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PARLIAMENTARY OVERSIGHT OF THE SECURITY AND
DEFENSE SECTOR IN MONTENEGRO

What next?

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Introduction

The aim of this paper is to present the key provisions of the applicable legal regulations, strategic and other documents relating to the work of institutions that belong to the defense and security sector in Montenegro. Furthermore, to present recommendations for improving the applicable legal and institutional framework and to encourage public and professional debate.

With this analysis, Institute Alternative wants to contribute to the development of democratic and civilian control of the security sector, provide a contribution to the work of the competent Committee and legislators whose work relates to legislation and policy in the area of defense and security.

This analysis does not have the ambition to provide a comprehensive overview of the practice of democratic and civilian control of defense and security sector, but to draw attention to key issues, problems and dilemmas that occur as a result of the existing legal framework and practice.

The methodology of the work included analysis of legal regulations, comparative analysis of the solutions from the existing legislation and that in parliamentary procedure, collecting official documents through requests for free access to information, interviews with members of the Montenegrin Parliament's Committee for Defense and Security.

This document addresses responsible persons in the Public Administration that have jurisdiction in the affairs of defense and security, members of the Committee for Defense and Security along with all MPs and interested international, governmental and non-governmental organizations and media.

We expect this analysis to encourage a more competent and intense public and professional debate concerning an important issue for further development of democracy and human rights, accountability and transparency of public institutions.

This analysis represents an introduction into the further work of Institute Alternative on specific issues of defense and security sector oversight.

1 Legal and institutional framework

In a democracy, the representatives of the people hold the supreme power and no sector of the state should be excluded from their control. A state without parliamentary control of its security sector, especially the military, should, at best, be deemed an unfinished democracy or a democracy in the making. As the security sector deals with one of the state's core tasks, a system of checks and balances is needed to counterbalance the executive's power. Parliamentary oversight of the security sector is thus an essential element of power-sharing at state level and, if effective, sets limits on the power of the executive or president. One of the parliament's most important mechanisms for controlling the executive is the budget. As security sector organizations use a substantial share of the state's budget, it remains essential that parliament monitor the use of the state's scarce resources both effectively and efficiently.¹ However, although the parliamentary oversight of security sector mainly takes place through the control of the way in which security sector consumes the allocated funds, control over methods and procedures used by the institutions of the security sector applied in their work. Long-term goal of the security sector - protection of the individual and society from harm and conflicts - can be achieved only if the security sector itself is under a watchful democratic control. In the broadest sense, this means that the army, police and intelligence services must be supervised by democratically elected bodies.

Parliamentary control of the security sector in Montenegro is in principle regulated by the Constitution and further by the Parliament's Rules of Procedure, Law on Army, Law on National Security Agency, Police Act, Law on Prevention of Money Laundering and Counter Terrorism Financing as well as the Law on Classified Data. Currently, the Law on Parliamentary Oversight of the Security Sector is in the parliamentary procedure. According to the bill of this Law, the subjects of parliamentary oversight are Ministry of Defense, Army of Montenegro, Ministry of Internal Affairs and Public Administration, ANB, Police Directorate, as well as "other organizations and agencies that operate independently or as part of other ministries and are engaged in security and defense affairs".

The Constitution of Montenegro prescribes that the Parliament of Montenegro "adopts national security strategy, defense strategy and supervises the Army and security services" along with the line that "the Army is under democratic and civilian control".² According to the Constitution of Montenegro, "the Council for Defense and Security makes decisions concerning command over the Army of Montenegro, analyzes and evaluates the security situation in Montenegro and decides on taking appropriate measures, appoints, promotes and dismisses officers of the Army, proposes declaration of war and the state of emergency to the Parliament, proposes the participation of Army in the international forces and performs other duties stipulated by the Constitution or the laws".³ The Council consists of President of Montenegro, Speaker of the Parliament and Prime Minister. President of Montenegro is also the President of the Council for Defense and Security.

Montenegrin Parliament's Rules of Procedure stipulate that the Committee for Security and Defense "shall perform parliamentary control of the Police and ANB, discuss realization of constitutionally granted rights and freedoms of man and citizen in the application of Police and ANB competencies, discuss proposed laws, regulations, general acts, strategies and other issues in the field of security and defense, considers proposals for the appointment of heads of Police and ANB. In the exercise of the oversight function within its jurisdiction, the Committee acts in the manner prescribed by the Law on Police and Law on ANB."

¹ <http://www.dcaf.ch/publications/kms/details.cfm?lng=en&id=25289&nav1=5>

² Article 129 of the Constitution of Montenegro.

³ Article 130 of the Constitution of Montenegro.

Law on Army⁴ prescribed that the Army is under democratic and civilian control. Democratic and civilian control of the Army is carried out by the Parliament of Montenegro, the Montenegrin Government and the Council for Defense and Security. Supervision of the Army by the Parliament is done through the competent working body. Annual report on the overall situation in the Army is submitted by the Minister to the competent working body of the Parliament of Montenegro by the end of the first quarter of the year for the previous one. At the request of the competent working body, the Minister submits a special report on the situation in the Army. Minister, in addition to the annual report on the overall situation in the Army, submits special reports at the request of the Council for Defense and Security.

