

# The Anatomy of Capturing **Serbia's** Security - Intelligence Sector



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European Fund for the Balkans

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## Abstract

In its Enlargement Strategy for 2018, the European Union assessed that elements of state capture are present throughout the Western Balkans. Our research shows, however, that when it comes to Serbia this is a very restrained assessment as whole state institutions and sectors – the security services and institutions tasked with their control and oversight – have been captured by the ruling Serbian Progressive Party (SNS). Key positions in the security and intelligence sector are staffed by close associates of party officials or directly by party officials and its founding members. The Director of the BIA, Bratislav Gašić, and the head of the Security Services Coordination Bureau, Nebojša Stefanović, are founding members and high-ranking officials in the SNS. Key posts in the judiciary that are significant for the activities of the security services have been taken up by close associates of party officials or of the leader of the SNS and the President of Serbia, Aleksandar Vučić. They are not all sufficiently experienced to be in these roles because the main criterion for their appointment was personal or party loyalty.

In order to ensure the smooth operation of the security services for the purposes of personal and party interests, the ruling party has made the bodies tasked with their oversight and control redundant. It is, therefore, the party with a parliamentary majority and not the opposition that obstructs the work of the National Assembly. The Security Services Control Committee of the Parliament has become an outfit for expressing support for President of Serbia and party leader, Aleksandar Vučić, which awards party officials with ceremonial plaques. After the appointment of a new Ombudsman and a new State Auditor, these institutions have been abandoned by people with experience of conducting checks on the security sector and have become little more than window dressing. This is a particularly worrying finding as the Ombudsman had been an example of best practice when it comes to controlling the security services, not only in the Western Balkans but also in developed European countries.

Clientelism and personal and party relations have thus become more significant regulators of relations between the security services and the political sphere than the law and constitution of Serbia. This state of affairs occurred through a combination of changes to legislation and the appointment of loyal personnel to key positions in the sector – who have then continued to recruit along these lines. Even though the capture of the sector began in 2012, once the SNS rose to power in both branches of the executive and accelerated in earnest in 2014 when the party won an absolute majority

through snap elections, elements of a captured security and intelligence sector began to emerge while the DS was in power. Some in the expert community had raised alarms over these early warning signs of a captured state but they were summarily ignored as they had been seen as an academic hair-splitting.

As a consequence, the security services are now (increasingly) exceeding their powers and authority and are (increasingly) acting as a political police force. Protection of the constitutional order and counter-espionage have been transformed into protection of the party in power and the fight against internal enemies. Such security services either turn a blind eye to crime and corruption linked with party officials or become its protectors. It is highly questionable whether they are capable of reviewing, accurately and in a timely fashion, the state of security, risks and threats and of identifying and forecasting the flow and outcome of important social, political, economic and security events.

The basic premise for reversing the capture of the security and intelligence sector is the understanding of the true state of affairs. This analysis seeks to identify the key actors, conditions, events and mechanisms of the capture of the security sector and to discover the dynamics of this negative trend, as well as its consequences. This study is, however, only the first step in this process because, as we write, fresh cases and affairs emerge and indicate that things in the security and intelligence sector are actually worse than we were able to record through our analysis. It is imperative, therefore, that a more comprehensive and detailed analysis is produced, which would involve a broader range of actors with more varied expertise, so as to ensure that the sector is analysed as accurate as possible. Such a study would make it possible to consolidate existing recommendations for reform of the security and intelligence sector (which Serbian experts have been advocating for more than ten years) and also to determine the scope and timeframe of their implementation.

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## List of Abbreviations

BCSP	Belgrade Centre for Security policy	Ombudsman	The Protector of Citizens
BIA	Security-Information Agency	Parliament	National Assembly of the Republic of Serbia
Biro	The Security Services Coordination Bureau	PU	Police Directorate
Commissioner	The Commissioner for Information of Public Importance and Personal Data protection	RDB	The State Security Service
CSO	Civil Society Organizations	RS	Republic of Serbia
DB	State Security	SBPOK	Service for Combating Organised Crime
DRI	State Audit Institution	SCG	Serbia and Montenegro
DS	Democratic Party	Secretary	Secretary of NSC and chief of Bureau
DSS	Democratic Party of Serbia	SO	Defence Strategy of Serbia
EC	European Commission	SNS	Serbian Progressive Party
EU	European Union	SPS	Socialist Party of Serbia
GIS	Inspector General for military security services	SRJ	Federal Republic of Yugoslavia
GŠ	Chief of General Staff	SRS	Serbian Radical Party
KOS	Counter-Intelligence Service	UKP	Criminal Investigations Directorate
MO	Ministry of Defence	VBA	Military Security Agency
MUP	Ministry of Interior	VOA	Military Intelligence Agency
NSC	National Security Council	VP	Military Police
NSS	National Security Strategy	VS	Military of Serbia
OKSB	The Security Services Control Committee		

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## Introduction

With the dissolution of the State Union of Serbia and Montenegro (SCG)<sup>1</sup> in May 2006 and the (involuntary) restoration of independence for Serbia, the country had an opportunity to shape its security sector to its own needs and capabilities, unburdened by the complex political and other relations inherent in the confederal state. Contrary to the expectations of the expert community and the wider public, however, comprehensive reform of the security sector and the security services themselves failed to materialise. In a manner reminiscent of the period after the overthrow of the Milošević regime<sup>2</sup>, partial and haphazard reform of the security services and the security and intelligence sector was driven by the most powerful political leaders and their impulses and ambitions for control over the security services, rather than by a desire for the security services to become fundamental to the protection of the democratic order proclaimed in the first article of the Serbian Constitution.<sup>3</sup> The unbroken clientelist relationship between the security services and ruling politicians only became stronger, to the point that today they have to all intents and purposes become a more important regulatory force between the security services and the political sphere than the law and the constitution. It is unsurprising, therefore, that Serbia's security services have now become more of a threat to the country's democratic order than an instrument for its protection.

This study seeks to describe and analyse the factors, conditions and actors that made it possible for Serbia's security and intelligence sector and the security services to become a tool in the hands of the ruling party, i.e. the Serbian Progressive Party (Srpska napredna stranka – SNS). Since this state of affairs did not emerge overnight, the first part of this study will describe how the shaping (or re-shaping) of the country's security and intelligence sector after the restoration of Serbia's independence created the preconditions for the effortless and complete capture of the security services. Particular attention will be paid here to legislative shortcomings that, at the time, appeared to be relatively insignificant but later proved to be crucial to the political instrumentalisation of the security and intelligence sector. Furthermore, the study

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1 The State Union of Serbia and Montenegro was a union of the former Yugoslav republics of Serbia and Montenegro. It lasted from 4 February 2003 to 21 May 2006, when Montenegro declared its independence following a referendum. SCG was the successor state of the Federal Republic of Yugoslavia (FRY). The FRY was a federation of the republics of Serbia and Montenegro created on 27 April 1992, as the successor state of the Socialist Federal Republic of Yugoslavia, which emerged from the Second World War.

2 Slobodan Milošević was the autocratic leader of Serbia from 1989 until 5 October 2000, when he was overthrown by mass protests. The overthrow of the Milošević regime is therefore often known as the October 5 Revolution (*petooktobarske promene*).

3 For more on the reform of the security services following the October 5 Revolution, see: Milosavljević, B. and Petrović, P. (2009), Security-Intelligence Services of the Republic of Serbia, *Yearbook of Security Sector Reform in Serbia 2008*, M. Hadžić, Belgrade, Centre for Civil-Military Relations: 208-235.

aims to show how certain, seemingly unconnected events, personnel arrangements, decisions and legislative changes are actually directly connected to one clear objective, the subjugation of the security services to personal and party control. The broader scope of the study will grant us greater insight into the methods and mechanisms of (and some early indicators for) the capture of the security services by the political authorities.

A section of the study will be devoted to analysing how the ruling party broke down mechanisms for (particularly external) oversight and control of the security services and, in so doing, removed the last remaining obstacles to their full instrumentalisation for personal and party purposes. Finally, the analysis will also show, through concrete examples, how the ruling party uses personal and party control of the security services to settle scores with, among others, those opposed to their rule.

### *The Captured State – A Conceptual Framework*

We rely here on the concept of the captured state, which has become broadly accepted in the Serbian and international expert community and broader public as descriptive of the negative socio-political and economic trends in the Western Balkans<sup>4</sup>, particularly since the European Commission's Enlargement Strategy indicated that elements of state capture are present in all of the countries of the region<sup>5</sup>. There is no need here to delve into alternate understandings of the concept or to challenge its meaning<sup>6</sup>, instead we offer up a working definition of the term to better serve the study.

State capture is a process in which individuals and groups (business people, politicians, criminals and, more often than not, all of them acting in concert) gradually and systematically change the formal "rules of the game", first in one sector of society and then in others, in order to pursue their interests at the expense of the public good. These interests may be to advance their material and financial gain but also the increase of political power and control of the levers of state power. These objectives are typically intertwined and reinforce one another since greater political power makes it easier to change the rules of the game and, consequently, to redirect public (but also private) material and financial resources to the narrow clique of individuals and groups. For example, personal and party control of the police and judiciary ensures

4 Beyond Europe the most well-known case of state capture was in South Africa. For more on this, see: Madonsela, T. (2016). State of Capture - A Report of the Public Protector. 14 October 2016. Pretoria, Public Protector of the Republic of South Africa.

5 A Credible Enlargement Perspective for and Enhanced EU Engagement with the Western Balkans. 06.02.2018. Strasburg, European Commission. Online source: [https://ec.europa.eu/commission/sites/beta-political/files/communication-credible-enlargement-perspective-western-balkans\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/communication-credible-enlargement-perspective-western-balkans_en.pdf)

6 For example, political scientist, Đorđe Pavićević, disputes the term 'state capture' and instead uses the terms 'hijacked state' or 'appropriated state'. For more on this, see: Pavićević, Đ. (2017). Serbia: Hijacked and Appropriated State. *Captured States in the*

immunity from prosecution for those who illicitly enrich themselves. In return, it is in the interests of these wealthy individuals to keep those politicians who have enabled their enrichment in power. Hence, a captured state acts as one large perpetual motion machine.

The manner of state capture can vary and is often completely legal, at least initially. In most cases, it begins with a combination of changes to primary and secondary legislation, the appointment of loyal party officials to key positions in the state apparatus and the employment of similar personnel at various levels in governmental institutions – accompanied by the purge of existing employees who are liable to become inconvenient witnesses in future. In the advanced stages of state capture, the separation of powers exists in name only and the institutions of the state cease to provide socio-economic, political and other rights to ordinary citizens. Instead, they function completely in the service of a narrow clique of individuals and groups.<sup>7</sup>

### **Data Gathering Methods**

In order to achieve the research goals, our starting point were existing findings on the reform of the security services. We supplemented these findings with 28 interviews with former and current security and intelligence personnel, employees at oversight bodies, parliamentarians, journalists working on security affairs, lawyers and civil society workers who have been targeted by the security services, as well as other experts working in relevant fields. As the overwhelming majority of interviewees requested that they remain anonymous, the study will cite and reference publically available media sources that we have vetted with our interlocutors. The references in the study will, therefore, contain significantly fewer citations of (anonymous) interviewees than the number of interviews conducted.

As with previous research, we have also relied on documents produced by governmental institutions (legal norms, information booklets and so forth), the websites of these institutions and also speeches made by the high-ranking officials from the security services or by leading politicians. Finally, we sought to obtain information through freedom of information requests – a practice that yielded very limited results due to the general trend of declining transparency at state institutions in Serbia. In turn, the limited success in collecting data and information in this way gave us an opportunity to compare the degree of transparency at the security services today and five years ago, since many of the questions submitted remained the same. This enabled us to confirm the trend of rapidly decreasing transparency.

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<sup>7</sup> For more on the concept of state capture, see: Kraske, M. ed. (2017). *Robbin' the Hood: Inquiries into State Capture*. Perspectives #01/2019. Cape Town, Heinrich-Böll-Stiftung e.V.

# Capturing the Security and Intelligence Sector: The Political Context

## The Emergence of the Serbian Security and Intelligence Sector

Following Serbia's re-emergence as an independent state and the adoption of the 2006 Constitution, the country's political authorities<sup>8</sup> passed the 2007 Law on the Bases Regulating Security Services of the Republic of Serbia<sup>9</sup> in great haste, using expedited legislative procedures, and then called and held a presidential election. This was done before the adoption of "umbrella legislation" for the security sector, in the form of a national security strategy, which would define the main challenges, risks and threats to the Republic of Serbia, as well as how these are to be responded to. The Constitutional Law on Implementation of the Constitution of the Republic of Serbia<sup>10</sup> stipulates that prior to elections for the President of Serbia being called, laws must be adopted that regulate the status and elections of the President, defence and the Army of Serbia, foreign affairs and the security services. However, in spite of legal obligations and the expectations and efforts of the expert community, the Law on the Bases Regulating the Security Services did not properly regulate the services. Instead, it merely catalogued them<sup>11</sup>, (partially) regulating their coordination through the National Security Council and prescribed mechanisms for parliamentary control and oversight. The law does, however, state that the governance, tasks and powers, as well as other issues pertinent to the activities of the security services, will be regulated in future by new laws on the civilian and military services, as this will "recognise the specificities of civilian and military security affairs".<sup>12</sup> On the other hand, neighbouring Croatia regulated both its civilian and military security services through one act passed in 2006, without jeopardising the "specificities" of their affairs.<sup>13</sup>

In 2009, however, just two years after the adoption of the above law, the Serbian

8 From 2004, the Serbian executive branch existed in a state of cohabitation. The Prime Minister was Vojislav Koštunica, of the Democratic Party of Serbia (*Demokratska stranka Srbije – DS*), and the President was Boris Tadić, of the Democratic Party (*Demokratska stranka – DS*). Cohabitation came to an end in 2008, when DS formed a government with the Socialist Party of Serbia (*Socijalistička partija Srbije – SPS*). This was preceded by a "grand reconciliation" between DS and SPS, which was formalised through the Declaration of Reconciliation: <https://pescanik.net/deklaracija-o-pomirenju-ds-i-sps/>, accessed: 20.12.2019.

9 Zakon o osnovama uređenja službi bezbednosti Republike Srbije (*Law on the Bases Regulating Security Services of the Republic of Serbia*), "Official Gazette of the Republic of Serbia", no. 116/2007.

10 Ustavni zakon za sprovođenje Ustava Republike Srbije (*Constitutional Law on Implementation of the Constitution of the Republic of Serbia*), "Official Gazette of the Republic of Serbia", no. 98/06.

11 Namely: the Security Information Agency (*Bezbednosno-informativna agencija – BIA*), the Military Security Agency (*Vojnobezbednosna agencija – VBA*) and the Military Intelligence Agency (*Vojnoobaveštajna agencija – VOA*).

12 Chapter III of the elaboration for the Draft Law on the Bases Regulating Security Services of the Republic of Serbia. Cited from: Petrović, Predrag, (2008). "Incomplete Step Towards Reform of the Security Intelligence System in Serbia", *Western Balkan Security Observer*, October 2007 – March 2008 (7-8): 108-115.

13 Zakon o sigurnosno-obaveštajnom sustavu Republike Hrvatske (*Act on the Security Intelligence System of the Republic of Croatia*), Croatian Parliament, People's Newspaper, 79/06, 105/06.

National Assembly adopted passed the Law on the VBA and the VOA<sup>14</sup>. Other laws regulating the security sector were adopted in the same package, as were the National Security Strategy and the Defence Strategy<sup>15</sup>. This showed that the political authorities actually lacked a strategy for reform of the security and intelligence system of Serbia. It is appropriate to note here that in some instances the political authorities introduced solutions that were problematic from the point of view of democratic civilian control, so that much draft and newly adopted legislation was actually worse than that which it replaced,<sup>16</sup> even though the latter was passed in the first years following the overthrow of the Milošević regime.

A new, modern, law on Serbia's civilian security service – the Security Information Agency (BIA) – the most important security service in the country, has not been adopted to date (2019), even though the expert community is unanimous in its assessment that this failure to pass such a law is not in line with the principles of democratic civilian control.<sup>17</sup> Therefore, the Law on the BIA, from as long ago 2002, has been amended several times, under the pressure of external circumstances, so as to at least formally adhere to minimal democratic standards.

The reasons for this incomplete regulation of the security intelligence sector, as well as for the tempo of the adoption of new or the amendment of existing legislation on the security services, are exclusively of a (low) political nature. Not only was legislation that would comprehensively regulate the security intelligence sector (similar to the Croatian act) ready following Serbia's independence, but new individual laws for the BIA and the military services had also been written. A matter about which representatives of the political authorities and security services have been happy to boast.

### ***The Unconstitutional Transformation of Political Power into Security Power***

One of the most important accomplishments of the Law on the Bases Regulating Security Services is the (final) regulation of coordination of the security services. The National Security Council and the Bureau for Security Services' Work Coordination are placed in charge of this. The problem here is, however, that both of these bodies were

<sup>14</sup> Zakon o Vojnobezbednosnoj i Vojnoobaveštajnoj agenciji (*Law on the Military Security Agency and the Military Intelligence Agency*), "Official Gazette", No. 88/2009

<sup>15</sup> For more on the security and defence strategies, as well as the manner of their adoption, see: Bjeloš, M. (2010). Security Policies in the Western Balkans – Case of Serbia. *Security Policies in the Western Balkans*. Miroslav Hadžić. Milorad Timotić and Predrag Petrović, Belgrade, CCMR, BTD: 141-164.

<sup>16</sup> For example, the Draft Data Secrecy Law initially denied access to classified information for independent state bodies, while the Draft Law on the VBA and VOA gave the VOA powers to covertly gather data in Serbia, even though this agency is supposed to gather information beyond Serbia's borders. Petrovic, P. (2012). Intelligence Governance in Serbia. Geneva, DCAF, p 2.

<sup>17</sup> For further criticism of the Law on the BIA, see: Milosavljević, B. (2003). Reforme obaveštajno bezbednosnih službi: slučaj Srbije (*Reform of the Intelligence and Security Services: The Case of Serbia*). *Prva škola reforme sektora bezbednosti: zbornik predavanja (First School of Security Sector Reform: Yearbook)*. P. Janković. Belgrade, Centar za proučavanje odbrane i bezbednosti, G17 institut, pp. 69-85.

designed under the influence of the current political power relations in Serbia, rather than to maintain the political system as defined by the Constitution or to reflect the country's security needs. Hence, the key person in the Council is the President of the Republic, who is responsible for calling sessions of the Council as well as signing off on the Council's conclusions and other acts.<sup>18</sup> Additionally, the Law introduces the approach that, according to the letter of the law, the secretary of the National Security Council is the President's chief of staff, who is also de facto the secretary of the Bureau for Security Services' Work Coordination. The Council and Bureau receive administrative support from the Office of the National Security Council, a department of the Government of Serbia, which is not logical since the secretary of the Council is also the President's chief of staff and so should be entrusted with this responsibility. However, as will be shown later, the role of Council secretary goes well beyond a purely administrative capacity.

These legislative approaches are not in accordance with the constitutional role of the President and, therefore, the design of the Serbian political system.<sup>19</sup> In neighbouring Croatia, which has a similar political set up, an institution of "countersigning" has been introduced, requiring both the President of Croatia and the prime minister to countersign decisions by the council.<sup>20</sup> Further "checks and balances" have also been established in Croatia, so that the body for coordinating the security services<sup>21</sup> is chaired by the cabinet minister responsible for national security and the deputy chair is the President's national security adviser. Together they call sessions, confirm session agenda and countersign the decisions brought by this body.

The (unconstitutional) dominance of the President of Serbia in the Council and the Coordination Bureau, via the President's chief of staff, is a consequence of the balance of political power between Serbia's ruling parties when these bodies were established. That is, rivalry between the Democratic Party of Serbia (DSS), led by Vojislav Koštunica, and the Democratic Party (DS), led by Boris Tadić. Koštunica was Prime Minister from

18 A "technical" problem may also arise here. Namely, that the law stipulates that Council sessions are chaired by the Prime Minister on occasions when the President is indisposed. However, Council conclusions and other acts can only be approved by the President exclusively, which could in practice result in certain problems. For example, it is not impossible to imagine a situation in which the heads of the security services require written approval for the implementation of important operations, which would not be possible in the aforementioned scenario. Politička bitka za kontrolu tajnih službi (*Political Battle for Control of the Secret Services*). [Politika online](#), 05.12.2007. Belgrade, Politika.

19 Provisions of the Serbian Constitution stating that the Government is to "establish and pursue policy" (Article 123, Point 1) and that it "direct and adjust the work of public administration bodies and perform supervision of their work" (Article 123, Point 5) clearly stipulate that the Government shall have administrative and/or command over the Armed Forces, police and security services.

The powers of the President are limited to the Armed Forces of Serbia, whereby "[in] accordance with the Law, the President of the Republic shall command the Army and appoint, promote and relieve officers of the Army of Serbia" (Article 112, Paragraph 3). For more on this, see: Hadžić, M. (2019). Ustavna zamisao kontrole i nadzora poslenika bezbednosti Srbije (*The Constitutional Conceptualization of the Control and Oversight of Security Officials in Serbia*). Belgrade, Belgrade Centre for Security Policy.

20 National Security Council of Croatia (Cro. *Vijeće za nacionalnu sigurnost*).

21 In Croatia, this body is called the Council for the Coordination of Security and Intelligence Agencies (Cro. *Savjet za koordinaciju sigurnosno-obaveštajnih agencija*).

2004 to 2008, when his party controlled the key internal security institutions – the MUP and BIA – by appointing loyal personnel to top positions.<sup>22</sup> On the other hand, Tadić was President of Serbia from 2004 and sought to translate the political power he had won in direct presidential elections into power over the security sector by using the National Security Council to exert influence, above all over the BIA – the most important security and intelligence service in Serbia<sup>23</sup>, which was then controlled by the rival DSS party.

When DS formed a government with SPS in 2008 and DSS became an opposition party, DS appointed a party affiliate as director of the BIA but, according to some sources, the real head of the security services and (part of) the police was President Tadić's chief of staff, the secretary of the National Security Council and chair of the Coordination Bureau, Miodrag Rakić. Hence, Rakić became, "the alpha and omega in the previous [DS-led] government. The pillar of authority in the precious system was Miki Rakić."<sup>24</sup> Aleksandar Vučić, the current President of Serbia, respected Rakić enormously<sup>25</sup> and it is probable that Rakić's success in wielding the security services from the position of National Security Council secretary was one of the reasons why Vučić later personally took on this role – a matter that will be examined in greater detail in forthcoming parts of this study.

