
*Jelena Ceranic, PhD*¹

PARLIAMENTARY OVERSIGHT OF THE DEFENCE SECTOR

1. INTERNATIONAL STANDARDS

1.1. Introduction

In the comparative law, there is wide-spread opinion that the security policy is a “natural” function of the executive government (the executive), considering that it possesses access to expertise, resources, and is able to act efficiently. Parliament is perceived as a less suitable institution to deal with the security issues, particularly taking into account lengthy parliamentary procedures and limited access to all necessary expertise and information.

However, as in any other area, in the security and defence sector, parliament is entrusted to perform the oversight of the executive. There are at least four reasons why this oversight is important:

- **A Cornerstone of Democracy**

Former French Prime Minister Georges Clémenceau once stated that “War is a much too serious matter to be entrusted to the military”. Beyond its humorous side, this statement recalls that in a democracy, the representatives of the people hold the supreme power and no sector of the state should be excluded from their control. A state without parliamentary control of its security and defence sector, especially the military, should, at best, be deemed an unfinished democracy or a democracy in the making.²

According to the eminent American scholar Robert A. Dahl, “the most fundamental and persistent problem in politics is to avoid autocratic rule.” That is why it is essential that there is a power-sharing system in place to ensure the system of checks and balances to counterbalance possible abuse of power in the security and

¹ Research Associate of the Institute of Comparative Law, Belgrade; Lecturer at the Faculty of Law, University of Banja Luka.

² P. Fluri, A.B. Johnsson, *Parliamentary Oversight of the Security Sector*, Geneva 2003.

defence sector. Namely, it is even more difficult and important to establish balance between efficiency and democracy in this sector than in any other field.³

- **No Taxation Without Representation**

One of parliament's most important mechanisms for controlling the executive is the budget. From the early days of the first assemblies in Western Europe, parliaments demanded that there should be no taxation without representation. As security and defence sector organisations use a substantial share of the state budget, it remains essential that parliament monitors the use of the state's resources effectively.

- **Legislation Drafting and Implementation**

In practice, it is the executive that drafts laws on the defence and security issues. Nevertheless, members of parliament play an important role in reviewing these drafts, and can, if need be, suggest amendments. Moreover, it falls to parliament to see to it that the laws do not remain a dead letter, but are fully implemented.

- **A Bridge to the Public**

The executive should be aware of the security issues which are priorities for citizens. Considering that parliamentarians are in regular contact with the population, they are the ones who can easily ascertain their views. Therefore, they present a sort of a bridge between the executive that drafts laws and the population.

1.2 Legal Sources

The defence sector is traditionally regarded as falling into the domain of national sovereignty. That is why there exist no internationally agreed standards in the field of democratic and parliamentary oversight of the defence sector. These standards are not mentioned neither in the Charter of the United Nations nor in numerous international agreements and conventions. Similarly, *acquis communautaire* does not include regulations relating to civil and military relations. However, in order to fulfil the accession criteria (defined at the European Council meeting in Copenhagen in 1993), a candidate country must organise its civil and military relations in a certain

³ S. Lunn, "The Democratic Control of Armed Forces in Principle and Practice", *Oversight and Guidance: The Relevance of Parliamentary Oversight for the Security and its Reform*, DCAF, NATO Parliamentary Assembly, Brussels/Geneva, 2003, p. 14.

way. Therefore, although there are no internationally agreed standards in the field of democratic and parliamentary oversight of the security and defence sector, there exist some regional standards, as for example the OSCE Code of Conduct.

The Organization for Security and Cooperation in Europe (OSCE) is the world's largest regional security organization. It offers a forum for political negotiations and decision-making in the fields of early warning, conflict prevention, crisis management and post-conflict rehabilitation, and puts the political will of its participating States into practice through its unique network of field missions. All 57 participating States (including all States from the region : Bulgaria, Romania, Slovenia, Croatia, Bosnia and Herzegovina, Montenegro, Former Yugoslav Republic of Macedonia, Serbia) enjoy equal status, and decisions are taken by consensus on a politically, but not legally binding basis.

The Code of Conduct on Politico-Military Aspects of Security was negotiated in the Forum for Security Cooperation (FSC) and adopted in 1994 Budapest Summit. This document deepens and codifies important principles of the Helsinki Final Act guiding relations between States, particularly concerning non-use of force. However, the Code of Conduct goes far beyond this conventional framework by adding unique norms of politic-military conduct within the States. Most importantly, its sections VII and VIII detail the commitment by participating States to place their armed forces, including military, parliamentary and security forces, intelligence services and the police, under democratic and civilian control.

This Code covers issues that are usually considered to fall within the domestic jurisdiction of the State. Thus this code represents a crucial advance in the area of State power that had hitherto been carefully guarded.⁴ So, it is often characterized as „a revolutionary document“ and „a hidden jewel among OSCE documents“⁵.

Since 1999, the participating States have annually exchanged information on their implementation of the Code of Conduct, on the basis of a Questionnaire which was updated in 2003 and again last year. The new Questionnaire better reflects the structure of the Code and introduces a number of new sub-questions, for instance on anti-terrorism. It also requests that participating States provide information on the different type of armed forces separately. Participating States' answers to the Questionnaire have been posted on the OSCE's public website since 2008.

In addition, the Code of Conduct is used inside the FSC, where several follow-up events have been taken place since its adoption and where the information exchange is regularly reviewed. Also, the Conflict Prevention Centre organizes seminars and workshops, often jointly with field operations and host countries. They usually meet in a regional setting, where sensitive security issues often remain, and invite the military experts and representatives from the foreign affaires departments and sometimes even

⁴ P. Fluri, A.B. Johnsson, *Parliamentary Oversight of the Security Sector*, Geneva 2003, p. 164.

⁵ “The Code of Conduct on Politico – Military Aspects of Security: a sleeping revolution”, Interview with Alexandre Lambert, *OSCE Magazine*, 3/2010, pp. 5-7.

members of parliament to jointly discuss the Code's implementation. So, practically speaking, the Code is already used as a new confidence-building measure on the sub-regional level and is unparalleled in any other international security organization, including the United Nations.⁶

The OSCE Code of Conduct:

- Maintain the armed forces under effective democratic control through authorities vested with democratic legitimacy (Paragraphs 20 and 21);
- To ensure legislative approval of defence budget and transparency and public access to information related to the armed forces (Paragraph 22).

In addition, some international organizations seek to establish principles that should govern the democratic civil and military relations. The most active in this field are the Inter-Parliamentary Union (IPU) and the Geneva Centre for the Democratic Control of Armed Forces (DCAF).

The International organization of Parliaments (IPU) was established in 1889. The Union is the focal point for world-wide parliamentary dialogue and works for peace and co-operation among peoples and for the firm establishment of representative democracy. The IPU supports the efforts of and works in close co-operation with the United Nations, whose objectives it shares. The Union also co-operates with regional inter-parliamentary organizations, as well as with international intergovernmental and non-governmental organizations which are motivated by the same ideals. There are currently 162 Members and 10 Associate Members of the Inter-Parliamentary Union. All the countries from the region (Bulgaria, Romania, Slovenia, Croatia, Bosnia and Herzegovina, Montenegro, Former Yugoslav Republic of Macedonia, Serbia) are the Members of IPU.

The Geneva Centre for the Democratic Control of Armed Forces (DCAF) was established in 2000 on the initiative of the Swiss government. DCAF is an international foundation whose mission is to assist the international community in pursuing good governance and reform of the security sector. The Centre provides in-country advisory support and practical assistance programmes, develops and promotes norms and standards, conducts tailored policy research, and identifies good practices and recommendations to promote democratic security sector governance.

The DCAF Foundation currently comprises 61 Member States from across the globe. The Foundation Council – an assembly of all DCAF Member States – is DCAF's supreme decision-making body. All the countries from the region are the Members DCAF (Bulgaria (2000), Romania (2000), Slovenia (2001), Croatia (2001), Bosnia and Herzegovina (2001), Montenegro (2006), Former Yugoslav Republic of Macedonia (2000), Serbia (2001)).

