



CENTER FOR EURO-ATLANTIC STUDIES - CEAS

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KEEPING UP WITH THE PRIVATE SECURITY SECTOR

REGULATED PRIVATE SECURITY SECTOR:
SAFER LIFE OF CITIZENS



A REPORT BY THE CENTER FOR EURO-ATLANTIC STUDIES
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„This area was unregulated and it is high time that Serbia should enact a law comprehensively regulating it. We want the private security sector which will cooperate with the state, as is common worldwide. It implies licencing the people who will do this job..“

**Ivica Dačić, Prime Minister and Interior Minister of the
Republic of Serbia, June 2013**

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Parts of the report are the result of cooperation between the Center for Euro-Atlantic Studies and the Association for Private Security of the Serbian Chamber of Commerce, through the framework of the Commission for Private-Public Partnerships in the Security Sector in Serbia



Serbian Chamber of Commerce
Association for Private Security

INTRODUCTION

The aim and methodology of research

The goal of the entire project entitled „Regulated Private Security Sector – Safer Life of Citizens,” carried out by the Centre for Euro-Atlantic Studies supported by the Royal Norwegian Embassy in Belgrade is to exert public pressure on government representatives to address the state of affairs in this important sector of both economy and national security and place its legal regulation on their agenda, employing all available public advocacy means: publishing research, organizing public debates and consultations with the drafting authorities, the Members of Parliament, consultations with experts, representatives of professional associations, civil society representatives and through media appearances. The fact that such an important area is not legally regulated leaves room for serious abuses and represents potential danger for the very functioning of the state. CEAS maintains that adoption of an adequate umbrella law would not only better regulate the private security sector, but would also improve the security of Serbian citizens.

Given that the private security sector has been recognized under the National Security Strategy as a part of the comprehensive security system of the Republic of Serbia, CEAS maintains that the current state of affairs in which an umbrella law is lacking has a detrimental effect on reforms in other parts of the security sector, representing a security threat in that it enables unsanctioned violation of basic human rights of both sector employees and citizens who are the object of work of private companies. Last but not least, it leaves ample room for corruption.

The aim of this report is multiple. The first part shortly acquaints the general public in Serbia with developments in this important and specific sector worldwide. The report goes on to analyze recommendations and good practice examples contained in certain documents enacted by other countries, international organizations and associations, including EU and NATO member states, the legislative framework and good practice examples of which, including respective challenges within private security sector, can be accessed on the Private Security Monitor , a portal created by the Geneva Centre for the Democratic Control of Armed forces – DCAF in cooperation with Sié Chéou-Kang Center for International Security and Diplomacy at the University of Denver. The report also analyzes good practices examples and recommendations by organizations such as the Confederation of European Security Services - CoESS; the Organization for Security and Co-operation in Europe - OSCE; Geneva Centre for the Democratic Control of Armed forces – DCAF, and ASIS International; as well as initiatives such are the Montreux document and the International Code of Conduct for Private Security Providers.

The report subsequently specifically analyzes the current state of affairs in the private security sector in Serbia, its main characteristics and challenges it faces as well as legislation which pertains to it.

The main part the report analyzes in detail the existing Draft Law on Private Security, comparing it with the aforementioned good practice examples, particularly bearing in mind the question whether specific recommendations of independent bodies, such as the opinion on the Draft Law by the Commissioner for Information of Public Importance and Personal Data Protection, professional associations and academic community, have been adopted.

The conclusions of the analyzed Draft Law, among other things, emphasize that:

- An analysis of the state of affairs in private security sector has confirmed the initial impression that the sector is not particularly well-ordered and that numerous irregularities exist in terms of violation and disregard of both legislation and rights of employees working in this sector.
- Considering that, according to the estimates of the Ministry of the Interior, private security sector in Serbia employs between 25,000 and 60,000 people (excluding the management and administrative staff) who possess 47,000 pieces of firearms, as well as that on the basis of public procurement the strength of the domestic market is estimated to be around 6,000 contracts with state institutions and potential 8,500 contracts with private clients, that is, the fact that the state itself makes a large share of the so alarmingly under-regulated private security market, CEAS calls upon urgent adoption of a quality Law on Private Security as the first step towards ordering this area.
- CEAS maintains that adequate umbrella legislation would contribute to additional professionalization of this important industry, its better public perception and advancement of security of Serbian citizens.
- CEAS endorses the proposed Draft Law adopted by the Government of Serbia on April 30, 2013 and hopes that the Draft would soon enter the parliamentary procedure. CEAS also maintains that the Draft is of sound quality and that it can be additionally improved through amendments.
- CEAS supports the present attempts to regulate the area of private security by effecting cooperation among various sectors e.g. the Serbian Chamber of Commerce Private Security Association and the Commission for Public-Private Partnerships in the Security Sector, the members of which are representatives of state institutions and companies providing private security services, as well as civil society organizations; by strengthening the legislative framework of areas which affect the private security sector, such as the Labor Law, the Public Procurement Law etc; as well as by embracing other good practice examples.

The recommendations for potential legal amendments if the Draft Law is adopted have been provided already at this stage because it is a frequent practice in Serbia that good legal solutions are not implemented due to the failure to adopt bylaws.

We sincerely hope that this part of the report would be of special use to the Members of Parliament of the Republic of Serbia to conduct quality parliamentary debate and adopt amendments on the Draft Law and its final version which would be beneficial to the sector itself, the state and the citizens of Serbia.

At the end of the report there are dissenting opinions of three experts, Aleksandar Resanović, deputy Commissioner for Information of Public Importance and Personal Data Protection; Dejan Milenković, PhD Assistant Professor, Faculty of Political Sciences, University of Belgrade; Željko Petrović, a lawyer and a researcher with the Centre for Euro-Atlantic Studies, as well as a short public procurement glossary we hope may be useful in the upcoming parliamentary debate.

This report is a result of work of an inter-sectoral, expert working group made up of the CEAS team, the representatives of the Commission for Public-Private Partnerships in the Security Sector of the Republic of Serbia, the Serbian Chamber of Commerce Private Security Association, lawyers, representatives of the academic community and consultants with international organizations dealing with the security sector. We also acknowledge the selfless professional contribution of the staff working at the Office of the Commissioner for Information of Public Importance and Personal Data Protection. The CEAS would publicly like to thank all of them for their exceptional collegial relationship and professionalism and hopes to foster further cooperation.

A Short Overview of Development of Private Security Sector Worldwide

Contemporary world is characterized by the growing porosity of borders, privatization of public goods, weakening of state functions and decaying of its power to implement laws, as well as fragmentation of the security sector which has traditionally been under state jurisdiction. Pressured by a multitude of various threats, processes and actors, states have lost their monopoly of the legitimate use of force. The consequence of this process is that states have surrendered their role of the only legitimate provider and guarantor of security to private military and security companies. The emergence of the private security sector, within which private non-state security providers, independent from the state, function, represents a very important moment in the development of modern international relations as well as in the functioning of states themselves. The private security industry, private security companies and private military companies have created an industrial chain which functions freely on the global market, organized along constant and tight corporative lines and expanding and getting stronger all the time.

Private security agencies are economic actors which operate under the rules of the market, but they also represent actors in the security sector. By using force, these firms may affect an increase or decrease of security of citizens and therefore their operation requires detailed and precise legal regulation. It should on the one hand enable these firms to freely operate on the market, but on the other to do so while observing the required human rights standards.

Private security industry emerged in the 1990s. The combined effect of three crucial elements – the end of the Cold War and the vacuum it created in the demand and supply of security, transformation of the nature of warfare and normative growth of privatization in all sectors – have created new space and demand to set up private security industries. The end of the Cold War has brought about significant reduction of the size of national armies and has at the same time led to the growth of global insecurity.

Such a development has created favorable conditions for supplying private security industry with new personnel and equipment, as well as the increase of demands and conditions for its engagement. The end of the Cold War has led to demobilization of over six million soldiers, many of which have found their new job in the private security sector.

One of the consequences of the end of the Cold War was that more weapons and military equipment has ended in private hands rather than in state ownership and the number of unstable and conflict areas has doubled. To what extent the end of the Cold War had favorably affected the growth of the private security sector is best illustrated by the following statement of a manager working in this sector: „The end of the Cold War has enabled conflicts which had for a long time been frozen or repressed by great powers to rise to flames once again. At the same time, the number of members of most national armies has been halved and disturbing images of US soldiers being killed in Somalia on CNN have had a very negative effect on the desire of governments to commit themselves to resolving conflicts in crisis areas. We have filled this gap.“¹ The transformations of the nature of warfare and revolutionary changes on all levels of warfare have also had a great influence on the growth of the private security sector. Military operations have become highly sophisticated due to the use of high technologies. Civil specialists were often needed for handling highly sophisticated equipment to manage highly developed military systems.

The demands of highly technological warfare have drastically increased the need for civilian experts who often had to be engaged from the private sector. Furthermore, the past several decades have been characterized by a normative shift towards privatization of many areas which have traditionally been regarded as a purview of the work of the state. The last decade has been characterized by privatization of education, healthcare, prisons and defense industry. The privatization of military industry, stimulated by privatization revolution in all spheres of life, has enabled private firms to become possible and sometimes even priority providers of security and military services. Conducting wars of low intensity (resulting in huge number of refugees), increased significance of providing humanitarian assistance, increased sensitivity of the domestic public to dispatching armed forces to conflict areas, as well as aforementioned privatization of public administration (with all its elements) represent factors which have largely contributed to the quick expansion of private security industries (Private Public Partnership, New Public Management, Private Financial Initiative)².

In the broadest context, actors belonging to private security sector consist of the widest range of people, organizations and activities. Some of them are very important and legitimate, while others are illegitimate and belong to the so-called grey zone of security. We could consider the following groups as comprising the private security sector: mercenaries, volunteers, foreign officers established in domestic armies, various kinds of private armies and militias, warlords, companies involved in the defense industry, private security agencies, private military companies and many other actors. In this report we will focus on mercenaries, private security and private military companies. It is necessary to make a distinction between the notion of 'the private security sector' which includes all the aforementioned (legal or illegal) actors and the notion of 'the private security industry' which includes legal actors or those on the verge of becoming ones (private military and security companies in all shapes and sizes). We will not consider volunteers because they are, in effect, hard to distinguish from mercenaries. The main difference is that their motives are ideological rather than financial. Different kinds of armed forces, militias and warlords represent higher level of organization than mercenaries. They are more organized than small mercenary groups and may include larger number of mercenaries who simply fight for control over certain regions or resources. These groups may not always be national or tied to one conflict. They may be transnational or may support any country able to pay them³. The operation of companies which industrially

¹ Sunday Telegraph, Nov 22, 1998. „Inside Lt. Col. Spicer's New Model Army," no. 1276

² Schreier, F. And Caparini, M. (2005) Privatising Security: Law, Practice And Governance Of Private Military And Security Companies, Occasional Paper - No6, DCAF, Geneva, p. 15

³ Schreier, F. and Caparini, M. (2005), Privatising Security: Law, Practice And Governance Of Private Military And Security Companies, Occasional Paper - No6, DCAF, Geneva, p. 16

produce military equipment is regulated by other laws. In case they are the ones who supply the military equipment, provide training and consulting, their services cannot be distinguished from the services of private military companies.

Mercenaries. Nathan defines mercenaries as „soldiers hired by foreign countries or insurgents to contribute to the conduct of an armed conflict, by direct engagement in the conflict or, indirectly, by providing training, logistics, consulting and information gathering–working outside the jurisdiction of the armed forces and the state they belong to.“⁴ The Oxford dictionary defines mercenaries as „professional soldiers hired to serve in foreign armies“.⁵ The Geneva Convention uses up to six criteria for defining the term of a mercenary.⁶ One of the recent definitions of the term is that: „mercenaries are individuals who fight for financial gain in foreign wars (wars not conducted by states they belong to as citizens) who are primarily engaged by armed groups, and occasionally by states.“

The engagement of mercenaries is prohibited under international law, but the problem is to come up with a single definition of a mercenary.⁸ The states have for decades been trying to determine this term, but have still not come to a uniform definition which could be fully incorporated into international law. It seems impossible to reach an acceptable legal definition of a mercenary, which has indeed been confirmed by three international conventions dealing with this issue. Traditionally, mercenaries have been defined as individuals hired to participate in wars not led by their native countries.⁹ Their primary motivation is money rather than patriotism or commitment to one's own nation or country. A mercenary may be an adventurer, but very often they are callous killers, ready to be engaged by any organization for whatever reason if they are to be financially compensated for it. Sometimes they are veterans of former wars or outlaws looking for a new armed conflict to continue with what they have done before – with warfare.¹⁰ On the basis of the aforesaid, we can conclude that people do not necessarily become mercenaries for financial reasons, but often due to the awareness that this is the only way of life they are capable of having and leading. A failure of re-education or re-training programs that would provide hope to former warriors often plays a very important role in their decision to continue their life as mercenaries.¹¹ For somebody who has spent a large portion of his life in combat, an understanding that he does not fit into the civil society and normal life represents the main motive to become a mercenary. A large number of mercenaries are soldiers without permanent place of residence, who are prepared, in exchange for a large sum of money, to fight for very suspicious goals. Mostly they are inherently merciless, they often stimulate and prolong the conflict in which they are embroiled, are disloyal, unreliable and often change sides in conflict in exchange for a larger sum of money.

Compared to private military and security companies, mercenaries are ad hoc groups of individual soldiers recruited in an indirect and roundabout way to avoid legal responsibility.

⁴ Nathan, L. (1997) Lethal Weapons: Why Africa needs alternatives to hired guns?, Track Two, 6(2), p.12

⁵ The Oxford Essential Dictionary of the US Military (2001)

⁶ See more in: ICRC (1977) Protocol Additional to the Geneva Convention of 12 August 1949, relating to the Protection of Victims of International Armed Conflicts.

⁷ Schreier, F. And Caparini, M. (2005), Privatising Security: Law, Practice And Governance Of Private Military And Security Companies, Occasional Paper - No6, DCAF, Geneva, p. 20

⁸ Schreier, F. And Caparini, M. (2005), Privatising Security: Law, Practice And Governance Of Private Military And Security Companies, Occasional Paper - No6, DCAF, Geneva, p. 21

⁹ United Nations, General Assembly (1989) International Convention against the Recruitment, Use, Financing and Training of Mercenaries. Doc. no. A/RES/44/34

¹⁰ Schreier, F. And Caparini, M. (2005), Privatising Security: Law, Practice And Governance Of Private Military And Security Companies, Occasional Paper - No6, DCAF, Geneva, p. 24

¹¹ Schreier, F. and Caparini, M. (2005), Privatising Security: Law, Practice And Governance Of Private Military And Security Companies, Occasional Paper - No6, DCAF, Geneva, p. 24

Since they do not belong to any organization, they lack professionalism and discipline and thus basically remain unintegrated, do not subscribe to any particular doctrine and their possibilities are limited. Basically, they are not able to provide anything more than direct fight on the level of small units with limited military training. Generally speaking, mercenaries have no skills, capital, established methods and possibilities to carry out complex multi-sectoral operations of which private military companies are capable.

Private military companies (PMC). In conditions of the post-Cold War downsizing of armies, large-scale selling of arms and military equipment and neoliberal privatization, corporations have seized the opportunities presented by the states which were privatizing certain state sectors. With the new privatization initiatives, states intended to reduce military costs and transfer some of the expenses to private industry. The result was that great powers - traditional actors in regional and international conflicts during the Cold War – have disproportionately reduced their engagement in conflict resolutions.¹² Private military companies have soon realized that it was their chance and have filled that vacuum. Private military companies have automatically absorbed the surplus of military staff and equipment. Very soon they started to offer a wide range of military and security services to various interested clients.