The National Security Council does, however, have other shortcomings that are also a consequence of (low) politics. For example, the foreign minister is not a member of the Council, making Serbia almost unique in the world in this aspect. The reason for this omission is that the fact that the foreign minister<sup>26</sup> at the time when the Law on the Bases of Regulating Security Services was adopted<sup>27</sup> was Vuk Jeremić, a highly ambitious and assertive young politician from DS ranks,<sup>28</sup> whom the then President of the Republic, Boris Tadić, saw as a major political rival and denied him membership of the Council.<sup>29</sup> It is needless to further expound how important foreign policy is

<sup>22</sup> The MUP was headed by Dragan Jočić, a DSS functionary, while the BIA was led by Rade Bulatović, officially not affiliated to any party but with links to DSS. After stepping down as BIA director, Bulatović also became a DSS functionary.

<sup>23</sup> The BIA is the most important security service in Serbia because it has the broadest jurisdiction and powers of all the services, as well as having the most developed covert surveillance capabilities.

<sup>24</sup> Miodrag Rakić was implicated in various interesting events and scandals. His name appears in testimony before the Special Court, in Wikileaks documents on the arrest of Ratko Mladić and the establishment of the Serbian Progressive Party. Meanwhile the press link him to the "historic" reconciliation between DS and SPS, as well as with scandals surrounding drug lord, Darko Šarić, and controversial businessmen, Stanko Subotić, and Miroslav Mišković. Rudić, M. (2014). Za one koji ga ne znaju: portret savremenika – Miodrag Rakić (*For those who don't know him: Portrait of a Contemporary – Miodrag Rakić*). *Vreme*, No. 1206, 13/02/2014. Belgrade.

<sup>25</sup> Lalić, V. (2017). Tri godine od odlaska Mikija Rakića: Najveće tajne najvažnijeg čoveka u državi (*Three Years After Kiki Rakić's Departure: The Biggest Secrets of the Most Important Man in the Country*). *Nedeljnik*, no. 148, 3 November 2014. Belgrade, NIP Nedeljnik d.o.o.

<sup>26</sup> Vuk Jeremić was Minister of Foreign Affairs from 15/05/2007 to 27/07/2012.

<sup>27</sup> The Law was passed in early December 2007.

<sup>28</sup> Jeremić was appointed President of the General Assembly of the United Nations on 08/06/2012, a result of his (hyper) active political activity.

<sup>29</sup> Petrović, P. and Đokić, K. (2017). *Slippery Slopes of the Reform of Serbian Security Services*. Belgrade, Belgrade Centre for Security Policy, p. 7. Internet: [http://www.bezbednost.org/upload/document/slippery\\_slopes\\_in\\_the\\_reform\\_of\\_serbian\\_security\\_.pdf](http://www.bezbednost.org/upload/document/slippery_slopes_in_the_reform_of_serbian_security_.pdf)

to national security, particularly for small countries and those seeking to remain militarily neutral. For the purposes of this article there is no need to deal with all of the shortcomings of the Council, merely those that are a direct product of struggles for political and security power.

### ***The (Un)intended Consequences: Clientelism as the Foundation for Security Sector Regulation***

The reshaping and reordering of the security services and the security and intelligence sector in Serbia according to the diktats of politicians seeking to satisfy their own needs rather than the security needs and capabilities of Serbia, has resulted in an unwritten rule that this is now fully their “right”. It is the “right” of the most powerful politicians at a given time to dictate the dynamics (the adoption or lack thereof) of new regulations and to, through legislative engineering, craft unconstitutional, impractical and unusual regulatory approaches that suit their own personal needs. One of the most significant “rules” that emerged during this period is that the secretary of the National Security Council is not a role filled by an experienced security and intelligence professional, instead it is a position that belongs to the most powerful politician at that moment, which enables them to control the security services and to maintain and grow their political power. It has become customary that the directors of the BIA do not rise up through the Agency’s ranks but are instead people from outside the BIA with links to the ruling party. Therefore, from 2004 to 2008 the BIA was led by Rade Bulatović, a trained diplomat, with no official party affiliation but with close ties to DSS. Upon stepping down from the BIA directorship, he became a DSS party official. He was succeeded at the head of the BIA by Saša Vukadinović who, upon his departure in 2012, followed in the footsteps of his predecessor and became a security affairs adviser to Bojan Pajtić, the then President of the Vojvodina Provincial Government from the DS party.

The establishment of these unwritten rules about the regulation and governance of the security services and the security sector as a whole<sup>30</sup> has brought with it the presumption that the next government will go a few steps further and fully subject the security and intelligence services to personal and party control. This is achieved through amendments to primary legislation and the appointment of those loyal to the party (who are sometimes openly party members) to key positions, as well as by incapacitating or otherwise hamstringing the institutions tasked with control and oversight.

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<sup>30</sup> More about these informal rules of the game and offer and demand at the specific politico-security market see: Hadžić, M. (2013). *Vrtlozi korupcije u sektoru bezbednosti*. Beograd, Beogradski centar za bezbednosnu politiku.

## The Rise to Power of the SNS and the Fast-Track Capture of the Security and Intelligence Sector

In a snap election held in 2012 the presidential candidate of the then opposition Serbian Progressive Party (Srpska napredna stranka – SNS), Tomislav Nikolić, defeated the candidate of the then governing Democratic Party (Demokratska stranka – DS), Boris Tadić. The SNS also won a parliamentary majority. This electoral success enabled the SNS to convince the Socialist Party of Serbia (Socijalistička partija Srbije – SPS) to break off its cooperation with DS and to form a coalition government with the SNS. Upon the constitution of the National Assembly, among the first laws<sup>31</sup> the new coalition government amended was the Law on the Bases Regulating Security Services of the Republic of Serbia. The official explanation for the amendment was the expansion of democratic civilian control because the secretary general of the National Security Council and the head of the Bureau for Security Services Work Coordination were now to be appointed or dismissed by the president of the republic.<sup>32</sup> However, concealed behind this change was the personal ambition of Aleksandar Vučić, then the acting leader of the SNS party, to concentrate the power of the security services in his own hands while he simultaneously performed several important state functions.<sup>33</sup> This Vučić ambition became possible only by amending Law on the Bases Regulating Security Services as the Law had previously stipulated that chief of President’s Cabinet was secretary general of the National Security Council by the letter of the law.

1. Following the formation of the coalition government Vučić quickly became:
2. The first deputy prime minister responsible for defence, security and the fight against organised crime and corruption,
3. The Minister of Defence,
4. The Secretary General of the National Security Council and the head of the Bureau for Security Services Work Coordination,
5. The leader of the SNS.

Vučić used these roles to strengthen his control of the security sector, as well as his own personal power and popularity, both in Serbia and within the SNS. At a rare press conference held as the Secretary General of the National Security Council and the head of the Coordination Bureau, he announced a decisive campaign against high corruption and criminality, which was followed by both announced and actual arrests.<sup>34</sup>

<sup>31</sup> The laws adopted before this one were the Law on Amendments to the Law on the Government and the Law on the Ministries:

<http://www.parlament.gov.rs/akti/doneti-zakoni/u-sazivu-od-31-maja-2012.2194.html>

<sup>32</sup> Prior to these changes, Secretary of the National Security Council and chief of the Bureau for security services coordination was chief of cabinet of the President of Serbia by the letter of the Law.

<sup>33</sup> Petrović, P. (2012). *Bezbednosno-obaveštajni sistem Srbije se kroji po diktatu Aleksandra Vučića*. Beograd, Beogradski centar za bezbednosnu politiku.

<sup>34</sup> For example, Miroslav Mišković, one of the most powerful (and most controversial) business people in Serbia, was arrested in

Meetings of the Council and the Bureau were held most frequently during those two years following the SNS forming a government (2012 and 2013)<sup>35</sup> while it was nominally fighting corruption. A fact that certainly contributed to Vučić's popularity and power. Although he relinquished most of his state functions, Vučić retained his position as general secretary of the National Security Council until late 2017 when this post passed to his party colleague and Minister of Defence, Nebojša Stefanović.

The governing SNS party made use of (justified) initiatives by external oversight institutions to amend laws with the aim of enhancing the rule of law in the security sector in order to further consolidate personal and party influence over the security and intelligence sector. Thus, in December 2013 the Constitutional Court passed a decision<sup>36</sup> finding that Articles 13, 14 and 15 of the Law on the BIA, which primarily deal with the interception of communications, are not in accordance with the Constitution of Serbia.<sup>37</sup> In June 2016, the National Assembly passed amendments to the Law on the BIA that made these provisions more precise and more constitutional. And this is not in dispute. What is in dispute, however, is that the governing coalition also amended provisions that were not problematic. Specifically, prior to these amendments, the High Court of Cassation was responsible for approving measures for covert data collection in cases of national security. After the amendments, these measures were to be approved by the "President of the Higher Court in Belgrade, i.e. a judge whom he shall delegate among judges from the Special department of that Court, which, according to the law, processes cases dealing with criminal offences relating to organized crime, corruption and other particularly severe criminal offences." The expert community were taken aback by this amendment as the previous provision was not controversial and because it was unusual for special measures that are implemented to protect national security to be approved by a judge responsible for criminal proceedings in cases of organised crime and corruption. Earlier, when the Law on the VBA and VOA was amended for similar reasons, the High Court of Cassation was retained as the body that approves special measures used by the VBA.

The reason for this approach can be found in the fact that the president of the Higher Court in Belgrade, appointed in May 2014, was Aleksandar Stepanović, a university friend of the then prime minister and now president of Serbia and leader of the

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December 2012.

35 Petrovic, P. and K. Djokic (2017). *Slippery Slopes of the Reform of Serbian Security Services*. Belgrade, Belgrade Centre for Security Policy, pp. 8-9, internet: [http://www.bezbednost.org/upload/document/slippy\\_slopes\\_in\\_the\\_reform\\_of\\_serbian\\_security\\_.pdf](http://www.bezbednost.org/upload/document/slippy_slopes_in_the_reform_of_serbian_security_.pdf)

36 Odluka broj: IUz-252/2002, 39. sednica, 26.12.2013. godine. Beograd, Ustavni sud Republike Srbije (*Decision of the Constitutional Court of Serbia*).

37 The most controversial among these was Article 13 of the Law on the BIA, whose provisions were not sufficiently precise or clear, preventing citizens from being aware of which legal rule will be applied in given circumstances and thus denying them the opportunity to protect themselves from unacceptable restrictions to their rights or from arbitrary interference in their personal life or private correspondence.

SNS, Aleksandar Vučić. Readers will remember that Vučić personally insisted that Aleksandar Đorđević, also his friend from university, be appointed director of the BIA. Thus control of the BIA and its operations, which includes the use of special measures for covert data collection, was consolidated by combining amendments to legislation with key appointments across state institutions.<sup>38</sup> The governing party was able to seize upon another opportunity created by external factors to further bend the BIA to its own interests. This occurred when, in order to harmonise Serbian legislation with the EU legal standards, Serbia in the beginning of 2016 adopted a new Law on the Police, which regulates management of human resources in a much more transparent manner. For example, the introduction of public recruitment calls and internal promotion for police advancement. The then already in force Law on the BIA did not regulate human resources in detail and instead referred to the Law on the Police<sup>39</sup>, which no longer corresponded to the principles of a security and intelligence agency, giving rise to a need for further amendment. However, the ruling party was able to twist this objectively necessary legal change to its favour by giving the director of the Agency enormous and decisive powers in managing human resources.<sup>40</sup> At the same time, amendments to the Law on the BIA did not resolve a slew of issues pertaining to the role of the director and that are considered normal in democratic societies. For example, the law does not stipulate the qualifications a candidate must have in order to be appointed director of the BIA, what the director is answerable for, not the length of the term for which he may be appointed. The amendments also did not introduce the participation of a greater number of bodies in appointing the director. For example, that the Government must consult the parliamentary committee responsible for the security services prior to naming a director or that the appointment of the director must have the consent of the president. The position of deputy director also remained unregulated.

Another provision that had proven very contentious in this round of amendments to the Law on the BIA is one that stipulates that security checks are necessary not only for those personnel gaining employment with the Agency but also for those individuals who are returning to work on the basis of a court ruling. Please be reminded here that it is the director of the BIA who regulates security checks. Legally binding rulings can be appealed against but through extraordinary legal remedy in court proceedings and not

<sup>38</sup> For more on this, see the section Party Patronage.

<sup>39</sup> "Rights, duties and responsibilities resulting from the employment status of the members of the Agency, shall subject to regulations that apply to members of the Ministry competent for internal affairs" (Article 20, Paragraph 1 of the Law on the BIA).

<sup>40</sup> Thus the director: with the prior consent of the Government passes an act on the internal regulation and systematisation of roles in the Agency; passes a ruling deciding on the start of employment at the Agency; determines the procedures, criteria and methods for evaluating those employed at the Agency; with the prior consent of the Government determines the coefficients for salary calculations; determines the procedures, programmes and methods for professional training, development and a special professional examination; and determines the form defining the content of the identification questionnaire that is to be used for security checks.

through the administrative or operative activities of a state institution. The assumption here is that this provision seeks to prevent the return to work of employees against which the BIA has lost an employment dispute.

This latest round of amendments to the Law on the BIA virtually give the director a free hand in managing the human resources and other affairs of the Agency. The fact that the Law on the Police entered into force in February 2016 and that the amendments to the Law on the BIA were initiated only in August 2017, using emergency procedures, ought to be taken into consideration here. It may be that the reason for this sudden urgency comes from the fact that it was only in late May 2017 that Bratislav Gašić, one of the founders of the SNS who had already shown loyalty to the party leader on previous occasions, was appointed as the new director of the BIA. In his speech on the occasion of BIA Day on 17 October 2018 Gašić evaluated these amendments in the following manner: “by amending the Law on the BIA, we have opened the way to faster development of the Agency and the recruitment of young and educated personnel who are the future of this institution.”<sup>41</sup>

## The Serbian Security and Intelligence Sector

The Law on the Bases Regulating Security Services of the Republic of Serbia affirms the existence of three security and intelligence services.<sup>42</sup> The first of these is the Security Information Agency (Bezbednosno-informativna agencija – BIA), a civilian service directly answerable to the Government and also a service having the status of a special national organisation. The Military Security Agency (Vojnobezbenosna agencija – VBA) and the Military Intelligence Agency (Vojnoinformativna agencija – VOA) are military services, organised as administrative units within the Ministry of Defence (Ministarstvo odbrane – MO) and answerable to the Minister of Defence and, through the ministerial office, to the Government.

41 Gasic, B. (2018). The speech of the Director of the Security - Information Agency, Mr. Bratislav Gašić at the Agency Anniversary, 17.10.2018. Belgrade, Security-information Agency, internet: [https://bia.gov.rs/sites/default/files/2019-11/govor\\_direktora\\_oktobar\\_2018.pdf](https://bia.gov.rs/sites/default/files/2019-11/govor_direktora_oktobar_2018.pdf)

42 Two security services that existed as part of the Ministry of Foreign Affairs of the State Union of Serbia and Montenegro – the Service for Research and Documentation (*Služba za istraživanje i dokumentaciju*) and the Security Service (*Služba bezbednosti*) – have to all intents and purposes ceased to exist with the adoption of the Law on the Bases Regulating Security Services as the new law simply does not mention them. The law also does not determine what will be done with the employees or documentation of these services. Predrag, P. (2008). „Incomplete Step Towards Reform of the Security Intelligence System in Serbia.“ *Western Balkans Security Observer*. Oktober 2007 – March 2008. (7-8): 137-143.

## The Security Information Agency

The BIA was formed in 2002 with the adoption of the Law on the BIA, when the State Security Service (Resor državne bezbednosti – RDB) was decoupled from the Ministry of the Interior (MUP), transformed into the governmental agency and renamed the BIA. The head of the BIA is the director who is appointed and dismissed by the Government. In terms of the operations it undertakes it is a “mixed” service since it conducts both intelligence gathering and counter-intelligence assignments but also performs the function of a security service.<sup>43</sup> The BIA retains police powers, so it has the power to gather evidence for criminal prosecutions before the courts and also the power of arrest. Accordingly, the BIA has the power to implement special measures for covert data collection for the purpose of criminal prosecution and preventative security.

## The Military Security Agency

The VBA was formed from the Counter-Intelligence Service (Kontraobaveštajna služba – KOS) of the Yugoslav Army (Vojska Jugoslavije – VJ). The 2002<sup>44</sup> reform of the security services saw the name of the KOS changed to VBA and its transfer from the Security Administration of the General Staff of the VJ to the direct control of the Minister of Defence. Also, an important new development was that the military police were separated from the Military Security Agency, resulting in a service that uses covert methods of intelligence gathering being left without the military police as an operational arm, which is a democratic standard.<sup>45</sup> The VBA has, however, retained certain police powers, which will be covered in greater detail in a separate section.<sup>46</sup>

The Agency is responsible for providing security and counter-intelligence cover for the Ministry of Defence and the Serbian Armed Forces (Vojska Srbije – VS), which means that its purview is limited to MO employees and the personnel of the VS. In the event that, in executing its duties, the VBA determines that the investigation should be expanded to cover other persons, it is obligated to immediately inform the BIA or the police, with whom it must then jointly establish how to proceed. The law does not, therefore, allow the VBA to independently implement investigative measures against persons who are not either MO employees or VS personnel. The VBA can implement

43 Although security and counter-intelligence overlap, in the Serbian legal system they are considered to be different. Security assignments comprise all operations ensuring the physical and technical security of persons and buildings, the protection of data and information infrastructure, as well as the development of security evaluations and checks. Counter-intelligence includes all activities pertaining to the detection, surveillance and interception of activities by foreign intelligence agencies in Serbia.

44 Which is when the Law on Security Services of the Federal Republic of Yugoslavia was adopted, Official Journal of the Federal Republic of Yugoslavia, no. 37/2002.

45 Horvat, Z. (2007). *Reforma vojnih službi bezbednosti (Reform of the Military Security Services)*. *Zbornik predavanja sa IX Škole reforme sektora bezbednosti (Collected Lectures from the 9th Security Sector Reform School)*. P. Janković, Belgrade, ISAC Fund: 121-135.

46 More on this in the section titled Police powers of security services.

special measures for covert data collection for preventative security purposes, which was not the case prior to the reform when the Agency could implement such measures solely for the purposes of criminal prosecutions before the courts.<sup>47</sup>

The director of the VBA and the deputy director are appointed and dismissed by decree of the President of Serbia at the request of the Minister of Defence if they are a military professional or by the Government, at the request of the Minister, if they are a civilian. The director answers to the Minister of Defence.

## Military Intelligence Agency

The VOA is responsible for gathering, analysing, evaluating and reporting data and information (of a military, military-political, military-economic or scientific or technological character) on potential and actual dangers, activities, plans or intentions by foreign states and their armed forces, international or foreign organisations, groups and individuals, which are directed against

the Ministry of Defence, the Serbian Armed Forces or the sovereignty, territorial integrity or defence of the Republic of Serbia. The director of the VOA and its deputy director are appointed and dismissed by decree of the President of Serbia at the request of the Minister of Defence if they are a military professional or by the Government, at the request of the Minister, if they are a civilian. The director answers to the Minister of Defence. The Military Intelligence Agency has the power to implement all special procedures and measures, except optoelectronic monitoring of persons and communications.

## Special Measures for Covert Data Collection

Two security services – the BIA and the VBA – have the power to implement special measures for covert data collection that temporarily restrict individual human rights and freedoms. Both agencies have the power to implement these measures in order to achieve two main goals:

1. Detection, investigation and documentation of serious criminal offences; and
2. Preventive security activities.

There are separate legal regimes for both purposes regulating their approval and implementation. For the first purpose, Criminal Procedure Code (Zakon o krivičnom postupku – ZKP) is applied because the agencies are collect data in order to process criminal offences before the courts – that is, in order to identify suspects and gather

47 Articles 28 and 29 of the Law on Security Services of the Federal Republic of Yugoslavia, Official Journal of the Federal Republic of Yugoslavia, no. 37/2002.

evidence for criminal proceedings. Since “prosecutorial investigation” was introduced with the adoption of the 2012 ZKP it is now, nominally at least, prosecutors who conduct the entirety of criminal proceedings and are responsible for their outcome. In that sense, it is the prosecutors who propose the use of measures for covert data collection, which are called “special evidentiary actions” in the ZKP, and the judge for preliminary proceedings who approves them. The measures can be applied for up to three months. The agencies are responsible for implementing the measures.

In the case of the second goal, the directors of the security services or personnel whom they empower propose the use of measures for covert data collection and these are then approved by the relevant court. For the BIA the measures are approved by the President of the Higher Court in Belgrade or a judge appointed by the president at a Special Department of that court designated by law to adjudicate on matters pertaining to organised crime, corruption and other particularly serious offences. Prior to the adoption of a new Law on the BIA in 2014 these measures were approved by the Supreme Court of Cassation and the change of the court that approves the measures was due to personal and party interests and appointments in both the security and intelligence sector and the judiciary since the consolidation of the SNS’s grasp on power.<sup>48</sup> The measures can be applied for up to three months, with the possibility of three extensions of three months each.

In the case of the VBA, the Supreme Court of Cassation approves measures that result in accessing the content of communications while the accessing of electronic data stored by telecommunications and internet providers is approved by the higher court within the appellate court in whose jurisdiction measures of detection, monitoring or prevention are being prepared or carried out by the VBA. The VBA can apply these measures for up to six months and this can be extended once for up to six months on the basis of a new proposal.

The existence of separate legal protocols for the application of special measures and procedures does give the provide the security services with greater flexibility and room for manoeuvre but it also can negatively impact citizens’ legal security and complicate oversight of both the measures and the entire services as well. For example, it is possible for an individual to be under surveillance for twelve months for preventative purposes and then for another twelve months for the processing of a criminal offence. In addition, the laws have not been harmonised in terms of the courts that approve measures for covert data collection – a consequence of political influence rather than legal reasons. Another potential issue is that data gathered for preventative purposes is not made available to the courts and is instead stored in the archives of security

48 More on this in the section titled Party Patronage.

services, out of the reach of oversight bodies, and is kept for longer than there is realistically a need for.