⁶ *Ibid.*

The Inter-Parliamentary Union and the Geneva Centre for the Democratic Control of Armed Forces defined the following principles:⁷

- The state is the only actor in society that has the legitimate monopoly of force;
- The security services are accountable only to legitimately elected authorities;
- The parliament is sovereign and holds the executive accountable for the development, implementation and review of the security and defence policy;
- The parliament has a unique constitutional role in authorising defence and security expenditures;
- The parliament plays a crucial role with regard to declaring and lifting a state of emergency or the state of war;
- Principles of good governance and the rule of law apply to all branches of government, and therefore also to the security and defence sector.

1.3. The content of standards

1.3.1. Constitutional and Statutory Powers

Parliament has a wide range of powers that can be used in the course of the control of the security and defence sector. A review of the legal provisions in many countries has shown that the constitutional and statutory powers include *inter alia* the following:

- General Powers
 - To initiate legislation;
 - To amend or to rewrite laws;
 - To question members of the executive;
 - To summon members of the executive to testify at parliamentary meeting;
 - To summon military staff and civil servants to testify at parliamentary meetings;
 - To summon civilian experts to testify at parliamentary meetings;

⁷ P. Fluri, A.B. Johnsson, *Parliamentary Oversight of the Security Sector*, Geneva 2003, pp. 23-24.

- To obtain documents from the executive;
- To carry out parliamentary inquiries;
- To hold hearings.
- Budget Control
 - Access to all budget documents;
 - The right to review and amend defence and security budget funds;
 - The right to approve/reject any supplementary defence and security budget proposals.

In most cases, parliament ensures the budget control in the military sector through its committees and subcommittees. In many countries, in addition to parliament and its budget committee, the military budget control is performed also by external independent auditing bodies. In addition, the control is performed by the internal supervisory bodies of the military as a direct budget user.⁸

- Procurement/asset disposal/ arms sale /transfer
 - Obligation of the executive to fully inform parliament on decisions relating to procurement/asset disposal/ arms sale /transfer;
 - The right to approve/reject contracts;
 - Review of the following phases of procurement:
 - Listing equipment specifications;
 - Comparing and selecting a manufacturer;
 - Assessing offers for compensation and off-sets.
- General Defence and Security Policy – the right to approve/reject:
 - Security policy concept;
 - Crisis management concept;
 - Force structure;
 - Military strategy/doctrine.

⁸ M. Hadžić, B. Molosavljević, “Demokratsko preuređenje civilno-vojnih odnosa u SCG“, *Modeli zakona o bezbednosti i odbrani*, Centar za civilno-vojne odnose, Belgrade, 2006, p. 22.

- Defence sector personnel, management and organisation
- The right to approve/reject the personnel plan;
- The right to fix ceilings for manpower;
- The right to approve/reject or the right to be consulted on the highest military appointments (such as chief of staff);
- The right to review the internal organisation of the defence and security and defence sector

As constitutional provisions have the highest juridical status, it is important to inscribe parliamentary powers regarding the security and defence sector in the constitution. Constitutions cannot be easily changed; any such reform generally requires a qualified majority in parliament. Therefore the constitution represents an effective way of protecting the power of the parliament in that sensitive field. Such powers may be further reinforced by specific legislation and through the rules of procedure of parliament.

It is crucial for parliament to receive timely information on the government's intentions and decisions regarding security issues and the security and defence sector. Parliament will not have a strong case if the government briefs it only after having reached a final decision. In such situations, parliament will be confronted with a "fait accompli" and will have no other alternatives than to approve or reject the government's decision.

1.3.2. Parliamentary Mechanisms Applied to the Defence Sector

All democratic systems provide parliaments with a variety of means to retrieve information relating to the performance of the executive. Based on such information, the parliament controls the government's policy, supervises the administration, protects the individual, or seeks to bring to light and eliminate abuse and injustice. The three common legal possibilities available to the parliament are:

1. Parliamentary debates;
2. Parliamentary questions and interpellations;
3. Parliamentary oversight.

Parliamentary debates on defence issues provide a key opportunity for exchanging opinions and gathering essential information about facts and the government's intentions. Generally speaking, parliament debates on security and policy issues can occur in five types of situations:

- Following the presentation by the executive of its yearly defence budget proposals;
- Further to official or unofficial statements by relevant ministers such as the minister of defence or the minister of foreign affairs;
- In connection with a national defence review, the presentation of a defence white paper or any other major national defence documents;
- In connection with the government's programmes, which are mainly issued after an election;
- In connection with a major security concern or disaster.

Parliamentary questions and interpellations are a mechanism that is used mostly to obtain specific information about the government's action and potentially to investigate mismanagement/abuse in the government bodies and redirect the government policy. Questions can be posed in writing or orally at the special sessions of the parliament. The following factors contribute to the efficiency of parliamentary questions:

- An opportunity for members of parliament to ask additional questions in case they are not satisfied with the answers or they find that additional clarifications are necessary;
- An opportunity for members of parliament to initiate a debate about the issues raised during the time allocated for parliamentary questions;
- Willingness of members of parliament to use the procedural possibility to ask questions;
- An opportunity for the public to be present during the parliamentary questioning or to follow it on radio or television;
- The disclosure of the questions and answers in documents that are made available to the public.

Either as a part of or as a complement to the above mechanism, **parliaments can oversee** the executive's by reviewing the reports prepared by the government or independent public authorities and conducting special inquiries. The core parliamentary powers normally include the power:

- To choose the topic and scope of the parliamentary inquiry;
- To carry out visits to army bases and other premises of security services;
- To collect all relevant information, including classified and top secret documents, from the presidency, government administrations or the general staff;
- To take evidence under oath from members of the presidency, government administration or the military as well as civil society;
- To organise public or closed hearings.

1.3.3. Institutional and Political Factors

The Parliament as a whole is too unwieldy a body to make full inquiries into matters of interest to it and to consider and investigate in detail all issues relevant for the work of this legislative body. This is why parliamentary committees have become one of the most powerful tools for efficient parliamentary business. As a body involving a limited number of members of parliament, parliamentary committees can, depending on the level of means, such as information and research capacity more especially, and expert support they enjoy, perform in some depth the vast and complex task of overseeing the security and defence sector.⁹

A well-developed parliamentary committee structure is crucial if the parliament is to exert real influence on the executive. In fact, the parliamentary oversight of the security and defence sector involves not just one committee but several committees which may be found under different names in different parliaments. Based on the comparative legal review, it can be concluded that most of the countries have the following committees:

- **Defence and security committee** which generally deals with all issues related to the security and defence sector;
- **Budget or finance committee**, which has a final say on the budgets of all security and defence sector organisations; possibly the public accounts committee which reviews the audit reports for the entire national budget, including the defence budget;

⁹ W. F. van Eekelen, "The National Parliamentary Dimension", *Democratic Control of Armed Forces: The National and International Parliamentary Dimension*, DCAF Occasional Paper - No. 2, Geneva, 202, p. 18.

- **Committee (or sub-committee) on intelligence services and matters**, which often convenes behind closed doors;
- **Committee for industry and trade**, which is especially relevant in matters of arms procurement and trade;
- **Anticorruption committee**, which deals with corruption issues in all state institutions, including the security and defence sector bodies.

1.3.3.1. Parliamentary Defence and Security Committees

The parliamentary defence and security committee is a specialised body of the parliament that provides advice to and prepares recommendations for the Assembly on the legislation or decisions relating to national defence or public security. A particular feature of this parliamentary body is the complexity of the issues it deals with in its work. Parliamentarians must oversee the work of various institutions and deal with the military, police, gendarmerie, and other law enforcement issues, as well as the issues relating to border control, budget, procurement, arms control, intelligence agencies, etc. That is why this committee with a wide range of powers can be organised in several subcommittees.¹⁰

The key functions of the parliamentary committee on defence issues include consideration of and reporting on any draft legislation proposed by the government and referred to it by the parliament, consideration of international treaties and arrangements falling within the area of responsibility of the ministry of defence, as well as initiating and adopting new legislation or drafting legislation by the committee itself. As a part of these competences, the decisions on deployment of national forces in foreign countries are also considered. In addition to that, the work of the committee relates also to consideration of and reporting on any major security policy initiative, periodical examination of the defence minister on his discharge of the security policy responsibilities, keeping under scrutiny the ministry of defence's compliance with the applicable legislation, and examination of petitions and complains from military personnel and civilians concerning the security and defence sector. One of the most important functions of the committee relates to consideration of and reporting on the

¹⁰ This division may be based also on the functional approach, for a specific draft law, inquiry or a hearing, or the institutional approach covering the mandates of a committee for a certain institution or agency. In some countries, committees have combined mandates, and thus, for example, one committee can deal with the issues of national defence and intelligence agencies, etc. With respect to the actions of intelligence agencies, some parliaments have adopted the functional approach and delegate the responsibility for all the agencies performing intelligence activities to one committee. Other parliaments have adopted the institutional approach and the actions of joint agencies or ministries performing intelligence activity are overseen by different committees.

annual expenditures of the ministry of defence, consideration of each supplementary estimate presented by the ministry of defence, and reporting to the parliament on the decisions on these issues, and, if necessary, ordering the competent authorities to carry out a financial audit, as well as consideration of procurements and dual-purpose goods.¹¹

For the purposes of discharging the above competencies, the committee members have a possibility to hold hearings or inquiries, summon military personnel, civil servants or experts to attend sessions of the committee, examine ministers and other government representatives, oversee transparency and efficiency of the budget spending, order the competent authorities to carry out a control, investigate complaints, as well as organise field visits and inspect army bases and other premises of security services, including field visits to the forces deployed overseas.