After the end of the Cold War, the second large wave of the growth of private military and security companies started after military campaigns in Afghanistan and Iraq. According to David Isenberg, private military companies (PMC) have performed their tasks rather well in Iraq, engaging in very difficult missions in pretty uncertain circumstances. He says that most companies have been in Iraq for the first time, but that they have nevertheless managed to deploy their staff and execute tasks in much shorter time periods than regular national armies.¹³

Until 2006, the term private military company has not appeared in any international document or convention. One of the more well-known definitions of PMC is as follows: „A registered civilian company specialized in providing military trainings, support to military operations (logistical support), operative combat capabilities (engagement of special forces, command and control, communication and intelligence) and provision of military equipment to legitimate domestic and foreign entities.“¹⁴

A more general definition of private military companies is that they are: „companies that provide, for profit, the services that have previously been under the purview of state military forces, including military exercise and training, intelligence work, logistics and engaging in direct combat, as well as providing security in zones of conflict“.¹⁵ Singer defines PMC as „business providers of professional services directly connected with conducting of war“.¹⁶ On the basis of the aforementioned, we can conclude that PMC are profit-oriented organizations that offer professional services associated with conducting armed conflicts, consulting and logistical support. Their basic purpose is to increase and advance efficiency and effectiveness of the armed forces conducting a military campaign and to direct armed conflicts towards the desired outcome preferred by the client.

¹² Schreier, F. and Caparini, M. (2005), *Privatising Security: Law, Practice And Governance Of Private Military And Security Companies*, Occasional Paper - No6, DCAF, Geneva, p. 20

¹³ Isenberg, D. (2004), *A Fistful of Contractors: The case for a pragmatic assessment of private military companies in Iraq*, BASIC Research Report 2004 of the British American Security Information Council

¹⁴ Goddard, S. (2001), *The Private Military Company: A Legitimate International Entity Within Modern Conflict*, thesis presented to the Faculty of the U.S. Army Command and General Staff College, Fort Leavenworth, Kansas, p.8

¹⁵ Schreier, F. and Caparini, M. (2005), *Privatising Security: Law, Practice And Governance Of Private Military And Security Companies*, Occasional Paper - No6, DCAF, Geneva, p. 26

¹⁶ Singer, P. W. (2001-2002). *Corporate Warriors: The rise of the privatized military industry and its ramifications for international security*, *International Security* 26(3), p. 186-220

Because of the wide range of activities PMC differ in the field and purpose of their activities. Their organization mostly depends on the range of services being offered, as well as the level of armed forces it can provide. Singer provides a typology classifying PMC into: 1) private military companies that provide military services, 2) private military companies that engage in consulting, and 3) private military companies that provide logistical support.¹⁷

Private military companies that provide military services offer services directly related to conducting armed conflicts, engaging in combat and directly commanding units in the field or both. PMCs from this group have been engaged in many conflicts as „force multipliers,“ with forces distributed across client’s military forces in order to ensure leadership and warring experience.¹⁸ The clients of these firms mostly have low level of military possibilities and are faced with an imminent, highly dangerous situation. PMCs such as „Executive Outcomes“ and „[Sandline](#),“ which offer special combat services, are typical examples of firms from this group.

Private military companies engaging in consulting mostly provide services of surveillance, exercise and training. They also provide strategic, operational and organizational analyses often associated with functioning and restructuring of the armed forces. Their capability to bring a much higher level of experience, knowledge and expertise than any standing army, represent the primary advantage of engaging these companies in armed conflicts. The main difference between the first and the second type of companies is the „trigger finger“ factor. It means that the task of consulting firms is to provide management and training to the armed forces of their clients, rather than to be directly involved in combat.¹⁹ Even though companies from this group can transform the strategic and tactical context, it is the client who assumes the final risk at the battlefield. Their clients are mainly amidst the reconstruction of their armed forces or want to transform their armed forces in order to increase their efficiency. The clients’ needs are not that urgent and do not have to be met immediately as is the case with the needs of clients of companies from the former group. The contracts they concluded with their clients are mostly long-term and often more lucrative. The companies which belong to this group are, for example, „[Levedan](#)“, „[Vinnela](#)“ or MPRI. Private military companies which provide logistical support also provide background and technical support, as well as supply the armed forces with staples. Even though they do not participate in planning and carrying out direct military interventions, they meet some of the military needs such as logistics, technical support and transportation, which are crucial for carrying out combat activities in the field. Their clients need both imminent and long-term interventions (standing armies demanding both imminent and long-term supply). Most private military companies, regardless of the types of services they provide, are clearly structured and hierarchically organized, do their business in a corporate form, are legally registered and have a wide range of services and clients. They have a reputation they want to preserve so as to ensure long-term market gains, providing legal and legitimate services. Many experts versed in this area claim that PMC would not place their activities in the service of organized crime, cartels trafficking drugs, insurgent regimes, terrorists or weapon dealers.²⁰ In the US, PMC have even formed a trade union entitled „[International Stability Operations Association](#).“ Most PMC tend to provide military services with recognizable chain of command, disciplined military personnel and previously set procedures observing laws and customs of warfare. Some of them even claim

¹⁷ Singer, P. W. (2004), The private military industry and Iraq: What have we learned and where next?, DCAF Policy Paper

¹⁸ Singer, P. W. (2004) The private military industry and Iraq: What have we learned and where next?, DCAF Policy Paper, p.11

¹⁹ Singer, P. W. (2001-2002). Corporate Warriors: The rise of the privatized military industry and its ramifications for international security, International Security 26(3), p. 19

²⁰ Schreier, F. and Caparini, M. (2005), Privatizing Security: Law, Practice And Governance Of Private Military And Security Companies, Occasional Paper - No6, DCAF, Geneva, p. 30

on their web sites that they have adopted The Code of Conduct for the International Red Cross and Red Crescent Movement ([International Federation of Red Cross and Red Crescent Societies](#)) and [The Voluntary Principles on Security and Human Rights](#).

Private security companies (PSC). Even though the term „private security companies“ is used in many countries there are numerous discussions about the exact notion of that term.

Godard defines PSC as „registered civilian company specialized for providing contracted services of commercial nature to domestic and foreign clients in order to protect people, humanitarians or industrial complexes within the laws of the state in which such activity takes place.²¹ A wider definition of PMC is: „PMC is a clearly structured and hierarchically ordered registered corporative association that offers security services, competing with other firms on the market for contracts.“

The PSC market exists much longer, is much bigger and the competition is much tougher than in the case of PMCs. The two main characteristics of PSC are profit orientation and trade by providing services of interior security and protection. Most of these companies are small, focused on prevention of crime and ensuring public peace and order, as well as on provision of private security services at the domestic market. In many countries, such are the US, Great Britain, Israel, Germany, Russia, South Africa and Philippines, the size of PSC budgets exceed the police budget.²² A small number of PSC is organized according to a system of huge corporations and shares the same corporative principles and command structure like PMC. PSC which belong to this group mainly look for foreign clients and engagement in several states, especially in crisis areas.

C. J. Van Bergen Thirion made the classification of the PSC which work at the domestic market on the basis of the following characteristics:²³

- The security sector is the biggest and the most visible component. The regions with high percent of crime have the largest number of companies engaging in this type of work. The security sector guards airports, buildings, apartments, shopping and sports centers, warehouses, storage facilities, parking lots and other objects and performs other security services.
- The sector of technical security, data protection and surveillance implies installing of alarms, access control and security devices and biometric sensors. The services often include interventions in cases of burglaries. The services of surveillance are mostly carried out by monitoring sensors and recording and surveillance equipment.
- The sector of investigations, analysis and risk management which is the smallest, includes private investigators whose activity encompasses a broad range of activities. These activities range from dangerous and potentially tragic to harmless and ridiculous and include marital fights, services associated with business operations, providing expert testimonies, private and industrial espionage, counter-intelligence activities, overt and covert and intelligence gathering missions, prevention of frauds and market abuse etc.

Private investigators have very different and constantly evolving roles in preventing and

²¹ Goddard, S. (2001), *The Private Military Company: A Legitimate International Entity Within Modern Conflict*, Thesis presented to the Faculty of the U.S. Army Command and General Staff College, Fort Leavenworth, Kansas, p.34

²² Schreier, F. and Caparini, M. (2005), *Privatising Security: Law, Practice And Governance Of Private Military And Security Companies*, Occasional Paper - No6, DCAF, Geneva, p. 40

²³ Schreier, F. and Caparini, M. (2005), *Privatizing Security: Law, Practice And Governance Of Private Military And Security Companies*, Occasional Paper - No6, DCAF, Geneva, p. 40

detecting crime and other offences. The risk management is the least visible of all sectors. It began to develop only in the last couple of years and is the least problematic from the point of view of our research. Here it is also necessary to mention activities of private intelligence agencies which may also be classified as PSC. In Western countries their activity is mostly legal and abides by law. The problem is with many parts of Southeastern Europe where private intelligence agencies are connected with members of former intelligence services and cooperate with criminal organizations. A good example of such a state of affairs is Romania. There are over 160 private intelligence services which are active, mostly owned by former high-ranking members of the Army, the police or the state security services.²⁴ In Russia there are more than 12,000 registered agencies for „intelligence gathering“ of this kind. They mostly employ former members of the KGB, GRU and the former Soviet Army. Most of these agencies are in direct collusion with Russian mafia.²⁵

The demand for PSC is constantly growing due to economic, demographic and political changes in society. At the same time, direct responsibility of the state for public security is shrinking and is ceded to other subjects. In an intention to ensure maximum flexibility and the best relationship between price and demand, these functions are increasingly transferred to the private security industry. In most Western countries, owners of private houses, representatives of local communities and the private sector rely more on the private security than on the police financed by taxpayers' money to deter crime, mostly due to police downsizing and doubts about the efficacy of the entire criminal judiciary. Due to such developments, PSC have become responsible for ensuring public peace and order, as well as for protection of public and private property on a wide range of locations. Their areas of activity have expanded to include securing high-risk premises such as nuclear power plants, vital national infrastructure, banks, embassies and airports. The services provided by PSC have also been extended to include prison management, regulating of parking lots, securing witness protection programs and courts, ensuring security at public assemblies, escorting transport of high-risk goods such as gas transports, transports of chemicals, prisoners, mental patients, guarding military bases and training camps, securing immigration centers and various other services.

The work of private security companies, which has for a long time been focused on domestic market, has lately been speedily expanding to include provision of security services in other countries. PSC abroad provide services to major multinational companies, governments, government personnel, embassies, UN institutions and other international organizations, NGOs, even to delegates of the International Committee of the Red Cross.

The services provided by PSC in other countries include training of police and security forces, protection of vital national infrastructure, protection of convoys and various delegations, as well as protection of multinational corporations involved in demining, energy production and transport. In addition, they secure companies which manage ports, railways and airports, conduct airborne reconnaissance and espionage missions as well as other high-risk security operations such as hostage rescue missions. The best example of PSC expansion is Iraq. The PMC and PSC industry has dispatched more of its members to Iraq than any other member of the coalition. The number of people coming from this sector is almost equal to the number of all coalition soldiers combined except US soldiers.²⁶ As a rule, PSC are at the US payroll directly or indirectly, as subcontractors with companies engaged in reconstruction of Iraq. Many

²⁴ Schreier, F. and Caparini, M. (2005), *Privatizing Security: Law, Practice And Governance Of Private Military And Security Companies*, Occasional Paper - No6, DCAF, Geneva, p. 41

²⁵ Bonnel, V. and Gold, T. (2001), *The New Entrepreneurs of Europe and Asia: Patterns of Business Development in Russia, Eastern Europe and China*, London: M. E. Sharpe, p.12

²⁶ Schreier, F. and Caparini, M. (2005), *Privatising Security: Law, Practice And Governance Of Private Military And Security Companies*, Occasional Paper - No6, DCAF, Geneva, p. 42

civilian guarding services are hired as „independent contracting parties“ by smaller companies that are subcontractors of large security companies, which, again, are contractors of states that have engaged them. This complicated web of mutual relations in practice often means that governments do not have true oversight over PSC that are on their payroll. Another aspect of this problem is that it is the way states shrug off responsibility for crimes that might be committed by the forces they have hired. A combination of insecurity and unlawfulness and millions of dollars invested in reconstruction have created a huge and powerful market of security services in the Iraq conflict zone. New security companies aggressively compete for lucrative contracts in this obscure environment.

Regulating the work of private security industry and the private security market

Some critics of the work of private security industry maintain that this industry cannot be legitimate, because it is made up of illegitimate actors. They advocate a prohibition of the entire private security industry and re-nationalization of security and military competences of the state. The demand for PSC services is growing throughout the world, so a prohibition of their work is unrealistic. One of the consequences of the ban would certainly be to reduce transparency and accountability of the security sector, because it would force the industry to go underground i.e. to become a part of the black market. At the other extreme are those opinions that the market itself would punish „unconscientious“ security providers and that regulating their work is thus superfluous. Such an opinion is unrealistic. It has been shown so far that the hand of the market is not sufficient to ensure accountability of companies for their actions.²⁷

The most realistic response to the huge growth of the private security industry ought to be found somewhere between these two opinions. The need to legally regulate this area has become especially pronounced since the wars in Iraq and Afghanistan.

If states and non-state actors are to be able to constructively provide security within a wider system of security management, they ought to pay particular attention to three main things. First, the question of accountability ought to be regulated. Without accountability of individual contracting parties, the use of private security industry will continue to raise doubts. Second, the question of legitimacy is very important. If private security industry wants to actively participate in the construction of state security, state and non-state actors must embrace it as a legitimate actor. It is particularly important that it is perceived as a legitimate actor by people who are the end objects and users of their services. Apart from legitimacy, it is necessary to ensure that appropriate actions by private security industry should be perceived as legal i.e. because their individual actions are approved by the state and other actors. The legality of private security industry largely depends on whether they possess the necessary degree of transparency and democratic standards in areas such as business operations of the company, its finances and daily work. Third, practical obstacles for effective business operation of private security industry have to be overcome. A system of private – public interaction at the international level has to be developed in this direction. Such a development requires that private security actors increasingly work together with states, rather than against them.

If we want to make private security sector efficient and regulated, it is necessary to align

²⁷ Nossal, K. R. (2001), Global governance and national interests: Regulating transnational security corporations in the post-cold war era, *Melbourne Journal of International Law* 2(2), p. 22

²⁸ Lilly, D. (2002), Green Paper submission: Private military companies: options for regulation, *International Alert*, p.9

various demands and interests.²⁸ The first and the most important interest that should be taken into account is the interest of the „host state“ (the interest of the state in which private security industry operates) and its population. This particularly refers to weak states in which private security industry mostly operates under contracts signed with foreign actors. The second interest that has to be considered is the interest of the „home state“ (the state from which companies originate), which has to be able to supervise and control private security actors as well as where, how and for whom they work. The third interest that has to be taken into account is the interest of companies themselves which operate within this sector and must be able to profit from regulation and enforcement of legal norms. Namely it is important to create such an environment in which companies which operate in accordance with the rules are rewarded with market success, while others which break the rules are suspended and punished. Only if the interests of all stakeholders concerning the private security industry are taken into account, the regulation of this area can have the desired practical and normative effects.

UN approach to regulating private security market

The UN is the main actor responsible for maintaining international peace and security. Clear and unambiguous UN position on private security industry would certainly have an important normative influence, although not the force of law. As the leading international authority and promoter of norms, the UN clearly needs to react to the new situation regarding the huge growth and spread of the private security sector.

For the start, the UN ought to regulate the issue of its own use of private companies from this sector. The UN is a big user of private security industry services in its peacekeeping operations. The fact that the world organization often engages private companies represents a huge incentive for regulating this sector, especially because a lack of accountability of private security actors may reflect badly on the UN itself. The UN have to create and develop public standards for private security industry and to uphold them itself when selecting companies they will contract. The use of private security industry in peacekeeping operations has to be open and transparent. The first step would be to make a public list of companies which have been contracted by the UN, specifying their tasks, mandates and areas of engagement. Such an approach would enable the public to be informed about the companies which are engaged in peacekeeping operations. Moreover, such an approach would change the general perception that there is a need to protect „confidentiality“ in the interest of clients, presently dominant within the industry, hindering discussion about accountability of private companies. The company standards should be thoroughly considered. In any case, they should be aligned with international humanitarian law, observance of human rights, obligatory transparency and accountability of individual contracting parties and satisfactory personnel training.