### ***Sidebar 1: What are Special Measures?***

Special measures for covert data collection are all those means that make data gathering possible without the knowledge of the person, group and/or organisation targeted for investigation. All of these measures can be divided up into two groups:

1. Measures that have a reduced or insignificant impact on human rights and freedoms. This group comprises traditional operational methods, such as interviews, covert tracking and recording without recording the content of conversations, infiltration of groups and organisations, accessing documents, accessing public records and other registries of data held by public authorities. The application of these measures is approved by the director of the agency and with no time limit.

2. Measures whose application will significantly restrict human rights, particularly the right to privacy. Most commonly these are measures that rely on accessing all forms of communications but also measures that gather statistical data on communications (accessing stored data), as well as covert domicile searches – the latter being one of the most aggressive special measures for covert data collection. It is for this reason that court approval is necessary for the application of these measures and why they are time-limited. In order for a court to approve the use of these measures there must be a basis for suspicion of a threat to security, the planning of a crime or of an offence already committed and for such measures to be necessary in order for the investigation to progress (the principles of necessity and proportionality).<sup>49</sup>

Special measures are applied for two main purposes: in order to gather evidence for the processing of criminal offences before the courts; and for preventative security purposes – so as to prevent threats to national security and the interests of the state, for the civilian agencies, and for the purposes of defence and the military, for the military services.<sup>50</sup>

49 For more on this see: Petrović, P., Ed. (2015). *Special Measures for Covert Data Collection: Oversight Handbook*. Belgrade, Belgrade Centre for Security Policy, internet: [http://www.bezbednost.org/upload/document/posebne\\_mere\\_tajnog\\_prikupljanja\\_podataka\\_-\\_vodic\\_.pdf](http://www.bezbednost.org/upload/document/posebne_mere_tajnog_prikupljanja_podataka_-_vodic_.pdf)

50 For a more detailed explanation of special measures for covert data collection see: *ibid.*

## Police Powers for Security Services

Contrary to democratic norms<sup>51</sup> and the expectations of the expert community, when they were reorganised the BIA and VBA retained their police powers. BIA personnel who are assigned to work on the detection, monitoring, prevention and interception of organisations and persons active in organised crime and criminal offences with an element of foreign, internal and international terrorism and the most serious crimes against humanity and international law, as well as against the constitutional order and security of the Republic of Serbia are able to exercise all powers available to officers of the MUP, in accordance with regulations on internal affairs. This implies that BIA personnel have the power to forcibly apprehend citizens in order to gather intelligence, to gather evidence for the purpose of criminal prosecution before the courts and to use weapons, apply force and detention.

Unlike their BIA counterparts, VBA personnel have limited police powers without the power of arrest. Thus the VBA can exercise police powers in the detection, investigation and documentation of criminal offences committed against the constitutional order and security of Serbia and of crimes against humanity and against international law, as well as the most serious crimes with elements of organised crime and crimes that compromise classified information. Of course, all of these competencies are limited to the MO and Serbian Armed Forces.

Not only does the BIA have all police powers but the Law on the BIA also enables the BIA to take over and directly carry out tasks within the jurisdiction of the MUP when exceptional security circumstances so require. A consequence of this is that the BIA is heavily involved in the investigation of various forms of crime (organised, financial and economic), as well as in fighting narcotics trafficking – a fact that has been celebrated by the Agency’s leadership, as well as by the presidents and prime ministers of Serbia.<sup>52</sup> It is, therefore, justified to ask what is the purpose of the Organised Crime Service and the Service for Extremism and Terrorism within the Criminal Investigations Directorate of the MUP, which are nominally responsible (along with the prosecution) for investigating crime and terrorism.<sup>53</sup> It is worth mentioning here the fact that

<sup>51</sup> The merging of policing and security and intelligence tasks leads to a high concentration of power in one organisation, which threatens the principle of separation of powers, one of the main tenets of contemporary democracy. Combining counter-intelligence, security, intelligence and policing activities in one service is a function of authoritarian rule and such services are called “the secret police”.

<sup>52</sup> For more on this, see: Petrović, P. (2014). „The Security Information Agency”. In: Petrović, P. (ed.). *Integrity Assessment of Security Sector in Serbia*, Belgrade: Belgrade Centre for Security Policy, pp. 101–106. internet: [http://www.bezbednost.org/upload/document/integrity\\_assessment\\_in\\_security\\_sector\\_in\\_serbia.pdf](http://www.bezbednost.org/upload/document/integrity_assessment_in_security_sector_in_serbia.pdf)

<sup>53</sup> Previously, the granting of police powers to the security services was justified by the fact that the police were not sufficiently well trained or capable to lead complex investigations of organised crime. However, over the last decade this has changed significantly and the capacities of the police in that regard have been significantly enhanced. Among other things, the series of measures from the Action Plans for Chapters 23 and 24 of the *Acquis* foresee further strengthening of police capacities to fight organised crime and terrorism, while the Serbian authorities regularly broadcast to the expert and international communities about these strengthened

the monitoring centre used to covertly intercept communications is located on the premises of the BIA, which means that the police in Serbia intercept communications through the Agency. This gives the BIA insight into the most important investigations being conducted by the police, which gives the Agency enormous power.

Considering the facts that the VBA only has limited police powers and that its jurisdiction is restricted to the MO and VS, as well as the fact that it has significantly fewer resources than the BIA, it is clear that the greater challenge to the democratic order comes from the fact that the BIA enjoys police powers.

### ***Reasons for Retaining Police Powers***

The reasons for retaining police powers are to be found in a several facts. First and foremost, in transition societies large flows of hard cash emerge and flow through criminal channels, from which they flow into legal channels. Granting police powers to the security services makes it easier for politicians to influence these flows.<sup>54</sup> In practice this is carried out by placing people who are close and loyal to the party and its leadership at the key positions of the security services, prosecution and judiciary.<sup>55</sup> For this to work, the ruling party uses its majority in the National Assembly to bend legislation to this purpose.<sup>56</sup>

Furthermore, police powers also “expedite” the operations of the services as they not only enable them to take subjects in for questioning but also to threaten criminal charges and prosecution in order to extract information and cooperation from persons of interest. “See here, many investigative procedures don’t end in a prosecution and verdict.” Police powers can also serve to intimidate various “enemies” of the state, the party<sup>57</sup> or even within the party.<sup>58</sup> They can also serve for the purposes of indirect covert surveillance of journalists. For example, investigative journalists frequently work on the topics of corruption and organised crime and the involvement of the authorities therein, which often involves meetings between journalists and criminals. In such cases, the Agency is formally “working on” the criminals but their real target could be the journalist and what kind of information they might be gathering that could be compromising for the authorities. So, combining covert operations and law

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capacities.

Petrovic, P. and K. Djokic (2017). *Slippery Slopes of the Reform of Serbian Security Services*. Belgrade, Belgrade Centre for Security Policy, p. 11. Internet: [http://www.bezbednost.org/upload/document/slippery\\_slopes\\_in\\_the\\_reform\\_of\\_serbian\\_security\\_.pdf](http://www.bezbednost.org/upload/document/slippery_slopes_in_the_reform_of_serbian_security_.pdf)

54 *Ibid*, p. 10.

55 For more on this, see the section on Party Patronage

56 For more on this, see the section The Rise to Power of the SNS and the Fast-Track Capture of the Security and Intelligence Sector.

57 See the case of the whistleblower, Aleksandar Obradović, in the section, The BIA Fighting an Internal Enemy of the State.

58 See the case of the fragmentation of the Pozarevac branch of the SNS in the section The BIA Fighting an Internal Enemy of the State.

enforcement give the services a great deal of room to manoeuvre but also leads to breaches of human rights and abuse of powers for political ends.<sup>59</sup>

## Coordination of the Security Services

The National Security Council – comprising the President of Serbia, the prime minister, the minister of defence, the minister of the interior, the minister of justice, the chief of the general staff of the armed forces and the directors of the security services – is responsible for coordination of the security services. Sessions of the Council are presided over by the President of Serbia, who also signs the conclusions and other acts passed by the Council.

The Council deliberates on intelligence and security assessments and reaches conclusions that determine the priorities and means for the protection, direction and realisation of national interests, which are then implemented through intelligence and security operations. The Council also reaches conclusions pertaining to the security services operations, as well as conclusions that guide and harmonise the work of the services. The Council monitors the implementation of its conclusions and issues opinions on proposed annual and medium term plans produced by the security services, as well as issuing opinions on the security services' budgets, as proposed by the Government.

The law also established the Coordination Bureau and the Office of the Council. The Coordination Bureau, comprising the directors of the security services and the Council secretary, coordinates the operational work of the security services and executes conclusions reached by the National Security Council. Representatives of other government bodies, organisations and institutions may also participate in the work of the Bureau. Also, the Data Secrecy Law has charged the Office with issuing and maintaining a register of security clearance certificates, a register of foreign covert data, declassifying documents, producing plans for covert data protection and organising training for covert information users.

The Council has a secretary who participates in the Council's work but does not have decision-making powers. The main task of the secretary is to manage implementation of the Council's conclusions. The secretary is also de facto the head of the Bureau for Security Services' Work Coordination. After the amendment of the Law on the Bases Regulating the Security Services, the Council secretary is appointed and dismissed by the President of Serbia.

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<sup>59</sup> For more on this, see the sections on Covert Surveillance in Practice and The BIA Fighting an Internal Enemy of the State.

## Important Weaknesses

One of the major shortcomings of the Council stems from the fact that the foreign minister is not among its members. This approach contradicts the practice in most countries, as foreign policy is one of the most important elements of national security policy, a fact that is also recognised by the National Security Strategy of Serbia<sup>60</sup>. Foreign policy (should) be particularly important for smaller states and states that pursue policies of (military) neutrality. Furthermore, given the fact that the intelligence component of the BIA and VBA is underdeveloped and that Serbia's diplomatic capacities are not sufficiently utilised for these purposes,<sup>61</sup> depriving the foreign minister of NSC membership becomes all the more significant.

Another of the important shortcomings is that the Speaker of the National Assembly of the Republic of Serbia is also not a member of the Council, hence the NSC is not obligated to brief the National Assembly or to its working bodies on its activities. This significantly impacts the principles of democratic control. Furthermore, if the lawmakers have already decided that the NSC is to be of a mixed composition, that is, that it will be composed of both politicians and professionals, it is not clear why the director of the police or the prosecutor for organised crime have not been included in the NSC alongside the chief of the general staff of the Serbian Armed Forces and the directors of the security services.<sup>62</sup>

Thus far, however, practice has shown that the National Security Council secretary is the weakest link in the coordination of the security services. Considering the fact that the secretary is to coordinate the operational activities of the security services, it would be reasonable to expect that the law would stipulate that this office must be occupied by someone with multiple years of experience of security and intelligence work. Instead, the position of secretary has become an important party political prize, so it has become customary that appointees to this position are not only people with close links to the ruling party but sometimes actual party officials.

60 Vlada Republike Srbije (*Government of the Republic of Serbia*). Strategija nacionalne bezbednosti Republike Srbije (*National Security Strategy of the Republic of Serbia*). Belgrade, 2009: 18. <https://goo.gl/a18TJz>

61 As reported by several interviewees, March 2016 to May 2017. Insufficient development of the intelligence component is, it seems, a common characteristic for security services in formerly communist states. For example, it is estimated that the Croatian Security and Intelligence Agency (*Sigurnosno-obavještajna agencija*) devoted only 5-10% of its capacity to intelligence work. For more on this, see: Tuđman, M. O iskustvima parlamentarnog nadzora i funkcionalnosti izveštajnog sustava Republike Hrvatske (*On the Experiences of Parliamentary Oversight and the Functionality of Briefing Arrangements of the Republic of Croatia*), July 2013, *Večernji list*, 10/02/2016. <https://goo.gl/mnsZln>

62 In conducting research for this study, some interviewees referred to approaches adopted in mature democracies (e.g. the United Kingdom or Australia) and pointed out that only politicians and ministers need be permanent members of the NSC. Professionals such as the directors of the security services and the police or the chief of the general staff would then be permanent members of a body for the operational coordination and implementation of NSC decisions and would only participate in the NSC itself as needed. Petrovic, P. and K. Djokic (2017). *Slippery Slopes of the Reform of Serbian Security Services*. Belgrade, Belgrade Centre for Security Policy, p. 8.

Security Intelligence sector of the Republic of Serbia

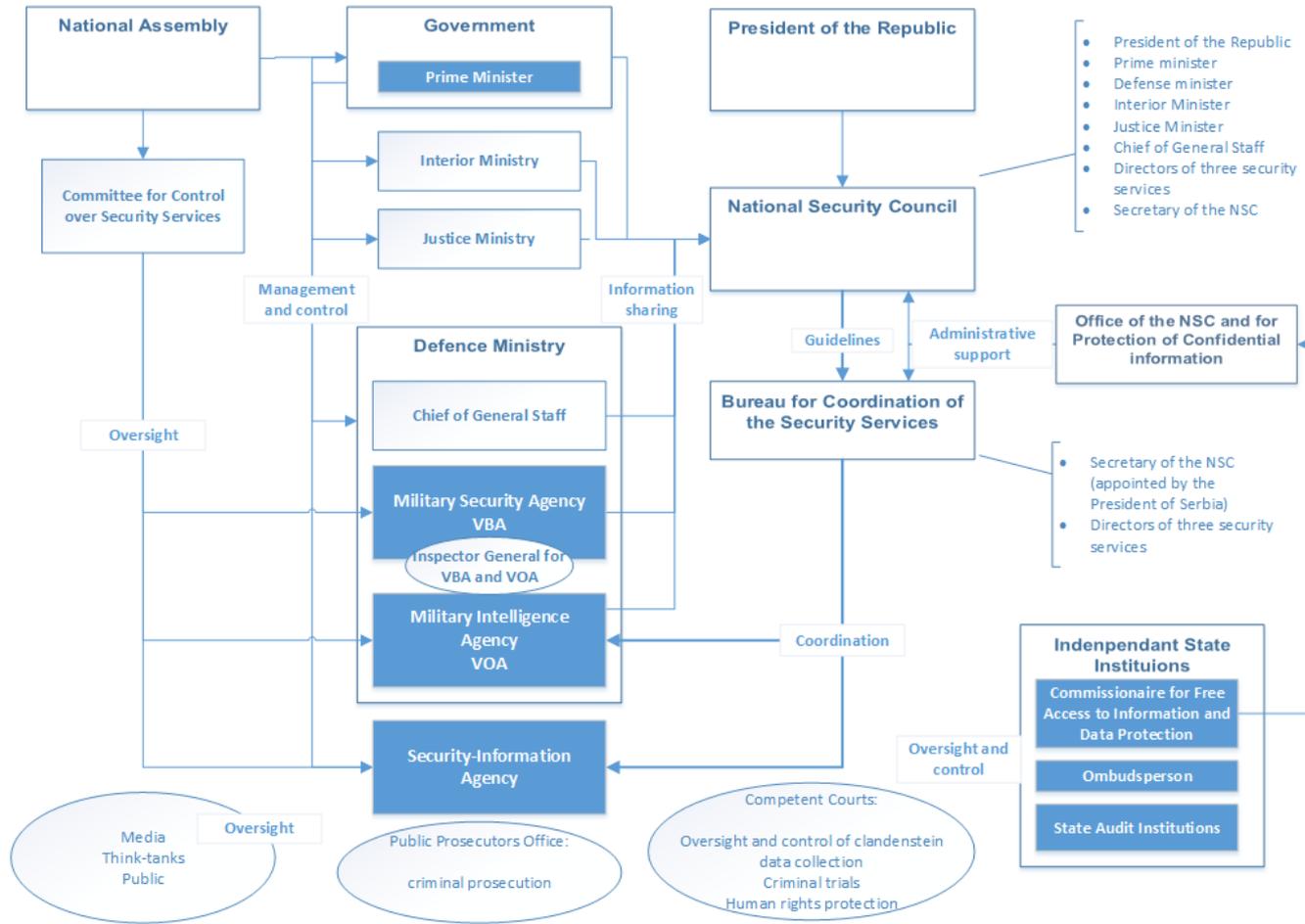


Diagram 1 Security-intelligence sector of the Republic of Serbia

## The capture of the security and intelligence sector in practice

### Party Patronage

It is common in Serbia for the political parties that form a government after an election to appoint people loyal to them to positions of power in the security services (directors, deputy directors, advisors, etc.), who then embark on far-reaching changes, appointing high and low-ranking managers (administration managers, heads of department) and their associates. This is particularly the case for the BIA, the most important and largest security service in Serbia. Following the 5<sup>th</sup> of October overthrow of the Milošević regime, this was carried out by appointing people from within the Agency who were loyal to the new ruling coalition to directorial positions. Subsequently, people who were not from the Agency began to be appointed to these posts. For example, Rade Bulatović had close links with the DSS and his successor, Saša Vukadinović, had links with the DS. Neither had previously worked in the BIA but they did have experience that was to some extent relevant to security work. Bulatović had worked in diplomacy while Vukadinović had worked in policing.

Since the rise to power and consolidation thereof by the SNS, however, the authorities went a step further in party patronage in the BIA and, it seems, that the most important criterion for selection of the Agency's director became a personal relationship with the leader of the SNS, Aleksandar Vučić. Later it also became important that the appointee have prior experience of management in the party. So, for example, in 2013 Aleksandar Đorđević was appointed director of the BIA – he was a lawyer of whom Vučić had said that he had known him personally for 25 years and that they had studied together. Moreover, Đorđević had a very close relationship with Zlatibor Lončar,<sup>63</sup> the Health Minister, whose wife, Vesna Lončar, was employed in Đorđević's law firm.<sup>64</sup>

Đorđević was succeeded as director of the BIA by Bratislav Gašić, one of the founders of the SNS, where he has also served as vice-president. Of him Vučić has said, "He is my friend, one of the most loyal..."<sup>65</sup> While he was Minister of Defence from 2014 to 2016 Gašić displayed his loyalty to Vučić on several occasions. Firstly, after the incident at

63 Investigative journalists of the KRIK network revealed links between Zlatibor Lončar and the criminal group known as the Zemun Clan, whose members have been convicted of participating in the assassination of Serbian Prime Minister, Zoran Đinđić. For this work KRIK journalists received the 2019 EU Award for Investigative Journalism: Vojinović, M. (2019). KRIK-ova priča o kriminalnim vezama ministra Lončara osvojila EU nagradu. Beograd, KRIK, internet: <https://www.krik.rs/krik-ova-prica-o-kriminalnim-vezama-ministra-loncara-osvojila-eu-nagradu/>

64 Also, in June of this year Lončar's bestfriend, Miodrag Stojković, an employee of the BIA, was shot in circumstances that remain unexplained: D.D. (2019). Upucan kum Zlatibora Lončara. *Danas*, 13.06.2019. Beograd, DAN GRAF d.o.o.

65 Bratislav Gašić. Istinomer, CRTA.internet: <https://www.istinomer.rs/akter/bratislav-gasic/>

the pride parade he (unlawfully) prevented the Ombudsman from conducting checks of the Ministry of Defence and the VBA, showing that he is loyal to the whole Vučić family. Later, the Ministry of Defence formed its Command for the Protection of Aleksandar Vučić (then serving as prime minister) into which flowed all information relevant to his protection gathered by the services and the police. Finally, following his sexist remarks, Gašić stepped down without protest from his post as Minister of Defence, albeit on Vučić's orders.<sup>66</sup> On the occasion of Gašić's appointment as director of the BIA, Vučić stated, "Yes, he will be the head of the BIA, he has held on for a year and a half without a role. He has many fine qualities, he is a man who knows everything about security."<sup>67</sup> Moreover, Gašić's CV has a series of other elements that experts claim make him less than worthy of the role of BIA director.<sup>68</sup>

At any rate, Article 45 of the Law on Civil Servants stipulates that, among other things, this role requires nine years of experience in the profession. Article 66 of the same law states that the role must be filled through an internal or public call for candidates and that an internal call is mandatory if the appointment is being made by the government. According to publically available information, these conditions and procedures were not respected in the appointment of the BIA director.

That the process of recruitment in the BIA is profoundly influenced by the key governing parties and that this goes beyond the appointment of high-ranking managers and their associates became clear to the general public when a National Assembly deputy from the SNS, Mićo Rogović, a proprietor from a small town in Serbia, resigned in order to become a BIA employee at the age of 47. The BIA told journalists that he is a beginner in this line of work and that he is being given operative training.<sup>69</sup> Given that, according to the latest publically available information, the average age of BIA employees is 37, and that only around ten or so employees are over the age of 50<sup>70</sup>, it becomes impossible not to wonder what possible reason the BIA could have to invest resources in this individual other than a politically motivated reason?

It has been reported in the media that Simo Čulić another, this time younger, proprietor and SNS party member, previously a councillor in the Belgrade City Assembly, has also been employed by the BIA as a public relations advisor. Even though he worked in the hospitality industry, Čulić was put forward for this role thanks to his experience of

66 Smenjen ministar odbrane Bratislav Gašić. [Radio televizija Vojvodine. 05.02.2016. godine](#). Beograd, RTV.

67 Jeremic, V. (2017). Imenovanje Gašića pokazatelj Vučićeve osionosti. [Danas. 23.05.2017](#). Beograd, Dan Graf d.o.o.

68 For more on this see: Bratislav Gašić. Istinomer, Beograd, CRTA, internet: <https://www.istinomer.rs/akter/bratislav-gasic/> and Živković, P. (2017). Brižni baštovan na čelu BIA. [Vreme. broj 1377. 25.05.2017](#). Beograd.