These parliamentary bodies normally act in accordance with the competencies ensuing from the rules of procedure of parliament, separate law, or the constitution itself. Most committees retain the right to set out their own operating plans and meeting schedules, which may be open or closed for public. In most parliaments the committees have a consultative role, as they do not have the powers to enforce laws and adopt final decision on specific issues.¹²

Committee members are appointed by the parliament and their number varies from country to country. The candidates for committee members are normally proposed by the parliamentary lobby groups, taking into account to ensure equal representation of all the political parties in the committee. The most efficient procedure for appointment of committee members is their selection based on their specialised expertise that falls under the competence of the committee. The membership on the committee lasts for the duration of the parliamentarians' term in office, and may be extended over several statutory mandates. The candidates for the committee chairman are selected mostly in the agreement between the major parliamentary parties. As the supervisory role of the committee on defence and security issues is crucial, in some parliaments, the role of the chairman of the committee is delegated to a representative of the opposition, or the chairman position is rotated between the largest opposition party and the leading party.

The committee staff prepare and organise the sessions of the committee, establish and maintain contacts with relevant institutions and organisations and civil society representatives, collect relevant information, and in an unbiased manner, assist in the implementation of the committee's competencies. Some of the activities performed by the professional service include: provision of professional opinions, preparation of the materials and briefings for parliamentarians, monitoring and implementation of

¹¹ Parliamentary defence and security committees, "Parliamentary oversight of the security and defence sector: Principles, mechanisms and practices", Geneva Centre for the Democratic Control of Armed Forces, Inter-Parliamentary Union, Geneva/Belgrade, 2003, p. 86.

¹² W.F. van Eekelen, *op. cit.*, p.122.

the committee's findings and decisions, preparation of information and conclusions on the issues considered in the sessions of these parliamentary bodies, preparation of amendments at the request, preparation of reports and opinions relating to the authentic interpretation of legislation and other acts, drafting of relevant information and professional processing and analysis of citizens' applications and proposals. Regular review of information and developments in the defence and security field, preparations of analyses and surveys, constructive proposals and suggestions are also some of the ways in which the professional service can contribute to the improvement of the legislative and supervisory function of the parliamentary committee. In addition, adequate number of staff in the committee and their additional training are necessary to ensure the efficient work of these parliamentary bodies.

Another important issue faced by the members of these committees is the issue of access to confidential information. There are two approaches to regulating access to confidential information. In most parliaments, members of parliament are not required to undergo security checks, as it is considered the very procedure for appointment to office implies that they have access to confidential information, while in other parliaments, they are granted access to such information after a positive security check. There are regulations stipulating that members of parliament who come in touch with confidential information that constitutes a state, official or military secret are required to sign a confidentiality statement committing to protect the confidentiality of the information they obtained during their mandates on these committees. Also, they do not have the right to initiate questioning or inquiries based on the knowledge that results from confidential information obtained in the course of discharging their function as a member of committee or upon the termination of their membership in these parliamentary bodies. In some parliaments, the committees can hire experts to lead the inquiry into specific issues under the competence of that body, and the hired experts are subject to a special obligation to protect the confidentiality of information, as they would come in contact with confidential materials during their work.¹³

It is particularly important that the discharge of the competencies from the scope of the committees on defence and security issues is not perceived as control in the negative sense of the term, i.e. as assuming in advance the opposing position of a controller against those whose work is overseen, but rather as a constructive cooperation and communication, exchange of ideas, as a correction of prospective mistakes in order to create conditions for successful work of the institutions and agencies that are controlled, as well as to improve their activities through constructive comments and proposals. This cooperation is necessary not only because of the division of responsibilities between the legislator and the executive, but also because of the fact that the security and defence sector contributes to the protection of the interests and the country as a whole.¹⁴

¹³ D. Djurašinović, "Parlamentarna kontrola sektora odbrane", *Pregled zakonodavstva sistema odbrane Republike Srbije*, Institut za uporedno pravo, Belgrade, 2007, 41.

¹⁴ *Ibid.*, 49.

1.3.4. Efficiency of the Parliamentary Oversight of the Defence Sector

Efficient parliamentary oversight of the security and defence sector requires, above all, expertise and resources within the parliament or at its disposal. However, the in-house parliamentary expertise can rarely match the expertise of the executive. In most cases parliaments have a small number of, if any, research staff, while the government can rely on the staff in the ministry of defence and other ministries that deal with the security and defence sector. In addition to that, members of parliament are elected for a limited term in office, while civil servants and military personnel for the most part spend their entire professional career in the ministry of defence. The main problem is that members of parliament rely primarily on the information provided by the government and the military, and those are the very institutions they are supposed to oversee.¹⁵

Another important element of efficient parliamentary oversight is the political will of members of parliament to use the mechanisms that are available to them. Even if parliamentary oversight is regulated in an adequate way and the parliamentary bodies/parliamentarians individually do possess adequate expertise and resources, efficient parliamentary oversight will not be possible without a strong political will of members of parliament to use the available mechanisms. However, there is no “recipe” for efficient parliamentary oversight; it rather has to be adjusted to the specific needs, capacities and circumstances of the individual country.¹⁶

The political will to ensure efficient oversight of the security services is determined by various factors, including party discipline, political interest, and security reasons.

Firstly, with respect to party discipline, considering that it is in the interest of the members of parliament from the ruling party to keep the executive power, in most cases they refrain from any public criticism of the executive. Hence, due to the dominance of the party loyalty over the formal duties of members of parliament, specific mechanisms for establishment of the ministers’ accountability were rendered to a great extent inefficient.

Furthermore, with respect to political interest, in most countries the voters are not particularly interested in the security issues. Moreover, politicians would rather discuss forward-looking issues than go back to the issues from the past for which there is no longer any interest. Consequently, members of parliament could exhaust their motivation to pay attention to the oversight of the government’s action in the security and defence.

¹⁵ *Ibid*, 37.

¹⁶ *Ibid*, 51.

Finally, due to security reasons (real or perceived) the members of parliament responsible for the security and defence issues are reluctant to disclose, share and discuss openly their findings and observations.

As a result of the above factors, today, the parliamentary accountability mechanisms are often applied passively. The political parties would be ready to examine the accountability of their members holding public office only if they concluded on their own that such behaviour could damage their future election prospects.

2. COMPARATIVE LEGAL ANALYSIS

2.1. Parliamentary Accountability Mechanisms

The mechanisms ensuring government accountability to parliament in the countries in the region are very similar and include: parliamentary questions, interpellations, and a vote of no confidence in the government. While parliamentary questions are the most “benign” form of accountability, whereby members of parliament express their interest in the current government policy issues, interpellations and a vote of no confidence in the government present accountability mechanisms with serious consequences, as they can result in the fall of the government. The difference between these two mechanisms is that a vote of no confidence in the government may be initiated without any response required from the government, based only on the request by a certain number of members of parliament. Parliament is obliged to vote on the motion of no confidence in the government, and its adoption normally requires a majority vote of all members of parliament. An interpellation, on the other hand, is initiated by submitting formal questions to the government, and it depends on the government’s response whether members of parliament would ask after that for a vote of no confidence in the government. Therefore, it can be argued that an interpellation is a sort of a combination of a parliamentary question and a vote of no confidence in the government, which is widely accepted in our region.

