Accountability of Intelligence Services after September 11*, Geneva Centre for the Democratic Control of Armed Forces (DCAF), Working Paper No. 103, Geneva, 2003.

<sup>22</sup> See: Edward N. Lutwak, *From Vietnam to Desert Fox: Civil-Military Relations in Modern Democracies*, Survival, volume 41, 1999, no. 1, p. 99.

<sup>23</sup> See: Hans Born, *Democratic Oversight of the Security Sector: What Does it Mean?* DCAF, Working Paper no. 9, Geneva, April 2002, p. 1.

how different, contain the syntagm “democratic and civil” and relate to democratic and civil control of operations of the security sector, and thus the intelligence services.

Control in the broadest sense implies assessment of achieved results. In a narrow sense, control implies special activity of secret monitoring of realization of set tasks, and comparison of realized results with the set goal with a possibility of correction in case of deviation. Based on this, we can say that control presents a permanent activity of monitoring and assessing the work of others. With regard to control, the term oversight imposes in practice and presents a synonym for the term control, but these two terms are quite often used with different meanings.

The term *oversight* is most often defined as: supervision, taking care of someone or something, service and taking care of preserving of order, laws, performing of jobs, etc. In English language several terms are used for designating oversight - *supervision, custody, care*, but also the terms *control* and *inspection*.<sup>24</sup> In French language, several terms are also used for designating oversight - *surveillance, garde, controle, gardiennage, inspection*.<sup>25</sup>

Both oversight and control imply subordination of their executors. Both phenomena have a certain object and include influence of the supervisory, control body on the person under oversight, i.e. control.

In our theory and practice there is no unique stance which of these two terms is more correct for use. Because of that, quite understandably, it is acceptable to use both.

## INTERNATIONAL STANDARDS FOR DEMOCRATIC AND CIVIL CONTROL

Most countries from the area of East and South-East Europe started transition processes without having either democratic or social or politically established tradition of democratic and civil control of the security sector.<sup>26</sup> For this reason there were no sufficient or quite clear legal presumptions for reform of security services, of which democratic and civil control was just one but essential component. If we take into consideration the international law, it has not offered a lot either with regard to providing and defining of principal guidelines for defining and establishing of new mechanisms.

The earlier documents of the international character, starting from the UN Charter, the Council of Europe’s documents, the OSCE, as well as numerous international agreements and various conventions do not mention democratic and civil control at all. True, the first such political document was adopted at the meeting of the OSCE member countries in Budapest on December 3 1994, entitled “The Code of Conduct of Politico-Military Aspects of Security”.<sup>27</sup>

24 According to the dictionary of legal terms, *supervision* has three meanings: oversight, superintendence, monitoring, the term *custody* also has three meanings; safekeeping, guardianship and superintendence, while the term *care* designates safekeeping, observation and caring.

25 According to the dictionary of legal terms, *surveillance* has three meanings: custody, oversight, superintendence, the term *garde* also has several meanings: safekeeping, guardianship, superintendence, care; while the term *gardiennage* has two meanings: safekeeping and superintendence.

26 See: Valery Zorkin, “European Commission for Democracy through Law (Venice Commission)”, *Comments on Democratic Oversight of Special Services in Eastern Europe, Strasbourg*, May 10 2007, Study no. 388/2006.

27 The document is political and binding for all member countries and its goal is, as stated in Chapter 7, para 21, that “at all times it ensures and maintains efficient leadership and control of its military, paramilitary and security forces, based on the constitutionally established bodies of authority which have a democratic legitimacy” and points out that “all participant countries are obliged to establish control mechanisms which shall ensure that the bodies of authority are fulfilling their constitutional and legal obligations”, and that “they (the states) shall clearly define roles and tasks of these forces and their obligation to act exclusively within the framework of the constitution”.

This document emphasizes the importance of establishing democratic and civil control over all institutions entitled by the law to use force and requires the member states to “consider democratic political control of military, paramilitary and internal security forces, as well as intelligence services and the police, as a necessary element of stability and security”.

At the time when interest for democratic and civil control of security services started to increase, there was no universal theoretical model for this. A multitude of literature on this topic appeared around the world in this period. At various gatherings, scientists and practitioners were trying to define the key actors, mechanisms and procedures for establishing civil control.