The UN should also work towards developing international regulation of private security industry in cases when private security actors conclude contracts with clients which are not UN members. The role of a regulatory instance for international contracts signed by private security companies could be taken over by the UN Special Rapporteur on the use of mercenaries. The UN regulation ought to include a list of companies which have adopted the required standards and which thus become „accredited,“ gaining a certain degree of legitimacy. This would be particularly useful, because it would enable states and non-state clients to have a better insight into the operation of companies before they hire them. The second possibility is for the UN to assume a role of an external auditor, dispatching an independent rapporteur to establish whether companies abide by accepted standards and observe the rules.

EU context

The private security sector in EU countries has experienced a huge growth. This growth is reflected in a large number of private security companies and diversity of services they provide. There is an observable increase of the number of employees in these companies.²⁹

In 1999 the Confederation of Security Providers estimated that in EU member states there were over 500,000 officers working for 10,000 companies which specialize for securing industrial objects, offices, public buildings, shops, airports, as well as for money transport, personal protection and security of private houses. Nowadays, with EU enlargement to countries of southeastern Europe and constant growth of private security companies, there are 52,300 private security companies in the EU employing approximately two and a half million people. In some EU member states the number of private security members exceeds the number of policemen, while in most countries this number is approximately the same as the number of policemen. It is noticeable that almost all EU member states have regulated this area under national legislation. In Austria with some 200 companies (with a ratio of one private security employee per 523 citizens) and the Czech Republic with 5,629 companies (with a ratio of one private security employee per 203 citizens and one policeman per 238 citizens), there is no umbrella law regulating this area. Instead, the activity of these companies is regulated under provisions of other laws. The partial exception is Spain with 1,299 companies (and with a ratio of one private security employee per 1,260 citizens and one policeman per 565 citizens) and Sweden with 250 companies (and with a ratio of one private security employee per 467 citizens and one police member per 522 citizens) because they have specific laws regulating this type of activity. In the legislation of Germany with some 3,700 private security companies (with a ratio of one private security employee per 484 citizens), Belgium with around 1,300 companies (and with a ratio of one private security employee per 526 citizens), Great Britain with around 2,500 private security companies (and with a ratio of one private security employee per 170 citizens) and Slovakia (with a ratio of one private security employee per 314 citizens), specific legislation regulating this sector is an exception rather than the rule. According to some research, Sweden has been classified as the state which provides the best conditions for the work of private security industry.

At the EU level there is no universal and generally accepted definition of private security industry and there is no uniform way of regulating this market in EU member states. However, under provisions of most laws, private security services imply securing persons, property, organizing escorts of money and other valuables, centers which design, install, maintain and conduct surveillance of systems of technical security, as well as private investigations. In most members states the Interior Ministry is in charge of issuing work permits. In some states this competence is under the purview of special institutions (Great Britain and Ireland), while in some states this jurisdiction is exercised by the Ministry of Labor, local self-government bodies or even the Defense Ministry. It is significant that in all states, work permits with an expiry period are mandatory. In all states except Italy, companies are required to have trained personnel, sufficient technical equipment and procedures ensuring transparency and accountability. Most countries require that private security employees should undergo basic training. A smaller number of member states require that employees should also undergo additional specialized training, as well as additional checks. The passing of an exam in order to be granted the license is required in almost all members states. The approval of the Interior Ministry or a body competent to determine the training curriculum is required in a couple of states.

²⁹ CoESS (2011) Private Security Services in Europe, CoESS Facts and Figures 2011, available at: [http://www.coess.org/_Uploads/dbsAttachedFiles/Private_Security_Services_in_Europe-CoESS_Facts_and_Figures_2011\(1\).pdf](http://www.coess.org/_Uploads/dbsAttachedFiles/Private_Security_Services_in_Europe-CoESS_Facts_and_Figures_2011(1).pdf)

In Great Britain, Holland, Ireland, Denmark and France the use of firearms is prohibited, but in most EU countries the use of non-lethal weapons and restraining devices is allowed. Private security companies have limited competences to search persons and premises and seize things in all states. The additional special competences are only granted to private security employees in Greece, Belgium and Poland, but even in these countries such competences are defined in accordance with specificities of the situation and the field of activity (activity on private grounds, airports etc). The weapons-specific training is compulsory in all states.

The work of companies is mostly controlled by the police, or more rarely by local authorities. The institutions issuing licenses are in most cases in charge of controlling the work of these companies too. The sanctions to be borne in the case of violation of the rules of conduct mostly boil down to administrative bans, denial of work licenses or criminal charges. The prohibition of work is not infrequent and in some cases prison sentences have also been pronounced.

THE OVERVIEW OF RECOMMENDATIONS AND GOOD PRACTICE EXAMPLES

Although presently there is no harmonized legal framework at the level of the European Union which regulates the private security sector, some broadly accepted standards represent basic guidelines. The draft law contains a short overview of standards and experiences in the private security sector in European Union member states.

Montreux Document ³⁰

The Montreaux Document is one of the basic international documents setting standards for functioning private security companies – a result of the joint initiative by Switzerland and the International Committee of the Red Cross (ICRC) launched in 2006. It insists on obligations of states, companies providing private security services and their employees to carry out their activities in accordance with international law in cases when private security companies, for whatever reason, participate in armed conflicts. Although at first sight it may not be fully applicable to the context in which attempts are made to regulate the private security sector in Serbia, the Document nevertheless may be useful, because it contains 70 good practice examples formulated by experts from 17 countries as well as civil society and private security industry representatives.

Among good practice examples presented in the Montreaux Document, one of the most important ones is found in Part I, Title E and its Article 22, which envisages that companies providing private security services are obliged to comply with international humanitarian law and human rights guaranteed by domestic regulation as well as other applicable national laws such as the criminal law, the tax law, the immigration law, the labor laws and specific regulations pertaining to the private security sector. Consequently, private security sector is embedded in the broader legislative framework even if concrete and clear legal framework specifically dealing with the private security sector is missing, given that other regulations and laws regulating the areas affecting private security apply.

Moreover, Part II, Title III is particularly important, as it sets out the criteria for selecting companies which provide services of a private army and guarding services. Among other things, Articles 5-13 call on introduction of adequate security checks, especially in cases firearms are used in performing of their activities; necessary training and licensing; definition of the manner of acquiring and using equipment; observance of the broader legislative

³⁰ United Nations General Assembly, Annex to the letter dated 2 October 2008 from the Permanent Representative of Switzerland to the United Nations addressed to the Secretary-General, Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict, Montreux, 17 September 2008. Doc. no. A/63/467-S/2008/636

framework and existence of supervisory internal mechanisms ensuring accountability; as well as observance of the right of employees in accordance with labor laws, especially in terms of contracts, salaries, safety at work and anti-discriminatory measures.

Finally, Article 21 paragraph f calls on appropriate administrative and other monitoring mechanisms ensuring proper enforcement of contracts and accountability in cases of improper and unlawful behavior, calling, among other things, on cooperation among companies providing services of a private army and security services, states where these companies are seated and states where they offer their services, as well as with professional associations, civil society and other actors, in order to ensure exchange of information and develop such mechanisms.

Confederation of European Security Services

The appropriate health and safety of work of private security companies at the European level are given the greatest emphasis in the publication issued by CoESS. The CoESS Manual for Organizations Awarding Contracts for Guiding Services, developed in cooperation with [UNI Europa](#) (European Federation of Trade Unions for Services and Communications)³¹ serves as a source of initial information and as a tool for those awarding contracts to legal persons providing private security, defining technical merits and criteria of quality which help identify companies which provide high-quality private guarding services.³² The Manual serves as a guide explaining the process, while its Annex provides evaluation tables as a scoring framework that can be used as a reference tool.

The main aim of the Manual is to set out the conditions necessary for a company to fulfill in order to be awarded a contract for providing private security. It emphasizes the need for quality rather than merely the acceptable price. The Manual emphasizes the danger inherent in the tendency to award contracts to the cheapest bidder because of perceived consequences of this tendency for the private security sector, including weakening of system infrastructure in terms of personnel training, oversight and quality management. The choice of the cheapest bidder means that the selected bidder will tend to reduce costs even more, mostly by using cheaper workforce, which has a detrimental influence on employee motivation.

Reducing wages, payroll taxes and social insurance (such as health and pension insurance) is a frequent practice. The increasing number of temporary labor contracts or part-time arrangements, as well as avoidance of collective bargaining schemes, represents a frequent occurrence. In the race to offer the cheapest possible services, security mechanisms become perceived as a luxury and as excessive costs, increasing the security risk both for clients and for the general public. The Manual stresses cases of tax avoidance and avoidance to pay payroll and other taxes and social security on the part of private security companies, as well as cases of violation of original contracts which envisage that a certain number of security providing personnel, as well as cases of undeclared work.

As such, the Manual and its evaluation tables can serve as a basic guide for selecting a private security company so as to ensure the best quality, which is in the long-term interest of all stakeholders, especially considering aforementioned problems which are also present in the private security sector in Serbia. Namely, there is a widespread practice in Serbia to bid with

³¹ CoESS (1999), Selecting Best Value - A Manual for Organisations Awarding Contracts for Guarding Services, available at [http://www.coess.org/_Uploads/dbsAttachedFiles/Best_Value_Manual_EN\(1\).pdf](http://www.coess.org/_Uploads/dbsAttachedFiles/Best_Value_Manual_EN(1).pdf)

³² CoESS and UNI Europa made a joint appeal in 2011 that the European Commission should issue the Regulation under which the selection of bidders in public procurement would adopt the criterion of the „economically most advantageous bid.“

the so-called „dumping prices“ i.e. prices of work which cannot effectively pay even the minimum wages and other business expenses. In addition, labor contracts tend to be temporary or part-time and there is avoidance of collective bargaining contracts so as to be able to offer the cheapest bid and be more competitive at the market.

In accordance with recommendations made in the Manual, the Serbian Chamber of Commerce Private Security Association has been promoting since 2009 the European methodology for awarding contracts to private security providers, primarily the criterion of economically most advantageous rather than the cheapest bid.

International Code of Conduct for Private Security Service Providers - ICoC³³

The International Code of Conduct for Private Security Service Providers (ICoC), promoted by the Swiss government, is a multiple initiative the aim of which is to clarify international standards on the basis of which private security sector operates, as well as to improve and strengthen accountability of these companies and their oversight.

The Code promotes the principles – which are based on human rights – which ought to serve as the guidance for responsible provision of private security services. These are the principles which guide use of force, prohibition of torture, human trafficking and other human rights abuses as well as specific obligations in terms of company management, including hiring of employees, management of weapons and internal handling of grievances. By February 2013, ICoC has been signed by 592 private security providers.

Among other things, Title G of the Code lists specific commitments regarding management and governance, possession of an adequate permission (license) for providing private security services, mental and physical aptitude and security checks. For employees who are to carry weapons, the Code makes weapons-specific training mandatory.

The Code also calls on the establishment of a special grievance mechanism to address claims alleging violation of accepted regulations. It implies procedures for reporting improper or illegal conduct of private security personnel, publishing details and information about the grievance mechanism on a publicly accessible portal, internal investigation and cooperation with an official investigation, taking appropriate disciplinary action and protection of people who report improper or illegal conduct in good faith.

These principles have also been incorporated in the Code of Professional Ethics of Serbian Private Security Providers, adopted in 2006 by the Serbian Chamber of Commerce Private Security Association. In 2012, a Commission for the Oversight and Enforcement of the Code³⁴ has also been set up, the aim of which is to address cases of violations of the Code before courts of honor set up within Serbian chambers of commerce.

European legal framework

As the Draft Law emphasizes, the domain of private security is relatively well-ordered by the European Union legislation, primarily due to participation of the private security sector in the

³³ International Code of Conduct for Private Security Service Providers 2010, available at http://www.icoc-psp.org/uploads/INTERNATIONAL_CODE_OF_CONDUCT_Final_without_Company_Names.pdf

³⁴ The Commission for Monitoring and Implementation of the Code of Professional Ethics of Private Security, available at <http://www.pks.rs/ONama.aspx?id=254>

EU single market to which regulations pertaining to freedom of service provision, freedom of residence or movement, etc, apply.

Thus the European Court of Justice is empowered to adjudicate in issues related to private security sector as its activity is regulated as a part of the single (internal) EU market.

Furthermore, the Council of Europe has brought numerous acts which affect the private security sector and which pertain to the protection of human rights and the rule of law, e.g. the European Convention on Human Rights and Fundamental Freedoms, the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data and a recommendation on harmonization of national firearms legislation.

Advocacy of Law adoption

In the following examples, the greatest bone of contention was whether private security should be categorized as purely business sector or whether, due to the fact that legal persons which perform private security activities possess specific, legally determined and certified authorities (similar to some police authorities) or it ought to be categorized as a kind of a private-public sector which requires regulation specific to this sector.

This issue has been resolved in various countries in reference to various arguments the common aim of which was to legally regulate this sector. The Government of the United Kingdom has argued that such legislation would reduce the number of violations committed by private security providers and that it would simultaneously raise the quality of the service, promote trust in the industry as a whole and ensure greater protection of the general public. It would be a win-win for both the general public and the industry (private security sector). In their reports, the Legislative Committee in Denmark and the Consultative Group in Ireland have emphasized that regulation of this area would ensure significant benefits both for the sector and for the broader public, concluding that this fact alone suffices to justify regulation of the private security sector. In Norway, a similar committee has voiced its support to enactment of a legislation regulating private security sector, given that it is in the public interest.³⁵

The Western countries have therefore mostly grounded their arguments in favor of regulating private security sector in the fact that such a decision would be in the interest of the state, the industry as well as the general public. This and similar conclusions can also be reached in the Justification Statement of the Draft Law, Title II – Reasons for Law Enactment.

South Africa has officially categorized private security as a sector belonging to the general security culture of the society, defining it as more than a private sector industry requiring legal regulation.³⁶ In Serbia, private security sector has been categorized similarly as an integral part of the national security, mentioned in the National Security Strategy.

The last good practice example in terms of advocating regulation of the private security sector is provided by the self-regulation initiative that has originated from private security providers themselves. The [ASIS International](#), an organization of security professionals established in 1955, which brings together more than 38,000 members throughout the world, insists on the need to regulate the sector in order to ensure security services which will meet clients' needs, protect vital infrastructure and fulfill obligations in terms of the legal framework of the country

³⁵ Jorma Hakala (2008), Why regulate manned private security? Report. Helsinki: CoESS, p.10

³⁶ Jorma Hakala (2008), Why regulate manned private security? Report. Helsinki: CoESS, p. 11

in which private security services are provided and in order to solve problems which arise when less scrupulous companies and criminals tarnish the image of reputable private security companies which strive to provide quality services.³⁷

Such a self-regulation initiative coming from the private security sector itself is also present in Serbia, as testified by the Memorandum on Cooperation between the Interior Ministry of Serbia and the Private Security Association of the Serbian Chamber of Commerce and the Commission for Public - Private Partnerships in the Security Sector, the members of which have participated in drafting the present Law. Given that almost all companies in the field of private security in Serbia have for more than a decade now been actively participating in drafting the law, they already apply the proposed legal provisions having introduced them into their general acts (e.g. the Ordinance on the Security Service) – which effectively self-regulates private security sector in Serbia.

Problem of conflict of interest

It has already been mentioned that in Serbia there is a problem of the conflict of interest when private security sector is concerned due to the fact that the Interior Ministry officials also frequently moonlight as private security employees. This poses risks of a vague chain of command, corruption, problems with oversight and accountability. In the worst case, the balance might become tipped and there might be an increase of tensions among the branches of government (army, police), the private security companies and other stakeholders.