In all the seven countries in the region (Bulgaria, Bosnia and Herzegovina, Montenegro, Former Yugoslav Republic of Macedonia, Kosovo, and Serbia) the executive government’s accountability to parliament is legally regulated in a similar way, primarily under constitutional provisions and the rules of parliamentary procedure.

The **Bulgarian** Constitution stipulates that Parliament appoints and removes the Prime Minister, and, at his/her proposal, members of the Council of Ministers, and, at the proposal of the Prime Minister, makes changes in the Government.¹⁷

¹⁷ Article 84, Para. 6, of the Bulgarian Constitution.

The mechanisms of parliamentary oversight over the executive stipulated in the Constitutions and elaborated in the Rules of parliamentary procedure include: parliamentary questions, inquiries, interpellations, and a vote of no confidence in the government.¹⁸

Members of the National Assembly may address questions to the Prime Minister, any Deputy Prime Minister or Minister relating to any current issue of public interest under their scope of competence.¹⁹ The Prime Minister is asked questions relating to the activities of the Government. These questions are submitted in writing and must be precisely formulated. The responses can be oral or in writing. Written responses are given only if that is explicitly requested by members of parliament.

Members of parliament have the right to request the initiation of an inquiry from the Prime Minister, any Deputy Prime Minister or Minister. Such inquiries must relate to reasonable aspects of the activities of the Prime Minister, Deputy Prime Minister, Minister or an Administration under their competence.²⁰

The Rules of Procedure stipulate also that one fifth of members of parliament may request an interpellation or initiate a vote of no confidence in the Council of Ministers or the Prime Minister.²¹

With respect to **Bosnia and Herzegovina**, the Rules of Procedure of both Houses of the Parliamentary Assembly of Bosnia and Herzegovina stipulate mechanisms ensuring parliamentary oversight of the executive. The Bosnia and Herzegovina Council of Ministers is accountable to the Parliamentary Assembly for the policy proposals and implementation and the implementation of laws, other regulations, and provisions whose implementation is under its constitutional and statutory competence, as well as for directing and coordinating the activities of the Ministers. The oversight mechanisms stipulated in the Rules of Parliamentary Procedure include: a vote of no confidence in the Council of Ministers,²² parliamentary questions,²³ interpellations,²⁴ reports submitted by the executive,²⁵ standing and

¹⁸ Chapter VIII of the Bulgarian Rules of Parliamentary Procedure.

¹⁹ Article 82 of the Bulgarian Rules of Parliamentary Procedure.

²⁰ Article 85 of the Bulgarian Rules of Parliamentary Procedure.

²¹ Article 96 of the Bulgarian Rules of Parliamentary Procedure.

²² Articles 143-147 of the Rules of Procedure of Bosnia and Herzegovina Parliamentary Assembly House of Representatives (Poslovník Predstavničkog doma Parlamentarne skupštine BiH); Articles 135-140 of the Rules of Procedure of Bosnia and Herzegovina Parliamentary Assembly House of Peoples (Poslovník Doma naroda Parlamentarne skupštine BiH).

²³ Articles 151-157 of the Rules of Procedure of Bosnia and Herzegovina Parliamentary Assembly House of Representatives; Articles 144-149 of the Rules of Procedure of Bosnia and Herzegovina Parliamentary Assembly House of Peoples.

²⁴ Articles 158-161 of the Rules of Procedure of Bosnia and Herzegovina Parliamentary Assembly House of Representatives; Articles 150-153 of the Rules of Procedure of Bosnia and Herzegovina Parliamentary Assembly House of Peoples.

²⁵ Articles 162-163 of the Rules of Procedure of Bosnia and Herzegovina Parliamentary Assembly House of Representatives.

provisional commissions,²⁶ and use of reports prepared by independent public authorities.²⁷

In **Montenegro**, the Government and Ministers' accountability to Parliament is also regulated by the Constitution and the Rules of Procedure of the National Assembly. The Montenegrin Constitution stipulates that the Montenegrin Assembly appoints and removes from office the Prime Minister and members of the Government.²⁸

The Rules of Procedure of the National Assembly of Montenegro further elaborate the mechanisms specified in the Constitution for plenary sessions and specialised committees. It is stipulated that parliamentary hearings and inquiries may be organised in the relevant Assembly committees to gather information, i.e. professional opinions on the enactment proposals that are in the parliamentary procedure before the Assembly, clarifications of specific proposals in the proposed or existing enactments, clarifications of specific issues relating to the preparation of enactments, and to ensure more efficient discharge of the Assembly's oversight function.²⁹

The Rules of Procedure stipulate also the possibility of posing parliamentary questions. In order to gather the necessary information, i.e. implement the agreed policy, a member of parliament has the right to address a parliamentary question to the Government, i.e. the competent Minister, and receive an answer to the question.³⁰

In addition to that, the Rules of Procedure stipulate the mechanisms for voting no confidence in the Government, and interpellations. A motion for no confidence in the Government must cite the reasons why it is proposed.³¹ A vote of no confidence in the Government requires public voting. An interpellation inquest into specific issues relating to the Government's activities is submitted to the Speaker of the Assembly in writing, and the issue that is to be considered must be clearly formulated and explained.³²

The **Croatian** Constitution stipulates that the Croatian Parliament (Sabor) oversees the activities of the Croatian Government and other public officials accountable to the Croatian Parliament, in accordance with the Constitution and the law.³³

²⁶ Articles 28-29 of the Rules of Procedure of Bosnia and Herzegovina Parliamentary Assembly House of Representatives.

²⁷ Article 54 of the Rules of Procedure of Bosnia and Herzegovina Parliamentary Assembly House of Representatives.

²⁸ Article 82, Para. 12, of the Montenegrin Constitution (Ustav Crne Gore).

²⁹ Article 72 of the Montenegrin Rules of Parliamentary Procedure (Poslovník skupštine Crne Gore).

³⁰ Article 187 of the Montenegrin Rules of Parliamentary Procedure.

³¹ Article 194 of the Montenegrin Rules of Parliamentary Procedure.

³² Article 198 of the Montenegrin Rules of Parliamentary Procedure.

³³ Article 80 of the Croatian Constitution.

The Rules of Procedure of the Croatian Parliament specify in more depth the mechanisms ensuring Government and Ministers' accountability to Parliament. It is stipulated that, at the request by Parliament, the Government is obliged to report to Parliament on their activities, the overall Government policy that is implemented or parts thereof, enforcement of laws and other regulations, and other issues under the Government's scope of competence.³⁴ A vote of no confidence in the Prime Minister, a member of the Government or the Government as a whole can be proposed by at least one fifth of members of parliament.³⁵

The Rules of Procedure also stipulate that Parliament, i.e. its working bodies, may request reports and information from the Ministers and other officials managing other public administration authorities, who are obliged to respond to the request by reporting on the issues and events from the scope of the competence of the Ministry, i.e. other public administration authority, submitting legal compliance reports and other acts they have available, and by providing answers to the questions that were addressed to them.³⁶

The Rules of Procedure of the Croatian Parliament also stipulate interpellations, as one of the accountability mechanisms. By submitting an interpellation in the session of the Assembly, a discussion is initiated on specific decisions by the Government or a Ministry, if they diverge from the general position of the Government or the Ministry on the implementation of law or the agreed policy. An interpellation is submitted in writing. It must clearly indicate and explain the issue that is to be considered. An interpellation is signed by all the members of parliament that submit it. An interpellation to the Speaker of Parliament is submitted by at least one tenth of members of parliament.³⁷

In the **Former Yugoslav Republic of Macedonia**, the National Assembly oversees the activities of the Government in accordance with the terms and procedures specified by the Constitution and the Rules of Procedure of the National Assembly. The Constitution of the Former Yugoslav Republic of Macedonia stipulates that the Assembly appoints the Macedonian Government.³⁸

The Rules of Procedure of the National Assembly stipulate the traditional procedures ensuring Government accountability to Parliament including parliamentary questions, interpellations, and a vote of no confidence in the Government.

³⁴ Article 111 of the Croatian Rules of Parliamentary Procedure.

³⁵ Article 113 of the Croatian Rules of Parliamentary Procedure.

³⁶ Article 115 of the Croatian Rules of Parliamentary Procedure.

³⁷ Article 190 of the Croatian Rules of Parliamentary Procedure.