69 Jevtić, Željka. "Naprednjak ugostitelj, budući operativac BIA," (*"Progressive Proprietor, Future BIA Operative"*) [Blic](#), 05/04/2013 internet: <http://www.blic.rs/Vesti/Politika/375804/Naprednjak-ugostitelj-buduci-operativac-BIA>

70 Milosavljević, B. and Petrović, P. (2009). Security-Intelligence Services in the Republic of Serbia. In: Hadžić, Miroslav et al (Eds.), [Yearbook on Security Sector Reform of Serbia 2008](#). Belgrade, Center for Civil-Military Relations, p. 233. Internet: [http://www.bezbednost.org/upload/document/\(11\)\\_milosavljevic\\_petrovic.pdf](http://www.bezbednost.org/upload/document/(11)_milosavljevic_petrovic.pdf)

working on the SNS media campaign during the 2012 elections. Čulić was a procurator for the Romanian company, Kondiment, which provided services to the SNS during the election campaign.<sup>71</sup>

The Serbian public are familiar with the case of Dijana Hrkalović who worked at the BIA until 2014 but was then transferred to the MUP where she took up a series of very high-ranking posts: Deputy Chief of the Cabinet, Secretary of the Criminal Investigations Directorate and finally State Secretary of the MUP. It is important to note here that, prior to her work in and subsequent rapid advancement through these security institutions, she was elected to the Belgrade City Assembly on the SNS ticket in the 2012 elections.<sup>72</sup>

Insight into the number of new recruits at the Agency in the years before and after 2012 additionally contributes to suspicions that there is a widespread party patronage. In 2013, three to four more personnel were recruited to the BIA than in the previous three years.<sup>73</sup> Simultaneously, with the rise in new recruits in 2013 there was also an increase in retirement of Agency employees before the fulfilment of general retirement conditions. During 2013, 32 Agency employees were retired, which is eight times as many as in 2012. The number of BIA personnel who retired due to reaching their pension age remained virtually unchanged during this time.<sup>74</sup>

The military intelligence services also experienced a change in leadership but these occurred more slowly and later in comparison to those at the BIA. Part of the reason lies in the fact that these are smaller services with fewer resources, jurisdictions and powers and that the Law on the VBA and VOA prescribes selection criteria for directors who need to have specific knowledge of large, complex systems such as the Ministry of Defence and the Serbian Armed Forces. The top people in the VBA and VOA, Svetko Kovač and Dragan Vladislavljević were therefore only replaced in early 2014. This does not mean that the military services were completely insulated from party influence and patronage. Specifically, Petar Cvetković, director of the VBA from 2014 to 2018, proved to be very obedient to the Minister of Defence, Bratislav Gašić, when the latter unlawfully prevented inspection of the VBA and MO by the Ombudsman. Cvetković was replaced as director of the VBA in 2018 by Đuro Jovanić, who had previously managed a restaurant owned by the military, served as a military police officer and as an aid to the then Minister of Defence and now President of the Republic, Aleksandar

71 Apostolovski, A. (2017). Politika čeka zvanično izvinjenje BIA. Politika, 18.10.2017. Beograd, Politika novine i magazine and Nikolić, M. (2017). SNS i misterija rumunskih "internet specijalaca". TV N1. Beograd, N1.

72 Istinomer (2019). Dijana Hrkalović. Beograd, Crta, internet: <https://www.istinomer.rs/akter/dijana-hrkalovic/>

73 Petrović, P. (2014). „The Security Information Agency“. In: Petrović, P. (ed.). *Integrity Assessment of Security Sector in Serbia*, Belgrade: Belgrade Centre for Security Policy, pp. 110 - 114. internet: [http://www.bezbednost.org/upload/document/integrity\\_assessment\\_in\\_security\\_sector\\_in\\_serbia.pdf](http://www.bezbednost.org/upload/document/integrity_assessment_in_security_sector_in_serbia.pdf)

74 Response by the BIA to question 29 of the BCSP questionnaire of 21 January 2014.

Vučić.<sup>75</sup> As of 2012, Jovanić has been extraordinary promoted four time, which is in direct contradiction to the Law on Military of Serbia.<sup>76</sup>

Finally, when it comes to patronage, a very illustrative example is the inspectors-general of the VBA and VOA who are “routinely” rotated after virtually every change of Minister of Defence, even though the Law on the VBA and VOA clearly specifies the few situations in which the inspectors-general can be replaced and does not allow their dismissal whenever the Minister of Defence desires.

### ***Judiciary – an Important Instrument of Politicized Security Services***

In order to establish complete (party and personal) control of the security and intelligence sector, as well as the affairs and activities of the security services, it is important to install loyal personnel to key positions in the judiciary. As has already been mentioned, the BIA has police powers and can gather data-evidences for the purposes of processing criminal offences (principally those in the category of organised crime) before the courts. This is why it is important who will be appointed as prosecutor for organised crime. In late 2015, the National Assembly, through an accelerated procedure, appointed to this post one Mladen Nenadić, a lawyer from Čačak hitherto unknown to the public or expert community. Considering the fact that Nenadić had the background of an attorney rather than a prosecutor, he first had to pass a written exam in which he not only achieved the maximum score (50) but was also the only candidate without a prosecutorial background to pass the exam. That is why the expert community began to ask questions about how it was possible that no other candidate passed, why some candidates dropped out and how it was possible that Nenadić received top marks when at a previous exam for the prosecutors position at the Higher Public Court in Čačak he scored only 30 points. It is reasonable to assume that the exam for prosecutor for organised crime is significantly more difficult than the test for ‘ordinary’ criminal prosecutors. This is a serious indication that the procedure for the written exam was not legitimate.<sup>77</sup> As a result, speculation surrounding Nenadić’s unbelievable exam success and later appointment as prosecutor for organised crime began to focus on his close friendship with Aleksandar Đorđević, the then director of the BIA.<sup>78</sup> “Nenadić and Đorđević know each other well. They were both lawyers in Čačak.”<sup>79</sup>

75 Zorić, J. (2018). Na koju stranu vuku promene u vrhu Vojske Srbije?, *N1 info*, 17.09.2018. Beograd.

76 Antić: Za malverzacije u trgovini oružjem odgovorno Ministarstvo odbrane. *N1 info*, 21.11.2019. Beograd, Beta.

77 Rakić Vodnелиć, V. (2015). Pripreme za izbor javnih tužilaca - institucionalne i vaninstitucionalne (*Preparations for Selection of Public Prosecutors: Institutional and Extra-Institutional*), S. Lukić, Belgrade, Pešćanik.

78 Dekić, D. (2015). Po volji vlasti, a ne struke. *Vesti online*, 23.12.2015, Frankfurt, Vesti online.

79 Interview with a Belgrade-based lawyer.

Another important post in the judiciary is that of the President of the Higher Court in Belgrade because, with the June 2014 changes to the Law on the BIA, it is this court that became important for the approval of special measures of covert data collection for the protection of national security. Since May 2014, this position has been filled by Aleksandar Stepanović, who is said by some sources to be a friend of Aleksandar Vučić. "Stepanović and Vučić are friends. As far as I know they graduated in the same year [...] Stepanović became President of the Higher Court in Belgrade and then the SNS changed provisions of the Law on the BIA so that wiretaps are now approved by the Higher Court and not the Supreme Court of Cassation. That's how they gave their man control of who will be tapped [...] Why didn't they also change the law on the military services to harmonise the court that approves wiretaps? For the VBA that's still the Supreme Court of Cassation.<sup>80</sup> Lawyers specialised in the security sector have also been expressing concerns about the need for harmonisation of the courts that approve and oversee special procedures and measures for covert data collection.<sup>81</sup>

In the same year Stepanović also became the President of the Criminal Extrajudicial Chamber (Krivično vanraspravno veće) of the Special Department for Organised Crime at the Higher Court in Belgrade (hereafter, the KV Chamber). This body is also not insignificant, as was shown by the case of the whistleblower from the Krušik arms manufacturer, who leaked information on suspected arms deals involving this company and the father of the Minister of the Interior.<sup>82</sup> Specifically, the whistleblower was arrested for revealing official secrets and, in spite of the great pressure he was under, the pre-trial judge determined he should be detained in house arrest. The prosecution appealed the decision and the KV Chamber, presided over by Stepanović, remanded the whistleblower to custody for 30 days on three grounds: to prevent him from repeating the offence, escaping or influencing witnesses. "The fact that the Extrajudicial Chamber of the Higher Court decided on custody tells me that the case is under the control of the president of that court. The three legal grounds for custody speak to the fact that there is tremendous pressure on the suspect. They place him in custody so that he won't repeat the crime? That's bizarre. More likely so that someone wouldn't expose the crime of someone's father?!"<sup>83</sup>

Finally, it is worth mentioning that Judge Stepanović has been linked with a series of controversial decisions reached during his time as President of the Higher Court and which have influenced the course of trials. Certainly, the most well-known case is the

<sup>80</sup> A journalist with many years of experience working on proceedings for the most serious criminal offences.

<sup>81</sup> Milosavljevic, B. (2015). Special Measures for Covert Data Collection: Between Law and Justice. Belgrade, BCSP.

<sup>82</sup> Gaytandzhieva, D. (2019). Islamic State weapons in Yemen traced back to US Government: Serbia files (part 1). Arms Watch, 01/09/2019 and Đorđević, A. and J. Veljković (2019). Trgovina oružjem: Povlašćena cena za oca ministra policije. Javno, 19.09.2019.

Beograd, internet: <https://javno.rs/istrazivanje/trgovina-oruzjem-povlascena-cena-za-oca-ministra-policije>

<sup>83</sup> Cvijić, V. (2019). Vlast progoni uzbunjivača da sakrije krivca. NIN\_broj\_3589, 10.10.2019. Beograd, Ringier Axel Springer d.o.o.

transfer of judges Vučinić and Trešnjev, who were presiding over the cases against Mišković and Šarić respectively.<sup>84</sup>

### **Sidebar 2: The Significance of the Prosecution in the Pyramid of (Political) Power**

The role of the prosecution in criminal prosecutions is enormous. First, trials for most crimes only begin once the prosecution has gathered sufficient evidence on which to base its charges. The court then goes on to deliberate on the indictment and how it has been written and reasoned by the prosecutor. If the indictment does not cover all of the relevant circumstances and facts that would lead to a conviction, the defendant can be freed (even in cases of the most serious crimes). A person who has received a legally binding acquittal cannot be charged again for the same criminal offence. This means that “mistakes” by the prosecutor can be decisive not only for the acquittal of those suspected of the most serious crimes but also in securing their immunity from re-prosecution for the same crime.

How great the power (for manipulation) of the public prosecution for criminal cases is can be seen in its strictly centralised, hierarchical structure. In practice, this means that a public prosecutor is legally empowered to take a case from a deputy prosecutor and assign it to someone else, to take a case from a lower ranking prosecutor and work on it themselves or to simply issue binding instructions to “make” a lower ranking prosecutor or deputy prosecutor reach a decision that contradicts their professional convictions.<sup>85</sup> “That is how by pressing one button, by influencing someone at the top of the hierarchy, the political authorities control the whole system.”<sup>86</sup>

84 Jahić, D. (2017). Premeštanja sudija za usporavanje suđenja: Slučajevi Vučinić i Trešnjev. CINS, 01.12.2017. Beograd.

85 For a detailed hierarchical structure of the prosecution, see Section II, Chapter 2 of the Law on Public Prosecution (Zakon o javnom tužilaštvu), “Official Gazette of the Republic of Serbia”, no. 116/2008, 104/2009, 101/2010, 78/2011 – dr. zakon, 101/2011, 38,2012 – odluka US, 121/2012, 101/2013, 111/2014 – odluka US, 117/2014, 106/2015 i 63/2016 – odluka US, as well as the following study: Ilić, G., et al. (2018). *Javno tužilaštvo i javni interes - mogućnost javnog tužioca da zaštiti javni interes*. Beograd, Udruženje javnih tužilaca i zamenika javnih tužilaca Srbije.

86 Ilić, G. (2016). *Samo podobni ljudi se biraju za ključne funkcije u Tužilaštvu (Only individuals loyal to ruling political party are appointed at the top positions in the Prosecution)*, 25.08.2016. Udruženje javnih tužilaca i zamenika javnih tužilaca Srbije. Beograd.

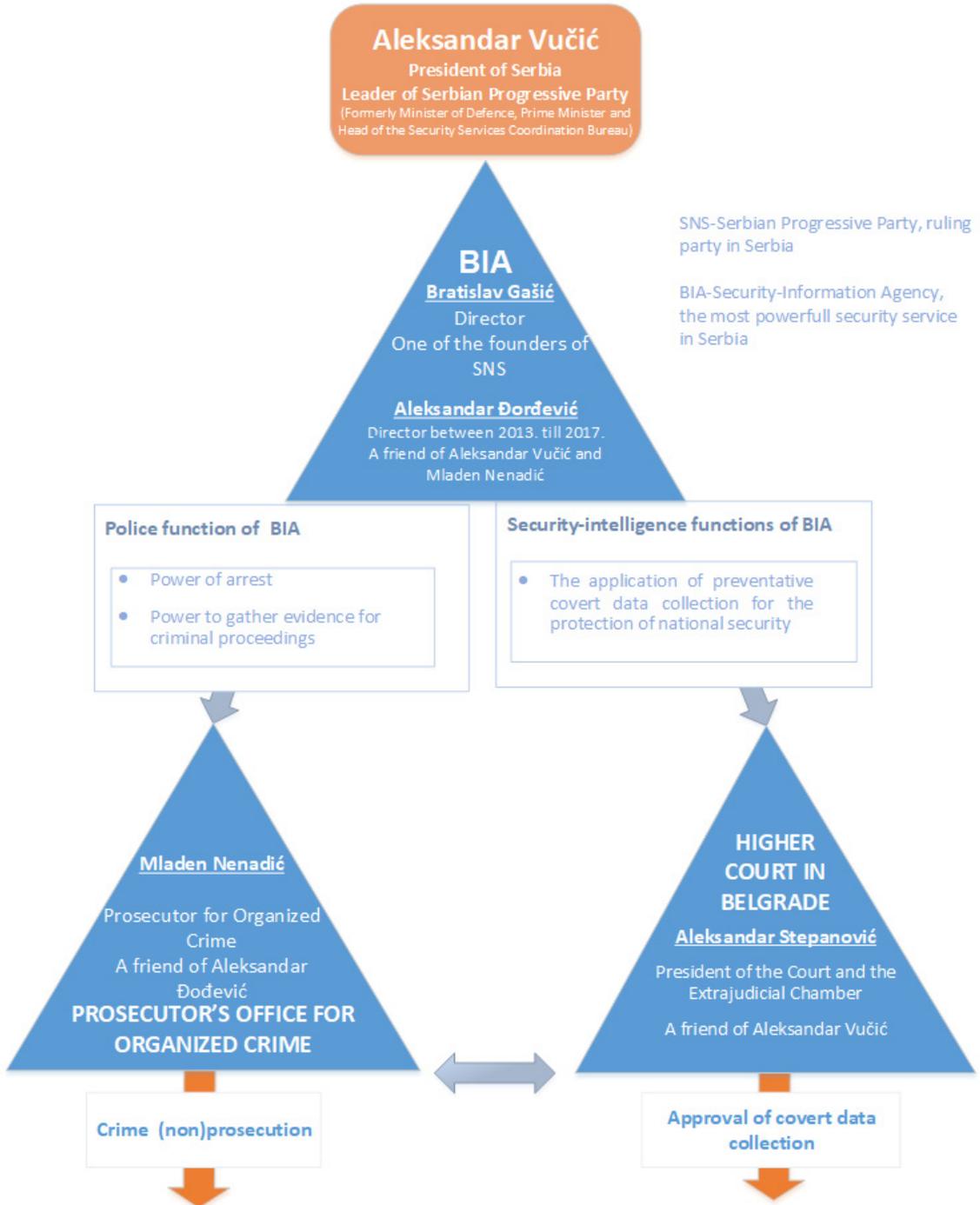


Diagram 2 Pyramid of (Crony) Security Power

## The BIA Fighting an Internal Enemy of the State

At a time when corruption, professional killings of criminal group members, extremism and nationalism are on the rise in Serbia, along with poverty and population outflows, a BIA representative identified the activities of civil society as the greatest threat to Serbia's national security. Indeed, Marko Parezanović, head of the BIA's Security Protection Department<sup>87</sup>, stated, "As the most intense threat to the constitutional order and security of our country, the covert activities of external actors, most often using mechanisms of their intelligence services, can be placed in pole position. In this way, certain abuses are carried out and individuals – I emphasise individuals – from opposition parties and certain parts of the media are made operable. It is not uncommon for some parts of the NGO sector to be placed in a destructive and subversive function. A relatively new phenomenon, but not an unknown, is the influence of these negative and destructive structures on trades unions."<sup>88</sup>

These views were expressed by a representative of the BIA, the successor agency of the State Security Service (Resor državne bezbednosti - RDB) at a conference held by the right-wing National Vanguard (Nacionalna avangarda) on 5 October 2018, that is on the anniversary of the day<sup>89</sup> that is seen as the start of Serbia's transformation into a democratic society and the beginning of a break with the RDB's practices of persecuting and liquidating internal enemies. There are a few other interesting details from this event. The first being that the BIA was represented at this conference by a high-ranking official, which had not been the practice to date. Moreover, it is the experience of the author of this text that BIA representatives speaking at public events most often speak of security threats in general terms, citing the National Security Strategy. An example of this is BIA Director, Bratislav Gašić, speaking on BIA Day<sup>90</sup>, while Parezanović clearly singled out one threat as the "most intense". Finally, the Nacionalna avangarda conference was attended by almost the whole Serbian leadership, including the President of Serbia and leader of the SNS, Aleksandar Vučić<sup>91</sup>

87 Before working in this role, Marko Parezanović headed the BIA's Belgrade Centre, the Agency's most important regional centre. Moreover, Parezanović has completed a doctorate on the topic of political revolutions and has authored numerous papers on the subject, such as, for example: "Značaj i uloga društvenih mreža u političkom prevratu, Državni udar kao jedan od modaliteta nelegalne političke borbe and "Uloga propagandnih aktivnosti u političkim prevratima" ("The Role and Significance of Social Media in Political Revolutions, the Coup d'État as a Mode of Illegal Political Struggle" and "the Role of Propaganda Activities in Political Upheavals").

88 The whole statement by Marko Parezanović is available on the *Nacionalna avangarda* YouTube channel: <https://www.youtube.com/watch?v=yDAGqJCwxVs&t=1795s> from 29:55 to 42:25.

89 On 5 October 2000, the Democratic Opposition of Serbia coalition, which had defeated Slobodan Milošević (autocratic ruler of Serbia) at the September polls, organised a mass demonstration after which Milošević conceded his electoral defeat.

90 For example, in a speech on 17 October 2017, the Director of the BIA named terrorism, separatism, religious, ethnic and ideological extremism, the covert activities of foreign actors and organised crime as the most serious security threats. A later part of the speech was mostly devoted to terrorism and extremism. [https://bia.gov.rs/sites/default/files/2018-11/govordirektora-17102017\\_0\\_0.pdf](https://bia.gov.rs/sites/default/files/2018-11/govordirektora-17102017_0_0.pdf) In a 2018 speech, the Director reported that the Agency had recently successfully combated terrorism and separatism, illegal migration, various forms of extremism, covert activities by foreign actors, organised crime and corruption. [https://bia.gov.rs/sites/default/files/2019-11/govor\\_direktora\\_oktobar\\_2018.pdf](https://bia.gov.rs/sites/default/files/2019-11/govor_direktora_oktobar_2018.pdf)

91 Aleksandar Vučić had served as Information Minister during the Slobodan Milošević regime. During his time in office, he

– a very unusual accomplishment for an organisation little more than a year old.<sup>92</sup>

The President himself sought to downplay the statement by the high-ranking BIA official, saying, “As the country’s president, I can say I don’t see any problem here. Especially as we are talking about people who have no standing nationally, no authority at all, about people who don’t mean anything to anybody, if you’re talking about our political opponents”.<sup>93</sup> However, his statement only exacerbates things. Firstly, it confirms that the BIA is monitoring the activities of his political opponents. Also, if they are indeed unimportant political opponents, without authority, why would the BIA monitor them at all? In contemporary democratic societies, it is accepted that the main targets of foreign intelligence services are people with access to classified information, who are in positions of power within the state – in short, people from the (higher or middle echelons of) ruling parties or groups and individuals with ties to these parties. Political activities by the opposition are seen as legitimate in democratic societies and the monitoring of those who think or speak critically or in opposition are emblematic of the secret police of totalitarian regimes.

### *From Theory to Practice*

That this is not merely a reckless statement by a high-ranking BIA official, good for little more than providing a basis for theoretical discussions and contentious TV shows, is borne out by a whole series of cases of journalists being subjected to covert surveillance by the Agency. This overview will cover only the best known cases. It has been confirmed, for example, that the BIA not only covertly followed and recorded Stevan Dojčinović, the editor of the KRIK investigative journalism network, but that it also passed the recordings to the Informer tabloid newspaper, which has close ties to the regime and which used those recordings to conduct a campaign against Dojčinović.<sup>94</sup> On the basis of a suit Dojčinović brought against the BIA, the Ombudsman initiated proceedings against the Agency but, since the BIA did not respond, the

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approved the Law on Public Information, which is remembered for the draconian penalties it imposed on media outlets critical of the government and the consequences of its enforcement include the closing down of the newspapers and journals *Dnevni telegraf*, *Evropljanin* and *Naša borba*. Aleksandar Vučić. Beograd, CRTA, internet: <https://www.istinomer.rs/akter/aleksandar-vucic/>

92 National Vanguard (Nacionalna avangarda) was founded in May 2017 and in a short time succeeded in gathering the Serbian political leadership and a high-ranking BIA official at its conference. For those familiar with Serbian civil society, this is a most unusual accomplishment for a young organisation, unless it has close ties to the ruling party. For this reason, many consider Nacionalna avangarda to be a government-organised NGO (GONGO) with far-right views. Among other things, this organisation participated in the founding congress of Srpska desnica, a far-right party that zealously defends the policies of the ruling SNS party. Popovic, D., et al. (2018). *Associations of Citizens: Shrinking Civic Space Serbia 2014-2018*. Belgrade, Civic Initiatives. Internet: <https://www.gradjanske.org/wp-content/uploads/2019/03/SHRINKING-SPACE-5.2.2018-REPORT-BY-CIVIC-INITIATIVES.docx.pdf>

93 Tatalović, Ž. (2018). Vučića ne brine “spoljni faktor”, novinare brinu etikete BIA, 06.10.2018. Beograd, N1.

94 Djurkovic, S., Ed. (2019). *Preugovor Alarm – Report on Progress of Serbia in Chapters 23 And 24 September 2019*. September 2019. Belgrade, prEUgovor. Internet: <http://preugovor.org/upload/document/preugovor-20191017-alarm-sr-web.pdf>

Ombudsman was forced to submit an urgency motion to the Agency.<sup>95</sup> Nonetheless, the case remains unresolved. It seems that the BIA's silence may speak volumes about its involvement in this case.