Law on ANB prescribes that the "parliamentary control of the Agency's work shall be conducted by the Parliament, through a competent working body. The Agency shall submit an annual report on its work to the competent working body. The Agency shall also, upon the request of the working body submit special reports on specific activities within its scope of work. The Agency shall, upon the request of the working body allow for the inspection of surveillance of mail deliveries and other means of communication, unless the national security would be threatened thereby. The Agency may not disclose data on the identity of the Agency's associates, undercover officers and other persons to whom the disclosure of such data may inflict any damage, as well as on any security and intelligence sources and actions underway".⁵ Law on ANB has prescribed certain limitations for the members of the Parliamentary Committee. The same law prescribes the rules of procedure of the Parliamentary Committee for defense and security, by stating that the "Sessions of the competent working body are closed for the public. President of the competent working body shall inform the public on its activities in accordance with decisions of that body. The working body in charge of parliamentary control shall submit a report on its activities to the Parliament, at least once a year. The Parliament may decide to hold its session without attendance of the public, if necessitated so by the contents of the report."⁶

Police Act determines that parliamentary control of the police work is conducted by the Parliament of Montenegro, through its competent working body. Head of the Police Directorate submits a report on the work of the police at least once a year to the Parliamentary Committee. The report may be submitted when needed or at the request of the Committee. The Police can not provide Committee with the information concerning the identity of the associates of the Police, police officers with concealed identity, other persons to whom disclosure of such information could do harm, security and intelligence sources, actions that are underway.⁷

Parliament of Montenegro has a certain role in the process of appointing heads of ANB and Police Directorate. The proposal for appointing Head of ANB is submitted for assessment to the Parliament by the Government. The Parliament, after debate in the Committee for Defense and Security, gives an opinion. Work of the Police Directorate is governed by the Head of the Police. He is appointed and dismissed by the Government of Montenegro, at the proposal of the Minister of Internal Affairs. The proposal for the appointment is then submitted to the Parliament for assessment. The Parliament, after debate in the Committee for Defense and Security gives its opinion concerning the proposed candidate.

Law on Prevention of Money Laundering and Counter Terrorism Financing established Competencies of the Administration for prevention of money laundering and counter terrorism financing. Administration has the authority to submit the initiative to amend the regulations relating to the prevention of money laundering and terrorism financing. It prepares and incorporates

⁴ Official Gazette of Montenegro, No. 47-07, entered into force in August 14, 2007.

⁵ Article 43 of the Law on ANB.

⁶ Articles 45 and 46 of the Law on ANB.

⁷ Article 92 of the Police Act.

indicators to identify a list of clients and transactions for which there are grounds for suspicion that money laundering and terrorism financing is taking place, which are then submitted to those who have obligations stipulated by law, participate in training and professional specialization of authorized persons employed by the taxpayers and state institutions; initiates publication of the list of countries that do not apply to the standards in the field of prevention and detection of money laundering and terrorism financing; prepares and issues recommendations and guidelines for uniform implementation of the laws and bylaws; publishes statistical data in the field of money laundering and counter terrorism financing at least once a year and informs the public about the forms of money laundering and terrorism financing using other mediums. The Administration is obliged to submit the available data, information and documentation from the persons and transaction evidence records and other data collected through international cooperation, which the court or prosecutors need during the legal proceedings.

Under current legislation, the Administration for prevention of money laundering and counter terrorism financing is not among the bodies that are subjected to the parliamentary oversight.

Amendments to the **Law on Classified Data**⁸ adopted in December 2009 provide that "access to classified information without a special permission is granted to President of Montenegro, Speaker of the Parliament, Prime Minister, Minister of Interior Affairs, Minister of Foreign Affairs, Minister of Finance, Minister of Economy, Minister of Defense, State Prosecutor, President of the Supreme Court and members of the Committee for Security and Defense. These persons only have access to classified information required for exercise of their competencies, in accordance with the law. When coming into office, they sign a statement that they will comply with the Law and relevant regulations when dealing with classified information."⁹

The basic text of the Law adopted in February 2008 did not provided the members of the Committee for Defense and Security the access to classified information, which was an obstacle to the participation of opposition MPs and regular functioning of the Committee.¹⁰

Through the proposal of opposition MPs backed by representatives of SDP, amendments to the Law on Classified Data were adopted that enabled this right to the members of the Committee on Security and Defense as well. Legal and practical problems caused by the adoption this law, which limited to the right of access to Committee members represents a negative example that blocked the work of the Committee, increased gap between parliamentary majority and minority and slowed the progress in developing supervisory functions of Parliament.

⁸ Official Gazette of Montenegro, No. 014/08-7

⁹ Article 26 of the Law on Classified Data

¹⁰ The members of the Committee were required to submit documentation to prove that they are Montenegrin citizens, that they are capable of work (document from the Social Work Center), that they are over 18 years old, (or 21 in order to access information classified as 'top secret'), to prove that they have not been issued a ban on performing work activities as well as insurance of their health condition. Furthermore, the members of the Committee had to pass ANB security check.

2 New legislation on defense and army

Parliament of Montenegro at the end of December 2009 adopted two legal texts in the field of security and defense - Law on Defense¹¹ and the Law on Amendments to the Law on Army.

These laws were adopted after nearly a year of intense political debate between the ruling and opposition parties, after the Government withdrew the proposals from December 2008, and proposed new versions during 2009. In the course of the parliamentary debate, these versions were modified as well, at the insistence of the opposition MPs and representatives of the ruling SDP.