³⁸ Article 68 of the FYROM Constitution.

A member of the National Assembly has the right to address to the Prime Minister, any member of the Government or any other responsible public official reporting to the Assembly any question relating to their work or the issues under their scope of competence.³⁹ The questions should be short and precisely formulated. Parliamentary questions are answered in the special sessions that are held every last Thursday of the month.

An interpellation may be submitted by at least five members of parliament regarding the activities of any public service, the Government and any member of the Government individually, as well as the issues relating to the activities of public authorities. An interpellation is submitted in writing, it is signed by all the members of parliament who submit it, and it must contain the explanation.⁴⁰

A vote of no confidence in the Government may be initiated by at least 20 members of parliament. This procedure must be initiated in writing, and must include the explanation.⁴¹

The **Kosovo** Constitution stipulates that the Kosovo Parliament appoints the Government and votes no confidence in the Government,⁴² while the Government accountability mechanisms are regulated under the Rules of Parliamentary Procedure. Those include the traditional mechanisms: a vote of no confidence in the Government, interpellations, parliamentary questions to the Government requiring oral answers, and parliamentary questions to the Government requiring written answers.

The Kosovo Parliament may vote no confidence in the Prime Minister, based on a motion submitted by at least one quarter, or more specifically 30 members of parliament, appointing at the same time a new Prime Minister, together with new Ministers, by a majority vote of the members of parliament.⁴³

A parliamentary group may initiate an interpellation to discuss an issue relating to the work of the Government or the Ministries.⁴⁴ An interpellation is submitted in writing, and it must indicate a precisely formulated subject, the explanation and the names and signatures of all those who submit it.

The Rules of Procedure stipulate also parliamentary questions to the Government requiring both oral and written answers. In any session of the Parliament, time must be allocated for parliamentary questions, not exceeding 50 minutes. During the time allocated for parliamentary questions, any member of parliament may pose a question to be answered by any member of the Government, provided that the

³⁹ Article 37 of the FYROM National Assembly Rules of Procedures.

⁴⁰ Article 45 of the FYROM National Assembly Rules of Procedures.

⁴¹ Article 214 of the FYROM National Assembly Rules of Procedures.

⁴² Article 65 of the Kosovo Constitution.

⁴³ Article 19 of the Kosovo Rules of Parliamentary Procedure.

⁴⁴ Article 25 of the Kosovo Rules of Parliamentary Procedure.

question was submitted in writing at least 48 hours prior to the session.⁴⁵ Furthermore, members of parliament may address questions requiring answers in writing to the Prime Minister or any other Minister relating to his/her scope of competence.⁴⁶

The **Serbian** Constitution stipulates that the National Assembly appoints members of the Government, and decides on the termination of the Government's and Ministers' term of office.⁴⁷ The Law on Government⁴⁸ also stipulates that the Government is accountable to the National Assembly for the implementation of the policy of the Republic of Serbia, enforcement of law and other general acts of the National Assembly, for the status in all the areas under its scope of competence, and for the performance of the public administration authorities.

Unlike other countries in the region, Serbia has a Law on the National Assembly as well, which regulates in more depth the accountability of the executive to parliament. This Law stipulates that the National Assembly oversees the work of the Government or a member of the Government by posing parliamentary questions, submitting interpellations, voting no confidence in the Government, and establishing inquiring committees.⁴⁹

The traditional accountability mechanism that ensures the Government accountability to parliament for its actions is a vote of no confidence in the Government or in a member of the Government. In accordance with the Serbian Constitution, a vote of no confidence in the Government or an individual member of the Government may be requested by at least 60 members of parliament. The National Assembly has accepted the motion for no confidence in the Government or a member of the Government if more than one half of all members of parliament voted in favour of the motion.⁵⁰ The 2006 Serbian Constitution introduced an additional accountability mechanism – interpellation.⁵¹

From the early 2000s, the Rules of Procedure has stipulated the practice of establishment of special committees for specific breaches on an *ad hoc* basis for the inquiry into specific cases. These committees have the right to summon the civil servants involved in the case. However, over the last decade, *ad hoc* committees were established on rare occasion and their work did not relate to the security and defence sector.

⁴⁵ Article 26 of the Kosovo Rules of Parliamentary Procedure.

⁴⁶ Article 27 of the Kosovo Rules of Parliamentary Procedure.

⁴⁷ Article 105, Para. 9, of the Serbian Constitution.

⁴⁸ Article 7 of the Law on Government, *Official Gazette RS*, No. 55/2005, 71/2005 - correction, 101/2007 and 65/2008.

⁴⁹ Article 56 of the Law on National Assembly, *Official Gazette RS*, No. 9/2010.

⁵⁰ Article 18 of the Law on Government, *Official Gazette RS*, No. 55/2005, 71/2005 - correction, 101/2007 and 65/2008.

⁵¹ Article 129 of the Serbian Constitution.

2.2. Specialised Defence Sector Oversight Committees

In the analysis of parliamentary control and oversight of the security and defence sector in the countries in the region, it should be taken into account that these countries have lived more than half a century in a communist (socialist) society, followed, in the early 1990s, by a difficult period of internal conflicts. In fact, it is this post-authoritarian and post-conflict heritage that makes it difficult to put the security sector under democratic civilian control. The introduction of effective and efficient parliamentary control of the security and defence sector is a very complex and time intensive process.

With respect to the parliamentary committees entrusted with parliamentary control and oversight of the security and defence sector, in all of the countries in the region, the Rules of Procedure stipulate the establishment of one or more committees specialised for the security and defence issues.

The only country in the region that has a special Law on Parliamentary Oversight of the Security and Defence Sector is Montenegro. In Bosnia and Herzegovina this law is still in the parliamentary procedure.

The main reason for adopting a special law on parliamentary oversight in the security and defence sector, instead of regulating this matter simply by parliament's rules of procedure, appears to be the wish of the Montenegrin parliament to define not only its authorities in this matter, but also the obligations of the Government's security and defence institutions during the oversight process. Thus, for example, Article 13 of the Montenegrin Law on Parliamentary Oversight of the Security and Defence Sector, envisages the obligation of state bodies to provide all data and information requested by the parliamentary Committee for Security and Defence and inform the Committee about implementation of its recommendations. Article 22 of the Law also prescribes the fines that will be imposed upon state bodies which do not comply with the Committee's requests (do not allow carrying out the oversight of the Committee members; do not provide information or documentation in the requested matter). As the obligations of the Government institutions in the course of the oversight process cannot be governed by parliament's rules of procedure, the adoption of a special law for the area of parliamentary oversight in the defence and security appears to be a logical and effective solution. The question, however, remains as to whether there is a real need to regulate each area of the parliament's oversight function (of which defence and security is only a small part) and respective government institutions that are subject of the parliamentary oversight by a special law? The more effective solution could be to regulate the overall Government's responsibility to parliament, including the responsibilities of the state bodies during the oversight process, by general Law on Government. However, as a Law on Government appears to be missing in Montenegro, the idea of adopting a special Law on Parliamentary Oversight of the

Defence and Security Sector may indeed be a good solution for the sector of defence and security for the time being.

In **Montenegro**, there has been a significant improvement of the work of the Assembly in terms of both its efficiency and its transparency, based on the new legal framework. The new Law extends the mandate of members of parliament to control the security sector and encourages them to take initiative by obliging the Committee for Security and Defence members (responsible for oversight of defence and security institutions) to make yearly action plans for control and oversight. The law does not prohibit the Committee for Security and Defence from including other oversight bodies in their meetings or from asking them for advice. The Law does not prohibit the Committee for Security and Defence members to have other supervisory bodies present at their sessions or to consult with other supervisory bodies. In addition, according to the law, to hold a meeting during regular parliamentary sessions on one specific topic, the Committee only needs the agreement of one third of its members. That allows the Committee for Security and Defence to be independent in their operations and to exercise oversight of the overall security and defence sector in Montenegro, which was not the case before, when the work of the Committee for Security and Defence was regulated only by the Rules of Procedure. This clearly improves the capacity of the Committee for Security and Defence to act independently and to monitor the whole security sector in Montenegro. This was not the case before, when its work was only governed by the Rules and Procedures of the Parliament. In addition, the members of parliament have received numerous trainings and have been offered a number of study visits to learn best practices from Western countries.⁵² The work of the Parliamentary Committee for Security and Defence is widely covered in the media, and recently there were successful attempts to involve civil society in the work of this Committee.⁵³

With respect to the control of the specialised parliamentary defence committees in Bosnia and Herzegovina, it has to be noted that, in accordance with the Dayton Agreement, the security and defence sector was not one of the exclusive competencies of **Bosnia and Herzegovina**, and therefore it is not mentioned explicitly in the Constitution. However, the Constitution stipulates that the Parliamentary Assembly of Bosnia and Herzegovina is responsible *inter alia* for:⁵⁴

⁵² F. Klopfer et al., *Almanac on Security Sector Oversight in the Western Balkans*, The Belgrade Centre for Security Policy and Geneva Centre for Democratic Control of Armed Forces, p. 167.