That information is being leaked from the BIA to pro-government tabloids was also confirmed by the Commissioner for Information of Public Importance, whose checks on the MUP biometric database established that a photograph of the deputy special prosecutor, Saša Ivanić, was accessed from the BIA not long before it appeared in the pages of a tabloid newspaper.<sup>96</sup>

The former editor of the Južne vesti online news portal, Predrag Blagojević, also discovered that he was being secretly followed and recorded from a car. Blagojević reported the incident to the police but the case has yet to be resolved even though video evidence of it exists. "It is impossible that with the license plate and a detailed description of the vehicle, as well as photographs and security camera footage from the court building and other cameras around the city centre, that the police are unable to find the owner of the car within minutes. If those plates are really not on the MUP register, then it's clear this is a car from the 'Agency'."<sup>97</sup> Blagojević himself received uncorroborated information stating that BIA personnel were recording him but that they did this informally, bypassing official procedures.<sup>98</sup>

That part of the BIA is working for the interests of the ruling party is also underpinned by the case of Nebojša Blagotić, a police inspector from Niš, who found out that information from an investigation he was leading was being passed to officials of the ruling party by individuals in the police and via the BIA.<sup>99</sup> Not only did police and BIA personnel who leaked information from an operational investigation or who did nothing to prevent information leaks not face criminal or disciplinary charges but were promoted to management positions in either the BIA or the Niš police. Blagotić, who challenged the leak was summarily retired. It is also worth mentioning the case of Centar za ekologiju i održivi razvoj (Centre for Ecology and Sustainable Development – CEKOR), a civil society organisation that works on environmental issues, whose finances were investigated by the BIA. It is reasonable to ask why an agency tasked with improving national security and fighting serious organised crime is investigating

95 Radivojević, J. (2018). Zaštitnik građana: BIA ima tri nedelje da se izjasni o Dojčinovićevom slučaju, 17.05.2018. Beograd, KRIK.

96 Ko je odgovoran za objavljivanje fotografije tužioca iz baze MUP-a? Beograd, Insajder, 13.04.2016., internet: <https://insajder.net/sr/sajt/tema/720/>

97 8 meseci kasnije: Još se ne zna ko je pratio Blagojevića. 22.11.2017. Niš, Južne vesti, internet: <https://www.juznevesti.com/Hronika/8-meseci-kasnije-Jos-se-ne-zna-ko-je-pratio-Blagojevica.sr.html>

98 Kolundžija, D. (2018). Policija uspešno ne nalazi vozača automobila snimljenog na više kamera, 24.03.2018. Beograd, Cenzolovka. In cases of the misuse of the police for party political purposes, orders are issued without following proper procedures and without a written record. More on this subject see the section Are the Police Becoming the Secret Police?

99 Blagojević, P. (2017). Inspektor niške policije: Podaci iz policijskih istraga preko BIA cure ka SNS. 15 minuta, 08.12.2017. Niš, Južne vesti.

the finances of a local civil society organisation. What is more, the checks were not conducted using covert methods but were carried out publically, like a financial audit. If there was cause to suspect that CEKOR's financial dealings were a threat to national security or that they were mixed up in organised crime, one would expect the BIA to first carry out checks using covert methods and then to decide on a further course of action: the use of covert measures for the protection of national security or for the transfer of the case to the relevant prosecutor. It is not even worth commenting on whether the BIA should be used to carry out financial checks of civil society organisations. Hence, this can be understood as a form pressure by the government against this organisation.<sup>100</sup>

The most recent example is the case of whistleblower, Aleksandar Obradović, an employee of the Krušik arms manufacturer who revealed to reporters that the company had sold its products at preferential rates (much lower than market prices) to GIM, a company represented by Branko Stefanović, the father of the Minister of the Interior and coordinator of the security services, and in so doing was effectively operating at a loss.<sup>101</sup> As a result, Obradović was arrested by the BIA but not discreetly, instead the arrest was a demonstration of force and aggression. "There were around ten men from the Security Information Agency. They were in suits but they were all armed. [...] They were aggressive. With raised voices they immediately started asking: 'Who're you working for?', 'how much are they paying you?' and 'which politicians approached you?'"<sup>102</sup> From the aggressive behaviour and the type of questions they asked, particularly, "which politicians approached you?", it is possible to conclude that the BIA agents acted as a political police force. The manner in which Obradović was arrested suggests that they tried to intimidate the other Krušik employees so they would not dare to become whistleblowers themselves and so that the Obradović case would not be discussed in public. This is indeed what happened, as Obradović's family were intimidated by the BIA's manner and news of his arrest only emerged almost a month later.<sup>103</sup> It could be of interest to note here that Krušik, the allegedly injured party in this case, is being represented by a law firm established by Aleksandar Đorđević, a former director of the BIA.<sup>104</sup>

100 CEKOR also experienced other forms of pressure by people who identified themselves as "DB" (*Državna bezbednost*, state security). For more on this, see: Stakic, I. (2019). *Case Study: Threats and Pressures Faced by Activists and Independent Journalists in Serbia*. Belgrade, BCSP.

101 For more on this, see: Finansijska GIM-nastika: Državne kompanije posrću, privatnim trgovcima nikad bolje. [NIN, broj 3592, 31.10.2019](#). Beograd, Ringier Axel Springer.

102 Cvijić, V. (2019). Uhapsili su me, a imam dokaze za sve sumnjive poslove - Ispovest Aleksandra Obradovića, radnika Krušika, uhapšenog jer je ukazao na trgovinu oružjem u koju je umešan i otac ministra policije. [NIN, broj 3590, 17.10.2019](#). Beograd, Ringier Axel Springer.

103 Miletić, M. (2019). Hapšenje Obradovića poruka drugim uzbunjivačima, odgovor javnosti – reagovaće se. Beograd, N1 info, 17.10.2019.

104 Cvijić, V. (2019). Uhapsili su me, a imam dokaze za sve sumnjive poslove - Ispovest Aleksandra Obradovića, radnika Krušika, uhapšenog jer je ukazao na trgovinu oružjem u koju je umešan i otac ministra policije. [NIN, broj 3590, 17.10.2019](#). Beograd, Ringier

Finally, also noteworthy is the case in which the BIA was involved in a political clash between two camps within the Požarevac branch of the ruling SNS party. A leaflet<sup>105</sup> appeared in the town of Požarevac claiming that a few manipulated members of the SNS led by Miodrag Stepanović, the director of Georad, a Kostolac-based company, was trying to illegally remove the current authorities in Požarevac, led by the mayor, Bane Spasović. In addition to this, the leaflet also contained allegations about illegal organ trafficking and plans to settle migrants in the area. BIA operatives from Požarevac, assisted by colleagues from Kragujevac, were tasked with uncovering who produced the leaflet, which they did by interviewing several locals<sup>106</sup> and by sending two of them for polygraph testing at the Security Institute in Belgrade. “I’m not sure why the BIA was used, because they’re looking for the author of the leaflet rather than investigating the allegations it contained about organ trafficking and the settlement of migrants, which should be its purview. Finding the author of the leaflet should be a job for the ordinary police because, if they can prove it, this is a case of defamation, which has not been a criminal offence for years now, as it was abolished so that politicians could have at each other, but here the injured party can file a civil suit.”<sup>107</sup>

## Are the Police Becoming the Secret Police?

The professionalization and globalisation of organised crime have prompted changes to how policing is organised. As a result, police forces around the world are today applying special criminal investigation techniques but are also adopting an approach comparable to that used by intelligence agencies under the title, “intelligence-led policing”. Serbia is no exception here and the MUP and police are working to apply these principles in their operations. Consequently, the Criminal Investigations Directorate (Ser. Uprava kriminalističke policije – UKP) contains the following units: the Service for Fighting Organized Crime (ser. Služba za suzbijanje kriminala-SBPOK) and the Special Investigative Methods Service (Ser. Služba za specijalne istražne metode). The latter also contains a unit known as the Special Operations Department (Ser. Odeljenje za posebne akcije). While these organisational arrangements are not in dispute, what is questionable is the widespread use of special measures by the UKP. In 2014, for example, national mobile communications operator, Telenor, recorded 201,879 individual instances of data being accessed, with the MUP being responsible for the lion’s share (199,818 instances) and the BIA and VBA for the remainder. Since

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Axel Springer.

105 The leaflet was rather “amateurish” and was not printer like a flier. It was written on a personal computer and an unknown number of copies were printed on a home printer. It is assumed around a hundred were printed and distributed. M.V. (2018.). Požarevačke naprednjake saslušavala BIA. *Danas*, 30.05.2018. Beograd, DAN GRAF d.o.o. internet: <https://www.danas.rs/drustvo/pozarevacke-naprednjake-saslusavala-bia/>

106 Ibid.

107 The lawyer of one of those interviewed. Cited from: Ibid.

then the situation has only gotten worse.<sup>108</sup>

At the same time, neither the former parliamentary Defence and Security Committee nor the current Defence and Internal Affairs Committee, responsible for oversight of the MUP, nor indeed the Security Services Control Committee, have conducted oversight of the UKP or examined how the services of the Directorate implement covert data gathering measures. The problem was highlighted by research carried out by the BCSP<sup>109</sup> and also Momir Stojanović of the ruling SNS party who was chairperson of the Security Services Control Committee from 2012 to 2016: "It also implements special covert data gathering methods that encroach upon the constitutionally guaranteed rights and freedoms of citizens. Therefore, the media often report that the president is being wire-tapped or something similar... The fact that the parliamentary committee does not have the authority to oversee its work is a substantial weakness."<sup>110</sup> Additionally, no other external oversight body has conducted comprehensive checks and oversight of the MUP's use of covert surveillance measures such as, for example, the Ombudsman's checks of the BIA on two occasions.

A consequence of this is an increase in the potential for political or party political abuses in the MUP and the police. The first serious allegations of this kind came from the ranks of the police in 2015. Dejan Tripković, who at the time was employed in the Cabinet of the Minister of the Interior, Nebojša Stefanović, alleged that the Department for Security Affairs<sup>111</sup> within the Cabinet monitors opponents of the government and that information from covert surveillance (including raw data) were being passed to Dijana Hrkaločić, the then deputy chief of staff to the minister.<sup>112</sup> Tripković also initiated criminal proceedings against Dijana Hrkaločić and the MUP leadership but the case was quickly dropped without all of the evidence being examined. What is more, no other oversight body looked into the case and the serious allegations of abuses raised by Tripković remain unverified.<sup>113</sup>

At a press conference in early 2016, Vukašin Obradović, head of the Independent Association of Journalists of Serbia, raised serious allegations that he was being secretly monitored by the MUP. He based his suspicions on the fact that in an interview on the RTS's Dnevnik programme, Minister of the Interior Nebojša Stefanović revealed

108 Zadržavanje podataka o komunikaciji u Srbiji, Koliko smo pod nadzorom? (2014 – 2016). Beograd, SHARE LAB, 29.08.2017.

Internet: <https://labs.rs/sr/zadravanje-podataka-o-komunikaciji-u-srbiji/>

109 Đokić, K. and V. Erceg (2014). (2014). Parliamentary Oversight and Integrity Building in Security Institutions. Belgrade, BCSP, pp. 15-17.

110 Glavonjić, Z. (2014). Reforma tajnih službi: Krv, znoj, suze i politička volja. Beograd, Radio Slobodna Evropa, 09.12.2014.

111 Petrović, P., Ed. (2015). Posebne mere tajnog prikupljanja podataka Beograd, Beogradski centar za bezbednosnu politiku, p. 28.

112 Jovanović, B. (2019). Period Dijane Hrkaločić u MUP-u: mafijaška ubistva, veze kriminala i policije i prijave protiv nje. Beograd, KRIK, 29.05.2019. internet: <https://www.krik.rs/rad-dijane-hrkalovic-u-mup-u-mafijaska-ubistva-veze-kriminala-i-policije-i-prijave-protiv-nje/>

113 Petrović, J. (2019). Cvijić: Optužbe o nelegalnom prisluškivanju i od policajaca, setimo se Hrkaločić. Beograd, N1, 24.07.2019.

internet: <http://rs.n1info.com/Vesti/a502160/Cvijic-Optuzbe-o-nelegalnom-prisluškivanju-i-od-policajaca-setimo-se-Hrkaločić.html>

details of a meeting between Obradović and police officers who had information on illegal surveillance of journalists. The minister was also able to show that he had knowledge of their subsequent plans.<sup>114</sup>

Serious allegations of illegal activities by the police surfaced again in 2016 when Milan Dumanović and Mladen Trbović, who worked in the UKP at the time, disclosed that they were receiving verbal orders by their superiors secretly tasking them to attend the 2015 commemoration of the victims of Srebrenica – with no official identification or service weapons and carrying (false) press accreditation – in order to film possible attacks on Serbia's then Prime Minister, Aleksandar Vučić. According to these officers, similar operations had been carried out previously and since these events, such as when in May 2016 Serbian police officers were sent to secretly monitor a protest by those opposing Milorad Dodik and the counter-protest by his supporters.<sup>115</sup> The Criminal Police of the Serbian MUP are not authorised to conduct covert operations beyond Serbia's borders, neither do they have powers to covertly monitor public gatherings in Serbia.

These cases all have a number of elements in common. Firstly, those suspected of illegal activities in the Ministry of the Interior crop up in all of the cases. Since the appointment of Nebojša Stefanović as the Minister of the Interior, his cabinet has employed people without previous police experience but who have party and personal ties to the minister. Dijana Hrkalović, previously an SNS party official, worked first as his deputy chief of staff then as the Secretary of the UKP and finally as an MUP Secretary. Without any prior police experience, Goran Papić, the minister's kum<sup>116</sup>, was appointed to the Security Affairs Department and, shortly thereafter became the deputy head of the Service for Combating Organised Crime (Služba za borbu protiv organizovanog kriminala – SBPOK).<sup>117</sup>

Further cause for concern stems from allegations made by police officers that they received verbal orders from their superiors, indicating a strong reliance on informal management channels within the police. Dumanović and Trbović filed criminal charges against those in charge of the Special Investigative Methods Service, Dejan Milenković and Tomislav Radovanović, the head of the Department for Observation and Documentation, Goran Nešić, but also the Secretary of the UKP, Dijana Hrkalović. This may provide some indication of who the key people could have been in this informal chain of command. The Ombudsman also highlighted informal groups and channels

114 Obradović, V. (2016). Krivična prijava protiv Nebojše Stefanovića, ministra unutrašnjih poslova. Beograd, NUNS, 11.01.2016.

115 Jovanović, B. (2017). Detalji tajne operacije u Potočarima. Beograd, KRIK, 01.06.2017. internet: <https://www.krik.rs/detalji-tajne-operacije-u-potocarima/>

116 Translator's note: the Serbian word kum may denote a godfather, a best man at a wedding or a special witness at one's baptism. The institution of *kumstvo* is considered to result in a close relationship between two people.

117 Jovanović, B. (2017). Detalji tajne operacije u Potočarima. Beograd, KRIK, 01.06.2017. internet: <https://www.krik.rs/detalji-tajne-operacije-u-potocarima/>

of influence (in a broader sense beyond covert surveillance) as a very serious problem in the MUP. He pointed out that the MUP acts on the Ombudsman's recommendations when it comes to individual problems or failings that impact individuals but that the larger, systemic problems remain unresolved. "It seems that certain parts of the Police do not answer in hierarchical terms to those to whom they should answer, instead they have their own taskmasters or are their own taskmasters. The institutional framework is noticeably no longer as it used to be. Some people think they are untouchable and the way they do things bears this out."<sup>118</sup>

Suspicious and allegations that the UKP is being used to covertly surveil opponents of the government continue to emerge to this day. They were repeated in mid-2019 by opposition leaders but also by the former chairperson of the Security Services Control Committee, Momir Stojanović, who indicated that the Department for Special Investigative Methods of the Criminal Investigations Directorate is at the forefront of this abuse of powers for political purposes. "They shadow political opponents and those who criticise the regime, monitor their communications, blackmail them... All compromising materials released by the tabloids come from them." This is a very dangerous organisation that does everything but combat organised crime.<sup>119</sup>

The leaders of this organisational entity within the MUP deny these accusations by citing the formal procedures for approving and applying measures for covert surveillance of communications and pointing out that these measures are implemented via the so-called monitoring centre at the BIA.<sup>120</sup> There are, however, a few problems with this. Firstly, covert surveillance does not involve only the monitoring of communications and access to the contents thereof but also insight into statistical communications data that the MUP can access directly from telecoms and internet providers and such instances of direct access are not recorded.<sup>121</sup> Additionally, the content of communications can also be accessed using mobile devices or listening posts, which are available to the security services, the police and also to private actors. In Serbia there is no effective regulation of these mobile listening devices. Finally, covert surveillance also comprises tailing and recording, gathering information from informants or from databases and registries, for which court approval is not necessary. It is not uncommon nowadays for the security services or the police to outsource covert surveillance to private actors in

118 Skozza, T. (2014). Tabloidno uterivanje strah: intervju – Saša Janković. Vreme, broj 1213, 03.04.2014. Beograd.

119 Beta (2019). Bivši načelnik VBA: Bezbednosne službe danas služe političkoj opciji na vlasti. Beograd, N1 info, 24.05.2019. internet: <http://rs.n1info.com/Vesti/a486239/Stojanovic-Bezbednosne-sluzbe-danas-sluze-politickoj-opciji-na-vlasti.html>

120 UKP: Izjava bivšeg načelnika VBA skandalozna i neistinita. Beograd, N1 info, 24.05.2019. internet: <http://rs.n1info.com/Vesti/a486321/UKP-o-Momiru-Stojanovicu-i-prisluskivanju.html>

121 Of the mobile telephone operators, only Telenor had the ability to record direct access to stored data and kept records until 2017. It has not, however, been made clear to the public why Telenor stopped this good practice nor why it no longer adheres to its obligations under the "Rulebook on Requirements and Program Support for the Lawful Interception of Electronic Communications and Technical Requirement for the Fulfilment of the Obligation of Electronic Communications Data Retention", Official Gazette of the Republic of Serbia RS 88/2015.

order to increase the secrecy and effectiveness of operations<sup>122</sup> but this is also a tactic that is resorted to for the surveillance or harassment of political opponents<sup>123</sup> and for the pursuit of other interests.<sup>124</sup>

Here we can, of course, ask ourselves whether there had previously been political abuse of police powers. Former police officers and journalists who cover security affairs indicate that this level of abuse was not present earlier because there had always been respect for the balance of power in the MUP and the police. “Ivica Dačić has indeed been Minister of the Interior but other important positions in the police were handed out to coalition partners. That’s how they kept an eye on one another and they couldn’t abuse police powers quite so easily. Also, it used to be the case that a good number of professionals would survive changes of government, not all of them would be purged, and they were a kind of shield preventing political abuses. This is no longer the case as the SNS controls everything.”<sup>125</sup> The key moment was, therefore, the complete takeover of all the most important functions in the MUP by the SNS and their subsequent consolidation of control of this institution from 2014 onwards.<sup>126</sup> Lest we forget, in 2017 Nebojša Stefanović was appointed Secretary General of the National Security Council and de facto head of the Bureau for Security Services Work Coordination. Even though not all cases of illegal and illegitimate covert surveillance have yet to be confirmed by the courts, the lack of non-judicial oversight and control mechanisms (parliamentary committees, expert bodies and the Ombudsman)<sup>127</sup> only reinforces the conviction that over the past few years parts of the police have been committing abuses for party political and personal gain and that the scale of the problem is on the increase.

## Civilians and the Opposition Routinely in the VBA’s Sights?

The incident at the pride parade and the subsequent investigation by the Ombudsman into the conduct of security actors involved in the incident caused the public to suspect that the VBA almost routinely exceeds its jurisdiction and powers towards civilians. The Ombudsman found that, following the incident, VBA personnel had begun to take statements from potential witnesses before the police and had also confiscated

122 Katrein, F. (2017). Intelligence Officers Should Say NO to the Illegal Demands by Politicians. P. Petrovic. Belgrade, BCSP, internet: <http://www.bezbednost.org/All-publications/6624/Intelligence-officers-should-say-NO-to-the.shtml>

123 Bayer, L. (2019). Israeli intelligence firm targeted NGOs during Hungary’s election campaign. Brussels, POLITICO, 04.09.2019. internet: <https://www.politico.eu/article/viktor-orban-israeli-intelligence-firm-targeted-ngos-during-hungarys-election-campaign-george-soros/>

124 For more on this, see the section Covert Surveillance in Practice.

125 Interview with former security service officer no.3.

126 In the 2014 snap election the SNS party doubled the number of seats it had won in 2012, enabling it to significantly reduce the bargaining potential of its coalition partner, the Socialist Party of Serbia – hence the leader of the SNS, Aleksandar Vučić was able to replace SPS leader, Ivica Dačić, as the Prime Minister.

127 On the state of security service oversight and control in Serbia, see the section on Oversight of Security Services in Freefall.

security camera footage from two banks close to the incident. In gathering information from legal and natural persons the VBA cited two separate legal bases, even though it was in reality the same act in factual and legal terms. In addition, the VBA did not immediately inform the prosecutor's office via the Ministry of Defence of all gathered information pertinent to the ongoing investigation.<sup>128</sup> In situations such as this, the Law on the VBA obliges the Agency to cooperate with the police and the BIA, to pass findings and information to other institutions in a timely manner and not to conduct investigations independently.

This incident was cause for the Security Services Control Committee to hold an emergency session<sup>129</sup> in January 2015, at which the Ombudsman revealed another, more important potentially illegal act by the VBA. At the session the Ombudsman revealed that he was in possession of a copy of a VBA document received from a retired officer from the Agency, which shows that the Agency had monitored the activities of an opposition party. The copy of the document indeed contained a report from the Second Regional Centre of the VBA about preparations for political activities by certain political organisations, their leaders, members and supporters, noting that there were no indications of a threat to the Armed Forces of Serbia or the Ministry of Defence. Nonetheless, the gathering of information continued.<sup>130</sup> At this session, representatives of the ruling SNS party called into question the authenticity of the document but later, in March 2015, the Committee conducted an onsite inspection of the VBA, confirming that it was genuine and concluding that it contains data and findings that do not comply with the VBA's lawfully prescribed jurisdiction.<sup>131</sup> At the same session, the Committee ordered the Inspector General of the Military Security Services to carry out checks of the legality of VBA information gathering in relation to this document and to report on this to the Committee.