In theoretical sense, according to some researchers, the idea originates as early as from ancient Greek classical philosophers and the famous Plato’s question: “But who will guard the guardians?”. An important starting point could be in the study “The Soldier and the State” (1957) by Samuel Huntington,<sup>28</sup> who introduces division on subjective and objective civil control. General Karl von Clausewitz, in his famous work “On War”, gave a theoretical explanation of civil control, i.e. that “a soldier must accept the standpoint that politics is a ‘representative of all interests of the total society’ and must obey it as such”.

Moreover, the most important international institutions, such as “the Organization for Economic Cooperation and Development (OECD)<sup>29</sup>, United Nations Development Program (UNDP), Organization for Security and Cooperation in Europe (OSCE), Parliamentary Assembly of the Council of Europe (PACE) and Inter-parliamentary Union (IPU), expressively and without exception, believe that intelligence services must be subject to democratic principles of accountability checks”.<sup>30</sup>

Parliamentary Assembly of the Council of Europe got involved in establishing of legal standards in this field adopted in April 1999, an important Recommendation on Control of Internal Security Services in the Council of Europe’s member-countries.<sup>31</sup> This document states that “internal security services must follow the European convention on human rights and basic freedoms”, and that “each deviation of operative activities of security services from the Convention must be approved by the law”. In this sense, there is a clear recommendation that “legislative authorities must adopt clear and comprehensive legal norms which set internal security services within the legal framework”.

In February 2003, this institution had adopted the Proposal for Recommendation on Democratic Oversight of the Security Sector in the Council of Europe’s Member-Countries;<sup>32</sup> and finally, it adopted the Recommendation on Democratic Oversight of the Security Sector in the Council of Europe’s Member-Countries at the meeting in June 2005.<sup>33</sup> In addition, the European Commission for Democracy through Law (better known as the Venice Commission) adopted the Report on Democratic Oversight of Security Services in June 2007.<sup>34</sup>

<sup>28</sup> This study was translated and published in Belgrade in 2004, under the title: *A Soldier and the State - Theory and Politics of Civil-Military Relations*, by the Center for Studies of South-East Europe, Faculty of Political Sciences and the Diplomatic Academy of the Ministry of Internal Affairs.

<sup>29</sup> Guidelines and instructions by the Development Assistance Committee (DAC) titled “Security System Reform and Governance” from 2004 state: “Security system should be governed by following the same principles of accountability and transparency valid in the whole public sector, especially with greater civil control of security procedures”.

<sup>30</sup> See: Hans Born, Ian Leigh, *Making Intelligence Accountable: Legal Standards and Best Practice for Oversight of Intelligence Agencies*, op. cit., p.13.

<sup>31</sup> See: Parliamentary Assembly of the Council of Europe, doc. 1402 from April 26, 1999.

<sup>32</sup> See: Parliamentary Assembly of the Council of Europe, doc. 1712 from February 13, 2003 - Proposal for Recommendation.

<sup>33</sup> See: 23rd meeting of the Parliamentary Assembly of the Council of Europe, doc. 1713 from June 23, 2005.

<sup>34</sup> The Report was adopted at the 71<sup>st</sup> plenary meeting of the Venice Commission in Venice on June 1-2, 2007. The text is available on: [http://www.venice.coe.int/docs/2007/CDL-AD\(2007\)016-e.asp](http://www.venice.coe.int/docs/2007/CDL-AD(2007)016-e.asp).

## PRINCIPLES OF DEMOCRATIC AND CIVIL CONTROL AND GOOD GOVERNANCE OF SECURITY SERVICES

As said previously, democratic and civil control of activities of national security services derives from the principles of respect of the rule of Law, based on the principles of constitutionality and legality.

The principle of constitutionality and legality is one of the basic principles based on which all forms of control mechanisms for security services function. States are organized on the principles of the rule of law. That is why behaviour of all subjects in performing of state authority is based on the constitution and the laws.

Legal framework for such control is provided in the Constitution of the Republic of Serbia as well (Article 99, para 1, item 6),<sup>35</sup> while special guarantees are contained (according to internationally adopted standards) in the provisions on human and minority rights and freedoms<sup>36</sup> and on organization of power.