Key dilemmas and arguments were related to the definition of intelligence, counterintelligence and security operations, their organization and supervision of their implementation.

According to the adopted Law on Defense, intelligence and counterintelligence operations are in the domain of ANB¹², while the security operations remain the responsibility of the Ministry of Defense.

Namely, the Law provides that the intelligence and counterintelligence operations in the area of defense are organized within ANB and carried out in the manner prescribed by the Law on ANB and by-laws for its implementation. Analytically processed data related to the defense will be submitted to the Minister by the Head of ANB, through reports and situational assessments. Head of ANB will provide the Chief of General Staff of Montenegrin Army with the same, if it includes information relating to army.

However, the Law does not precisely define the intelligence and counterintelligence operations, but leaves allows the Ministry to determine the way of performing them as well as the types of file records, the manner of their establishment and running, with the consent of the Government.¹³

When it comes to security operations in the are of defense, the adopted Law on Defense defines them to be related to collecting data on crimes with elements of organized crime directed against the Ministry and the Army or when the perpetrator of these acts is an employee of the Ministry or the Army; the security protection of the Ministry, Army, Directorate for the protection of classified information and facilities and areas used by the Ministry and the Army; security protection of the Minister, the Chief of General Staff and the senior persons in the Ministry; the exercise of security

¹¹ Official Gazette of Montenegro, No. 47-07, 86-09, 88-09.

¹² Competencies of ANB, granted by the Law on ANB, include: collecting data and information on potential threats, plans or intentions of organizations, groups or individuals the activities of which are aimed against the territorial integrity, security and the established order guaranteed by the Constitution of Montenegro, collecting data of relevance for the national security, collecting data on the activities of organizations, groups and individuals aimed at performing acts of national and international terrorism, organized crime and serious crimes against humanity and international law, analyzing, appraising, using, recording and storing collected data and information, providing security and counterintelligence protection of the Parliament, Government, President of Montenegro and other state authorities, ministries and state administration bodies, organizing and coordinating implementation of measures for safeguarding secret information and compliance with security standards applicable to dissemination of such information, protecting collected data and information from unauthorized disclosure, disposal, alteration, use or destruction, and performing other activities of interest for the security of Montenegro, in accordance with law.

¹³ The bill of the Law on Amendments to the Law on Defense in December 2008 stipulated that the intelligence and counterintelligence operations in the defense area include collecting, documenting and analyzing information and data that are of importance for the defense interests of Montenegro, as well as their recording and preservation. Particularly monitoring and evaluation of military and security situation in other countries, as well as the military capabilities of these states, collecting and assessing data on the situation in the territory where the Army carries out tasks within the international forces, as well as detecting, investigating and documenting the activities of foreign intelligence services and other foreign organizations and persons directed against the security of the Ministry or the Army.

checks for admission to work, training and deployment to specific tasks or duties in the Ministry and the Army as well as the professional guidance of the Military Police.

Representatives of the Government have rejected the SDP amendment which stipulated that Minister of Defense should accompany the annual report on the overall situation in the Army report with a part on security operations, which will be performed at the Department for military and security affairs. Another SDP amendment which prescribed that the Army will be a subject of parliamentary oversight through a special working body was accepted. This resolved a previous dilemma initiated by the Government which proposed that the Parliament of Montenegro should oversee the Army through the Council for Defense and Security, to whom the Minister of Defense submits annual and special reports on the overall situation in the Army.

3 Strategic documents

Basic documents relating to defense under the Law on Defense are:

- National Security Strategy of Montenegro,
- Defense Strategy of Montenegro,
- Strategic Defense Review of Montenegro and
- Defense Plan of Montenegro.

National Security Strategy of Montenegro is a document which defines development and functioning of the system of national security of Montenegro, while Defense Strategy defines the most important issues in the field of functioning and development of the defense system. Strategic Defense Review is a basic program document that defines medium-term defense planning, efficient management of defense resources, transparency of the defense affairs, setting up of the preconditions for democratic and civilian control as well as professionalization and effectiveness of the Army in carrying out assigned missions and tasks.¹⁴ Defense Plan is a set of documents which plan preparations for achievement of defense goals.

All of these strategic documents is characteristic the emphasis the need for democratic control of armed forces and security sector in general. Besides the aforementioned, the need for control of the security sector in particular is stressed by the National Program for Integration of Montenegro into the EU, the Innovated European Partnership as well as NATO Presentation document.

The current National Security Strategy¹⁵ lists "strengthening democracy, rule of law, full protection of human and minority rights" as well as "strengthening transparency of the defense sector and civilian control of armed forces", as security interests and goals of Montenegro. "Montenegro gives particular importance to the role of civil society, civil-military and civil-police cooperation in the field of security, as well as the development of civil society and institutions of the national security system." It also states that "Montenegro is developing functionally integrated system of national security, which, inter alia, provides transparent operation of all elements of the system." The same document, in the chapter entitled "Structure of the system of national security," it is stated that the "security forces are under parliamentary and democratic oversight and civilian control".

Defense Strategy of Montenegro¹⁶ lists transparency as one of the principles in the functioning of defense system, which means openness in the affairs and activities that are implemented in the defense system. Furthermore, the part entitled "Transparency and control in defense planning and funding" states that transparency in defense planning and funding is achieved "in the procedure of nominating, preparing and budgeting, showing the goals, programs and tasks that require adequate financial resources, as well as in the process of execution and reporting of executed expenditures according to purpose for which these costs were approved". The strategy provides that "the control over the funds used to finance defense, as an important form of democratic and civilian control of the defense system, is done by a competent working body of the Montenegrin Parliament, as well as other bodies in accordance with the law."