The problem of the conflict of interests also exists in much better-ordered societies where legal imprecision leaves the room for possible abuses due to possibilities of divergent interpretations. Thus in the US there are two definitions of state functions in federal laws and policies. One legal definition, adopted as a part of the Federal Activities Inventory Reform Act of 1998, maintains that Government exercises jurisdiction over those functions and activities which are „so closely associated with the public interest that they require arrangements to be made by federal government officials.“³⁸ Another much more politically oriented definition stipulates that Government exercises jurisdiction over activities which are „so intimately associated with the public interest that they require the engagement of state officials.“³⁹ The lack of a clear definition leaves room for flexible interpretation and brings into question possibility of establishing mechanisms of accountability and oversight.⁴⁰

In Serbia, an ordinance on kinds of services the Interior Ministry is allowed to provide in order to acquire own funds is still in effect.⁴¹ The legal basis for enacting the ordinance is paragraph 2 of Article 182 of the Law on Police which envisages that „the Ministry may acquire own funds by providing services associated with the Ministry’s core activity i.e. in accordance with tasks which serve the purpose of security and keeping of registers in its jurisdiction; it shall have the property of an own income.“ Accordingly, the provision of these services is associated with

³⁷ Jorma Hakala (2008), Why regulate manned private security? Report. Helsinki: CoESS, p. 37

³⁸ The White House, Office of Management and Budget, Federal Activities Inventory Reform Act (FAIR Act) of 1998, Public Law 105-270, available at http://www.whitehouse.gov/omb/procurement_fairact/

³⁹ The White House, Office of Management and Budget, Circular No. A-76 Revised of May 29, 2003 on the Performance of Commercial Activities, available at http://www.whitehouse.gov/omb/Circulars_a076_a76_incl_tech_correction/

⁴⁰ Željko Branović (2011), The Privatization of Security in Failing States - A Quantitative Assessment, Occasional Paper No.24, Geneva Center for the Democratic Control of Armed Forces (DCAF), p.6

⁴¹ Republic of Serbia, Ministry of the Interior, Ordinance on the types of services provided by the Interior Ministry towards earning own funds, article 2, "Official Gazette of the RS", no. 64/2006, 71/2007, 14/2008, available at http://www.mup.gov.rs/cms_cir/sadrzaj.nsf/propisi.h

„the Ministry’s core activity“ „serving the purpose of security and keeping of registers in its jurisdiction.“

The ordinance specifies the services that may be provided by the police and provides concrete illustrations specifying cases (e.g. transport services using Interior Ministry SUVs to help active or retired employees change their places of residence, providing „official escort and transportation of hazardous substances, weapons, money, securities and other objects and goods of significance for Serbia“) and providing individual services not offered by private security companies (e.g. sale of security forms and registration plates).

Consequently, there are some cases in which the Interior Ministry and private security companies might prove to be competitors, particularly in cases of providing services such as transportation of persons and goods, transportation of money or delivery of valuable items, meeting the needs of clients such as commercial banks, institutions, organization and other legal persons. Thus, once the Law on Private Security has been enacted, it will be necessary to specify in the ordinance which services exactly may be provided by the Interior Ministry, associated on the one hand with its „core activity“ and on the other with „serving the function of security in its area of jurisdiction,“ without constituting a conflict of interest.

This problem becomes even more pronounced if we take into account the fact that the police i.e. the Interior Ministry are envisaged as the instance which provides administrative oversight and serves as the control mechanism over the private security sector. This creates a direct conflict of interests if Interior Ministry officials are business competitors of the private security sector as owners or active employees of private security providers.

Article 133 of the Law on Police states that „police officials and other police employees may not perform other activities associated with tasks of police officials“ (paragraph 1). A Minister’s decree more closely regulates these activities and tasks, as well as conditions under which activities can be performed outside working hours. The Law on Police therefore does not prohibit police members to perform activities outside working hours (moonlighting), but restricts such work to the kind of work not associated with tasks of a police official. Consequently, the Law on Police does not contain clear provisions which would envisage a clear status of the private security sector. The CEAS legal team maintains that this makes the Law on Police incomplete and that the Law, as well as relevant bylaws, ought to be aligned with the Law on Private Security as soon as the latter has been adopted.

Similarly, under Article 169 of the Law on the Police, Interior Ministry officials have to abide by provisions of the Law on Civil Servants concerning their status, duties, rights and obligations. These provisions envisage that „provided a written approval by his/her superiors, a civil servant may work outside office hours for another employer if additional work is not prohibited under other laws and regulations and if that does not create a possibility for the conflict of interests or affect impartiality of his/her work as a civil servant.“ Given that it has not been clearly recognized that for a police official to moonlight in the private security sector constitutes the conflict of interests, no law or regulation presently give ground to prohibit hiring of Interior Ministry officials by private security companies. Despite the fact that Article 28 of the Law on Civil Servants envisages that „a civil servant cannot be an owner of a business, a utility service or an entrepreneur“ and Article 29 envisages that „a civil servant cannot act as a manager, a deputy manager or an assistant manager of a legal person,“ there is no regulation clearly prohibiting Interior Ministry officials to moonlight in the private security sector, although such a situation necessarily constitutes the conflict of interests.

One of the solutions to this problem could be adoption of clear internal rules by the Interior

Ministry regarding moonlighting.⁴² In Belgium, Greece and Portugal, for example, employment in a private security company is not allowed to officers who have served in the police or the security forces in the previous five years.⁴³ However, as reasons for the enactment of the Draft Law, Title II, state: „One of the reasons for the adoption of the Law is appropriation of European standards and experiences.“ However, „in states like Serbia which attempt to reduce the number of civil servants, such a provision would be too restrictive.“ Accordingly, as far as Serbia is concerned, it has been proposed to enact a law which would prohibit private security companies to hire active police officers.⁴⁴ Such a regime exists, for example, in Denmark.

Licensing

According to the CoESS analysis of 34 European countries (the then 27 EU member states and seven other European countries including Bosnia and Herzegovina, Croatia, Macedonia, Norway, Serbia, Switzerland and Turkey) conducted in 2011, the percentage of countries in which possession of a license is a legal obligation for legal persons to be able to provide private security services is 94%, while the percentage of countries in which the license for natural persons to engage in such activities (of an active private security employee) is 88%.

The instance which most typically regulates the legal framework within which private security companies must operate in aforementioned countries is the Interior Ministry in 53 percent of cases, while in 25 percent of cases the jurisdiction lies with other Ministries and institutions, in 16 percent of cases with the Ministry of Justice and in the 6 percent of cases with the police.

The legal obligation to possess a certificate on the completed basic professional training exists in 97 percent of cases of the analyzed European countries.⁴⁵

Security checks and data protection

The data protection issue has been repeatedly raised in this analysis of the Draft Law. However, at this point we address this issue in terms of security checks of private security sector personnel. Namely, stricter regulations pertaining to personnel checks are increasingly advocated by the private security sector.

During the debate on a law regulating labor relations of security officers, a conclusion was reached by the US Congress that without proper security checks, the security guards, in charge of guarding the citizens and vital infrastructure, may as well turn out to be those against whom the security officers are expected to guard the general public. A similar conclusion has also been reached by the United Kingdom.⁴⁶

Some of the conditions which applicants in Europe have to fulfill to become security personnel are not to have been convicted of a crime, to have passed a security check and to be able to furnish a testimony about their good moral character. The condition that the owner of the private security providing service has not been convicted of a crime and that he has passed a

⁴² Jorma Hakala (2008), Why regulate manned private security? Report. Helsinki: CoESS, p. 21

⁴³ Draft Law on Private Security, April 2013

⁴⁴ Unijat (2007) cited in Jorma Hakala (2008), Why regulate manned private security? Report. Helsinki: CoESS, p. 22

⁴⁵ CoESS (2011), Private Security Services in Europe, CoESS Facts and Figures 2011, p.143-144. NOTE: The CoESS analysis was written at the time when the Draft Law on Private Security in Serbia was last time placed at the parliamentary agenda. The analysis considers the Law as awaiting immediate adoption. Accordingly, the analysis classifies Serbia among the countries having specific private security legislation.

⁴⁶ Jorma Hakala (2008), Why regulate manned private security? Report. Helsinki: CoESS, p. 30-31

security check exists in 88% of cases i.e. 87% of cases in Europe, while these two conditions must be met by active private security personnel in 87% of cases.⁴⁷

The nature of the data collected in the process of security checks of applicants for security jobs is such that most European legislation regulates data protection pertaining specifically to this sector through its implementing legislation.

Problem of public procurement of services provided by private security sector

The public procurement of private security services has economic as well as security implications. The major issues when it comes to public procurement of services provided by the private security sector include: deficient training of public procurement officials who are often not able to provide technical specifications, unfair competition, administrative obstacles to conduct annual public procurement, inexistence of clear legal and market rules and lack of investment in the quality of services.

The commissioning authorities play an important role because in the procurement procedure they may set the terms of the tender so that they clearly specify the quality of security services expected for the estimated price. The methodology of selecting the winning bid must imply some sort of a check of hired security personnel, managers of contracted services, infrastructure and the company itself.

Once again, if private security bids are selected on the basis of a criterion of the lowest price offered rather than the criterion of the economically most advantageous bid, problems arise because prices of private security services offered at public tenders are often abnormally low and substantially deviate from the comparable market price in the region. For example, an average price per hour in Serbia currently stands at 1.9 Euros, which makes it impossible to pay state-level minimum wage to employees and do business profitably. The price below 2.2 Euros is considered close to „gray economy,“ but nevertheless frequently appears at public tenders. By contrast, an average price in most EU countries is 8.9 Euros per person per hour; in Serbia the recommended price is 5.0 Euros, which would enable paying an average salary of the Republic of Serbia and making of a gross profit of around 5%. In some of the richest European countries, such as Switzerland and Sweden, the price of private security services stands at as much as 28 Euros per person per hour.

It is necessary to convince the commissioning authorities to adopt the criterion of economically the most advantageous bid when procuring private security services under the restricted procedure or the competitive dialogue as the chosen type of the public procurement procedure and concluding the framework agreement type of public procurement contract, which enables the awarding of contract lasting up to three years. It would also ensure that the public procurement plan and the estimated procurement value are envisaged in accordance with the recommended, rather than the dumping prices offered by unfair competition. The commissioning authorities ought also to make sure that their invitations to bid display the knowledge of the types and manners of physical and technical securing of objects or persons, facilitating providers of services to make quality bids and users of private security to increase efficiency and prevent and reduce consequences of perceived risks.

The state should boost its mechanisms of oversight of public procurement of private security services for several reasons. In Serbia, these reasons are that there is often a discrepancy

⁴⁷ CoESS (2011), Private Security Services in Europe, CoESS Facts and Figures 2011, p. 145

between laws and their implementation, that the legal framework regulating the private security sector is still missing, that the economic situation in the country is very difficult and that one of the preconditions for narrowing the grey economy is that the state should stop selectively tolerating the practice of avoiding paying taxes and payroll benefits.

Managing insured risks and quality of private security services

The insurance companies in Serbia do not have a specific insurance policy that would stimulate the quality of services provided by the private security sector, while the conditions they set in their insurance policies are very easily met. The clients are not motivated to invest in security because such an investment is not offset by stimulative packages offered by insurance companies. Frequently even the banks report only a small amount of money they are transporting in order to reduce insurance costs. Private security companies try to provide the kind of service a client wants and meet his demands. The public tenders are mostly won by the cheapest bid in terms of price per working hour of an employee, which is constantly decreasing because they are no state sanctions for offering dumping prices or engage in unfair competition.

This raises numerous questions: Why do insurance companies avoid giving discounts to premium amounts for insurance of properties which are secured by high-quality security systems? Can private security companies conclude public liability contracts with insurance companies and which risks would public liability imply? To what extent is money protected during transport and do insurance companies provide stimulative discounts if money transport is secured using both electrical and chemical protection? Do insurance policies stimulating investments in good-quality security provision lead to lower indemnification amounts paid to clients and how could the efficiency of this causation be increased? Do insurance companies have well-trained risk assessment personnel?

On the other hand, client's and insurance companies' policies may possibly lead to professionalization of private security personnel. The insurance companies can play a much greater role in the oversight of private security companies. However, the insurance companies would first have to elaborate in more detail the conditions under which they insure private security services and certify with their authority those private security providers which meet the required standards which have been introduced in Serbia in 2008.

Moreover, insurance companies can exert a significant influence on the quality of services provided by private security companies by making the premium amount dependant on the level of sophistication of the system securing the insured risks. Insurance policies ought to reflect the costs of investing in the security of values being insured and determine stimulative measures accordingly, motivating clients to invest in security.

Insurance companies should introduce professional liability insurance as a new insurance policy which would, in line with the existing standards and the Draft Law on Private Security, form a part of the contractual relations between the private security companies and their clients.

In order to meet these standards, insurance companies must have professional staff well acquainted with the area of private security, so their personnel should be additionally trained for security management in order to be able to efficiently conduct security checks and control the quality of private security services in line with valid legislation pertaining to the sector. The body of such legislation, after a long period of dormancy, is now constantly growing

(National Security Strategy, the standards of private security provision, the Law on Private Security about to be adopted, the Code of Professional Ethics of the Serbian Chamber of Commerce Private Security Association etc).

Introduction of a quality assessment and control system pertaining to private security provision would be a good stimulative measure, which would contribute to greater quality of private security services and impose stricter standards of private security provision, sanctioning those who do not uphold them. We reiterate that standards of private security provision have already been made, as well as those pertaining to assessment of risk in protecting persons, property and professional activities, whereby representatives of insurance companies have been included in their making.

Finally, a strong role of the state is needed, given that without a specific law on private security and the accompanying implementing legislation, insurance companies would refrain from offering stimulative insurance policies in terms of premium amounts for professional liability types of insurance. This, however, is crucial if the link is to be established which would develop and advance cooperation between insurance companies and private security companies.

The new Law on Private Security envisages licensed risk assessment specialists. Consequently, the state should make insurance companies amend their risk assessment methodology so as to encompass all elements of security.

The interesting question here is whether in existing circumstances the eligibility to be granted a license should be restricted to private security providers or should the law allow some individuals, who want to specialize in this area, to be able to obtain all six types of licenses. It is however questionable whether in Serbia there are private security providers who are professional and capable enough to become experts in all areas of private security so perhaps the eligibility of being granted various types of licenses should be restricted.

The Draft Law envisages general conditions which have to be met by persons who apply to obtain any type of license for providing private security as well as specific conditions for obtaining each type of license. On the other hand, theoretically there are people who would be able to obtain all types of licenses and this might potentially prove to be a problem because it is justified to raise a question whether in Serbia in the current circumstance there are people who would be able to provide all these services in a manner which uphold all quality and professional standards. A question can also be also raised whether such companies which „do all things at once“ are desirable in Serbia at all, given the existing social conditions.

The license to perform private security activities can be granted to legal persons i.e. entrepreneurs which fulfill the general conditions for being granted such a license which imply that they: 1) have been entered into business registers of the Republic of Serbia; 2) have an internal document specifying a job description and competences of each employee; 3) have an internal document closely regulating the appearance of the uniform worn by security officers and the appearance of the logo; 4) have a designated responsible person who: 1. is a citizen of the Republic of Serbia, 2. is legally of age, 3. has physical and mental fitness to perform private security activities, as certified by a competent health authority, 4. has at least secondary or vocational education 5. has passed appropriate checks, 6. has been granted a license issued to a natural person to carry out private security services; 5) disposes with appropriate premises; 6) disposes with a separate firearms and ammunition storage site in line with regulations on storing and keeping firearms and fire-fighting, if security services is provided with personnel carrying weapons.

The special conditions which legal persons i.e. entrepreneurs must fulfill in order to be granted: 1) the license for assessment of risk in the protection of persons, property and professional liability - are that they have at least one employee who is a natural person granted the license for assessment of risk in the protection of persons, property and professional liability; 2) the license to perform activities of physical and technical protection of persons and property and maintaining order at sports events, public gatherings and other places of citizen assembly - are that they have at least 10 employees who are natural persons granted the license to carry out activities of a guard or the license to carry out basic activities of a security officer – those not carrying weapons or the license to carry out basic activities of a security officer – those carrying weapons; 3) the license to carry out activities related to security, transport and transfer of money and other valuables - are that they have at least 10 employees who are natural persons granted the license to carry out special activities of security officers – those carrying weapons, and that they dispose with technical means for transport and transfer of money and other valuables in line with Articles 36 and 38 of this Law; 4) the license to carry out activities of planning a system of technical protection - are that they have at least one employee with completed secondary technical education and granted the license issued to natural persons to carry out activities of planning a system of technical protection; 5) the license to carry out activities of designing and installing a system of technical protection - are that they have at least one employee with completed higher education in technical or technological sciences and granted the license issued to a natural person i.e. the license to carry out activities of designing and installing a system of technical protection; 6) the license to carry out activities of mounting, launching and maintaining a system of technical protection and to conduct user training - are that they have at least one employee with completed secondary technical education and granted the license issued to a natural person i.e. the license to carry out activities of installing, launching and maintaining a system of technical protection and to conduct user training.