Control and oversight of security services in the Republic of Serbia are implemented by parliamentary, executive and judicial authorities, but also by independent governmental bodies (Commissioner for Information of Public Importance and Personal Data Protection, Ombudsman, State Audit Institution, general inspectorates, budget inspections, etc.). Internal control of the legality of operations within the services is performed by internal bodies (security protection of employees, internal auditors and budgetary controllers, and the general inspector, in case of military services).

Special forms of control are realized by institutions of civic society (expert teams, non-governmental organizations, citizens associations, etc.) and the public.

Established control and oversight of security services operations may also be characterized as the prerequisite for “good governance”<sup>37</sup> for the rule of law. Today, it is defined as democratic and civil control of the security sector.

Good governance of security services relies on several factors of which the most important one is: efficient directions by executive authorities enabling a high degree of independence and operative independence in work in order to avoid potential politicization. Besides, “it relies on high professional standards and the awareness of their members that they should act within the framework of national interests, the rule of law and the highest democratic values and standards”<sup>38</sup>

Apart from this, functioning of democratic and civil control over security services is realized by following these principles: subordination and accountability of security services to elected authorities; impartiality; political and interest neutrality; obligation of security services to inform the public on performance of their tasks; obligation of controllers to inform the public on results of controls; professional responsibility and operative independence of members of security services in performance of set tasks; accountability of managers of services for the work of services; as well as competency, purposefulness and opportuneness of all types of control, etc.

35 According to which the National Assembly of the Republic of Serbia “oversees the work of security services”.

36 “Universal Declaration on Human Rights” was adopted and proclaimed by the Resolution 217 (III) from December 10 1948, of the UN General Assembly; the European Convention for Protection of Human Rights and Basic Freedoms, adopted by the Council of Europe in Rome on November 4, 1950, which came into effect on September 3, 1953, and “Framework Convention for Protection of National Minorities” adopted at the Ministers Committee of the Council of Europe on November 10 1994 in Strasbourg.

37 World Bank, *Management: World Bank's Experience*, Washington, 1994.

38 See: Radojica Lazic, *Control of Security Services*, National Security Academy, JP “Sluzbeni glasnik”, *op.cit.*, p. 34.

## CONCLUSION

Democratic and civil control presents the key prerequisite in reforms of security services. It requires constant vigilance of numerous actors at the state level among the citizens and non-governmental institutions, as well.

Certain states or phases in the achieved level of democratic and civil control cannot be measured exactly, but can be described and analyzed. The question is if describing is proper, what is it based on, which facts were used and how were they collected and analyzed. The procedure is even more complex because in this type of research it is very difficult (i.e. almost impossible) to obtain exact data. In a way it is understandable, because this relates to the most sensitive part of states administrative apparatuses whose job is to work in secret.

A paradox of its kind is the strive to achieve a greater degree of transparency in security services as traditionally closed bodies, and also in the degree of professional discretion which is required by intelligence work in order for it to be efficient. Anyway, values and norms which are fundamental for democratic systems require security services to be subject to accountability, as well as to democratic and civil control in performing of security tasks.

Governmental institutions, such as legislative, executive and judicial authorities, and independent bodies play the formal and essential role in democratic and civil control of activities of security services. They can be limited in this because of generally accepted political conditions, lack of independence or inclination of some actors toward executive powers. This informal role is played by civic society organizations and the public.

There is no generally accepted international legal document or model for establishing of democratic and civil control. Although most important international organizations and institutions (UN, OSCE, Council of Europe, European Court for Human Rights) paid special attention to this issues and gave certain recommendations.

Significant European and world researchers dealing with this topic (like Hans Born, Peter Gill, Heiner Hanngi, Marina Caparini) point out that for control and oversight over security services it is necessary to find an appropriate model which would be applicable in the given country, with full respect of generally acceptable standards and principles, especially those relating to the guaranteed human rights and freedoms.

Hence, it is necessary to plan the recommendation that apart from a well founded and clear legal solution, so it could be successfully applied in practice. When adopting any legal act, this fact must be taken into account. If this is given greater attention, among other things, realization of democratic and civil control of security services shall have a greater effect.

Besides, regardless of the importance of adoption of a valid and applicable legal solution if there is no will for its implementation, there shall be no progress.

Thus, the normative and the real must permeate and have a very important link between them. Without that there shall be no democratic or civil control. Good laws and other legal norms are as good as they are applicable in practice.

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