Presentation document of Montenegro, which was adopted at a meeting of the Council for Partnership for Peace, provides that Montenegro among other facilities, wants to implement and develop a system of democratic control of armed forces within the PfP framework. The same

¹⁴ Article 4, Line 4, Law on Amendments to the Law on Defense

¹⁵ Official Gazette of Montenegro, No. 75-08, Adopted in the Parliament of Montenegro on 27/11/2008

¹⁶ Official Gazette of Montenegro, 79/08-29, Adopted by the Government of Montenegro on 14/06/2007

document identifies "democratic control of armed forces" as one of priorities in the fields of cooperation and states that "the adoption of the new Constitution and the laws regulating the system of defense of Montenegro will regulate the jurisdiction over the armed forces and their democratic control in a new way. At this level, we want to continue cooperation with NATO, DCAF and other international organizations."

National Program for Integration of Montenegro into the EU (NPI) for the period 2008-2012 in the part entitled "Reform of the security sector", among other things, states that the "practice of regular direct reporting to the Parliament through annual reports by the Minister of Defense, as well as visits to the Ministry of Defense and Army units by the MPs" is established. The NPI also states that during the process of implementing international standards, the decision on disbanding the former military intelligence and military security service was adopted. Developing mechanisms for more efficient and quality cooperation with the Parliament is set as a medium-term priority. NPI correctly notes that ANB was formed as an 'institution sui generis' in the system of Montenegrin public administration.

Innovated European Partnership prescribes as one of the medium-term priorities the need to "continue with the process of restructuring and reforming the armed forces, including, if possible, reduction (taking into account the social impact), the conversion and privatization of military goods and defense industries as well as increasing transparency and civil control".

4 The work of the Committee for Defense and Security

Committee for Defense and Security is one of the standing committees of the Montenegrin Parliament. Under the Parliament's Rules of Procedure, its number of members is determined during the process of MPs election into the Committee. In the current assemblage the Committee has 13 members¹⁷, of which five are from the ranks of opposition. Chairman of the Committee in both the previous and the current assemblage was an MP from the ruling DPS. The same person performed the function in both cases, after serving as Minister of Education, MP and Vice President of the Parliament.

Vice President of the Committee in the previous assemblage was a representative of PzP, at the time the strongest parliamentary opposition party, while in the current composition that function was taken by the representative of NSD, the second strongest opposition party in the Parliament of Montenegro.¹⁸

In both previous and current assemblage, there were no women among Committee members.

Committee in its 23rd assemblage held 28 sessions. It reviewed a series of proposed legal acts¹⁹ and reports on the work of the Ministry of Defense, the Police Directorate and ANB. Committee members have once visited the Police Directorate, ANB and Ministry of Defense. Those were the first and protocolary visits to these institutions. In the new 24th assemblage, the Committee for Security and Defense held a 11 sessions.

According to the data from the Committee, representatives of the Ministry of Defense appeared eight times before the committee, representatives of the Police Directorate and the Ministry of Internal Affairs and Public Administration five times, while representatives of ANB appeared twice before the Committee in 2008.²⁰

According to Institute Alternative's findings, in 2009 representatives of the Ministry of Defense appeared four times before the Committee, representatives of Police Directorate also four times, while the representatives of the Ministry of Internal Affairs and Public Administration and representatives of ANB's appeared twice before the Committee.

4.1 Work related issues

Content, structure and the type of information provided to the Committee by the institutions from the sector of defense and security are not defined. All legal acts that deal with the reports submitted to the Committee do not contain specific regulations concerning this issue, nor are there any by-laws that treat it in detail. That way, the Committee is dependent on decisions and will of those whose reports it reviews, in terms of information that are to be communicated to it in this way. During the parliamentary debate in December 2009 concerning the proposal of the Law on Army,

¹⁷ Dragan Kujović (DPS), Fahrudin Hadrović (DPS), Radivoje Nikčević (DPS), Tarzan Milošević (DPS), Obrad - Mišo Stanišić (DPS), Aleksandar Bogdanović (DPS), Borislav Banović (SDP), Raško Konjević (SDP), Vasilije Lalošević (SNP), Predrag Bulatović (SNP), Goran Danilović (NSD), Nebojša Medojević (PzP) and Mehmet Bardhi (DUA).

¹⁸ Goran Danilović from NSD resigned the post of Vice President of the Committee in 11/12/2009 because he was denied access to ANB data concerning the deportation of Muslim Bosniacs in 1992, as well as regarding the burning of the archives and library of the Morača Monastery.

¹⁹ Law on Army of Montenegro, Law on Amendments to the Law on Defense, Budget Act for 2009 in part related to the Ministry of Defense, Ministry of Internal Affairs and Public Administration and Police Directorate, Amendments to the Law on Defense, Defense Strategy, Law on Foreign Trade in Weapons, Military Equipment and Dual-Use Goods.

²⁰ NDI, Findings: Montenegrin governing system in law and practice

Ministry of Defense refused SDP amendment that stipulated the obligation to specifically treat security tasks in the reports of the Ministry.