⁵³ For example, the non-governmental organisation Institute Alternativa from Podgorica did an expert study "Comments of the draft Law on Parliamentary Oversight within the Area of Security and Defence." The document was made available to members of the Committee for Security and Defence. Some of the comments from the study were accepted when drafting the final version of the law.

⁵⁴ Article IV of the Bosnia and Herzegovina Constitution (Ustav Bosne i Hercegovine).

- Deciding on the financial sources and allocations for financing of the operations of the Bosnia and Herzegovina Government institutions and the international obligations of Bosnia and Herzegovina;
- Approving the budgets of the Bosnia and Herzegovina Government institutions.

Bosnia and Herzegovina should be the second country in the region, after Montenegro, to adopt the law on parliamentary oversight of the security and defence sector and intelligence services. This law was put into parliamentary procedure on 25 June 2010, but it still has not been adopted. In July 2012, the Bosnia and Herzegovina Joint Committee on Defence and Security organised a workshop on the draft law. The objective was to prepare the final draft of the law, but it has not been published to this date. In accordance with the Committee's explanations, this law ensues from the obligation assumed by Bosnia and Herzegovina under the Individual Partners Action Plan for Bosnia and Herzegovina to harmonise its legal arrangements with the EU and NATO regulations.

The Joint Assembly of Bosnia and Herzegovina has two Committees responsible for the control of the security and defence sector. These are: the Joint Committee on Defence and Security of Bosnia and Herzegovina, and the Joint Security and Intelligence Committee on Supervision of the Work of the Intelligence and Security Agency of Bosnia and Herzegovina, which operation shall be discussed in the chapter on control of security services.

The Joint Committee on Defence and Security of Bosnia and Herzegovina considers and monitors the implementation of the security and defence policy of Bosnia and Herzegovina; monitors the work and considers reports from the Standing Committee on Military Matters, Bosnia and Herzegovina Ministry of Defence, Bosnia and Herzegovina Ministry of Security and other executive bodies dealing with defence and security issues as well as report the Parliamentary Assembly Bosnia and Herzegovina thereof, in particular focusing on reports, short-term and long-term plans pertinent to the structure of the Armed Forces of Bosnia and Herzegovina, personnel policy and recruiting, salaries and allowances, education and training of the Bosnia and Herzegovina Armed Forces, professional conduct and ethical standards of civilian and military staff, Army equipment, military industrial work, procurement and export/import of weapons and military equipment, material assistance and contracts with foreign companies rendering services to the defence institutions on a commercial basis, combat readiness, military exercises and operations including enforcement of international obligations and international peace support operations; considers laws and amendments to laws within the competencies of the Committee; considers and submits opinions and recommendations, amendments and changes to the defence budget proposal; considers reports on the defence budget execution as well as reports on the auditing of institutions in the domain of the Bosnia and Herzegovina defence and security policy, and considers other issues in the domain of security in Bosnia and Herzegovina.

In **Serbia**, until the parliamentary elections in 2012, the main parliamentary committee responsible for the security and defence sector was the Defence and Security Committee. The work of this Committee was limited in scope for several reasons. Firstly, the provisions of then Assembly's Rules of Procedure did not stipulate that the Ministry of Defence submits regular reports to the Assembly and the Defence and Security Committee.⁵⁵ Parliamentary control and oversight was also limited by a lack of initiative on the part of members of parliament, lack of clearly defined procedures for reporting on the performed inspections and oversight during field visits, as well as the lack of an annual work plan that would set the priorities of the Committees' work.⁵⁶

The Assembly's Rules of Procedure adopted in 2010 govern these issues and stipulate the obligation of the Ministry of Defence to submit regular reports to the Defence and Internal Affairs Committee (every four months). The Rules of Procedure also delegate adequate powers to the Committee to oversee the security sector.⁵⁷ However, the effectiveness of the provisions of the Rules of Procedure was deferred in the transitional and final provisions, which stipulate that the existing committees shall continue to operate in accordance with the previous scope of activities until the new Assembly is constituted.⁵⁸ As a result of that, the Ministry of Defence did not submit reports to parliament in 2006-2010, which was considered to be the biggest deficiency in the system of democratic civilian control of the military.⁵⁹

In **Croatia**, civilian control of the defence and security sector is exercised by executive (president, government and corresponding ministries), legislative (security, intelligence and defence related parliamentary committees), and the operational leadership, exercised by high ranking professionals belonging to the professional security, intelligence, defence and military structures.⁶⁰

The working body of the Croatian Parliament responsible for the defence sector is the Defence Committee. The competencies of the Defence Committee include establishing and monitoring policy, and in procedures to enact legislation and other regulations it has the rights and duties of the competent working body in matters pertaining to: the structure and authority of state administrative bodies in the field of defence; state and public security; cooperation with the bodies in the Republic of Croatia active in the field of state and public security, and other matters of state and public security.

⁵⁵ P. Klopfer at al, *op. cit.* 198-199.

⁵⁶ *Ibid*, 201.

⁵⁷ Article 49 of the Serbian National Assembly's Rules of Procedures.

⁵⁸ Article 296 of the Serbian National Assembly's Rules of Procedures.

⁵⁹ P. Klopfer at al, *op. cit.*, pp. 198-199.

⁶⁰ *Ibid*, p. 85.

The Former Yugoslav Republic of Macedonia shows a solid track record reforming its security sector. Much progress has resulted from the efforts to facilitate EU and NATO integration. Good governance and democratic control of its security sector were part of these reforms.⁶¹ In the Assembly of the Former Yugoslav Republic of Macedonia the committee in charge of defence issues is the Committee on Defence and Security.

Parliamentary oversight over the security sector in **Kosovo** is newly established and has limited experience. It was first introduced towards the end of 2006. More comprehensive consolidation of parliamentary oversight, however, only occurred after 2008. After the Declaration of Independence, it became possible to put all local security institutions under the scrutiny of parliament.⁶²

The Parliament's Rules of Procedures regulate the mandate and responsibilities of the parliamentary committee responsible for the oversight of defence and security sector in Kosovo while primary legislation, regulating operation of defence and security institutions, provide further details on responsibilities of particular institutions during the oversight process. The Law on the Ministry of Kosovo Security Force regulates only the KSF parliamentary oversight; Law on Kosovo Intelligence Agency regulates only the intelligence oversight.

Indirect oversight of the security sector by general committees was set up immediately after the establishment of the Kosovo Parliament in 2001. Among these committees, which continue to oversee important areas of the security sector, are the Committee on Budget and Finances, with the competence to oversee the finances of all institutions funded by the public institutions (including those of the security sector), the Committee for Community Rights and Interests and for Return, and the Committee on Human Rights, Gender Equality, Missing Persons and Petitions, with a responsibility to oversee human rights issues, particularly those related to the security sector.

In **Bulgaria**, the parliamentary committee responsible for the parliamentary control of the defence sector is the Foreign Policy and Defence Committee.

It is interesting to note that the details of the work of the Foreign Policy and Defence Committee (as well as majority of other committees) have not been stipulated by the general Rules of Procedures of Bulgarian Parliament. There is only one provision that refers to the work of this Committee outlined in the Article 28 paragraph 5 of the Rules of Procedures of the Bulgarian Parliament. This Article stipulates that, unlike other committees, the meetings of the Committee on Foreign Affairs and Defence and Internal Security and Public Order Committee and their subcommittees are closed to public. Only certain meetings of these Committees may be open, which is to be decided by the respective Committee.

⁶¹ *Ibid*, p. 131.

⁶² *Ibid*, pp. 119-120.