At a session held in April 2015 the Committee deliberated on the Inspector General's oversight report but concluded that the VBA had received information on the activities of the opposition party through an exchange with another agency. The stated reason for receipt of the information from another security actor was the protection of forces, structures, resources and activities, as well as protected persons – in this case the then Prime Minister, Aleksandar Vučić. At this session it was concluded that the Committee supports the recommendation of the Inspector General that the National Security

<sup>128</sup> All findings and documents pertaining to this case that the Ombudsman managed to access are available on the website of this institution: <https://www.ombudsman.rs/index.php/lang-sr/2011-12-25-10-17-15/4319-jjhj>

<sup>129</sup> 13. sednica Odbora za kontrolu službi bezbednosti (*National Assembly of the Republic of Serbia, Thirteenth Session of the Security Services Control Committee*), 28.01.2015. Beograd, Narodna skupština Republike Srbije, internet:[http://www.parlament.gov.rs/13\\_sednica\\_Odbora\\_za\\_kontrolu\\_sluzbiBezbednosti.24170.941.html](http://www.parlament.gov.rs/13_sednica_Odbora_za_kontrolu_sluzbiBezbednosti.24170.941.html)

<sup>130</sup> Redovan godišnji izveštaj zaštitnika građana za 2015. godinu (*Regular Annual Report of the Protector of Citizens 2015*), p. 273.

<sup>131</sup> Odbor za kontrolu službi bezbednosti u nadzornoj poseti Direkcije Vojnobezbednosne agencije u Beogradu, 19.03.2015. Beograd, Narodna skupština Republike Srbije.

Council, in accordance with the Regulation on Security Protection of Certain Persons and Structures, reach a decision as quickly as possible on the counter-intelligence and security protection of the Prime Minister of the Republic of Serbia.<sup>132</sup> This is indirect acknowledgement that the gathering of information for the protection of the prime minister lacked a legitimate legal basis.

In this particular case there are two main problems. Firstly, the Ministry of Defence and the VBA prevented the Ombudsman from conducting controls of the VBA to investigate the incident and, so the case would not go uninvestigated, the Security Services Control Committee called on the Inspector General to carry out controls, something that is not in the Committee's purview. Second, the Inspector General at the time was a retired VBA officer who had, prior to his retirement, headed the Agency's unit for implementation of operational and technical measures.<sup>133</sup> "In fact, the Inspector General was being asked to establish whether there was illegality in activities for which he had been directly responsible. So, he was being asked whether he was responsible for certain illegalities, which is unbelievable."<sup>134</sup>

By interpreting the jurisdiction and powers of the VBA in such a broad and flexible manner it could be concluded that just about any activity by political organisations or individuals could be covered by the VBA if there is even the slightest indication that there could be a possibility of a threat to the security of the military structures and personnel they are supposed to be protecting. Moreover, the VBA and military police provide protection for a large number of civilians – government officials outside of the MO and VS (e.g. judges and prosecutors) – something that the expert community has long impugned. In spite of their criticism, amendment of the Law on the Armed Forces of Serbia introduced a provision that the military police can, "at the discretion of the Minister of Defence, provide security and antiterrorist protection to certain persons outside the Ministry of Defence and the Armed Forces of Serbia."<sup>135</sup> To all intents and purposes this legalised the long-standing bad practice of providing counter-intelligence and security protection to civilians holding high office but it also grants the Minister of Defence the power to provide military security to whomsoever he desires.<sup>136</sup>

132 16. sednica Odbora za kontrolu službi bezbednosti (*National Assembly of the Republic of Serbia, Sixteenth Session of the Security Services Control Committee*), 09.04.2015. Narodna skupština Republike Srbije.

133 Redovan godišnji izveštaj zaštitnika građana za 2015. godinu (*Regular Annual Report of the Protector of Citizens 2015*), p. 17.

134 Former employee no. 3 of the Ombudsman's office.

135 Član 53, stav 1, Zakona o Vojsci Srbije (*Article 53, Paragraph 1, Law on the Armed Forces of Serbia*), Official Gazette of the Republic of Serbia, No. 116/2007, 88/2009, 101/2010 - law, 10/2015, 88/2015 – Constitutional Court Decision and 36/2018.

136 More on legal regulation of the activities and powers of the military police can be seen in: Milosavljević, B. (2019). *Nadležnosti i ovlašćenja vojne policije - pravna (ne)uređenost (Jurisdiction and Powers of the Military Police: Legal (De)Regulation)*. Beograd, Beogradski centar za bezbednosnu politiku.

## A Military “Command” to Protect the Prime Minister of Serbia

In early December 2015 the then Minister of Defence, Bratislav Gašić, revealed publically that a new command had been established under the auspices of the Ministry of Defence, which would be tasked with protecting the then Prime Minister, Aleksandar Vučić. The command would be composed of VBA and VOA personnel and all information relevant to the comprehensive protection of the prime minister would be sourced from the BIA and the MUP. According to Gašić, “the subordination of all security services provides sufficient information with which the specially formed command in the Ministry of Defence can deal on a daily basis.”<sup>137</sup> The immediate cause for the public disclosure of the formation of this special “military” command was that a member of a criminal group, who had been a member of the special police units of the Serbian Ministry of the Interior, was seen eight times in one 24-hour period at the address of the Prime Minister.

At first it seemed that confirmation of the establishment of this command was part of an attempt by the government to manipulate the media but interviews with security experts and former members of the security services indicate that the “command” really was formed. “No, it isn’t media hype. The Army really did form this new command. Now it’s the biggest deal.”<sup>138</sup> In response to a BCSP questionnaire, the Ministry of Defence said that, “the term ‘command’ is informal and primarily comprises a group of authorised security officials in the MO and VS who are tasked with undertaking measures of close personal protection for certain individuals. From this it can be concluded that the level of measures undertaken are not linked to the formation or otherwise of special security entities, instead the undertaking of close personal protection measures for certain individuals is founded on the latest security threat assessments.”<sup>139</sup>

The formation of the “command” is highly problematic for a number of reasons. Firstly, not a single legal act stipulates that the military security services are responsible for the coordination of security and intelligence activities pertaining to the protection of senior state officials. The National Security Council is responsible for coordinating the security services and their operational activities are coordinated by the Bureau for Security Services Work Coordination.<sup>140</sup> In its response to a BCSP questionnaire, the Ministry of Defence did highlight the fact that, according to the Law on the Bases

<sup>137</sup> Baković, B. (2015). Poseban štab u Ministarstvu odbrane za zaštitu Vučića. *Politika*, 30.11.2015. Beograd, Politika novine i magazin.

<sup>138</sup> Interview with a former member of the security services no. 3.

<sup>139</sup> Response by the Ministry of Defence to a BCSP question, No. 508-13119 of 7 October 2019.

<sup>140</sup> See the Law on the Bases Regulating Security Services of the Republic of Serbia (Section III ) and the Regulation on the Provision of Security Protection for Individuals and Objects (*Uredba o određivanju poslova bezbednosne zaštite određenih lica i objekata*), (Official Gazette of the Republic of Serbia, No. 72/2010 and 64/2013), Article 14.

of Regulating Security Services, the Coordination Bureau can form mixed working groups for operative tasks carried out through operative harmonisation of activities and shall define their tasks.<sup>141</sup> However, the problem remains that the military services are not authorised to conduct these tasks beyond the Ministry of Defence and the Armed Forces. At any event, at the time the “command” – i.e. unit for the protection of Aleksandar Vučić – was formed the head of the Coordination Bureau was Vučić himself.

Even before the formation of this “command”, however, the VBA and the Cobras<sup>142</sup> provided close personal protection for the Serbian Prime Minister, Aleksandar Vučić, even though this had no legal underpinning. The reason given for this in public was that the VBA and Cobras protected Vučić while he was Minister of Defence and that he had come to trust the military bodyguards so he kept them on when he became prime minister.<sup>143</sup> The “right” of politicians holding the highest state offices to independently decide who will be responsible for their security was a precedent set during Boris Tadić’s time as President of Serbia from 2004 to 2012. He had also been protected by the VBA and Cobras while he was Minister of Defence of Serbia and Montenegro (2003-2004) and he also “took” them with him. In contrast, when he became president, Tomislav Nikolić decided he would not be protected by the Cobras and instead chose the MUP. It is clear that the holders of the highest state offices independently decide who will be responsible for their security, depending on who they personally trust the most and paying no heed to the security and intelligence system or legal regulations.

Even though this bad practice was in place earlier, the formation of this command is yet another step in the same direction as the VBA and VOA are now the main nerve centre into which security and intelligence data pour and this military “command” has become the main coordinator of security protection provision. The main foundation for this approach lies not, it seems, in the analysis of previous practices and the subsequent adaptation of systems and regulations but in the personal relationships and trust of politicians.<sup>144</sup> For example, when he was Minister of Defence and a high-ranking party official, Bratislav Gašić displayed great loyalty to Aleksandar Vučić when he prevented the Ombudsman from investigating the Ministry of Defence and the VBA in early 2015. The cause of this investigation was the incident at the pride parade when Gendarmerie personnel used excessive force against the brother of the then prime minister, Aleksandar Vučić, and the brother of the then mayor of Belgrade, Siniša Mali,

141 Response by the Ministry of Defence to a BCSP question, No. 508-13119 of 7 October 2019.

142 The Cobras are a special forces battalion of the military police that is directly under the command of the Military Police Department. The Cobras provide close personal protection for holders of the highest offices but also a broader circle of civilians who are not state officials. This practice has for years been criticised by the expert community.

143 Gavrilović, M. (2014). Ko su „Kobre“, Vučićevi telohranitelji. *Politika*, 22.10.2014. Beograd, Politika novine i magazin.

144 Interview with a former member of the security services no. 2.

as well as against their close personal protection team, made up of members of the Cobras.<sup>145</sup> Vučić saw this incident as an attack not only on his brother but on himself and his whole family, hence any attempt by the Ombudsman to carry out checks of why the Cobras were protecting private citizens was seen as an additional attack. “That’s where Gašić and Cvetković showed their mettle. By blocking the Ombudsman’s investigation they showed that they are loyal to Vučić and his family”.<sup>146</sup>

That the formation of the military command for the protection of the then prime minister had no legal nor practical grounding and that this was a case of demonstrating party loyalty and pandering to the party leader is indicated by two later events. The first, in October 2016, almost a year after the formation of the command, a cache of weapons was found near the Vučić family home. The highest state officials, including the Minister of the Interior, expressed grave doubts about the ability of the security services to protect the prime minister.<sup>147</sup> “This makes me suspect that when it comes to the prime minister’s protection, nobody knows who’s doing what...”<sup>148</sup> The second is the appointment of Bratislav Gašić as director of the BIA in 2017, a post he took over from Aleksandar Đorđević, a friend of Aleksandar Vučić from their time at university. It seems that Gašić deserved credits for this post by showing excessive loyalty to Vučić when he had served as Defence Minister.

## Covert Surveillance in Practice

As we have already shown, in order for security services to implement special measures for covert surveillance which significantly restrict the rights of citizens, they must first obtain approval from the relevant court. In practice, however, there are a number of problems with this, which will be explained in detail below. First, according to the latest publically available information, telecoms and internet providers have yet to install equipment that would enable them to maintain indelible records of each instance in which the security services or police covertly accessed communications<sup>149</sup>. It is, therefore, impossible for oversight bodies to determine whether these actors have implemented special measures without the approval of a court. This issue is particularly pronounced when it comes to accessing stored data because this is the measure that

145 For more on this incident see the sections on the Protector of Citizens and the Pride Parade Incident: An Attack on the Vučić Family.

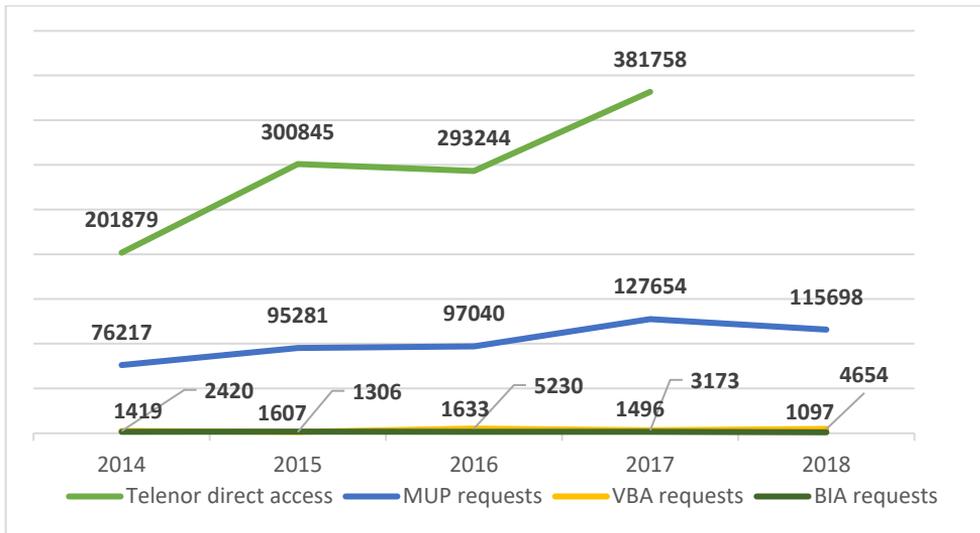
146 Former employee no. 1 at the Ombudsman’s office.

147 Latković, N. (2016). Oruđe u Jajincima-da li su zakazali srpski špijuni? *Blic*, 01.11.2016. Beograd, Ringier Axel Springer d.o.o.

148 Ko to čuva premijera. Beograd, Sputnik, 31.10.2016. internet: <https://rs-lat.sputniknews.com/analize/201610311108676313-premijer-obezbedjenje-bia/>

149 “Devices and program support for legal interception and retention of data and its storage must enable the existence of an indelible record of each instance of access of retained data, that is of each lawful intercept of electronic communications.”, Article 17, Paragraph 3, Rulebook on Requirements and Program Support for the Lawful Interception of Electronic Communications and Technical Requirement for the Fulfilment of the Obligation of Electronic Communications Data Retention, Official Gazette of the Republic of Serbia, 88/2015.

the police and security services use the most and the law allows them to access stored data in two ways: 1) by submitting a request to the operator (which is then recorded) or 2) directly and in real time, without submitting a request.<sup>150</sup> The records maintained by operators are based on requests to access stored data, while real time access remains unrecorded. Even though it is the obligation of all telecommunications operators, until last year only one operator, Telenor, had installed equipment to record the accessing of stored data in real time and they maintained records from 2014 to 2017. In spite of this obligation and the good practice exercised to date, Telenor ceased keeping records in 2018 without explanation. A fact that further raises doubts about the unregulated and growing practice of directly accessing stored data.<sup>151</sup>



Graph 1 Access to Retained Electronic Data in Serbia<sup>152</sup>

An additional issue is the fact that the monitoring centre<sup>153</sup> is located on the premises of the BIA and there it will remain until the conditions are met for its establishment as an independent body.<sup>154</sup> This means that the BIA physically controls the equipment for the activation of a communications intercept and that the police and VBA conduct their covert communications intercepts via the BIA. The BIA, or rather individuals employed therein, have the opportunity not only to gain an insight into the covert operations of the VBA and the police but also to exert (covert) influence over them.<sup>155</sup>

<sup>150</sup> For example, in 2016 the MUP accessed stored data independently in 99% of cases. Petrovic, P. and K. Djokic (2017). *Slippery Slopes of the Reform of Serbian Security Services*. Belgrade, Belgrade Centre for Security Policy, p. 15.

<sup>151</sup> Šarić, M. (2019). Petrovski: Ne znamo koliko je pristupano bazama, operateri ne šalju podatke. *Dan uživo*, 31.10.2019. Beograd, N1.

<sup>152</sup> Pristup bez transparentnosti – praksa zadržavanja podataka u 2018. godini. Beograd, SHARE Fondacija, 29.10.2019.

<sup>153</sup> The Rulebook (Article 2, Paragraph 1, Item 6) defines a monitoring centre as a location that houses devices and program support for communications intercepts.

<sup>154</sup> The Rulebook does not, truth be told, say explicitly that it will become an independent body but it does suggest it in Article 26 by stating that until a provision on the monitoring center is adopted it will remain on the premises of the BIA.

<sup>155</sup> Petrovic, P. and K. Djokic (2017). *Slippery Slopes of the Reform of Serbian Security Services*. Belgrade, Belgrade Centre for Security Policy, p. 16.

### ***Sidebar 3: Maintaining the BIA's Monopoly on Communications Intercepts***

The European Commission has identified the police's dependence on the BIA in implementing these measures as a serious problem. Hence, in the Action Plan for Chapter 24 (AP24), Serbia has committed itself to ensuring the independence of the police from the security services in the area of special evidentiary measures.<sup>156</sup> However, not only has Serbia not fulfilled this obligation in the last five years, it has given up on it completely as the revised version of AP24 defines this general goal as: "Defined jurisdictions and regulations relating to communications intercepts in criminal investigations, as well as jurisdictions and regulations relating to communications intercepts for security purposes."<sup>157</sup> The Serbian authorities have regularly reported to the EU that in Serbia the jurisdictions and regulations relating to interception of communications are clear and that the regulations are harmonised with EU standards (see the introductory section of Chapter 6.2 in the first and revised versions of AP24). Hence, it seems that in terms of the interception of communications the Serbian authorities intend to maintain things as they currently are – that is, they aim to maintain the monopolistic position of the BIA.

For special measures for covert data collection to be needed there must be reasonable grounds for suspicion that constitute a set of indicators – i.e. facts and circumstances – that directly indicate that a person, group or organisation is preparing activities against the security and interests of the state or of society or are preparing to commit a serious criminal offence. Grounds for suspicion is the starting point for investigations conducted by government bodies and must not be mere guesswork or speculation, instead they must carry a degree of probability. The suspicion must be based on at least two indications on specific actors who are possible sources of a security threat or possible perpetrators of a crime.

However, control and oversight institutions and journalists have noted that in implementing covert surveillance measures there are two types of deformation of the principle of grounds for suspicion. Firstly, the security services produce grounds for suspicion by using tabloids and other media in which they have operatives to publish a news story that then represents grounds sufficient for them to launch an investigation and implement measures for covert data collection. "The media controlled by the

<sup>156</sup> Akcioni plan za Poglavlje 24 – Pravda, sloboda, bezbednost (the Action Plan for Chapter 24), Vlada Republike Srbije, 01.03.2016. Beograd, Pregovaračka grupa za poglavlje 24, Vlada Republike Srbije.

<sup>157</sup> The revised Action Plan for Chapter 24: Revidirani Akcioni plan za Poglavlje 24 – Pravda, sloboda, bezbednost. Beograd, Pregovaračka grupa za poglavlje 24, Ministarstvo unutrašnjih poslova.

service or the party, which is these days much the same thing, first launch some lie or half-truth about you, that you hang out with criminals or foreign agents, and then they have cause to legally subject you to measures.”<sup>158</sup> In such cases, the courts grant approval for the use of covert surveillance measures because the formal elements for approval have been complied with. And had the formal elements not been complied with: “when the court is presided over by someone who is friends with the party leader, judicial approval is easy to obtain.”<sup>159</sup>

Another issue is that the grounds for suspicion for threatening national security is sometimes an activity by an individual or group that is normal in a democratic society and that cannot in any way threaten national security. This can be, for example, the organisation of a panel discussion, activity on social media, researching various social and political topics and similar. This irregularity was identified in 2014 by the Ombudsman during checks of the BIA: “Activities that are given as cause for use of special measures (and on the basis of which the courts in fact approve the measures), the Ombudsman considers integral to democratic society and free from any element of illegality.” On the basis of this, he recommended that the BIA, “revise and enhance its interpretation of the term ‘xxxxxxxxxxxxxxx’, and in line with democratic attitudes and the meaning of liberty xxxxxxxxxxxxxxxx, as they are provided and protected by the Constitution of Serbia and ratified international agreements.”<sup>160</sup>

There are four other important issues pertaining to covert surveillance and its possible misuse. First, the measures do not apply only to the person who is directly targeted for surveillance, instead they formally also cover persons who are in regular contact with the main target. This results in the gathering of significant data and information on a person for whom judicial approval for covert surveillance has not been sought. Another serious issue is the fact that covert surveillance and communications intercepts are not conducted only via the telecommunications operator but also via mobile devices that are available to the security services and the police and probably private actors too.<sup>161</sup> In practice this means that the security services can intercept communications covertly and without judicial approval. Even the former President of Serbia, Tomislav Nikolić, expressed suspicions that he was under this kind of surveillance.<sup>162</sup> It is precisely because of their great potential and because of real experience with misuse

<sup>158</sup> Interview with a journalist no. 2 with years of experience covering the courts.

<sup>159</sup> Interview with an employee of the judicial system.

<sup>160</sup> The Ombudsman of Serbia, Izveštaj o kontroli rada Bezbednosno-informativne agencije u primeni mere tajnog nadzora (*Report on Oversight of the Security Information Agency regarding the Use of Covert Surveillance, Special Report*) 614-506/14, p. 5.

<sup>161</sup> For more on some of the ways covert surveillance via mobile devices is conducted, see: RelianceGCS (2019). *Smartphone Surveillance and Tracking Techniques*. [InfoSec Write-ups, 04.03.2019](#). San Francisco, Medium and EFF (2017). *Cell-Site Simulators/ IMSI Catchers*. [Street-level Surveillance, 28.08.2017](#). San Francisco, Electronic Frontier Foundation.

<sup>162</sup> “There, we are sitting here now but out front there is maybe a parked car from which they are listening”. Nikolić: Znam da me prisluškuju RTS, 23.12.2013. Beograd.

of these mobile devices that modes of oversight and control are currently being considered for them in Northern Macedonia.<sup>163</sup>

The third issue is the involvement of private actors in conducting covert operations, including covert surveillance. Viktor Orbán's (undemocratic) regime in neighbouring Hungary used the services of an Israeli private intelligence firm for covert surveillance and attempts to discredit a non-governmental organisation.<sup>164</sup> The fourth issue is a combination of the previous two – when party loyalists are appointed to important positions in services that conduct covert surveillance and operations and issue informal (and illegal) assignments for covert surveillance of opponents of the regime. In so doing, they are not using only the resources of government institutions but they also engage private actors, effectively outsourcing this work to private detective agencies and quasi-NGOs.<sup>165</sup> The numerous cases of covert surveillance, ransacked apartments and threats that have been reported to the authorities by Serbian activists and journalists – but which remain unresolved – only heighten suspicions that this has become a regular occurrence in Serbia.