Minutes from the sessions of the Committee are available to public. Rules of Procedure stipulate that "minute contains basic information about the meeting, issues discussed, outlined stances and attitudes, and adopted opinions and suggestions of the committee".

Web site of the Parliament contains reports and convocations from the session of the Committee. However, the reports are terse and do not contain information about stances that were presented at the meeting, but only the conclusions that were passed by majority vote, with no separate opinions or individual arguments of the minority members. The Rules of the Procedure provide that "upon request by a Committee member who singled out his opinion, the report of the Committee must note such action. There is no data on how individual Committee members voted on certain issues.

4.2 Examples of the Committee for Security and Defense

Hereinafter, an overview of some decisions and opinions of the Committee as presented in official reports from the sessions will be given.

At a session held on 18 December 2009, Committee for Security and Defense considered proposal of the Minister of Internal Affairs and Public Administration in the Government of Montenegro, on re-appointing Veselin Veljović as the Head of the Police Directorate.

On the basis of Minister of Internal Affairs and Public Administration's arguments, the results achieved in the previous period and the status the Police Directorate has in the local and regional public, a majority decided to send an opinion with a proposal that Veljović is to be re-appointed for another mandate as the Head of Police Directorate.

Functioning of the Department for security affairs, communications and crypto-protection of the Ministry of Defense, where nineteen workplaces were systematized, was deemed as 'phantom' by the President of PzP and Committee member Nebojša Medojević. He argued that this department is performing data collecting tasks without any legal grounds. There was an initiative for control hearing of the Minister of Defense concerning this issue, but the ruling majority in the Committee for Defense and Security rejected that proposal. Meanwhile, the Minister of Defense rejected allegations of the Department's of illegal activities, during the session of the Committee when the annual report on the work of the Ministry was presented.

In December of 2009, the Committee conducted a control hearing of the Head of ANB concerning allegations and charges imposed by retired police inspector Slobodan Pejović, who claimed his life was threatened by high ranking ANB officers who are planning his assassination. The Committee was informed by the Head of ANB that there was no basis for Pejović's claims that ANB is preparing his assassination. The Committee urged the citizen Pejović to present his findings to the institutions he trust can protect him, and appealed competent state bodies for more efficient engagement in resolving this issue that has its own political and other significance in Montenegrin and international public. They also emphasized the need for enforcement of protection measures for Slobodan Pejović and reminded him of his civic duty to accept them.

The Committee, with the participation of the Head of ANB, reviewed the Report of ANB for 2008.²¹ After discussion, the Committee concluded that ANB performed its activities in accordance

²¹ December 11, 2009

with law and jurisdictions that belong to it. Furthermore, they concluded that the high level of international credibility of ANB and the security of the citizens are confirmation of their evaluation of ANB and its work.

In November 2009, the Committee for Security and Defense reviewed the Report of the Ministry of Defense for 2008. Afterwards, the conclusions and remarks, which say that the Ministry has presented its work in 2008 in a comprehensive manner, along with data on the overall situation in the Army of Montenegro, were submitted to the Parliament. On the basis of the report, the Committee concluded that the continued success has been made in all relevant areas and in the reform process of defense and the Army of Montenegro.

In July 2009, Committee expressed support for the work of the Police Directorate by a majority vote, which was introduced through the Annual Report for 2008. Security situation in 2008 has been rated as "favorable as a result of organized efforts and professional relation of the police toward their duties and responsibilities as well as to general relations of the agencies, institutions and citizens toward this issue. The Committee concluded that the police should place a special emphasis on prevention activities concerning organized crime and crimes that occur as a violation of the ban on carrying weapons. Special attention should also be paid to the planned actions for combating drug trafficking, comprehensive and long-term action to improve conditions in the field of transport safety and to the fact that 5,2% of all crime perpetrators are juveniles."

Committee on Security and Defense discussed the draft Budget Act of Montenegro for 2008, in part related to defense and security.²²

After an introductory explanation of proponent of the Act and discussion which was conducted with the participation of representatives of the Ministry of Internal Affairs and Public Administration, Ministry of Defense, Police Directorate and ANB, the Committee concluded that the funds provided by the budget for 2008 for defense and security sector have been realistically planned. Also, the Committee stated that in accordance with the system laws, it is necessary for each consumer unit to construct a program budget for the next budgetary year. Committee on Security and Defense assessed that a more detailed analysis in the explanation should be given in the future work on proposing budget, in order for the MPs to have a better insight into the costs and expenses.

The Committee reviewed the report of the ANB's Sector for Combating Organized Crime and conducted a hearing of the Head of ANB in regards to that issue. A thorough and open discussion was led with Committee members and ANB representatives clearly expressing their readiness for mutual communication and implementation of the Parliament's control function in that area. It was estimated that the fight against organized crime and corruption is a priority national and state interest.²³

The Committee conducted a control hearing of the Head of Police Directorate Veselin Veljović concerning the murder investigation of victim Srdjan Vojičić, attack on writer Jevrem Brkovića and Director of the daily newspaper *Vijesti* Željko Ivanović.²⁴ The Chairman Dragan Kujović proposed that the first control hearing in the history of the Montenegrin Parliament, initiated by SDP, should be made closed for public. The Committee accepted this proposal by a majority vote. However, the Committee refused to approve the proposal on conducting a control hearing concerning the case of consigning two aircrafts of the former Serbia and Montenegro Air Force.²⁵