As far as natural persons are concerned, the Draft Law stipulates that the Interior Ministry can issue to a natural person, for purposes of providing private security services: 1) the license for assessment of risk in the protection of persons, property and professional liability; 2) the license to carry out activities of physical and technical protection of persons and property and maintaining order at sport events, public gatherings and other places of citizens' assembly: 1. the license to carry out activities of a guard, 2. the license to carryout basic activities of a security officer – those not carrying weapons, 3. the license to carry out special activities of a security officer – those carrying weapons; 3) the license to carry out activities of technical protection: 1. the license to carry out activities of planning a system of technical protection, 2. the license to carry out activities of designing and installing a system of technical protection, 3. the license to carry out activities of installing, launching and maintaining a system of technical protection and to conduct user training.

Natural persons can also carry out private security services on a freelance basis if they have been entered into the business register of the Republic of Serbia as entrepreneurs.

A natural person can be granted the license under the following conditions: 1) that he/she is a citizen of the Republic of Serbia; 2) that he/she legally is of age; 3) that he/she has completed at least secondary vocational education; 4) that he/she has passed appropriate security checks; 5) that he/she has physical and mental fitness to carry out these activities, as certified by a competent medical authority; 6) that he/she has completed a weapons-specific training or has served in the Army if these activities are performed carrying weapons; 7) that he/she has completed an appropriate training to carry out private security activities in accordance with the Law; 8) that he/she has passed the professional exam. Extraordinarily, persons who

have appropriate level and type of professional education and at least three years of work experience in the fields of private security, police work, security and intelligence work, Army work or work related to the enforcement of penal sanctions can be issued the license if they fulfill conditions under 1)-5) and 8) of this Article.

In connection with the said Draft Law articles one should take note of the difference between the notions of the appropriate check found in Article 10 (the license can be granted to a legal person or an entrepreneur with a designated responsible person who, among other things, has passed the appropriate check) and the notion of the appropriate security check found in the same Article when stipulating conditions under which a natural person can be granted the license, one of which is that he/she has passed the appropriate security check (Article 10).

Article 3 of the Draft Law explains the meaning of these notions. The security check is the check which, in line with the firearm regulation, is carried out by the Interior Ministry. Under Article 8 paragraph 1 point 2 of the Law on Weapons and Ammunition, the license to own guns shall be denied to a person who has been convicted of a crime including breaching the constitutional order of the state, jeopardizing the state's territorial integrity, undermining its military and defense capability, an act of violence against the highest state representative, armed rebellion, terrorism, diversion, violation of territorial sovereignty, kidnapping of an airplane, violation of security of a flight, murder, inflicting severe bodily injuries, inflicting light bodily injuries, battery, various kinds of security violations, kidnapping, rape, sexual abuse, fraud, robbery, theft, extortion, violation of general security, poaching, obstructing a state official in carrying out his/her duties, obstructing an authorized official to carry out security activities and maintain public law and order, violent behavior, production and acquisition of guns and other tools with a view to committing a criminal offense, membership in a group that has committed violence or other types of offenses envisaged by this Law.

However, there might be some people who could fulfill the conditions of the check, but not the conditions of the security check, who would nevertheless under existing legal provisions be able to own private security services. Perhaps this is the mistake of the authority drafting the Law and if so, it ought to be corrected.

The training of natural persons to carry out private security activities can be conducted by legal and natural persons who meet material, technical, professional and personnel conditions for conducting training activities and are authorized by the Serbian Interior Ministry.

A minister in charge of internal affairs (henceforth: the Minister) may specify less restrictive conditions in terms of necessary premises, material-technical tools and equipment, professional training, number and status of persons who meet the conditions to be able to conduct security trainings, to attend professional training programs, in terms of the manner of conducting such trainings, their content and the manner of keeping records about the licensed persons and persons who had completed the trainings or in terms of the amount of fees for organizing and conducting the trainings.

A natural person applying for the license to carry out private security activities should register for training with an authorized legal or natural person. The persons who have completed the training must pass the professional exam organized by the Interior Ministry. The content of the exam and the costs of organizing and conducting the exam as well as the manner of keeping records about the attendants who have completed the training and passed the professional exam are to be specified by the Interior Ministry upon the approval of the Finance Minister. A national administrative fee is to be charged for issuing licenses.

The application for obtaining the license is processed by the Interior Ministry but is first submitted to the competent police authority. The application has to be decided upon within 15 days after it was received. Exceptionally, this deadline can be postponed if verification of the information contained in the application is assessed to require longer. In that case the decision on the submitted application is to be made within 60 days at the latest since it was received.

The license is granted to a period of five years and can be annulled after the expiry of a six month period from the date its award became valid if the legal person fails to start carrying out private security activities within this period.

It however remains unclear what the conditions are under which the license expires. Does it expire ex-lege? It is also insufficiently specified in what way the evidence should be furnished that the legal person has failed to start carrying out the licensed activities within the aforementioned period, which could prove to be a problem.

Once the license expires, a new license can be re-issued following an application, under the same conditions.

The granting of the license is to be denied or its validity annulled if the applicant (a legal person, an entrepreneur or a natural person) does not or no longer fulfills the envisaged conditions for carrying out private security activities. The applicant has a right to appeal the decision. The appeal is lodged with the Ministry within eight days since the day it was received. The Draft Law does not envisage that an administrative dispute can be initiated against the decision, but since the decision is an administrative act, it can certainly be done under the provisions of the Law on General Administrative Procedure.

A legal person or an entrepreneur can carry out private security tasks only on the basis of a written contract with a legal or a natural person to whom the service is provided. The Draft Law envisages essential elements of such a contract. The notice on the contract (including information about subsequent Annexes or possibly contract annulment) must be furnished to the competent police authority. The Draft Law explicitly specifies elements of the notice.

Under the Draft Law, private security activities can be performed in the following forms: physical protection, security provision with carrying of weapons, technical protection, planning, designing, technical surveillance, installing and maintaining a system of technical protection, securing money transport, transport of other valuables and providing marshals. The Draft Law gives detailed specification of these forms of private security provision.

ANALYSIS OF THE DRAFT LAW ON PRIVATE SECURITY

The Government of Serbia adopted the Draft Law on Private Security at its meeting on April 30, 2013. The Law regulates compulsory security and protection of objects and business operations as well as the activities carried out by legal and natural persons who act as private security providers, conditions for granting private security licenses, manner of conducting private security activities and forms of oversight.⁴⁸ After two failed attempts to adopt the Law on Private Security, the Draft Law has once again entered parliamentary procedure and is expected to be placed on the agenda of the National Parliament in late October 2013.

The Law represents material and legal grounds for carrying out private security activities as a part of the national security system subject to democratic civilian oversight. Under the Draft Law, such oversight is to be carried out by the accredited organizations with a proven competence which, under Regulation no. 767/2008 of the European Parliament and of the Council of 9 July 2008, are considered to be the best instrument ensuring the qualities of democratic civilian control (independence, impartiality, objectivity).⁴⁹ However, it is still uncertain whether the Interior Ministry would allow accredited organizations to issue certificates testifying about the competence to carry out private security activities as a valid evidence that conditions were met by natural persons to acquire the license, even though it would be in accordance with international standard ISO/IEC 17024:2008 which regulates criteria for programs under which licenses are granted to accredited organizations.

No law pertaining to the defense and security system has undergone such thorough public debate as the Draft Law on Private Security. By the end of 2009, four models of the Law had been put forward and the Interior Ministry has subsequently referred these texts to the Law Faculty of the University of Belgrade for analysis and synthesis. This text was the starting point for the mixed working group, consisting of representatives of the Interior Ministry and the Private Security Association Serbian Chamber of Commerce, to draft the Law. In late 2010 the public debate on the Law Draft was held in all major cities in Serbia (Novi Sad, Kragujevac, Niš, Beograd), involving a large number of stakeholders, including representatives of the Office of the Commissioner for Information of Public Importance and Personal Data Protection. The significant public interest in this Law is also illustrated by the fact that numerous amendments

⁴⁸ The Draft Law on Private Security, April 2013. In terms of this Law, private security implies provision of services i.e. performing activities of protection of persons, property and business operations by providing physical and technical protection in case these activities are not under sole jurisdiction of state bodies, as well as activities of transport of money and other valuables, maintaining order at public gatherings, sport events and other places of citizen assembly (providing marshals) performed by legal persons and entrepreneurs licenced to perform such activities, as well as legal persons and entrepreneurs who have set up internal forms of security provision to meet own needs (self-protective activities).

⁴⁹ The Draft Law on Private Security, April 2013., Reasons for the Law enactment, Title V, p. 42

to the Draft Law have been submitted. The Law has been placed on parliamentary agenda and its adoption is under way.

I Introductory Provisions

Title 1 defines the scope of activities regulated by the Draft Law on Private Security, the meaning of the terms –'private security' and 'private security services.'

Some experts consulted by CEAS for the sake of this analysis have emphasized that imprecision can be found in Article 2 paragraph 3. Namely, in their opinion, the paragraph stating that „legal persons and entrepreneurs being issued a license for performing private security activities ought neither to perform activities of protecting persons and property in the exclusive jurisdiction of the state nor use operative methods and instruments of state bodies granted to them under specific regulations.“ It is unclear which state bodies the Law implies and what „operative methods and instruments“ could be.

II Compulsory security of objects

Title II regulates compulsory security of objects and what i.e. what kind of objects are implied and the level of security these objects must have. In addition, under this Title the Government is competent to specify more detailed criteria for classifying objects in terms of compulsory security and the manner of compulsory protection of those objects, as well as the minimal technical requirements of compulsory installation of a system of technical protection in banks and other financial organizations (posts, savings banks, exchange offices, safe-deposit boxes etc).

III Private security activities

Title III of the Draft Law on Private Security regulates private security activities requiring a license. Under Article 6, legal persons and entrepreneurs providing private security must be granted a license for assessment of risk in protection of persons, property and professional liability; protection of persons and property by physical and technical means, as well as for maintaining public peace and order at public gatherings such as sport events and other places of citizens' assembly not under the jurisdiction of the Interior Ministry; for planning, designing and supervising installation of a system of technical protection, for installing, launching and maintaining such a system as well as user training; and for providing security of transport and transfer of money and other valuables not under the jurisdiction of the Interior Ministry. Article 6 further specifies that legal persons and entrepreneurs privately providing security must uphold valid standards pertaining to private security provision and observe legislation pertaining to security and health and safety of the working environment. In addition to specifying the scope of private security activities, this Article also refers the Draft Law to other regulations and legislation, whereby it fits into the larger legislative framework of the Republic of Serbia.

Article 7 specifies that legal persons and entrepreneurs providing private security services cannot perform activities of an intermediary in the collection of outstanding debts. This provision is very important given that it is frequently reported by the media about private security companies abusing their authority and participating in extortions and which often participate in extortions and racketeering.⁵⁰

⁵⁰ For example Vreme April 15, 2010. Stevan Dojčinović, „Heavy-Handed Guards,“ available at <http://www.vreme.com/cms/view.php?id=926026>

Title III also sets out criteria for issuing licenses to legal persons and entrepreneurs to carry out private security activities. Under Article 10 of the Draft Law, the license can be granted to legal persons i.e. entrepreneurs who:

1. are entered into the business register of the Republic of Serbia (registered with the Serbian Business Registers Agency);
2. possess a document specifying a job description and competences of each employee;
3. possess a document specifying the appearance of the uniform worn by security officers and the appearance of the logo;
4. have a designated responsible person:
 - a. who is a citizen of the Republic of Serbia;
 - b. who is legally of age;
 - c. who is physically and mentally fit to carry out private security activities, as certified by a competent medical authority;
 - d. who has completed at least secondary or vocational education;
 - e. who has passed an appropriate check;
 - f. who is a natural person granted the license to carry out private security activities
 - g. who disposes with appropriate premises;
 - h. who disposes with a separate facilities for storing guns and ammunition in line with gun keeping and fire-fighting regulations if private security activities are carried out by carrying weapons.

Some experts consulted by CEAS for the sake of this analysis have emphasized that the proposed Draft Law does not contain a single provision describing the owner of a private security provision service. In their opinion, given the nature and type of authority invested in private security companies and the activities they perform, it would be appropriate to consider the following:

- whether the law should regulate the establishment and the conditions for the establishment of a private security provider (e.g. a company) by a foreign legal person;
- whether the law should envisage that one of the conditions for issuing the license should be the absence of a criminal conviction, the absence of the criminal sanctions and the absence of criminal charges pressed against the owner of the private security provider; whether this applies to owners who are natural persons and/or the owners which are legal persons, in line with provisions of the Law on the Liability of Legal Entities for Criminal Offences;⁵¹
- whether the law should stipulate absence of security obstacles as a condition for natural persons and owners of private security entities to be granted a license.

IV License for performing private security activities

Title IV contains provisions which pertain to licenses for providing private security services, specified in Title III, both for legal persons and entrepreneurs (Article 9) and natural persons

⁵¹ In terms of responsibility of legal persons for private security, a question could be raised whether exclusion or restriction of responsibility of the legal person who is private security provider would exist in the performing of public competences regulated by the Law?

(Article 11) i.e. stipulates types of licenses issued and conditions for issuance of the license both for legal persons and entrepreneurs and natural persons providing private security. Title IV of the Draft Law embraces global standards as well as SEESAC recommendations. In 2006 SEESAC made recommendations for legislative regulation of this area envisaging that „systems of granting licenses should be established so that they clearly define types of security service which PSC⁵² may or may not provide“ as well as that „licenses should expire after a certain time period in order to ensure regular reissuing and high level of professionalism; moreover, regular oversight of activities of PSC should be carried out, with penalties envisaged in cases of breaches of the law, envisaging both fines and withdrawal of licenses.“⁵³ While Articles 8 to 18 of the Draft Law directly address licenses – the type and the issuing procedure – Title XI (Articles 76-84) stipulates penal provisions for breaches of the law.

Thus under Article 12 of the Draft Law, license is issued to a natural person who:

1. is a citizen of the Republic of Serbia;
2. is legally of age;
3. has completed at least secondary or vocational education;
4. has passed an appropriate security check;
5. is physically and mentally fit to carry out these activities;⁵⁴
6. has completed a weapons-specific training;⁵⁵
7. has completed an appropriate training for private security provision in accordance with this Law;
8. has passed the professional exam.

The previous dangerous practice which saw Interior Ministry members moonlighting as private security providers⁵⁶ has now been regulated by this Article which in paragraph 4 stipulates that „a person who has an appropriate level and type of professional education and at least three years of work experience in the area of private security, police work, security and intelligence work, a professional Army member and the work experience in enforcing penal sanctions, can be granted the license if he/she fulfills conditions from 1 to 5 and 8 of Article 12 paragraph 1.“ This provision is in line with recommendations of representatives of the Serbian Army and the Defense Ministry as well as the Interior Ministry. Under these provisions, all applicants for the license must pass the professional exam. Even though there are individuals who are not required to complete the private security specific training to be issued the license, all applicants for the private security provision license must nevertheless pass the professional exam.

Such precise specifying of conditions for obtaining licenses for providing various private security services reduces the risk of „doing all things at once“ and provides better protection

⁵² PSC - Private Security Company

⁵³ SEESAC (2006), SALW and private security companies in South Eastern Europe: A Cause or Effect of Insecurity? available at <http://www.seesac.org/res/files/publication/541.pdf>

⁵⁴ As testified by a medical certificate issued by a competent health authority. The Draft Law on Private Security, April 2013.

⁵⁵ That is, if the person has completed the military service carrying weapons, for security provision with carrying of weapons. The Draft Law on Private Security, April 2013

⁵⁶ Blic online, April 13, 2010. „No-one Controls Security Companies,“ available at <http://www.blic.rs/Vesti/Drustvo/184898/Niko-ne-kontrolise-preduzeca-za-obebedjenje>

for users of private security services because the providers must be granted valid licenses and observe certain standards in providing private security services.⁵⁷

Furthermore, in accordance with SEESAC recommendations, the licenses have an expiry date limited to five years (Article 16, paragraph 1). However, paragraph 2 of Article 16 stipulates that a license may be no longer valid after six months since the final decision to be granted the license has been made and received if the licensed private security provider has failed to start providing private security services. However, this phrasing is insufficient because it does not specify the manner in which the license expires, *ex-lege* i.e. as a matter of law or by force of another legal regulation which has the force of the law, or in some other form.