The operation of the Committee on Foreign Policy and Defence is regulated in more detail by the Internal Rules of the Committee for Foreign Policy and Defence adopted on 9 September 2009.⁶³ The Committee holds regular meetings once a week (each Wednesday at 14.30) during the sessions of the Bulgarian Parliament and also ad-hoc meetings as it deems necessary. The Committee exercises its legislative and oversight function by discussing legislative drafts and proposing respective amendments and by providing its opinions on expected consequences of general legal acts and (Government) decisions on the Bulgarian annual budget.⁶⁴ The Committee periodically requests information and reports from the Ministry of Defence and other ministries about problems on the defence policy and other matters.⁶⁵ The invitations for such hearings have to be sent to the members of the executive at least 24 hours before the meeting. The Committee is also able to form sub-committees that will discuss concrete problems in the defence sector.

2.3. Problems in Practice

Although the legal framework for the parliamentary control and oversight of the security and defence sector in most of the countries is solid, in reality, its implementation is not at the satisfactory level. Considering that the established civilian control and oversight mechanisms are a novelty in the system, it will take some time for them to become fully operational.⁶⁶

When it comes to the very parliamentary committees for parliamentary control of the defence sector, although the number of committees and their competences vary, some weaknesses in the work of these committees are common for all the countries in the region. What is interesting to note is that in most of the countries, even though the Rules of Procedure stipulate a wide range of powers, the committee members do not use them efficiently. Also, a very high degree of dependence of members of parliament from the political party leaders is evident in all of the countries, indicating the lack of intra-party democracy.⁶⁷

⁶³ The Rules of the Committee for Foreign Policy and Defence are available at the Bulgarian Parliament's website: <http://www.parliament.bg/bg/parliamentarycommittees/members/228/documents>, date: 8/5/2013.

⁶⁴ Article 3 of the Committee's Rules of Procedure.

⁶⁵ Article 6 of the Committee's Rules of Procedure.

⁶⁶ P. Klopfer et al, *op. cit.*, p. 199.

⁶⁷ Some parties' statutory documents regulate the position and contain additional safeguards that apply to those members who hold a minority opinion. But, the situation in practice is quite different. „No matter how impressive the aforementioned rights may seem, Blondel's general assessment that the most members of political parties act just like member of any other social body, as they do not exercise any right or duty that their membership imposes on them (Blondel, 1963, 90), appropriately describes the behavior of members of Serbian political parties.“ Cf. Goati, „Internal Relations of Political Parties in Serbia“ in *Organisation Structures and Internal Party Democracy in South Eastern Europe* (ed. G. Karasimeonov), GorexPress, Sofia, 2005, p. 14.

Notwithstanding the solid legal framework, a number of weak points in the parliamentary oversight of the security sector in **Montenegro** have been identified. Firstly, even though the legal framework for parliamentary oversight has been assessed as adequate, its implementation is not at the satisfactory level, or in other words, the members of the relevant parliamentary committees generally do not use their powers fully.

Secondly, some ruling party members of parliament tend to refrain from embarking on any discussions that could be critical of the work of the Government. Not enough mechanisms exist that would limit the impact of politics, or ensure that the interplay of oppositional political forces contributes to the broader public good in terms of security sector reform and oversight. Political interests seem to guide the work of members of parliament in the Committee for Security and Defence. It appears as if members of this committee are more focused on staying in line with their party policy instead of trying to question, research, monitor, and where possible, cooperate with other members of parliament (from the opposition or the ruling party when necessary) in order to keep the security sector accountable, transparent and under democratic and civilian control.

Similarly, serious gaps in the oversight of the Committee for Security and Defence have been identified. So far, the Committee has never controlled the security institutions' budget planning or spending. This Committee has failed on several occasions to seriously consider or react to reports of the State Audit Institution on malpractices in discharge of the budget of the relevant ministries.

Also, the parliamentary committees have only limited administrative support at their disposal. The Committee for Security and Defence employs only one advisor, which is not sufficient to guarantee the proper functioning of this Committee. Furthermore, the members of parliament are members of several committees at the same time which prevents them from focusing solely on the work in the Parliamentary Committee for Security and Defence.⁶⁸

Although the work of committees in the Parliamentary Assembly of **Bosnia and Herzegovina** has been assessed as satisfactory, deficiencies still exist. One such deficiency is weak cooperation between committees and executive bodies, which in turn causes executive bodies to not respond to requests coming from the parliamentary committees.⁶⁹ Therefore, there is a need to improve the cooperation between the Bosnia and Herzegovina Parliamentary Assembly committees responsible for the oversight of the defence and security sector and the executive. This problem is expected to be overcome by the adoption of the draft law on parliamentary oversight of the defence and security sector and intelligence services, which stipulates sanctions for failure to cooperate with the Assembly and its bodies.

⁶⁸ P. Klopfer et al, *op. cit*, p. 168.

⁶⁹ According to reports of this Committee, the Council of Ministers of Bosnia and Herzegovina has failed to fulfil its legal duty of delivering annual reports on the work of the Intelligence and Security Agency of Bosnia and Herzegovina for the last three years.

Furthermore, one of the major weaknesses is inadequate administrative and logistical capacities of committees' secretariats. The needs of committees are greater than the support currently offered by their secretariats. It is clear that more expert and financial support needs to be provided to the committees in order to improve their work. This especially relates to entity level committees, where secretariats hire only one expert per committee.⁷⁰

In **Serbia**, the Security and Defence Committee in the former parliament composition did not have adequate resources, expertise and specialised staff to perform all the duties under its competence (defence, internal affairs and security issues). Consequently, the work of this Committee was mainly reactive and limited to routine periodical hearings stipulated by law.⁷¹ Furthermore, the Security and Defence Committee lacked staff, and the staff themselves did not have adequate knowledge about the Assembly's oversight function.⁷²

After the new Assembly was convened in mid 2012, new committees were established: the Committee for Defence and Internal Affairs, and the Committee for Oversight of Security Services. However, it is still too early to have an insight into the efficiency of these committees in ensuring oversight of the security and defence sector.

However, it appears that although the legal framework for parliamentary oversight of the security and defence sector was strengthened, in reality, the Assembly's oversight of the defence and security sector and generally the Government's actions is still weak for several reasons. The first reason is a high level of dependency of members of parliament from the political party leaders, which is a consequence of the lack of intra-party democracy in each individual party. The second reason is the very nature of the political system and the existence of coalition government and coalition agreements that imply a strict division of the Government sectors (ministries and agencies) between the coalition partners. As a consequence of that, the party members are reluctant to question the performance of their party colleagues who head other ministries and agencies, and the ruling coalition members are reluctant to interfere with the work of their partners for fear of disturbing the coalition balance.⁷³ Finally, it is crucial to take into account the nature of the parliamentarism in the Republic of Serbia and the countries in the region, which is based on the continental law tradition, where members of parliament are interested predominantly in the legislative

⁷⁰ P. Klopfer at al, *op. cit.*, p. 57.

⁷¹ Commission Opinion on Serbia's application for membership of the European Union.

⁷² P. Klopfer at al, *op. cit.*, p. 199.

⁷³ *Ibid.*

procedure, and are not used to oversee and control the work of the executive.⁷⁴ One of the key reasons for such practice on the part of the MPs is the communist tradition of a single-party system and the unity of power, where it was uncommon for the Parliament to invoke the Government's accountability. Under the unity of power concept, the parliament and the executive are just parts of a single system, whereas all the decisions were adopted by the party leaders.