²² December 17, 2007

²³ March 20, 2007

²⁴ November 01, 2007

²⁵ December 18, 2006

On the occasion of a Ministry of Interior Affairs' tender for production of new identity documents, the Committee unanimously decided to defer consideration of the proposal for conducting a control hearing concerning the case, until the Commission for Control of Public Procurements decides about the appeal of the French company 'Axalto'. Minister of Internal Affairs and Public Administration participated in the work of the Committee²⁶. The majority decision of the Committee and the official statements reflect the position of the Government and the Parliamentary majority that believes the security and defence sector to be greatly reformed and modernized as well as deprived of political influence meddling in its work. They also believe in the existence of quality Parliamentary oversight over the sector. The opposition, on the other hand, believes that the institutions of defense and security sector, particularly ANB, misused their jurisdiction in order to achieve political interests of the ruling coalition, and that the supervisory functions of Parliament are being obstructed by the MPs of the parliamentary majority.

The Committee has not had the opportunity to discuss the audit reports of DRI in relation to the state institutions from the defense and security sector. Until now, DRI has performed audit control of the of the Ministry of Defense 2007 financial report as well as 2008 financial report of the Ministry of Internal Affairs and Public Administration.

²⁶ December 18, 2006

5 Draft and bill of the Law on Parliamentary Oversight of the Security Sector

The Committee first prepared the draft of the Law on Parliamentary Oversight of the Security Sector in 2008, while in November the same year a bill of the same act was prepared.

Bill of the Law on Parliamentary Oversight of the Security Sector²⁷, which was prepared by the Committee for Security and Defense, was in mid-December of 2008 regressed into the draft form by the decision of the Parliament. After the Committee for Constitutional Issues and Legislation included the bill in the agenda of its 49th session (second part), after the introductory presentations of sponsors, bearing in mind the opinion of the Government, as well as a large number of complaints announced by the Committee members - it decided to propose to the Parliament to treat it as a draft law. "The Committee and the Government support adoption of legislation that would appropriately, in a legally undisputed manner, regulate parliamentary oversight in the field of security and defense, that would affirm principles of ever more demanding supervisory functions of the Parliament. Representative of the act sponsors agreed with the proposal of the Committee."²⁸

Work on both draft and bill of the Law, unfortunately, "was not preceded by the analysis of problems in the functioning of the control of security service"²⁹. Initial version of the text was prepared by a Special Advisor to the Committee for Security and Defense, former senior official of Montenegrin security service. The Committee in the explanation of the proposed law stated that experiences of "a number of European countries and expert assistance of the Institute for the Democratic Control of Armed Forces from Geneva" were used during the making of the act.

Bill and draft Law are essentially the same, with the exception of a few important definitions and legal/technical differences.

Bill Law in the general provisions of defines the subject and scope of parliamentary oversight, responsibility for its implementation, the parts of security and defense sector which will be made subjects of the parliamentary oversight, the purpose and mode of exercising oversight as well as the establishment and operation of the committees. In the part relating to the establishment of the committees, competencies for establishing committees are determined, the availability of the committee sessions for the public and informing the public about the work of the committee. The Law defines the tasks and competencies of the Committee, with the exercise of parliamentary oversight through control and consultative hearings and parliamentary investigation, planning parliamentary oversight, duties of individuals, the Government and other institutions toward the Committee, reporting to the Parliament and penal provisions.

The subjects of parliamentary oversight, as determined by the bill, are Ministry of Defense, Army of Montenegro, Ministry of Internal Affairs and Public Administration, ANB, Police Directorate, as well as "other organizations and agencies that operate independently or as part of other ministries and are engaged in security and defense affairs".

Closure of the Committee sessions for the public is established as a rule, while the openness is an exception on which the majority of the Committee members decide.

²⁷ Determined by the Committee for Security and Defense, on November 24, 2008.

²⁸ Minute from the 49th session of the Committee for Constitutional Issues and Legislative, held on December 11 and 15, 2008.

²⁹ Response from e-mail interview with Velizar Kaluđerović, SNP delegate and Committee member in the previous assemblage.

Consultative and control hearings as well as parliamentary investigations are envisioned as a method of the committees in exercising oversight function. Consultative and control hearings have already been prescribed by the Parliament's Rules of Procedure, while draft and bill of the Act do not go beyond the existing norms.

The bill of the Law on Parliamentary Oversight of the Security Sector, confirmed the existing competencies of the Committee for Security and Defense:

- parliamentary control of the Police and ANB;
- discussing realization of constitutionally granted rights and freedoms of man and citizen in the application of Police and ANB competencies;
- discussing proposed laws, regulations, general acts, strategies and other issues in the field of security and defense;
- considering proposals for the appointment of heads of Police and ANB.

The bill of the Law on Parliamentary Oversight of the Security Sector introduced some novelties in the Committee competencies, so that the Committee would have the authority to:

- consider a report on the participation of members of the Army of Montenegro in international missions;
- conduct a hearing of military and diplomatic representatives of Montenegro before coming into office;
- discuss the information and the initiatives received from individuals, agencies and organizations regarding the activities and documents from the defense and security;
- inform the Parliament and other institutions of Montenegro on findings that are obtained during monitoring the work of the institutions, and takes care that the Montenegrin public is also acquainted with these information;
- review the audit reports of DRI on financial operations of the bodies and institutions, takes stances and monitors the activities of the authorities with jurisdiction to act according to these reports;
- consider information on budget execution in part relating to funds allocated for institutions, at least twice a year, and more frequently if needed;
- review information and monitor engagement of bodies and institutions in assisting other state agencies in order to eliminate the consequences of natural and other disasters;
- supervise the estimation of political, ideological and interest neutrality in the work of agencies and institutions; consider annual reports on the work of agencies and institutions;
- supervise and monitor the implementation of the conclusions of the Parliament and of other bodies and institutions that require action of the bodies and institutions in the field of defense and security, takes stances upon these and informs the Parliament.