Under paragraph 5 of Article 6, a private security entity (a legal person, an entrepreneur or a natural person) which does not or no longer fulfills conditions for providing private security services should not be granted the license or its license should be withdrawn.

The decision to be or not be granted the license can be appealed against. The appeal can be lodged with the Ministry within eight days after the decision has been received. Taking into account that under Article 70 the implementation of the Law should be monitored by the Interior Ministry, the fact that the Ministry also controls the work of police authorities which issue licenses raises the question: who should control the work of the Ministry itself in terms of the lodged appeals. The applicant can only turn to the court for protection, in accordance with the rules of the administrative procedure. Another problematic point is that these legal solutions envisage merging of executive and control functions, which is not good. The Draft Law does not even envisage that a decision on granting the license can be appealed by launching an administrative dispute. However, given that the decision is an administrative act, this can be done under the provisions of the Law on Administrative Disputes.⁵⁸

Furthermore, even though the competent Interior Ministry is in charge of the professional exam required for obtaining the license and even though the legal person must inform the competent police station about all changes in its status, there is no clear provision defining an instance competent to monitor the license owner during the period of its validity except by making the responsible person within the legal person liable for upholding the law.

Moreover, the condition which pertains to „the appropriate check“ of legal persons and entrepreneurs (Article 10 paragraph 1 point 4 under 5.) i.e. „the appropriate security check“ (Article 12 paragraph 1 point 4) of natural persons is imperfectly phrased, because the legislative framework of Serbia does not recognize these terms. Namely, there are no clear legal criteria of the notion, procedure, competences, rights, obligations and protection of rights concerning the security check procedure in the legal system of Serbia. There is only a rough definition of this term in the Law on Police, which stipulates these checks as one of the conditions for applicants to be hired as police officers. The security check procedure and administrative forms envisaged for this procedure are regulated by the decree issued by the Minister. The same is envisaged by the Law on Military Security Agency and the Military Intelligence Agency („Official Gazette of the Republic of Serbia“ no. 88/2009 and decision by the Constitutional Court of Serbia 55/2012 and 17/2013). This problem could be resolved if the solution is adopted whereby some kind of absence of criminal conviction would be

⁵⁷ Blic online, June 11, 2013. Zoran Milićević, the secretary of the Association of Private Security of the Serbian Chamber of Commerce. „Doors Wide Open for Criminals: Gaps in the Law on Private Security“, available at <http://www.blic.rs/Vesti/Hronika/387332/Kriminalcima-sirom-otvorena-vrata-Rupe-u-zakonu-o-privatnom-obezbedjenju>

⁵⁸ Law on Administrative Disputes, „Official Gazette of the Republic of Serbia“, no. 111/09.

envisaged, thus setting clearer and tougher conditions for all persons participating in the system of private security in terms of passing the security check. Furthermore, one should add that the Data Secrecy Law („Official Gazette of the Republic of Serbia“ no. 104/2009) envisages the security check procedure, the types of the security check as well as the competences of institutions in conducting such checks in order to issue certificates required to access secret data, but all this does not directly pertain to private security.

Making a distinction between passing „the appropriate check“ for legal persons and entrepreneurs and „the appropriate security check“ for natural persons providing private security potentially opens a possibility that private security companies could be owned by persons which would not be able to pass „the security check,“ although they would be able to pass „the check.“

One of the good solutions would be to incorporate similar provisions in the Law on Private Security concerning the procedure of licensing persons providing private security. Practically, such a procedure would regulate security checks in Serbia in particular situations and areas of regulation (concerning the Military Security Agency and the police as well as private security) rather than regulating it by general provisions pertaining to all security services and to other important issues and areas of regulation. It seems that such partial regulation could be useful and could become a sort of „a legislative preparation“ for general regulation of the security check conducted by security services. It would be desirable that such general provisions on security checks should be provided by amending the existing Law on the Foundations of Regulation of Security Services of the Republic of Serbia („Official Gazette of the Republic of Serbia“ no. 116/2007 and 72/2012), as well as by a new provision amending the Law on Police (concerning police security checks) in addition to general provisions.

From the legal point of view, it is questionable whether an administrative decision envisaged by law should require that a natural person applying for the license to provide private security should have completed the secondary or vocational education, especially given the fact that the applying natural person is not required to have a particular level of education to undergo and complete the envisaged training programs.

Article 13 regulates the procedure and manner of issuing licenses. It envisages that private security training for natural persons can be conducted by legal and natural persons who fulfill material, technical, professional and personnel conditions for conducting trainings and are authorized by the Ministry. Therefore, the level of education of natural persons who conduct the training is not directly mentioned. One solution could be to set the mandatory legal condition that persons conducting the training should fulfill conditions for obtaining the license for which they conduct the training. This would legally ensure better quality and more trustworthy training in terms of security as well as in terms of social trust in the state and in persons conducting it.

Finally, paragraph 2 of Article 13, paragraph 3 of Article 14 and paragraph 6 of Article 16 are not aligned with the Constitution of the Republic of Serbia which in Article 42, paragraph 2 stipulates that „collecting, maintaining, processing and using personal data is to be regulated by law.“ Accordingly, in order to achieve legal coherence, it is necessary to amend those articles of the Draft Law which regulate collection of personal data by adding a detailed description of the process of collecting, maintaining, processing and using personal data in the process of issuing licenses and keeping records on the persons awarded the licenses.

V Manner of performing private security activities

Title V regulates the manner of conducting private security activities, including physical protection; security provision carrying weapons; technical protection; planning, designing, technical supervision, installing and maintaining a system of technical protection; providing security during transport of money and other valuables; providing marshals; control center; and activities of self-protection (Articles 21-45).

Article 20 of this Title determines the content of the contract only in the framework of which legal persons or entrepreneurs can carry out private security activities.

Article 20 specifies the content of notice on the concluded contract, an annex to the contract or contract annulment that should be submitted by the legal person or the entrepreneur to the competent police authority within eight days since the day such change has occurred. In this way effective oversight is established over the work of private security companies, taking into account that notices contain information about clearly defined purpose of the contract, the manner of enforcement of contracted obligations pertaining to private security, the number of security official envisaged by the contract and the location of their work schedule, the type and quantity of weapons and protective devices and dates of beginning and end of the contracted provision of private security.

However, it is necessary to consider whether all data collected in accordance with Article 20 observe the principle of commensurability envisaged by Article 8 of the Law on Personal Data Protection – the principle that only those pieces of personal data should be processed which are necessary for the case in point. In particular, consideration should be given to whether it is really necessary to collect information about the single citizen identification number of the responsible person within the legal person providing private security or the single citizen identification number of security providing entrepreneur in terms of their obligation to provide a notice to the competent police authority about the concluded contract, an annex to the contract or contract annulment.

Title V also regulates the type of weapons which legal persons or entrepreneurs may carry to afford physical protection. SEESAC report has stressed that it was problematic that in Serbia a security officer may carry the same weapons as officers on duty (which means that there is huge possibility for abuse of weapons) and that automatic rifles are ubiquitous in this sector despite the fact that such weapons are not adequate for private security purposes.⁵⁹ Article 24 envisages that for providing physical protection, security providing legal persons and entrepreneurs may carry a single-action 9 mm semi-automatic pistol. The security providing legal person is permitted to possess no more number of guns than one half of the number of employees licensed for providing security who carry weapons. The legal persons and entrepreneurs employing security officers carrying weapons must train with their duty guns at least once a year.

The problem of non-transparent issuance of weapons is addressed by paragraph 4 of Article 24 which envisages that weapons are issued on the basis of an authorization granted by the Interior Ministry in accordance with the law.

The problem of using personal weapons has been resolved by paragraph 3 of Article 26 stipulating that a security officer is not allowed to use personal weapons while providing private security.

⁵⁹ SEESAC (2006), SALW and Private Security Companies in South Eastern Europe: A Cause or Effect of Insecurity? available at <http://www.seesac.org/res/files/publication/541.pdf>

Article 28, stipulating that a legal person or an entrepreneur performing private security activities carrying weapons is obliged to ensure that security officers providing private security carrying weapons should shoot their duty guns at least once a year, should be amended to say „in accordance with regulations pertaining to specific conditions for performing certain activities carrying weapons, the weapons-specific training and the training program,“ which would facilitate implementation of the law in that it fits this norm with other norms found in other valid laws and regulations. It would be useful for all issues pertaining to carrying of weapons to be regulated in a uniform way by a small number of regulations in a way clear and understandable to all organizations engaging in some kind of legal use of firearms. Facilitating the implementation of the Law by referring the implementer to other laws and regulations is very important in terms of specifying obligations (the number of guns, the distance from which the guns should be used etc) of security officers training with their duty guns.

Title V specifically regulates the manner in which various aforementioned private security services should be provided. It defines the types of activities e.g. technical details such as contents of special vehicles used in transport of money and other valuables; suitcases in which money and other valuables are to be transported; control centers and so on.

Title V also specifies that private security of persons, property and business operations is to be provided in a way which does not obstruct the work of state officials and does not disturb peace and order; the duty of private security officers employed as operators in control centers is to immediately inform the police if they have an information that possible perpetration of a criminal offense pursued in the official capacity or a misdemeanor with elements of violence is under way. The Draft Law thus requires close cooperation between state bodies and the private security sector.

VI Authorities of security officers

Title VI specifies the authorities of a security official providing physical protection. Article 46 of this Title lists the authorities of a private security official:

1. to check the identity of persons entering or exiting the secured object or a premise or occupying it;
2. to search persons or vehicles entering or exiting the secured object or premise or found there;
3. to ban unauthorized persons from entering or exiting the secured object or premise;
4. to order a person to leave the secured object or premise if he/she is not authorized to be there;
5. to warn the person jeopardizing one's own security, security of others or causing damage or destruction of property by behaving or failing to behave in a certain way;
6. to temporarily restrain the person found in the secured object or premise committing a criminal offense or perpetrating a severe violation of public peace and order, until police arrival;
7. to use the following instruments of force;
 - i. restraining devices;
 - ii. physical force
 - iii. police dogs

iv. weapons⁶⁰

v. incapacitating agents⁶¹

The Draft Law stipulates that all aforementioned competences of the private security official should be clearly specified in the contract concluded with the user of services. Furthermore, it is stipulated that when exercising these authorities, security personnel must not subject people to torture or to inhuman or degrading treatment (Articles 46 and 47). In the light of this provision, a basic training in human rights and their protection should perhaps be introduced as a part of the professional exam and courses and units that security officers must complete.

Special provisions are to be found in Article 54, paragraph 3 which stipulates that police dogs may be used to perform certain actions if guided by trained security officers – their handlers, in accordance with valid animal right regulations. Accordingly, private security officers have to undergo additional training if police dogs are used in the provision of security services.

Furthermore, Articles 55 and 56 stipulate legal procedure for the use of firearms, which includes identifying and clear warning issued to a possible perpetrator, as well as the obligation of incident reporting i.e. writing a report about a firing incident and submitting it to the designated responsible person within the security providing legal person or the entrepreneur, who in turn add their own note and submit it to the competent police authority.

These provisions are expected to terminate the current practice: namely, at present, private security officers use firearms in accordance with the Law on Firearms and Ammunition, which envisages that the use of firearms by private security officers has the same standing as the use of firearms by civilians.

The only remaining unresolved issue concerns tax on guns, from which the Interior Ministry and the Army are exempt, but not the private security sector. Even though attempts have been made to resolve this issue and even though guns are legally permitted basic instruments of work of private security companies, private security sector has not yet been exempt from it.

VII Identification cards and logo

Title VI specifies logo and identification cards of private security officers. Under Article 58, the color and the elements of the uniform worn by private security officers are regulated under a Minister's decree, while the appearance of the uniform is regulated in accordance with conditions and activities being performed. Private security legal persons and entrepreneurs have the authority to more closely determine the appearance of the uniform in accordance with previously stated characteristics.

Private security officers must wear their uniform, except when they have a written approval of the legal person or the entrepreneur providing private security that private security activities should be carried out without the uniform and in civilian clothes. Private security officers cannot wear the uniform off duty (Article 60).

Article 61 stipulates that appearance and color of the uniform and the logo of a private security official must not resemble the uniform and the logo of the police, the army, the customs officers

⁶⁰ Under the conditions set by this Law and the law regulating the use of firearms by authorized police officials.

⁶¹ The temporary incapacitating agents will be added as one of the competences of security officers once amendments to the Law on Police are adopted, given that they have been approved by the Ministry of the Interior. This will significantly reduce the use of firearms.

and other state bodies. This has not previously been the case and some private security companies have used logos and vehicles which resemble police ones.⁶² Exceptionally, paragraph 2 of Article 65 of the Draft Law envisages that private security vehicles may use white rotating or blinking lights, in line with road safety regulations.

A potential problem is found in Article 64 which stipulates that the content, appearance and manner of use of identification tags of private security officials are to be decreed by the Minister. Similarly to provisions found in Articles 13, 14 and 16, this is unconstitutional, given that Article 42 paragraph 2 of the Constitution of the Republic of Serbia says that „collecting, maintaining, processing and using personal data is to be regulated by law.“

VIII Records

Title VIII regulates keeping of records pertaining to private security provision. This area has been relatively problematic. In his opinion on the Draft Law on Private Security,⁶³ the Commissioner for Information of Public Importance and Personal Data Protection has emphasized that articles which regulate records of personal data should be amended to specify the kind of data that may be collected and the instance in charge of collecting them.

More precisely, Articles 66 and 67 of the Draft Law on which the commissioner has expressed his opinion only enumerate the kind of records envisaged to be kept by the Interior Ministry or legal persons and entrepreneurs providing private security respectively, without further explanation, noting that the content of the recorded data are to be regulated by a Minister's decree. In his remarks on the Draft Law the Commissioner has insisted that collecting, keeping, processing and using personal data kept in such records“ ought exclusively to be regulated by law rather than general implementing regulations of the instance drafting the Law or any other instance.“ Articles 66 and 67 of the Draft Law are expanded with additional provisions clearly defining the content of any type of records.

Thus in accordance with the Commissioner's opinion, Article 66 of the Draft Law concretely specifies three types of records that can be kept by the Interior Ministry – record of licenses issued to legal persons and entrepreneurs providing private security; records of licenses issued to natural persons performing private security activities and records of identification tags issued to security officers – as well as the exact data these records contain. The manner of keeping the records is also specified by law in terms of the form in which they are to be kept (electronically or otherwise) and whether they should be confidential or not.

Article 67 stipulates the kind of records kept by legal persons and entrepreneurs providing private security concerning the types of contracts concluded and the types of private security activities performed. It also envisages the manner in which these records should be kept – manually or electronically – in accordance with regulations pertaining to personal data protection to which the Commissioner had referred in his opinion on the Draft Law.

However, point 8 of Article 67 regulates the content of the records pertaining to the use of force and envisages that the records should contain identification data of security officers and other personal data about persons against which force has been used. Referring once again to Article 42 of the Constitution of the Republic of Serbia, it should be said that personal data

⁶² Vreme, April 9, 2009. Dragan Todorović, „Businesses and Affairs of Laza Bombaš,“ available at <http://www.vreme.com/cms/view.php?id=859984>

⁶³ The Commissioner for Information of Public Importance and Personal Data Protection, The Opinion on the Draft Law on Private Security, Opinion no. 011-00-620/2012-05 of September 20, 2012

processed in accordance with this Article should be clearly defined by law; therefore it is necessary to amend these provisions of the Draft Law.

IX Data protection

Title IX of the Draft Law regulates in detail the data to be collected for purposes of keeping records mentioned in Title VIII. In accordance with the Law on Personal Data Protection as well as the Law on Free Access to Information of Public Importance, Article 68 of the Draft Law stipulates that data can be used only with consent; for purposes for which they were collected; that the person to which data refer has the right to have an insight into the collected data; and that there is an obligation to delete the data within fifteen days since the termination or the cancellation of the contract (for data collected under the contract or written consent).