## Buying Loyalty?

Over the past two decades there has been a trend of increasing budgets for security actors. Thus, relative to their budgets in 2016, the 2019 budgets of the Ministry of Defence and the Ministry of the Interior have seen increases of around 70 and 40 percent, respectively. Over the same period the budget of the BIA has also increased by nearly 40 percent.<sup>166</sup> The problem here is that the public, journalists and National Assembly deputies do not know what these funds will be spent on. It is no longer possible to see even the most basic budget categories for the security services as the budget of the BIA has been shown only in aggregate as a total amount since 2015 and the budgets of the VBA and VOA have been completely merged into the budget of the Ministry of Defence since 2014 and are not even shown as totals.

Therefore, in addition to concern about the numerous cases of secret tailing, surveillance and intimidation of journalists and activists by what are suspected to be members of the security services, certain elements of the public, the press and of elected representatives have also expressed concerns that the increased budget

163 Magdalena Lembovska, Centre for European Strategies – EUROTHINK, at a workshop on security service reform in Northern Macedonia, Montenegro and Serbia, held on 3 June 2019.

164 Bayer, L. (2019). Israeli intelligence firm targeted NGOs during Hungary's election campaign. Brussels, POLITICO, 04.09.2019. internet: <https://www.politico.eu/article/viktor-orban-israeli-intelligence-firm-targeted-ngos-during-hungarys-election-campaign-george-soros/>

165 On the basis of publically available information, this is precisely what was happening in the MUP and police, where one of the main heavy hitters was Dijana Hrkaločić. For more on this see the section on the DB-isation of the Police.

166 Budgets are available at the Parliament's web pages: <http://www.parlament.gov.rs/akti/doneti-zakoni/u-sazivu-od-16-%D0%B0prila-2014.3411.html> and <http://www.parlament.gov.rs/akti/doneti-zakoni/doneti-zakoni.1033.html>

of the BIA will serve to enliven and strengthen its role as a political police force – especially through the appointment of new personnel loyal to the ruling party. These suspicions are further strengthened by the party political appointments in the BIA, amendments to legislation regulating the agency, which gives its director, Bratislav Gašić, greater discretionary powers and the public appearances of high-ranking BIA official, Marko Parezanović.<sup>167</sup>

Year	BIA Budget	Increase relative to 2016	Increase relative to previous year
2020.	6.632.277.000 RSD ~56.457.922 EUR	2020 increase relative to 2016 = <b>46%</b>	2020 increase relative to 2019 = 6%
2019.	6.268.995.000 RSD ~53.127.076 EUR	2019 increase relative to 2016 = <b>38%</b>	2019 increase relative to 2018 = 18%
2018.	5.305.654.000 RSD ~44.860.143 EUR	22018 increase relative to 2016 = <b>17%</b>	22018 increase relative to 2017 = 15%
2017.	4.625.112.000 RSD ~38.118.217 EUR	2017 increase relative to 2016 = <b>2%</b>	2017 increase relative to 2016 = 2%Q
2016.	4.519.958.000 RSD ~36.712.704 EUR	-/-	-/-

*Table 1 Overview of the BIA budget (increase) 2016-2020*

	Ministry of Defence Budget (dinars)	MUP Budget (dinars)
2019.	95.058.946.000	85.290.535.000
2018.	70.484.263.000	74.923.801.000
2017.	58.867.536.000	66.010.857.000
2016.	55.788.602.000	61.739.377.000

*Table 2 Overview of the MoD and Mol budget (increase) 2016-2019*

In addition to this sudden increase in spending on security sector actors the authorities have decided to build housing in cities across Serbia that armed forces, security service and police personnel can purchase at significantly reduced rates. This homebuilding was enshrined in law in late May 2018 when the National Assembly adopted the Law on Special Conditions for Realisation of Project Housing Construction for Members of the Security Forces<sup>168</sup>, which stipulates that the price of these homes should not exceed 500 euros per square metre. According to civil engineers this price is not realistic.

<sup>167</sup> For more on this, see the sections: Party Patronage and The BIA Fighting an Internal Enemy of the State.

<sup>168</sup> Law on Special Conditions for Realization of Project Housing Construction for Members of the Security Forces, Official Gazette of the Republic of Serbia, no. 41, 31 May 2018.

In other words, the price of 500 euros per square metre is realistic only if some of the costs of construction are written off, signed over to the national or local budgets or covered by the investors themselves.<sup>169</sup> Representatives of the Government of Serbia have stated that 8,022 homes will be built for security forces personnel in 2019 and 2020 for a total cost of 325 million euros.<sup>170</sup> By looking at the national budget for 2019 we found that around 31 million euros was allocated to a category entitled, “construction of housing for armed forces personnel”.

“Serbia is being faced with mass outflow of construction workers both high and low qualified. It is very hard to believe that any investor would want to engage (scarce) workforce in a projects that yield zero or minimal profit. That is only possible if he is granted by the government with some big and lucrative jobs where high profits would pay off engagement in building homes without profit. Anyway, these both high and low (nonmarket) prices are payed by citizens themselves in the end as they are to repay loans taken by the government.”<sup>171</sup>

Of course, the question that promptly arises is why apartments at such low prices are intended for and offered only to security services, military and police personnel and not to government employees in other sectors whose work more immediately impacts the lives and health of ordinary citizens. According to estimates by the Serbian Medical Chamber, around 300 mostly experienced doctors emigrate from Serbia in search of better living conditions and work environments.<sup>172</sup> The reasons for the preferential treatment for security forces personnel could not even be discussed publically because, according to the Law’s proponent, the draft bill itself contains information of the interests of the Republic of Serbia that could potentially pose a threat to national or public security or for security and intelligence affairs were they to be revealed.<sup>173</sup>

It is possible that the Serbia’s political leadership are doling out preferential treatment to security sector personnel in order to try to ensure their loyalty at all costs. Because, “[a] dissatisfied doctor can easily find work on the side and they can now even leave for Germany. This does not affect the government directly. Things are significantly different and more difficult for security sector personnel. A dissatisfied security sector

169 Stevanović, V. (2019). Grade se stanovi za bezbednjake, mogu li i ostali da računaju na te povlastice. [N1 info, 08.02.2019](#). Beograd.

170 Više od 8.000 stanova za pripadnike snaga bezbednosti. [Vlada Republike Srbije, 23.07.2019](#). Beograd. Internet: <https://www.srbija.gov.rs/vest/399855/vise-od-8000-stanova-za-pripadnike-snaga-bezbednosti.php>

171 “Even if these cheap homes were built, I would never live in them as they would be of very low quality and as such ‘bottomless pit.’” Interview with civil engineer no. 1. Serbia is facing serious deficit of construction workers and as a consequence workforce is even imported from Moldova, Ukraine, Turkey... which only put additional financial burden to investors as they have to cover accommodation, meals etc. for them. Stevanović, M. (2019). Manjak radnika zaustavlja nove investicije. [Danas, 17.11.2019](#). Beograd, Dnevni list Danas.

172 Petrović, I. (2017). Egzodus lekara iz Srbije? Deutsche Welle. 06.12.2017. Bonn, internet: <https://p.dw.com/p/2ojf3>

173 O Zakonu o posebnim uslovima za realizaciju projekta izgradnje stanova za pripadnike snaga bezbednosti. Otvoreni parlament. Beograd, CRTA, internet: <https://otvoreniparlament.rs/akt/3638>

employee is dangerous for the government.”<sup>174</sup> This is borne out also by the experience of the Milošević regime: “Milošević fell at that moment when the security services ceased to be loyal. Vučić is trying to avoid the same outcome at all costs.”<sup>175</sup>

Two further facts indicate that the increased budgets of security services and the construction of low-cost housing for their personnel are indeed part of a “party-led project”. Firstly, both approaches resulted from decisions reached independently by the Defence Minister, Aleksandar Vulin, the BIA director, Bratislav Gašić, and the Minister of the Interior, Nebojša Stefanović, at a meeting held in September 2017. Of course, with the prior approval of the President of Serbia, Aleksandar Vučić.<sup>176</sup> The issue here is that neither the Government, led by the newly appointed Prime Minister, Ana Brnabić, nor the Ministry of Finance, then headed by Dušan Vujović, participated in the decision-making. Instead, the decision was made at liberty the leaders of the security apparatus who were, what is more, members and founders of the SNS. “If the Government existed, could two ministers and the chief of the BIA [...] dictate whether salaries in their jurisdictions would be increased and by how much? Would it be possible for the Prime Minister and the Finance Minister to be left out of this ‘approach supported by the President’?”<sup>177</sup>

These policies later became part of the ruling party’s self-promotion. The construction of the first apartments was launched with the ceremonial laying of the foundation stone in Vranje and Niš as part of the Future of Serbia campaign, led by the SNS and the President of Serbia, Aleksandar Vučić<sup>178</sup>, and which ended with a major political rally by SNS supporters in Belgrade.<sup>179</sup>

Finally, the director of the BIA, Bratislav Gašić, has repeatedly and publically thanked President Vučić, “because through his personal involvement he has contributed enormously to the strengthening of the Agency’s capacities”.<sup>180</sup> Similar statements were made by high-ranking BIA official, Marko Parezanović, at a conference organised by National Vanguard.<sup>181</sup> It is not evident what constitutional or legal powers the

174 Interview with former security service officer no. 1.

175 Interview with former security service officer no. 2.

176 Zaposlenima u MUP, BIA i odbrani 10 odsto veće plate. *Politika*. 06.09.2017. Beograd, Politika novine i magazini d.o.o. internet: <http://www.politika.rs/sr/clanak/388342/Zaposlenima-u-MUP-BIA-i-Odbrani-10-odsto-vece-plate>

177 Marković, R. (2017). Povećanje plata i penzija - Negde u zemlji snova. *Vreme*. br. 1393. 14.09.2017. Beograd.

178 According to the President, the goal of the campaign was to inform the public of all that had been achieved in the past year and what will be achieved in the year to come: Vučić: U kampanji ‘Budućnost Srbije’ obići ću svih 29 okruga naše zemlje - Želim da čujem šta narod želi! *Pink vesti*. 08.02.2019. Beograd, Pink. <http://pink.rs/vesti/114041/vucic-u-kampanji-buducnost-srbije-obicu-cu-svih-29-okruga-nase-zemlje-zelim-da-cujem-sta-narod-zeli>

179 Miting “Budućnost Srbije” u Beogradu završen govorom Vučića i specijalnom pesmom. *N1 info*. 19.04.2019. Beograd, N1.

180 Gasic, B. (2018). The speech of the Director of the Security - Information Agency, Mr. Bratislav Gašić at the Agency Anniversary, 17.10.2018. Belgrade, Security-information Agency, internet: [https://bia.gov.rs/sites/default/files/2019-11/govor\\_direktora\\_oktobar\\_2018.pdf](https://bia.gov.rs/sites/default/files/2019-11/govor_direktora_oktobar_2018.pdf)

181 Parezanovic, M. (2018). Prvi panel konferencije “Ka bezbednosj Srbiji”. 05.10.2018. Beograd, Nacionalna avangarda. internet: <https://www.youtube.com/watch?v=yDAGqJCwXVs&t=2549s>

President of the Republic was able to use to contribute to the strengthening of the Agency's capacities.

## Oversight of Security Services in Freefall

Thus far, one of the most important achievements of security service reform has been the legal regulation and introduction of various mechanisms of democratic control and oversight of these services. At present we have, nominally at least, very extensive external control of the security services comprising the National Assembly with its Security Services Control Committee and independent government institutions, principally among them: the Ombudsman; the Commissioner for Information of Public Importance and Personal Data Protection; the State Audit Institution; and also the media and expert communities. Additionally, mechanisms of internal oversight have also been put in place.<sup>182</sup>

In the years since their establishment a number of these institutions and bodies have succeeded – in spite of obstruction and resistance by the executive branch and through the great efforts and endeavours of those who led and worked in them – in building their capacities and resources for effective control and oversight of the security services. Some of them, such as the Ombudsman, have managed to ensure that their oversight of the security services has become an example of best practice not only in the Balkans but even in Europe more broadly.<sup>183</sup> Even the National Assembly's Security Services Control Committee was well on its way to being comparatively successful.

Over the past few years, however, there has not only been a sharp decline in terms of how external oversight and control are conducted but also a deterioration of the external oversight institutions themselves and their capacity to perform their primary functions. In searching for the causes of these detrimental trends one need look no further than the rapid increase in the dominance of the ruling SNS party since it came to power and consolidated its position, nor the strengthening of the personal power of its leader, Aleksandar Vučić, in the party itself. As has already been mentioned, this became particularly pronounced after the snap election held in the spring of 2014, when the SNS doubled its seats in parliament but the critical event that triggered the sudden deterioration of external oversight occurred at the pride parade in September 2014. This is because the incident was seen as an attack on Vučić's family and he came to see any attempt to re-examine systematic deficiencies within the security

<sup>182</sup> For more on this see: Petrovic, P. (2016). Serbia: An Awkward Legacy. *The Handbook of European Intelligence Cultures*. B. Graaff and J. Nyce. Lanham, Rowman & Littlefield: 321-334.

<sup>183</sup> For more on the powers and jurisdiction of the Ombudsman's office and the achievements of this institution in controlling and overseeing the security services, see: Glušac, L. (2018). "National Human Rights Institutions and Oversight of the Security Services." *Journal of Human Rights Practice* 10(1): 58-82.

sector or any individual failures to adhere to standard operating procedures as an attack on his family.

## Parliamentary Oversight

### *A Legacy of Good Practice*

The power of the National Assembly to conduct security services oversight is founded in the Constitution of the Republic of Serbia (Article 99, paragraph 1, item 6). As in other democratic countries, the central role in this oversight is held by a special committee: the Security Services Control Committee. The most significant act regulating the role of this oversight committee is the Law on the Bases Regulating Security Services of the Republic of Serbia (Article 16). The law gives the Committee significant powers to oversee the security and intelligence services. Members of the Committee can, among other things, interview the directors of the services, conduct direct oversight of the services and they have the power to, having been previously granted clearance, access classified documents.<sup>184</sup> In addition to this, in order to gain an overview of a particular area and to establish facts about certain phenomena or events, the National Assembly also has the power to form temporary working bodies (inquiry committees or commissions), as well as to organise public hearings. Similarly, the Committee may set up a subcommittee or form a working group.<sup>185</sup>

In addition to robust legal powers, the Committee has been granted other practical provisions that make it possible for it to do its work. For example, the conditions and procedures necessary for the handling of classified information have been put in place, including a sensitive compartmented information facility. Also, consensus has been reached by members of the Committee on the need for and manner of controlling the security services and that this matter should not be politicised – which resulted in a number of Committee sessions being closed to the public. Numerous international institutions and organisations have worked for many years to train National Assembly deputies and parliamentary services on how to exercise effective oversight of the security sector. All of this has prompted the Committee chairs to exert additional personal efforts to ensure that the Committee achieves practical results in oversight of the services.<sup>186</sup> This is why since 2012 the Committee has recorded a constant

<sup>184</sup> For more on the jurisdiction and powers of the Ombudsman, as well as the scope of this institution in controlling and overseeing the security services, see: Glušac, L. (2018), "National Human Rights Institutions and Oversight of the Security Services", *Journal of Human Rights Practice*, 10 (1): 58-82.

<sup>185</sup> For more on this, see: Hadžić, M., Ed. (2012). *Skupštinska kontrola i nadzor sektora bezbednosti*. Beograd, Misija OEBS u Srbiji i Beogradski centar za bezbednosnu politiku, str. 55-159.

<sup>186</sup> For more on this, see: Đokić, K. and V. Erceg (2014). (2014). *Parliamentary Oversight and Integrity Building in Security Institutions*. Belgrade, BCSP.

growth in its activities and has also initiated the practice of on-site visits and checks of the security services. In order to exchange knowledge and experience on security service control, the Committee has established collaborative links with independent state institutions. The so-called Belgrade Declaration was adopted in Belgrade, defining international standards on the relationship between the institutions of parliament and ombudsmen – this was done in a very meaningful and specific manner and continues to be a model for other countries around the world.<sup>187</sup> In early 2014 it looked as though external oversight of the security services was completely sewn up.<sup>188</sup>

### *Towards a Committee for Stifling Opposition*

After the incident at the pride parade in late September 2014, however, things changed drastically. The Ombudsman launched an inspection of the institutions involved in that incident and identified a number of systemic shortcomings, as well as specific failures in the operations of security actors. Instead of using the Ombudsman's findings to initiate changes to regulations and to establish who was responsible for the incident, at a session held in January 2015 the Committee virtually "interrogated" the Ombudsman seeking to establish his responsibility for launching control procedures as a result of the incident.<sup>189</sup> Pro-government tabloids simultaneously launched an intensive and negative media campaign against the Ombudsman, Saša Janković.<sup>190</sup> The *Odbrana* journal, published by the Ministry of Defence, also joined in with this campaign and its issue no. 226 ran the headline "Army in the Crosshairs: Ombudsman vs. Protector" ("Vojska na nišanu: Zaštitnik protiv Zaštitnika") on a cover that pictured a multiple rocket launcher firing.

The Committee has since then recorded a drop in its activities that have been reduced to deliberating on (regular) reports from the security services and "control" visits to the services and their regional centres that, as a rule, always confirm that the services are "acting in accordance with the law". This in spite of numerous controversies in which the services have either been identified as participants or are suspected of participating. These scandals have not been sufficient for the National Assembly to organise public hearings or even inquiry committees or commissions. According to an interviewee with knowledge of how the Committee functions, the control visits to the services have come to be little more than sightseeing trips.

187 Glušac, L. (2018), "National Human Rights Institutions and Oversight of the Security Services", *Journal of Human Rights Practice* 10 (1): 58-82.

188 Đokić, K. and V. Erceg (2014). (2014). *Parliamentary Oversight and Integrity Building in Security Institutions*. Belgrade, BCSP.

189 A video recording of this session is available at: Narodna skupština Republike Srbije, Trinaesta sednica Odbora za kontolu službi bezbednosti (*National Assembly of the Republic of Serbia, Thirteenth Session of the Security Services Control Committee*).

190 See, for example: "I ZAŠTITNIK GRAĐANA IZAZIVA HAOS U SRBIJI! Janković nam uvaljuje patku, a mi ga plaćamo 376.648 din!" ("OMBUDSMAN ALSO CAUSING CHAOS IN SERBIA! Janković is scamming us and we're paying him 376,648 din!"), *Informer*, 15.07.2016: <http://informer.rs/vesti/politika/81714/-ZASTITNIK-GRADJANA-IZAZIVA-HAOS-SRBIJI-Jankovic-nam-uvaljuje-patku-placamo-din>

The drop in the Committee's liveliness has also been influenced by the 2015 estrangement between the leader of the SNS party, Aleksandar Vučić, and the Chair of the Committee, Momir Stojanović, then a member of the SNS and the former head of military security. A consequence of this was that following the 2016 election, Igor Bečić was appointed to chair the committee, despite having no prior experience of security sector oversight – though he did have the advantage of being a loyal party soldier. Since then it has also been noted that fewer and fewer of the Committee's members participate in its activities, which is in stark contrast to how the Security Services Control Committee operated in 2012, a time when it was a good example of National Assembly deputies engaging in security sector oversight.<sup>191</sup> Moreover, the majority of the Committee's active members are (or were) from the ruling SNS party and lacked the will to genuinely oversee the security services. Part of the reason for the passivity of the Committee can be found in the fact that even over three years into its current term none of its members (9) or their deputies (9) have received security clearance<sup>192</sup> and so could not attend sessions at which classified information was revealed.

Another, more significant element of the explanation for the rapid decline in the Committee's activity and effectiveness can be found in the trend of the ruling SNS party undermining the functioning of the parliament as a whole. Seeking to reduce the opposition's room for manoeuvre and thus their public visibility<sup>193</sup>, the SNS have resorted to various strategies such as, for example, submitting a large volume of bills under urgent procedures and then submitting hundreds of amendments to these bills or placing the deliberation of various laws on the agenda and then changing the agenda at the last minute. It has become almost impossible to discuss even the "most important law", the Law on the Budget (which has, over the past three years, seen increasing spending on the security sector). The Committee adopted amendments to the Law on the BIA in just ten minutes, even though 40 amendments were tabled, all of which were rejected.<sup>194</sup>

### ***Towards a Committee for Public Support of Party Officials***

In the past year the Committee has indeed become a body for publically expressing support for the leadership of the governing coalition and especially for the leader of the ruling party, Aleksandar Vučić. This can be seen from statements issued after some Committee sessions – for example: "We offer our full support to the President

191 Đokić, K. and V. Erceg (2014). (2014). *Parliamentary Oversight and Integrity Building in Security Institutions*. Belgrade, BCSP.

192 Some of the committee members declined to sign the request for security clearance while the rest did so but have yet to receive a response even now, over three years later: Zagrađanin kontroliše službe, a nije prošao procenu BIA! Nadležni tri i po godine odbijaju da se izjasne da li je bezbednosno siguran! KURIR. 04.10.2019. Beograd, internet: <https://www.kurir.rs/vesti/politika/3333869/zagradjanin-kontrolise-sluzbe-a-nije-prosao-procenu-bia-nadlezni-tri-i-po-godine-odbijaju-da-se-izjasne-da-li-je-bezbednosno-siguran>

193 The state-run Radio Television of Serbia broadcasts sessions of the National Assembly live and internet users can follow the sessions live on the National Assembly website, where the recordings are also stored.

194 20. sednica Odbora za kontrolu službi bezbednosti. 03.05.2018. godine. Beograd, Narodna skupština Republike Srbije. (*National Assembly of the Republic of Serbia, Twentieth Session of the Security Services Control Committee*), [http://www.parlament.gov.rs/20\\_sednica\\_Odbora\\_za\\_kontrolu\\_sluzbi\\_bezbednosti\\_33886.941.html](http://www.parlament.gov.rs/20_sednica_Odbora_za_kontrolu_sluzbi_bezbednosti_33886.941.html)

of the Republic, Aleksandar Vučić, and the Government of Serbia in their efforts...”<sup>195</sup> It is interesting to note that these statements do not also name the Serbian Prime Minister, Ana Brnabić.