Responsibilities of the Committee are currently very broadly defined, and therefore an effort to make existing provisions more detailed and clearly defined is notable in the bill.³⁰

Also, Bill expands the jurisdiction of the Committee from Police Directorate and ANB to Ministry of Defense, Army of Montenegro, Ministry of Internal Affairs and Public Administration, as well as "other organizations and agencies that operate independently or as part of other ministries, and engage in activities security and defense".

According to the bill, the Committee is entitled to take on emergency activities of parliamentary oversight, bypassing the annual plan. Emergency activities of the Committee include:

- request to the bodies and institutions in the field of defense and security to submit information or a report concerning a particular issue;
- an authorized Committee group visiting the bodies and institutions from defense and security sector, accessing documents in accordance with the law, interviewing persons who deal with specific issues, with a minimum 24 hour prior notice;
- initiating and carrying out consultative and control hearings on certain issues, as well as initiating and participating in parliamentary investigations, if it turns out to be necessary.

The bill, unlike the earlier draft prepared by the same Committee, does not contained a provision that the Committee is chaired by a deputy from the opposition ranks. Also the bill does not contain the possibility of Committee members visiting institutions and bodies from their jurisdiction without prior notice. Instead, the bill left the issue of appointing the Committee chairman to the Parliament's Rules of Procedure. It also stipulates that a notice must be given to institutions and bodies, 24 hours prior to the intended visit a committee to visit the institutions can be made 24 hours after notification. The visit is decided by majority vote.

The Committee may "start an initiative, like proposals for determining liability and dismissal of the responsible persons in institutions that deal with issues of security and defense." The draft and bill of the Act do not contain provision that would determine the number of Committee members, define conflict of interest as an obstacle for membership in the Committee, or determine the period during which former leaders or officials of institutions and bodies of defense and security sector can not perform the function of Committee members. Also, access to logs/minutes and reports from open sessions is not defined.

The bill determines that the Chairman of the Committee decides on the degree of confidentiality of documents issued by the Committee.

The bill does not prescribe mandatory content (i.e. structure, types, categories of information), contained in the reports on the work of bodies and institutions of the security and defense sector, submitted to the Committee.

³⁰ For example, what was previously, in the Parliament's Rules of Procedure', been defined as "discussing proposed laws, regulations, general acts, strategies and other issues in the field of security and defense," the Bill defines so that the Committee: "gives opinions, suggestions and proposals concerning the draft budget for defense and security in all stages of its development, "discusses national security strategy and the defense strategy"; "considers law proposals in the field of defense and security".

6 Conclusions and recommendations for decision makers

Parliamentary control of defense and security sector is regulated by a series of legal acts, which makes a comprehensive and uniformly arranged work of the Parliamentary Committee for Security and Defence difficult. There is no justification to delay the adoption of the parliamentary oversight of defense and security sector.

Legal and practical problems caused by the adoption of the Law on Data Confidentiality, which limited to the right of access to the Committee members and introduced a series of requirements and checks, represent a negative example that blocked the work of the Committee. Furthermore, it increased gap between parliamentary majority and minority and confidence in the sector of defense and security. Such practices should be avoided in the future, and Committee members should be allowed full access to information as a precondition for doing quality work.

Law on Amendments to the Law on Defense should precisely define intelligence and counterintelligence operations, thereby replacing the existing solution that allows the Ministry to determine the way of performing them as well as the types of file records, the manner of their establishment and running, with the consent of the Government.

Unlike the previous practice, the Committee should take full advantage of opportunities that are at its disposal, especially when it comes to the possibility of insight into the process of postal consignments and other means of communication surveillance that is implemented by ANB.

Law on Parliamentary Oversight of Defense and Security Sector should be adopted as soon as possible, with important improvements regarding the composition of the Committee, conflict of interest and the role of opposition deputies in the Committee. Also, special attention should be made in defining the publicity of the Committee's work, the contents of the reports required to be submitted to the Committee, the status and content of the minutes and transcripts from public sessions of the Committee, refining the sanctions for persons who refuse to testify before the Committee as well as reports of other institutions which Committee should review.

Specifically, the Law should contain the following improvements:³¹

- **Composition of the Committee should be regulated by this act (the number of members, selection procedure, criteria and barriers to membership).** A period after which persons who performed intelligence tasks or former Ministers responsible for security and defense issues, can serve as members of the Committee should also be determined. This would ensure that the Committee can carry out independent monitoring in relation to those matters which have occurred in the previous period. Conflict of interest should be identified as a limiting factor for membership in the Committee (e.g. member of the Committee can not be a person whose spouse or a relative in a direct or indirect line performs the function in one of the institutions that make up the security and defense sector);

- **The Law should prescribe a stronger role of opposition MPs in the Committee.** By determining that all decisions in the Committee are adopted by majority vote, especially when electing the Head of the Committee, consequently means that the Head of the Committee will certainly be from the parliamentary majority and thus reduce space for activities of opposition MPs. Solution that would give an opposition MP to chair the Committee and/or a solution that the committee must be obligated to carry out a certain amount of parliamentary control at the request of all opposition members, would create more room for activities of the opposition in the Committee.