Article 68 says that „data collected for purposes of carrying out private security activities can be used only for purposes for which they were collected and cannot be disclosed to third persons or made publicly available unless regulated or agreed upon otherwise.“ However, the expression „unless regulated or agreed upon otherwise“ is imprecise and unclear, which might give rise to abuse.

The Draft Law articles which pertain to data protection must be more clearly defined in order to avoid possible abuses. For example, Article 68, paragraph 1, stipulates that the data collected as a part of private security provision can only be used for purposes for which they were collected and cannot be disclosed to third persons or made publicly available, unless otherwise regulated or agreed upon. The persons to which the data pertain have the right to have an insight into the collected data, including the right to take a look, read and hear data, take notes and obtain a copy of the data at their own expense (photocopying, audio copying, video copying, digital copying etc) in the form in which the data are stored and that, in line with the law, they may demand change or deletion of certain data. It seems that the latter phrase is insufficiently clear because it remains unsaid whether the regulation pertains only to change and deletion of data or to exercise of the right to personal data protection regulated by the Law on Personal Data Protection. Therefore this phrase should be made more precise.

If data are collected under the contract or written consent, once the contract is cancelled i.e. written consent withdrawn, the legal person i.e. the entrepreneur providing private security must hand down the data to the user or delete them within 15 days since the day of cancellation of the contract or withdrawal of the written consent; other data insignificant to the user ought to be destroyed within 8 days. Even though deadlines have been envisaged by this legal norm, the procedure for implementing this norm has not been clearly envisaged and there is no referral to subsidiary implementation of the Law on the Personal Data Protection. The issue of destroying the data in question can be resolved by, for example, amending Article 68 so as to envisage that the official note should be made about it and that it should be kept by the envisaged deadline. Accordingly, it is necessary to clearly define the mechanism of control and oversight over the observance and implementation of the Law on Free Access to Information and the Law on Personal Data Protection in terms of keeping of records. The good practice of consulting with the Commissioner for Information of Public Importance and Personal Data Protection when drafting the Law ought perhaps to be given a form of a legal norm by committing the stakeholders to cooperation with that institution in terms of data protection, which would give this Draft Law an even greater legitimacy. A possible solution is that the Draft Law should directly mention that the protection of the rights in question is to be exercised in accordance with the law regulating personal data protection.

X Oversight

Title X of the Draft Law regulates oversight of the Law implementation. Articles 71 and 72 envisage that the Interior Ministry and the authorized police officials are competent to verify the manner in which weapons are kept and carried, physical and mental fitness of security officers to carry weapons, and if the need arises, to undertake actions ensuring direct and unannounced oversight over private security provision.

Such unannounced inspections can contribute to greater observance of the Law but only if they are accompanied by adequate penalties and proceedings against those who violate the Law.

A good practice example is Article 75 which envisages establishment of a special working group – an Expert Council for Advancing Private Security and Public - Private Partnership in the Security Sector – in charge of effecting cooperation with associations of legal persons and entrepreneurs providing private security and launch initiatives to advance such provision in accordance with new standards. The existing framework of the Commission for Public – Private Partnership in the Security Sector of the Republic of Serbia has been maintained and advanced and its vital role in private security sector as an integral part of national security has been given a legal standing under the Law on Private Security.

However, the fact that Article 70 envisages that oversight over the Law implementation is to be exercised by the Interior Ministry raises the aforementioned problems with the conflict of interest.

XI Penal provisions

Title XI regulates penal provisions, which include fines and prison sentences, as well as protective measures of bans on activities. Articles 76 to 84 clearly define potential ways of violating the Draft Law and, commensurate with the seriousness of the offence, determine the possible amount of the fine.

However, a closer inspection of legal provisions pertaining to legal persons providing private security and security officers has shown that regardless of the violation, only security officers can be issued prison sentences of up to 30 days, while responsible persons in the legal person must only pay fines. This provision is potentially discriminating because it technically abolishes command responsibility and undermines the rights of security officers.

XII Transitional and final provisions

Title XII – transitional and final provisions – envisages that acts ensuring enforcement of this Law are to be enacted within six months since the day the Law enters into force (Article 85). Accordingly, all necessary implementing legislation should be adopted six months at the latest after the Law had been promulgated. The Conclusions and Recommendation of this Report provide suggestions about possible content of these legal acts.

Article 86 envisages that legal persons and entrepreneurs should align their work with provisions of this Law within a year. Only Article 24 paragraph 1, which stipulates that for providing physical protection, legal persons and entrepreneurs who are private security providers may possess single-action semi-automatic 9 mm pistols and Article 38, pertaining to transport of money and other values, are an exception in terms of the deadline for aligning

one's work with provisions of this Law. In the case of these two parts of the Article, the deadline has been extended to three years.

The fact that Article 89 stipulates that the guns exceeding the allowed limit of one half of the number of employed security officers licensed to carry out specialist activities of security officers should be handed down to (deposited with) the Ministry of the Interior within 30 days since the Law takes effect, is encouraging, given relatively brief but in our opinion efficient time frame. The amendment to this Article has been envisaged to replace the term „license to carry out specialist activities of security officers“ with the term which refers to private security officers who „carry out their activities carrying weapons,“ because the deadline for aligning one's work with the Law i.e. acquiring the license, is one year, rendering impossible an attempt to return any surplus guns within 30 days since the Law takes effect.

However, considering a large number of weapons currently kept by private security sector, including large amount of automatic weapons, it would be desirable to regulate the question of permitted types of weapons as soon as possible.

Finally, Article 90 stipulates that on the day the Law takes effect, Article 17 paragraph 2 (point 1) and Article 18 of the Law on Weapons and Ammunition should cease to be valid.⁶⁴ Namely, they envisage that bodies, companies, institutions and other legal persons directly carrying out activities concerning physical security and protection of objects must obtain an approval for acquiring and keeping automatic and semi-automatic weapons and regulates the procedure once the weapons are no longer needed.

Article 90 stipulates that on the day the Law enters into force Article 8, paragraphs 2 and 3 and Article 8b of the Law on Prevention of Violence and Improper Conduct at Sports Events⁶⁵ should cease to be valid as they pertain to private security officers at sports events.

These provisions show to what extent private security sector is an integral part of national security given that amendments to one sector require amendments to laws pertaining to other sectors in an effort to establish an efficient, common and uniform legislative framework.

Reasons for Law enactment

Reasons for enacting the Law regulating private security concern, among other things, the constitutional framework for enacting the law in accordance with Article 97 point 4 of the Constitution of the Republic of Serbia which states that the Republic of Serbia, among other things, shall regulate and ensure defense and security of the Republic of Serbia and its citizens, including the private security sector.

The facts are subsequently enumerated which have also been mentioned in this research, as well as good practice examples.

Financial resources required for Law implementation

The Draft Law envisages no additional resources that should be earmarked in the budget of the Republic of Serbia for implementing this Law.

⁶⁴ „Official Gazette of the Republic of Serbia“ no. 9/92, 53/93, 67/93, 48/94, 39/03, 85/05 – state law, 101/05 – state law and 27/11 – Constitutional Court

⁶⁵ „Official Gazette of the Republic of Serbia“ no. 76/03, 101/05, 90/07, 72/09 – state law and 111/09 – Constitutional Court

Reasons for enacting the Law as emergency legislation

As one of the main reasons for adopting the law as emergency legislation is the necessity to meet the obligations assumed under the Stabilization and Association Agreement with the European Union, which in its Article 77 envisages reform of the security sector in the process of gradual approximation with technical regulations of the Union and European standardization and the procedure for assessment of harmonization with requirements of European standards and regulations.

The adoption of the Law as emergency legislation is proposed due to the fact that it represents material and legal basis to carry out private security activities as a part of the system of national security and civilian control and oversight.

The adoption of the Law would also contribute to fulfilling international obligations ensuing from membership in the international organization CoESS.

OVERVIEW OF THE STATE OF AFFAIRS IN THE PRIVATE SECURITY SECTOR IN SERBIA

It should be underlined that although there is no umbrella law in Serbia that provides detailed regulation of the work of the private security sector, the sector does not operate outside the law or in a legal vacuum. So far a series of national standards of private security services has been adopted, as well as the Strategy of National Security, where, for the first time in the history of Serbia, private security has been defined as an integral part of the structure of national security, noting however the obligation to introduce legal and normative order into this sphere. The Law on Emergency Situations envisages that headquarters for emergency situations of local self-governments should select private security companies to carry out activities of protection and rescue in emergency situations. The Memorandum on Cooperation between the Interior Ministry and the Serbian Chamber of Commerce is the starting point for advancing private-public partnership in the security sector in Serbia. The Private Security Association and the Commission for Public-Private Partnerships in the Security Sector have been set up as a part of the Serbian Chamber of Commerce. Their members are representatives of state institutions and private security companies, but also civil society organizations. The Government of Serbia is slowly introducing measures of economic policy aimed at addressing deviations in the work of state bodies as well as business entities, in order to strengthen business control and reducing possibilities of inconsistent implementation of the laws on labor, employment, public procurement etc.

However, if embedded in the broader legislative framework, the private security sector would be accountable to the state, primarily in terms of recording and licensing, while the umbrella law would enable companies and persons to have organized professional training and mutual association. Last but not least, it would probably contribute to improved reputation of the private security industry among the wider public.

As has already been emphasized, some Serbian laws already apply to this sector, so the absence of an umbrella law does not automatically mean that the sector is necessarily illegal, only that it is not functionally integrated in the security system.

According to the estimates of the Ministry of the Interior, private security sector in Serbia employs between 25,000 and 60,000 people (excluding management and administration staff) disposing with 47,000 pieces of arms.

The CoESS data point to the fact that private security sector in Serbia experiences continual growth:

Percent of growth in 2007 compared to 2006: 10%

Percent of growth in 2008 compared to 2007: 12%

Percent of growth in 2009 compared to 2008: 14%

Percent of growth in 2010 compared to 2009: 20% ⁶⁶

The percent of growth in 2012 compared to 2011 has been shown in the following table:

35 FS PSC	2011 g	2012 g	Growth rate
income	16.097.248.000,00 Din.	17.963.801.000,00 Din.	1,116
	153.834.556,57 €	157.965.186,42 €	1,027
income	2.367.870,79 €	4.935.833,62 €	2,085
employers	22.205	20.438	0,920
15 Ts PSC	2011 g	2012 g	Growth rate
income	1.573.807.000,00 Din.	1.741.067.000,00 Din.	1,106
	15.040.204,51 €	15.310.121,35 €	1,018
income	1.277.092,89 €	1.406.788,60 €	1,102
employers	151	161	1,066
50 PSC	2011 g	2012 g	Growth rate
income	17.671.055.000,00 Din.	19.704.868.000,00 Din.	1,115
	168.874.761,09 €	173.275.307,77 €	1,026
income	3.644.963,68 €	6.342.622,22 €	1,740
employers	22.356	20.599	0,921

**Note: PSC – private security company; PP – physical protection; TP – technical protection*

Despite the economic crisis, an analysis of available 2012 financial reports of 50 private security companies in Serbia (35 mainly physical protection and 15 mainly technical security companies) has shown that business income and profits are growing, while the number of employees is falling.⁶⁷

The growth rate (of total income and profit) in conditions of economic downturn and reduction of the number of employees could have been achieved only by failing to register labor i.e. the failure to pay compulsory payroll and social security benefits („the grey economy“) and/or by concluding contracts on professional traineeship rather than employment contracts (total taxes and benefits equal 22% instead of 69.7%). The employees in the private security sector are increasingly lodging complaints with labor inspections due to overdue salaries (overdue from 3 to 6 months), but in vain, because one labor inspector is in charge of controlling 1,800 companies in Serbia, not only in terms of labor relations, but also in terms of controlling healthy and safe work environment.

One of the ways to overcome this state of affairs is for the state to admit that there is a surplus of employees in state administration and provide re-training programs to train them to become various types of inspectors – thus increasing efficiency and effectiveness of state oversight in numerous areas, including the area of private security.

It is obvious that many employers use the economic crisis and a lack of efficient state oversight to make excess profit, unscrupulously humiliating employees who do not have the means to effectively protect their rights and are forced to endure discrimination, often only because they hope that employers would in the end pay overdue salaries.

⁶⁶ CoESS (2011), Private Security Services in Europe, CoESS Facts and Figures 2011, p.103

⁶⁷ Security Consulting Agency Belgrade (2013), The growth rate of 50 private security companies in Serbia 2011/2012, available at <http://pretraga2.apr.gov.rs/ObjedinjenePretrage/Search/Search>

The atypical nature of this sector also reflects in the fact that there is a huge grey economy associated with this sector (thus, prices of 1.5 euro per person/working hour are sometimes on offer, although in 34 European states the average price is 8.9 euro per person/working hour). This, along with a lack of state control, is the basic cause of abnormally low price of work, humiliating employee salaries and grey economy.

For example, the Analysis of Abnormally Low Price⁶⁸ has shown that, according to CoESS statistics, the price of work in the private security sector in Serbia is the lowest compared to 34 European nations, the consequences of which might be potential bankruptcy of employers, lack of motivation of security officers, bad quality of provided services and consequent increase of vulnerability of secured property and persons in the midst of the constant increase of rates of all types of crime and the announced economic policy measures which envisage introduction of the order into the market and combatting of „grey economy.“

According to the data of the Serbian Chamber of Commerce, there are more than 3,000 registrated companies working in this sector in Serbia. However, there are no precise data how many of them are indeed active. Some data show that the private security sector has an annual turnover of 180 million euros. More precisely, a sample of 50 companies had an annual turnover of 173 million euros, which is only a fraction of the income officially registered in the financial reports submitted to the Business Registers Agency. This means that only a fraction of the true income of private security companies is taxed by the Government of Serbia. The fact that the Law drafted by the Government cites the data on the number of private security employees and number of pieces of guns in their possession found in a 2008 OSCE study, shows that the Government itself does not dispose with upgraded data about the private security sector. Because some parts of the private security sector function as „grey economy,“ the Serbian budget, according to some estimates, annually loses dozens of millions of euros.

Taking into account that the Interior Ministry officially employs 35,000 policemen (authorised officials), while the Serbian Army, according to official data, provides jobs for 28,000 soldiers (excluding civilians employed at the Ministry of Defence),⁶⁹ the advantage of the private security sector in terms of manpower becomes obvious. Another alarming fact is that, despite so many employees in the private security sector, only 25% citizens have trust in it, while 44% citizens maintain that the sector provokes greater insecurity.⁷⁰ The 2011 DCAF analysis testifies that weak states, with high level of corruption in an inefficient security sector may potentially have the greatest benefit (or at least loose the least) when services in the security sector are privatized; but weak states are the ones which are also the least capable to steer private security sector towards public good.⁷¹ Such data directly undermine the Serbian state's monopoly over the use of force. The state must not allow private security firms to become competition to security provided by the state. If that were to be allowed, the society would be divided into classes of those who can afford to be secure, those who can afford some levels of security, and those who cannot afford even the most basic type of security. The primary obligation and duty of the state to ensure high level of security thus cannot easily be replaced or superseded.

⁶⁸ Serbian Chamber of Commerce. The Analysis of Abnormally Low Price. Published on April 29, 2013, available at http://www.pks.rs/SADRZAJ/Files/Analiza%20neuobi%C4%8Dajeno%20niske%20cene_april%202013.pdf

⁶⁹ The 2008 data provided by the Defense Ministry. The upgraded data are not available.

⁷⁰ M. Hadžić et. al. (2009), The Annual Review of the Security Sector Reform in Serbia. Belgrade: The Center for Civilian-Military Relations, citing a CeSID research.