Parliament and its committees execute oversight over the work of security institutions **in Croatia** in many ways. One of those ways is proposing and adopting laws. Other ways include regular reviews of the security sector policy and activities, reviews of regular reports prepared by the security sector institutions, examinations of the security sector officials, who can always request that additional reports are prepared, if needed. These hearings and reviews normally relate to the legality of the activities and financial accountability of security institutions. The representatives of the security and defence sector are often summoned to attend the sessions of the Committee that pertain to the security and defence sector. In addition, field visits to the security and defence facilities, where the Committee members can get more extensive information about the everyday problems in the security and defence sector, are also frequently organised.⁷⁵

The Croatian example shows that the establishment of democratic and civilian control over the security and defence sector is a long-lasting process. The Republic of Croatia started the reforms more than 20 years ago. Although it is considered that the defence sector reform has achieved satisfactory results,⁷⁶ especially in comparison to the other countries in the region, there is still a lot to be done. With respect to parliamentary control, there is a need to improve the legal framework so that all government departments and agencies in cooperation with parliament and its bodies work to continue progress in the security and defence sector.⁷⁷

⁷⁴ The differences between the Anglo-Saxon and the continental model of parliamentary oversight are rooted in the historical differences between the British and the French parlamentarisms. Parliamentary oversight by invoking the Governments' accountability for its actions is the key mechanism for controlling the executive in Great Britain and other common law countries. Parliamentary scrutiny by calling the Government to account for its actions is a key means of controlling the executive, instead of designing the detailed rules and regulations to which the executive would need to adhere. However, in the countries following the continental law tradition, influenced primarily by the French model of parliamentarism, the key role of the parliament is to legislate, not to scrutinise. Consequently, parliamentary oversight is strictly separated from the legislative procedure and is considered to be a separate role for the parliament. In France, and, under the influence of French law, in other countries of the continental legal tradition, parliamentary oversight is identified with the right of expression of the opposition and is considered that the opposition has the privilege to control the executive. Cf. A. Rabrenović, *Financial Accountability as a condition for EU membership*, Institute of Comparative Law, Belgrade, 2009, pp. 205-207.

⁷⁵ P. Klopfer et al, *op. cit.*, p. 86.

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*, p. 97.

With respect to the Committee on Defence and Security in **Former Yugoslav Republic of Macedonia**, numerous weaknesses have been identified in relation to its work. Firstly, the Committee on Defence and Security does not have adequate staff to provide the necessary information and data. Secondly, the Committee has hardly ever examined army related trials. Furthermore, there is a practice to take most Committee decisions by consensus, especially those related to investigations such as requests for budget documentation. This limits the Committee on Defence and Security oversight because most members and the Chairman come from the ruling party and tend to avoid confrontation with the leadership. In this environment, the ruling party committee members can overturn any initiative within the committee. Since 2006, members of parliament have not initiated an interpellation towards the Minister of Defence. Members of parliament have undergone trainings by international civil society organisations on areas such as policy oversight and budget scrutiny but so far there is no substantial increase of involvement in Armed Forces oversight.⁷⁸

Therefore, although the security sector reforms have been assessed as satisfactory, in practice, with respect to parliamentary control of the security and defence sector, several shortcomings should be corrected. First, when political parties decide on appointing members of parliament to committees, particularly those dealing with oversight of intelligence, they should ensure the members of parliament have genuine interest in the particular field and possibly legal experience. Second, committee members should undergo specially designed training, particularly in budget scrutiny, intelligence services functioning, peace support operations, etc. Third, Parliament should hire advisors to assist the committees in their work. Number four, the Committee for Defence and Security and other relevant committees should insist on public debates and hearings on draft laws.⁷⁹

In Kosovo, despite a solid legal framework, neither the general nor the specific security sector committees have performed their oversight responsibilities successfully in practice. The Committee for Internal Affairs, Security and Kosovo Security Force has not prepared a single report on the activities of the Kosovo Security Force yet. With respect to field visits, they are mainly formal, so that committee members do not have a critical approach to the work of the Ministry for the Kosovo Security Force at all.

One of the main obstacles for efficient parliamentary oversight of the defence sector is related to limited professionalism within the Parliament staff. More specifically, in the recruitment of parliamentary support staffers, political biases and personal preferences influence the hiring of personnel, which is a problem that is common throughout public administration in Kosovo. Consequently, the number of skilled staffers among parliamentary committees is very low. In addition, there is a lack of political willingness to improve the processes, i.e. efficient parliamentary oversight of the security sector. In fact, due to a combination of personal or party

⁷⁸ *Ibid*, pp. 135-136.

⁷⁹ *Ibid*, p. 150.

interests and the influence that the party leaders have over other members of parliament, in practice the Kosovo Parliament has much less influence on security sector actors than it is given by law.⁸⁰

In Bulgaria, parliamentary control of the defence sector is also not satisfactory. In the most recent report of Institute of Modern Politics (IMP)⁸¹ parliamentary control in this sector is assessed as insufficient. The report especially notes that “some of the responses provided by the Minister of Defence to the Parliament are formal, bureaucratic, lack depth and completeness. Such responses are related to issues of defense and the state of the armed forces. Other statements are very complete and detailed – these are related to assets of MoD. In terms of personnel policy of the Ministry, as well as particular cases, the responses are comprehensive and consistent. The type of answers implies that there is a no complete vision on the whole sector (...). There is also a positive dialogue between the Minister and MPs, who are often satisfied with the answers received. The written answer provided by the Minister are concise and specific.”

3. CONCLUDING REMARKS

The regulatory framework of parliamentary oversight of the defence sector is sound in all the countries in the region. However, when it comes to its implementation in practice, the situation is quite different. In the majority of these countries, the members of the parliamentary committees are reluctant to use the powers vested with them by statutes and parliamentary rules of procedure. Moreover, MPs are highly dependant on political party leaders, which has an adverse effect to the parliamentary oversight of the defence sector. Therefore, if only the regulatory framework of the parliamentary oversight over the defence sector is analysed, in most countries it is fully in line with international standards and should be awarded the highest grades. However, if its implementation in practice was to be taken into account, the assessment would be quite different.

Constitutional and statutory provisions concerning parliamentary oversight of the defence and security sector in **Montenegro** guarantee the main principles of civil control over the armed forces. So far, Montenegro is the only country in the region to have passed a separate statute governing the parliamentary oversight over the defence sector. Given that the regulatory framework concerning parliamentary oversight over the defence sector in Montenegro is fully in line with the standards, it can be graded with an A.

⁸⁰ *Ibid*, 119-120.

⁸¹ Institute of Modern Politics (IMP) (<http://www.modernpolitics.org>) is an independent policy institute, a public benefit non-profit, non-partisan foundation. Members of IMP Board of Governors and experts involved in IMP's activities encompass a diverse range of backgrounds and professions including academics, policy-makers, former MPs, the media, NGOs, legal practitioners, political science researchers.

When it comes to the regulatory framework concerning parliamentary oversight of the defence sector in **Bosnia and Herzegovina**, one should take into account that, pursuant to the Dayton Agreement, defence is not an original competence of Bosnia and Herzegovina and hence the defence sector is not referred to in the Constitution. However, within the joint assembly of Bosnia and Herzegovina two Commissions charged with controlling the defence and security sector were formed. Current legal framework is comprehensive, but does not provide conditions for effective cooperation between the Defence and Security Commission and the executive. Furthermore, draft Law on parliamentary oversight of the defence sector has still not been adopted. Bearing all this in mind, the present regulatory framework governing the parliamentary oversight over the defence sector in Bosnia and Herzegovina can be graded with a B.

As far as the Republic of Serbia is concerned, the Parliamentary Rules of Procedure, adopted in 2010, regulate parliamentary oversight over the defence sector in detail and envisage the obligation of the Ministry of Defence to regularly report to the Defence and Interior Affairs Committee. Consequently, the regulatory framework governing parliamentary oversight over the defence sector in Serbia is fully in line with international standards and can be graded with an A.

The regulatory framework governing parliamentary oversight over the defence sector in the Republic of Croatia is also fully in line with international standards and can be graded with an A. It should be noted that the Republic of Croatia is the only country in the region that could be graded with an A when it comes to implementation, despite certain shortcomings.

The Former Yugoslav Republic of Macedonia has accomplished sound success in reforming the defence and security sector. The regulatory framework governing parliamentary oversight over the defence sector is fully in line with international standards and can also be graded with an A.

When it comes to Kosovo, the governing parliamentary oversight over the defence sector has been established only recently. The Constitution expressly envisages parliamentary oversight parliamentary control in this sector, whilst the statutes on the defence sector actors include principles guaranteeing democratic control of the defence and security sector. Generally, the governing parliamentary oversight over the defence and security sector is in line with international standards and can be graded with an A. Despite the harmonised regulatory framework, when it comes to its implementation in practice, in Kosovo it is almost inexistent.

In Bulgaria, the regulatory framework governing the parliamentary oversight over the defence sector is not comprehensive enough. Furthermore, the meetings of the Committee on Foreign Affairs and Defence and its subcommittees are closed to the public. Bearing all this in mind, the present regulatory framework governing the parliamentary oversight over the defence sector in Bulgaria is partially in line with international standards and can be graded with a grade B.