³¹ The recommendations are given on the basis of the bill Law which was returned to the draft form.

It would also increase confidence in the achievements of the overall work of Committees and the security and defense sector as a whole. Regarding the issue of committee chairmanship, the Resolution³² of the Council of Europe's Parliamentary Assembly that says "the presidency of standing/permanent committees shall be allocated among parliamentary groups on the basis of proportional representation; at least one permanent committee shall be chaired by a member of the opposition; the chairmanship of committees responsible for monitoring government action, such as the committee on budget and finance, the committee on audit, or the committee supervising security and intelligence services, should be granted to a member of the opposition"³³;

- **The Law should determine that the sessions of the Committee are open for public as a rule, and closed as an exception** in the cases when information that are legally granted a certain degree of secrecy are being discussed, which should be decided by a majority of members;
- **Minutes and transcripts** of the public sessions or parts of sessions that are seen as appropriate for public, should be made available through the internet site of the Parliament;
- **General definition of "other entities" of oversight** in addition to those that are explicitly listed can lead to a dilemma whether, e.g. the Administration for the prevention of money laundering and Counter Financing Terrorism and the Department for informative/technical and security support to the Ministry of Foreign Affairs. Such dilemmas should be eliminated in the final text of the Law;
- **Law should prescribe the content** (i.e. structure, types and categories of information) **of the reports** concerning the work of institutions and bodies of defense and security sector submitted to the Committee. First quarter should be determined as a deadline for submission of the reports. Obligation of submission and discussion over reports of the General Inspector of ANB and other inspectors or inspection control services related to the work of defense and security sector should be stipulated. The Committee should discuss the report on the work of courts in part related to the approval of measures of secret surveillance as well as the report of the Protector of human rights and freedoms in the part relating to complaints on the work of institutions in the sectors of defense and security;
- **Obligation of quarterly informing of the Committee on measures taken upon its recommendations** should be prescribed. Obligation to submit feedback on activities undertaken in connection with the recommendations of the Committee would strengthen obligations of the parliamentary oversight subjects and give more power to the Committee to receive, evaluate and determine reports on fulfillment of its recommendations;
- The Law should prescribe an obligation of the **Parliament to annually review the report on work of the Committee for Security and Defense**. The content of this report must be determined by the Law;
- When nominating members, **equal participation of women** should be taken into account. That way a positive example would be given and a new practice introduced, in which the affairs of defense and security would cease to be exclusively in the hands of men. It should be noted that in the past there were no women among Committee members;
- As a rule, **members of the Committee should not accept membership in other parliamentary committees**. That way, MPs who participate in the Committee's work will provide a full commitment to the tasks and responsibilities of this Committee and raise its importance.

³² Resolution 1601 (2008), 'Procedural guidelines on the rights and responsibilities of the opposition in a democratic parliament'

³³ Full text of the Resolution at <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta08/ERES1601.htm>

Membership in several committees and lack of coordination and efficiency undermined the position of MPs and committees in the past work of the Montenegrin Parliament;

- Parliament should recommend that the **State Audit Institution** include the control of at least one state institution from the security and defense sector in its annual plans of auditing. Given the previous public attitudes and suspicions, ANB might be a priority for DRI review;
- Criminal provisions of the Law on Parliamentary Oversight of the Defense and Security Sector should include explicitly include **persons who refuse to testify before the Committee**. If these persons are civil servants and employees, such behavior should be determined as a basis for termination of working relation;
- **Level of confidentiality** of documents issued by the Committee should be determined by a majority vote of members, instead of Chairman deciding on it.

Institute Alternative

Institute Alternative was founded in September 2007. Founders are prominent individuals with civil society, public administration and business sector background.

Mission of Institute is to strengthen democratic processes in Montenegro by identifying and analyzing policy options.

IA Strategic objectives are to increase quality of public policy development, to contribute to human rights protection in Montenegro, to contribute to development of democracy and rule of law.

The values we share are commitment, independence, learning, networking, team work.

Institute has implemented project “Public administration in Montenegro- salary schemes, rewarding mechanisms and opportunities for professional advancement in legislation and practice (January 2008 – June 2008)”.

Institute prepared short information with recommendations on Parliament of Montenegro - Transparency of financial activities (June 2008). Institute prepares and distributes on daily bases to over 200 recipients in Montenegro and worldwide “Daily Brief” containing political, social, economic, regional issues, with weekly commentaries. Institute was coeditor/co publisher of the Publication “Political criteria for EU Accession”. Representative of IA participated in session of the Parliamentary Committee for budget and finances where IA opinion on procedural and substantial budgetary issues was presented (December 2008).

IA implements, in cooperation with Center for Monitoring CEMI and European Movement in Montenegro, project “EU Matrix – Monitoring European integration process – Monitoring implementation of National Program for Integration of Montenegro into EU – preparatory phase”

Research report on Public Companies in Montenegro is in drafting process. (IA voluntary activity) Foundation Friedrich Ebert financed three IA research reports on Lipci case, case of First Bank as well as on parliamentary oversight of security services.

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