⁷¹ Željko Branović (2011), The Privatization of Security in Failing States - A Quantitative Assessment, Occasional Paper No. 24, Geneva Center for the Democratic Control of Armed Forces (DCAF), p.6

Due to the inexistence of an umbrella law that would precisely and comprehensively regulate the entire private security sector, business operation of private sector companies is regulated under several sporadic laws (Labor Law, "Official Gazette of RS," 24/05, Law on Weapons and Ammunition, "Official Gazette of RS," 44/98, Law Amending the Law on Weapons and Ammunition "Official Gazette of RS" 39/03, Law on Companies "Official Gazette of RS" 29/96, 33/96 amended 29/97, 59/98, 74/99, 9/2001 – Federal Constitutional Court decision 36/2002, Penal Code "Official Gazette of RS" 85/05, Fire Safety Law "Official Gazette of RS" 48/94, Law on Safety and Health at Work "Official Gazette of RS" 101/05, Law Amending the Law on Prevention of Violence and Improper Conduct at Sports Events "Official Gazette of RS" 90/07). Although private security companies provide specific types of services implying the use of force and firearms, they currently have to undergo the same registration procedure as any other company. These companies are registered at the Business Registers Agency like all entrepreneurs, while licences to acquire and keep firearms are issued by competent police authorities within the Serbian Interior Ministry. No institution in Serbia keeps national records of companies providing private security services, including the Interior Ministry.⁷²

The 2006 Analysis of the South Eastern and Eastern Europe Clearinghouse for the Control of the Small Arms and Light Weapons – SEESAC stresses that one of the problems with private security sector in South Eastern and Eastern Europe is the existence of special political links between political parties and private security industry.⁷³ Dusan Davidović, the former director of the Centre for Crime Prevention, the institution which was the first to organize training of security officers in Serbia applying all the European standards, the current president of the CoESS Working Committee Cohesion and the secretary of the Serbian Private Security Entrepreneurs' Association, a collective member of the Association for Private Security of the Serbian Chamber of Commerce, already in 2006 drew attention to this problem in Serbia. He claims that there is „a legal vacuum“ in Serbia which „suits most some security providers who, due to their strong connections with people from political parties, make good profits“. So „there are firms that have connections with all major parties in Serbia (the Democratic Party of Serbia, the Democratic Party, the Serbian Progress Party and the Socialist Party of Serbia). They do whatever they want, which is especially visible outside the capital of Belgrade. These companies obtain jobs outside public procurement procedures and can even steal jobs from other companies. The fact that the Law has not yet been placed on parliamentary agenda shows that this grey private security economy still has the upper hand and is able to pull all strings. They obtain jobs exclusively due to their strong connections with the political and business elite. (...). We can still see tough guys with short hair guarding the entrance to public facilities. We can still see them in the streets, carrying long guns and using rotating lights to which they are not entitled.“⁷⁴

In the meantime, in fall 2012 a huge scandal occurred in Serbia when senior state officials, including Serbian President Tomislav Nikolić and Defense Minister and Deputy Prime Minister in Charge of Fight against Corruption and the Coordinator of All Security Services Aleksandar Vučić, accused parts of the security sector for illegal interception of some of their electronic communication. This has confirmed what the Commissioner for Information of Public Importance, the Ombudsman and some (very few) civil society organisations have insisted upon for a long time – that legal regulation in this area, as well as democratic oversight over

⁷² Jan Litavski (2012), The Challenges of Private Security Sector in the New Century, New Century no. 2, Center for Euro-Atlantic Studies, p. 14, available at <http://ceas-serbia.org/root/tromesechnik/Novi-vek-broj-2.pdf>

⁷³ SEESAC (2006), SALW and Private Security Companies in South Eastern Europe: A Cause or Effect of Insecurity? available at <http://www.seesac.org/res/files/publication/541.pdf>

⁷⁴ Blic Online, November 9, 2006. Dušan Davidović, „Private Security Under the Protection of Political Potentates,“ available at http://www.blic.rs/stara_arhiva/hronika/124339/Privatna-obezbedjenja-pod-zastitom-politickih-mocnika

the security sector in general, display huge shortcomings and gaps that may be abused by organized criminal structures having connections with uncontrolled parts of the security sector, as well as companies providing private security.

Such a state of affairs has not changed to this day and the problem becomes even more serious when we take into account that, on the basis of public procurements, the strength of the domestic market has been estimated to be about 6,000 contracts with state institutions and potential 8,500 contracts with private clients.⁷⁵ Therefore the state is a major part of the market of these alarmingly underregulated private security sector.

Taking into account the aforementioned challenges, as well as incidents involving private security sector which are increasingly present in the media, CEAS fully supports the attempts by the Association for Private Security of the Serbian Chamber of Commerce to draw public attention to this burning question.



Association for Private Security
October 9, 2013
Belgrade

PRESS RELEASE

Regarding the incident in the Novi Sad nightclub „Tapas,” when gun fire incident resulted in one dead and several wounded visitors of the club, for which the so-called „private security officers,” as the media have called them, are held responsible, we want call public attention once again to the fact that this is not the case and to warn about distortion of facts and staining of the image of employers and employees working in the private security sector.

By equating „private security officers” with natural persons (including some members of the Interior Ministry moonlighting as private guards as well as members of various „hooligan firms” – registered as civil society associations and veiled in „a wall of silence” on the part of management of sports clubs) who, contrary to valid regulations and on unknown legal grounds perform activities of securing property (as a part of an oral agreement with owners of entertainment clubs, without a written contract), the media seriously tarnish the image of legally registered private security providers. These providers have been leading „a lost battle” for over a decade now with their advocacy to legally regulate this important area in order to draw a clear line of responsibility for all kinds of abuse of authority, as was the case in aforementioned incident (as well as in many previous ones).

The latest incident in Novi Sad resembles the recent incident in front of the floating raft boat „Sound” in Belgrade when a young man Fedor Frimerman was killed and as much as two months afterwards the police still does not know who the real perpetrators are (that is, in which registered insurance company the „insurance officials” who committed the murder are employed). Even though some people have been arrested and the investigation is under way, such incidents raise the question on which the general public and the registered private security companies, which are members of the Association of Private Security of the Serbian Chamber of Commerce, have been insisting for a long time, namely who is truly responsible for years-long obstruction and failure to enact a Law on Private Security and a Law on Detective Activity, which would clearly envisage that no-one (and not even night clubs) may conclude a contract on private security services with persons not authorized to provide such services (employers) or licenced to perform such activities (employees) except those which are registered in the appropriate Interior Ministry records and granted the Ministry’s licence.

This is a matter of some urgency – namely for the third time in the past 11 years in late April 2013, the

⁷⁵ Business and Finances May 27, 2013. Milica Rilak, „Private Security in Serbia: Who Protects Who?” available at <http://bif.rs/2013/05/privatno-obezbedenje-u-srbijiko-koga-stiti/>

Government of the Republic of Serbia has adopted the Draft Law and referred it to the National Parliament of the Republic of Serbia for adoption as an emergency piece of legislation. However, according to unofficial information, the Administrative Committee of the National Parliament has stripped the Draft Law of its emergency status. The Law consequently still awaits being placed on the agenda of the Second Regular Session of the National Parliament of the Republic of Serbia (three sessions have already been held). This is despite the growing number of victims and the unconvincing argument about other „priority“ legislation regulating aspects of life and work in Serbia.

Secretary

Zoran Milićević

Committee Chairman

Đorđe Vučinić

The Center for Euro-Atlantic Studies has reacted regarding the aforementioned incidents, issuing a press release condemning the worrying silence surrounding the murder in front of the floating boat raft „Sound“⁷⁶ and the press release concerning the Novi Sad incident.⁷⁷

⁷⁶ CEAS July 30, 2013. „Worrying Silence Surrounding the Murder on the Floating Boat Raft ‘Sound,’“ available at <http://ceas-serbia.org/root/index.php/sr/saopstenja/1457-zabrinjavajuca-tisina-o-ubistvu-na-splavu-sound>

⁷⁷ CEAS October 7, 2013. „Regarding the Incident in Novi Sad“, available at <http://ceas-serbia.org/root/index.php/sr/saopstenja/1638-povodom-incidenta-u-novom-sadu>

CONCLUSIONS AND RECOMMENDATIONS

The analysis of the state of affairs in the private security sector has confirmed the initial impression that the sector is underregulated and that there are numerous irregularities involving disregard and breaches of laws and regulations, but also disregard for the rights of the sector employees.

Considering that according to the estimates of the Interior Ministry, the private security sector in Serbia employs between 25,000 and 60,000 people (excluding managerial and administrative staff) who dispose with 47,000 pieces of guns, as well as that on the basis of public procurement it has been estimated that the strength of the domestic market is some 6,000 contracts with state institutions and potential 8,500 contracts with private clients, meaning that the state itself makes a large share of the so alarmingly underregulated private security market, CEAS calls on the urgent adoption of the Law on Private Security, as the first step towards regulating this area.

CEAS maintains that an adequate umbrella legislation would contribute to additional professionalization of this important industry, its better public perception and greater security of Serbian citizens.

CEAS propounds the present Draft Law the Government of Serbia adopted on April 30, 2013 and hopes that the Draft would soon be placed on parliamentary agenda. CEAS also maintains that the Draft Law is good in principle and that it can additionally be improved through amendments.

CEAS has also upheld previous attempts to regulate the private security area by effecting cooperation among various sectors through the Association for Private Security of the Serbian Chamber of Commerce and the Commission for Public-Private Partnerships in the Security Sector, the members of which are representatives of state institutions, companies providing private security services as well as civil society organizations; by strengthening the legislative framework in areas affecting private security such as labor law, employment law, law on public procurement etc; as well as by adopting other good practice examples.

CEAS reminds the general public that according to a CeSID research, only 25% of citizens place trust in the private security sector, while 44% of citizens maintains that by performing its activities, the sector actually contributes to greater insecurity.

On the basis of the analysis of the state of affairs in the private security sector, produced as a result of work of cross-sectoral, expert working group in cooperation with representatives of the Commission for Public-Private Partnerships in the Security Sector of the Republic of Serbia,

the Association for Private Security of the Serbian Chamber of Commerce, legal experts, representatives of academic community and expert consultants from international organizations dealing with the security sector, CEAS has formulated the following recommendations:

- To resolve the problem of the conflict of interest, that is, employment of active Interior Ministry officers and officers of other state security services in the private security sector by introducing a clear legal ban on the engagement of such officers by private security companies;

- To set up an expert working group in the framework of the Commission for Public-Private Partnerships in the Security Sector to draft and enact necessary bylaws which would, among other things, contain more detailed provisions about compulsory security of objects, mechanisms to control validity of licences, technical and organizational issues concerning collecting, keeping, processing and using personal data and access to information;

- The Interior Ministry should recognize professional exams which lead to the award of certificates on competence to perform private security activities which are conducted by certified bodies within the quality assessment system and which are accredited by the Accreditation Commission of Serbia in accordance with the international standard 17024: 2012. This would introduce an oversight over maintenance of certified competence within the five year period, in accordance with clearly specified methodology.

- To clearly define criteria for awarding licenses to legal persons, entrepreneurs and natural persons, especially in terms of the notions of „the appropriate check“ and „the appropriate security check“;

- To clearly define mechanisms of control and oversight over the observance and implementation of the Law on Free Access to Information and the Law on Personal Data Protection when records are concerned. The good practice of cooperation with the Commissioner for Information of Public Importance and Personal Data Protection when drafting the Law should be given the proper legal grounds in terms of a commitment to cooperation with this institution in order to protect data, which would increase the legitimacy of the Draft Law;

- To adopt amendments to the Law on Weapons and Ammunition and the Law on Prevention of Violence and Improper Conduct at Sports Events once the Law on Private Security is adopted;

- To implement recommendations of the Montreaux Document to fit the private security legislation into the larger legislative framework of comprehensive security checks and establishment of oversight mechanisms;

- To implement recommendations of the Manual for Organizations Awarding Contracts for Private Guarding Services, especially the Annex which contains evaluation tables;

- To implement recommendations of the Analysis made by the Serbian Chamber of Commerce concerning abnormally low price of public procurement of private security services in Serbia.

CEAS maintains that opening of Chapters 23, 24 and 31 in accession negotiations between Serbia and the European Union could create a pressure to comprehensively, swiftly and

efficiently regulate security, including private security, sector in Serbia. In this way the present situation would be avoided, namely that the state should launch a campaign against corruption, led by the security sector, although in some of its segments it itself remains unreformed and prone to corruption and disregard and/or breach of law, as the present study has shown.

ABOUT THE CENTER FOR EURO/ATLANTIC STUDIES

The Center for Euro-Atlantic Studies – CEAS is an independent, atheist, socially oriented left liberal think-tank organization, founded in 2007 in Belgrade. With its high quality research work CEAS generates precise analysis in the field of foreign, security and defense policy of the Republic of Serbia. Simultaneously, CEAS publicly promotes innovative, applicable recommendations and creates practical policy whose aims are:

- Strengthening of the socially oriented, left liberal democracy in Serbia
- Adopting the principle of precedence of individual over collective rights, without disregard for the rights which individuals can only achieve through collective action
- Development of the concept of transitional justice and the establishment of mechanisms for its enforcement in the Western Balkans region, exchange of positive experiences, emphasizing the importance of mechanisms of transitional justice for a successful security sector reform in post-conflict societies in transition towards democracy;
- Acceleration of the processes of Serbian EU integration and strengthening of its capacities for confronting global challenges through collective international action.
- Strengthening cooperation with NATO and advocacy for Serbian Atlantic integration
- Strengthening a secular state principle and promoting an atheistic understanding of the world,
- Contributing to the erection and preservation of a more open, safe, prosperous and cooperative international order, founded on the principles of smart globalization and equitable sustainable development and the international norm of 'Responsibility to Protect'

CEAS fulfils the mentioned activities through various projects assorted in four permanent programmes:

- Advocacy for Serbian Euro-Atlantic Integration
- Security Sector Reform in Serbia
- Transitional justice
- Liberalism, Globalisation, International Relations and Human Rights

CEAS is an active member of the REKOM coalition which gathers more than 1,800 civil society organizations, individuals from all the countries stemming from the break-up of former SFRY.

Among them are also missing persons' parental and family societies, veterans, news reporters, representatives of minority ethnic communities, organizations for the protection of human rights, etc. The REKOM coalition suggests that governments (or states) establish REKOM, an independent, inter-state Regional Commission for the Establishment of Facts on all the victims of war crimes and other heavy human rights violations undertaken on the territory of the former SFRY in the period 1991-2001.

During 2012 CEAS became an associate member of Policy Association for an Open Society – PASOS, the international association of expert non-governmental organizations (think-tanks) from Europe and Central Asia which supports the erection and functioning of an open society, especially in relation to issues of political and economic transition, democratization and human rights, opening up of the economy and good public governance, sustainable development and international cooperation. PASOS now has 40 full and 10 associate members, amongst which is the prestigious European Council on Foreign Relations from London - ECFR, and, until now, only the Belgrade Center for Security Policy - BCBP, from the non-governmental sector in Serbia.

During the same year, the Center for Euro-Atlantic Studies became the first civil society organization from the region of South-Eastern Europe to join the International Coalition for the Responsibility to Protect – ICRtoP as a full member. The coalition brings together non-governmental organizations from all over the world to collectively strengthen normative consensus for the doctrine of Responsibility to Protect (RtoP), with the aim of better understanding the norm, pushing for strengthened capacities of the international community to prevent and halt genocide, war crimes, ethnic cleansing and crimes against humanity and mobilize the non-governmental sector to push for action to save lives in RtoP country-specific situations. Among the prominent members of the Coalition are organization such as the Human Rights Watch - HRW and the International Crisis Group – ICG.

In April 2013 CEAS became the first civil society organization in Serbia to join the Commission of Associations of the Serbian Chamber of Commerce for Public-Private Partnership in the Serbian Security Sector. The Commission encompasses, among representatives of private security companies, representatives of the Ministry of Interior, as well as other state bodies and institutions who are, through taking care of state administration, also responsible for cooperation between the public and private security sector.

In September 2013 CEAS became a member of the Sectorial Civic Society Organizations – SEKO, for the rule of law sector. The program of cooperation with civil society in the planning of development assistance of the Office for Cooperation with Civil Society, especially the programming and monitoring of the use of the IPA in 2011. predicted the formation of a consultative mechanism with CSOs seeing the Sectorial Civic Society Organizations (SEKO) as the key stakeholder. The Sectorial Civil Society Organization is a consortium of civil society organizations of no more than three partners of which one is the lead partner.



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