In addition to this, the Committee has also awarded plaques for outstanding contributions to the development and strengthening of security sector capacities and civilian oversight of the security services to the Minister of the Interior, Nebojša Stefanović<sup>196</sup>, the then State Secretary for the MUP, Dijana Hrkaločić<sup>197</sup>, the Director of the Police, Vladimir Rebić<sup>198</sup>, and the Minister of Defence, Aleksandar Vulin<sup>199</sup>. Even if these holders of high office in the MUP, the police, the MO and the VS had really made remarkable contributions, it is the Defence and Internal Affairs Committee that is responsible for monitoring these security institutions and not the Security Services Control Committee. It is not known whether the latter committee has dealt with public and military security during its sessions.

Hence, it should come as no surprise that the majority of the opposition decided to boycott the National Assembly in late 2018.

## The Protector of Citizens

### *A Legacy of Good Practice*

The Ombudsman of Serbia (also known as the Protector of Citizens) is a state institution that has in its relatively short existence managed to achieve the most significant results in control and oversight of the security services and it has done this in spite of numerous obstacles and obstructions continually imposed upon it by the executive branch.<sup>200</sup> From the very beginning of its time under the leadership of

<sup>195</sup> See for example: *Nineteenth and Twenty Eight Session of the Security Services Control Committee* [http://www.parlament.gov.rs/19\\_sednica\\_Odbor\\_za\\_kontrolu\\_slu%C5%BEbi\\_bezbednosti.33669.941.html](http://www.parlament.gov.rs/19_sednica_Odbor_za_kontrolu_slu%C5%BEbi_bezbednosti.33669.941.html) [http://www.parlament.gov.rs/28\\_sednica\\_Odbora\\_za\\_kontrolu\\_slu%C5%BEbi\\_bezbednosti.36530.941.html](http://www.parlament.gov.rs/28_sednica_Odbora_za_kontrolu_slu%C5%BEbi_bezbednosti.36530.941.html)

<sup>196</sup> The whistleblower, Aleksandar Obradović, has revealed documents that indicate a conflict of interests for Stefanović and his possible involvement in (political) corruption in an arms dealing case where a company represented by his father purchased ammunition from the state-owned Krušik arms manufacturer at rates below the market prices for these goods: Cvijić, V. (2019). *U ime oca i sina - Poslovne, porodične i partijske veze trgovaca oružjem*. NIN. broj 3593. 07.11.2019. Beograd, Ringier Axel Springer.

<sup>197</sup> Numerous suggestions of wrongdoing have been linked to Dijana Hrkaločić over the years, such as her links with criminal and hooligan groups, her politicisation of the police and her attempts to illegitimately corrupt election processes: Djurkovic, S., Ed. (2019). *Preugovor Alarm – Report on Progress of Serbia in Chapters 23 And 24 September 2019*. September 2019. Belgrade, prEUgovor. Internet:

<http://preugovor.org/upload/document/preugovor-20191017-alarm-sr-web.pdf>

<sup>198</sup> The MUP statement issued on the occasion of the awarding of the plaque states, “They discussed the results achieved by the police, which were recently presented to the relevant parliamentary committee, highlighting that through its efforts the police have significantly improved their results, which has led to greater security for the citizens of Serbia.” Skupštinski odbor dodelio nagrade Stefanoviću, Hrkaločić i Rebiću. N1 info. 08.04.2019. Beograd, N1. internet: <http://rs.n1info.com/Vesti/a474581/Skupstinski-odbor-dodelio-nagrade-Stefanovicu-Hrkalovic-i-Rebicu.html>

<sup>199</sup> Ministru Vulinu uručena Plaketa skupštinskog Odbora za bezbednost. *Ministarstvo odbrane Republike Srbije*. 19.07.2019. Beograd, internet: <http://www.mod.gov.rs/lat/14197/ministru-vulinu-urucena-plaketa-skupstinskog-odbora-za-bezbednost-14197>

<sup>200</sup> See, for example, the European Commission Progress Report for Serbia: [http://bit.ly/EC\\_Rep\\_2010](http://bit.ly/EC_Rep_2010)

Saša Janković (2007-2017) it has carried out numerous activities pertaining to the oversight and control of the security services. On these occasions the Ombudsman used the full breadth of his jurisdiction, powers and mechanisms for oversight and control. For example, this institution has suggested amendments to the laws that govern the security services<sup>201</sup>; submitted a suggestion for an assessment of the constitutionality of these laws by the Constitutional Court;<sup>202</sup> acted on complaints from citizens and security service personnel; and has both proactively<sup>203</sup> and reactively<sup>204</sup> initiated checks of the security services. The Ombudsman's regular and special reports have been a significant source of information on the security services. The latter are particularly significant because, due to their detailed and systematic nature, they are a kind of security services oversight guidebook. Based on the findings and experience of performing checks of the security services the Ombudsman has, together with the Commissioner for Information of Public Importance and Personal Data Protection, compiled a list of 14 recommendations for systematic enhancement of the security and intelligence sector in Serbia.<sup>205</sup> The Ombudsman has, as a last resort, also made use of the legal authority to publically recommend the removal of some of the highest state functionaries.

### ***Pride Parade Incident: An Attack on the Vučić Family***

Although no administration of the executive branch has ever had a favourable attitude towards the Ombudsman and his determination to use his authority and powers to their fullest extent, a significant deterioration in relations between these two institutions followed in the wake of the pride parade, which was held in Belgrade on 28 September 2014. During the parade personnel from the Gendarmerie<sup>206</sup> used excessive physical force against persons who tried to pass through an area they were securing. The issue here is that the persons in question were Andrej Vučić, the brother of the then prime

201 For example, after just a couple of months in office, the Ombudsman suggested that the National Assembly adopt an amendment to the Draft Law on the Bases Regulating Security Services of Serbia, which stipulates that the security services are under democratic and civilian control.

202 Together with the Commissioner for Information of Public Importance and Personal Data Protection, the Ombudsman has, for example, submitted a suggestion for an assessment of the constitutionality of the elements of the Law on the VBA and VOA and the Criminal Procedure Code that regulate the approval of covert surveillance of communications.

203 The Ombudsman is the first institution to conduct checks on whether the BIA is intercepting communications legally. The report, including recommendations, is available in English at: [https://www.ombudsman.org.rs/attachments/088\\_Report%20on%20the%20Preventive%20Control%20Visit.pdf](https://www.ombudsman.org.rs/attachments/088_Report%20on%20the%20Preventive%20Control%20Visit.pdf)

204 E.g. the Ombudsman conducted checks on whether and how the BIA executes covert searches of premises – the checks were motivated by the then Prime Minister, Aleksandar Vučić, stating at a press conference that the BIA had conducted a search of the apartment of drug lord, Darko Šarić. The report of the checks is available in English at: [https://www.ombudsman.org.rs/attachments/article/133/2014\\_Report%20on%20oversight%20of%20the%20Security%20Information%20Agency%20regarding%20the%20Use%20of%20Covert%20Surveillance.pdf](https://www.ombudsman.org.rs/attachments/article/133/2014_Report%20on%20oversight%20of%20the%20Security%20Information%20Agency%20regarding%20the%20Use%20of%20Covert%20Surveillance.pdf)

205 The package of 14 reforms is available on the website of the Ombudsman: [http://bit.ly/14\\_Mera\\_Sluzbe](http://bit.ly/14_Mera_Sluzbe)

206 The Gendarmerie (*Žandarmerija*) is a special police unit under the Police Directorate. The unit's officers are trained and equipped to perform assignments different to more traditional policing, including tasks that involve military-style activities, measures and operations. More on the unit can be found on the MUP website: <http://bit.ly/zandarmerija>

minister and now president of Serbia and leader of the SNS, Aleksandar Vučić, and Predrag Mail, the brother of Siniša Mali, who was the mayor of Belgrade at the time and is now the Minister of Finance.<sup>207</sup> The two men were accompanied by a security detail of the Cobras (Kobre), a special purposes battalion of the military police. According to some sources, the officers of the Gendarmerie used coercive means, including physical force, against the Cobras personnel and the two men they were protecting because the Cobras personnel refused to provide identification and behaved aggressively towards the Gendarmes.<sup>208</sup> After the incident, personnel of the VBA began investigating the case, before the BIA and the police and without cooperating with them, by collecting statements from civilians (both individuals and legal entities), which they are not authorised to do. In doing so, VBA personnel failed to correctly identify themselves or to turn the gathered evidence over to the relevant prosecutor's office.

The incident raises a number of questions: Why were members of the Cobras unit securing persons who were neither affiliated with the Ministry of Defence or the Serbian Armed Forces nor held positions in government? Who assigned the Cobras to the protection of these persons and on the basis of which regulations?<sup>209</sup> Why have members of a military unit and not the police been providing close personal protection for civilians for many years? Why is the VBA independently collecting information from civilians? Why were the Gendarmerie officers not informed of the presence and routes of travel of the Cobras? Did the members of the Cobras act professionally and in accordance with their standard operating procedures? Why did the Gendarmes resort to coercive physical force so quickly<sup>210</sup>? In fact, these questions indicate that the incident occurred due to systemic shortcomings in the security sector that have been neglected for years: weak coordination between security actors, as well as improper and unlawful conduct by individual members of the Gendarmerie, the Cobras and, later, the VBA.

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207 Investigative journalists have uncovered a slew of data and information that indicate that Siniša Mali has been involved in various activities that could be understood as money laundering. More on this can be found on the KRIK website: <https://www.krik.rs/mali-ministar-finansija-uprkos-afetama/>

208 Information reached the public that, in response to being asked to produce identification, Andrej Vučić grabbed the body armour of one of the gendarmes and threatened to "dissolve" the unit, as well as asking, "do you know who I am?": asić, M. (2014). Slučaj Braće Vučić - Parada, policija i posledice. VREME. Broj 1239. 02.10.2014. Beograd, internet: <https://www.vreme.com/cms/view.php?id=1232295>

209 Later amendments to the Law on the Serbian Armed Forces in 2018 stipulate that the Military Police can secure certain persons and provide antiterrorist protection beyond the Ministry of Defence and Armed Forces of Serbia on the sole decision of the Minister of Defence. Đokić, K. (2017). *Comments on the Draft Law on Amendments and Supplements to the Law on Defence and the Draft Law on Amendments and Supplements to the Law on Serbian Armed Forces*. Belgrade, Belgrade Centre for Security Policy. <http://www.bezbednost.org/All-publications/6714/Comments-on-the-Draft-Law-on-Amendments-and-shtml>

210 Some experts have called into question the Gendarmerie's ability to maintain order public gatherings due to a number of incidents in which they have used disproportionate force against members of the public: Glavonjić, Z. (2014). Zašto je žandarmerija pretukla Andreja Vuliča? *Radio Slobodna Evropa*. 30.09.2014. Beograd, RSE. internet: <https://www.slobodnaevropa.org/a/istraga-zasto-je-zandarmerija-pretukla-andreja-vucica/26613923.html>

The Ombudsman sought to identify all of these systemic and individual shortcomings and failings but his efforts were interpreted as “hostile” because the then Prime Minister, Aleksandar Vučić, saw the incident as an attack not only against his brother but as one affecting his whole family. As a result, any attempt to investigate irregularities in the conduct of his brother’s security detail was understood as a continuation of attacks on the Vučić family. Consequently, the then Minister of Defence and current director of the BIA prevented the Ombudsman’s inquiry into the MO and BIA, leading to the Ombudsman publically calling for Bratislav Gašić and Petar Cvetković to be relieved of their duties.<sup>211</sup> During the whole affair Aleksandar Vučić and SNS officials orchestrated an intensive media campaign against the Ombudsman, Saša Janković, who they saw as the main threat to their grasp on power, removing all legal “checks and balances” – i.e. control and oversight mechanisms.

### *A New Ombudsman and the Dismantling of Oversight*

The 2017 appointment of Zoran Pašalić as the new Protector of Citizens has had a very detrimental effect on control and oversight of the security services for a number of reasons. Firstly, in contrast to Saša Janković, the new Ombudsman does not possess the knowhow and skills to oversee the security services. This is important as Article 38 of the Data Secrecy Law stipulates that access to the most highly classified information<sup>212</sup> is granted only to the heads of government bodies appointed by the National Assembly who have been subjected to the proper security checks. As the Ombudsman’s office is an independent institution and only the Ombudsman and the Deputy Ombudsman are appointed by the National Assembly, this provision suggests that only they have the right to access documents marked “top secret”. In addition, only Saša Janković was motivated and had the will to exercise oversight of the security services, which meant in practice that Saša Janković personally conducted the most sensitive aspects of oversight, without his team of experts who had access only to less sensitive data.<sup>213</sup> This did not, however, represent an insurmountable obstacle to the new Ombudsman, Zoran Pašalić, from being sufficiently motivated to exercise oversight of the legality and propriety of the activities of the security services. The new Ombudsman would have tried to retain and further encourage the employees who had acquired the relevant knowledge and in so doing bridge that knowledge and skills gap, if he had been interested.

<sup>211</sup> Recommendations could be found at the Ombudsperson Annual Report for 2015 in English at: <https://www.ombudsman.org.rs/attachments/article/132/Annual%20Report%202015.pdf>

<sup>212</sup> This includes information on: ongoing criminal investigations; the means of implementing covert data collection measures in a given case; and security service and police personnel with concealed identities. Government bodies and the National Assembly appointed heads thereof do not need prior security clearance in order to access information classified as “secret” or “restricted”, if this information is necessary for them to preform tasks within their purview.

<sup>213</sup> Interview with a former employee no. 2 of the Ombudsman’s Office.

The new Ombudsman's lack of will to work on oversight of the security services is evident from his reaction to the case of (unlawful) covert surveillance of Stevan Dojčinović and the leaking of the gathered information to the tabloids. Following a note of urgency sent to the BIA by the Ombudsman in late 2018, there seems to have been no further interest in the case and, almost one year later, it remains unresolved. The Ombudsman's predecessor handled more complex cases much more expediently. The likelihood that this case will be resolved is rapidly diminishing as many of those working on oversight of the security services have left the institution. Not only are the knowledge and skills of those working at the Ombudsman's office in question, it is also not clear how many of the employees even have security clearance certificates. "When Pašalić arrived we had our security clearance certificates taken away from us and placed in a safe. We even got receipts for them."<sup>214</sup> From 2017 to October 2019, the number of certificates issued to employees of this institution for the purposes of accessing documents marked "top secret" and "secret" was one of each,<sup>215</sup> while there was at the same time an outflow of experienced employees with security clearance certificates. Additionally, employees with security clearance showed an aversion to taking on cases that require access to classified documents, particularly those emanating from the security services.<sup>216</sup>

The manner in which the institution of the Ombudsman is being undermined is also evident from the fact that deputy ombudsmen are not appointed to replace those whose term in office has expired and, at the time of writing (October 2019) there are no deputy ombudsmen currently serving. At the same time, the number of assistants to the secretary general to the ombudsman has increased and there are now eight such positions. All of the assistants to the secretary general are there on a caretaker status, which fits with the general trend of the "caretaker-isation" of government that started under SNS rule. "Pašalić has no deputy ombudsmen but he does have assistants who are there on interim contracts, which is how he controls them. They now cover certain narrower aspects of the work, in place of the deputies. It wasn't like that before, this was brought in with a reorganisation of the workplace."<sup>217</sup> The BCSP asked the Ombudsman why all assistants to the secretary general are on interim contracts but, instead of a clear answer, we were told that this practice is in adherence to the Law on Civil Servants.<sup>218</sup>

The findings of this study are consistent with the findings of an analysis of the Ombudsman office conducted between 2015 and 2019 by the Lawyers' Committee

214 Interview with a former employee no. 3 of the Ombudsman's Office.

215 Response by the Ombudsman to a BCSP questionnaire, No. 31788 from 29 October 2019.

216 Interview with a former employee no. 1 of the Ombudsman's Office.

217 Interview with an employee no. 2 at the Ombudsman's Office.

218 Response by the Ombudsman to a BCSP questionnaire, No. 31788 from 29 October 2019.

for Human Rights (YUCOM) and published in November 2019.<sup>219</sup> The main findings of the analysis showed that this institution has serious problems in retaining qualified and experienced personnel and also that new employees are not being recruited in sufficient numbers. In a call disseminated in 2016 and 2017, advertising for 51 new positions, only 11 vacancies were filled. At the same time, serious indications surfaced in public of employment along party lines at the institution, however, when asked by the *Danas* daily about this (submitted in the form of a freedom of information request), the Ombudsman declined to answer.<sup>220</sup> The reduced output and activity of the Ombudsman's office has also affected the institution's budget, which has been in decline for a number of years in a row as the institution has been unable to spend its full allocation.

All of these factors have together resulted in a reduced number of complaints about the security services and particularly those who work in them.

## The Commissioner for Information of Public Importance

### *A Legacy of Good Practice*

In addition to the Ombudsman, the institution that has made the greatest strides in terms of oversight of the security services is the Commissioner for Information of Public Importance and Personal Data Protection. In working on the protection of personal data, the Commissioner has conducted checks on how telecommunications and internet providers store electronic data<sup>221</sup> and has found the situation in this area to be very poor indeed. Based on his checks, the Serbian public have learned that the security services, and particularly the MUP, have been accessing stored data without court approval on a vast scale.<sup>222</sup> This was also the basis for the Commissioner to initiate an assessment of the constitutionality of certain provisions of the law<sup>223</sup> and to suggest amendments to a series of legislative acts in this area. Most of the suggested amendments relate to the need for courts to approve access, rather than the heads

219 5 godina: Analiza rada Zaštitnika građana Republike Srbije u periodu 2015–2019. godine. Beograd, Komitet pravnika za ljudska prava – YUCOM.

220 YUCOM: Smanjen integritet Zaštitnika građana (YUCOM: Decline in the integrity of the Ombudsman). *Danas*, 29/11/2019. Belgrade, Dan Graf d.o.o.

221 U toku neposredan nadzor Poverenika nad provajderima. *Blic*. 06.08.2014. Beograd, internet: <https://www.paragraf.rs/dnevne-vesti/070814/070814-stampa6.html>

222 During these checks the Commissioner has ascertained that just one of the providers (of four) has recorded 270,000 occasions on which stored data were accessed, which indicates that the total number of times stored data has been accessed could be almost one million: Izveštaj o sprovođenju Zakona o slobodnom pristupu informacijama od javnog značaja u 2012. godini. mart 2013. Beograd, Poverenik za informacije od javnog značaja i zaštitu podataka o ličnosti. internet: <https://www.poverenik.rs/images/stories/dokumentacija-nova/izvestajiPoverenika/2012/izizvestaj2012.doc>

223 For example, the Commissioner has suggested a constitutionality assessment of the Law on the VBA and VOA, the Law on Electronic Communications and the Criminal Procedure Code: <https://www.poverenik.rs/index.php/sr-yu/za%C5%A1tita-podataka/praksa/odluke-i-mi%C5%A1ljenja-poverenika/ostalo/predlozi-ustavnom-sudu>

of the security services or the police, and the need for communications operators to keep indelible records of the occasions on which the data were accessed. The latest example of an initiative by the Commissioner was the suggestion for a constitutionality assessment of provisions of the Law on the BIA that, to all intents and purposes, grant the director of the Agency discretionary powers to regulate security checks through internal documents, as well as provisions that allow for BIA documents to be classified as secret according to the type of document, rather than its contents.<sup>224</sup>

The Commissioner also acted on the basis of information regarding violation of the right to protection of personal data and conducted oversight of the Ministry of the Interior when a photograph of the Deputy Special Prosecutor, Saša Ivanić, taken from the Ministry of Interior biometric database was leaked to the tabloids. The checks of the MUP confirmed that just before it was leaked, the photograph had been accessed from “a separate security structure” – i.e. from the BIA – which means that the Agency was guilty of this leak. Individual culpability could not, however, be determined on this occasion as more than one BIA operative used the same card to access the database.<sup>225</sup>

### *An Uncertain Future for Good Practice*

As was the case with the Ombudsman, the institution of the Commissioner also experienced a change in its leadership in mid-2019 when Milan Marinović was appointed Commissioner. The appointment of the new Commissioner was accompanied by a series of controversies, from the fact that the government were delaying his selection, to the fact that the ruling party tried to impose the condition that candidates could not be employed in another state body at the time of the nomination – this would actually prevent any employees from the Commissioner’s office from being candidates for the post. This condition was eventually dropped by the government under pressure from civil society and the international community.<sup>226</sup> Since so little time has elapsed since the new Commissioner was appointed that it is not possible to assess whether he will continue the good practices the institution has thus far established, particularly in certain areas such as security.

In the forthcoming period the Commissioner will face a significant challenge in the form of the implementation of the new Law on Personal Data Protection, which contains “chaotically transcribed and integrated provisions from the General Data

<sup>224</sup> overenik podneo predloge za ocenu ustavnosti Zakona o odbrani i Zakona o BIA. 14.06.2018. Beograd, Poverenik za informacije od javnog značaja i zaštitu podataka o ličnosti. internet: [http://bit.ly/BIA\\_USTAV](http://bit.ly/BIA_USTAV)

<sup>225</sup> Ko je odgovoran za objavljivanje fotografije tužioca iz baze MUP-a? Beograd, Insajder, 13.04.2016. godine, internet: <https://insajder.net/sr/sajt/tema/720/>

<sup>226</sup> Organizacije civilnog društva: Iskoristiti izbor poverenika za rešavanje ključnih problema. Danas online. 22.07.2019. Beograd, Danas. internet: <https://www.danas.rs/drustvo/organizacije-civilnog-drustva-iskoristiti-izbor-poverenika-za-resavanje-kljucnih-problema/>

Protection Regulation<sup>227</sup> and the Law Enforcement Directive, so the law is completely incomprehensible to top legal practitioners”.<sup>228</sup> The Law Enforcement Directive<sup>229</sup> is particularly important as it enables security actors to be excluded from the general personal data protection regime for the purposes of criminal investigations<sup>230</sup> but “here the issue is that the Directive is literally transcribed but its provisions are integrated into the Law in a disorganised and chaotic manner, which may create conditions for the security services and the police to act at liberty and even arbitrarily”<sup>231</sup>. The Serbian authorities have disregarded the initiative of the preceding Commissioner and of civil society to adopt the law that this institution put forward<sup>232</sup>, which would represent a significant improvement in terms of regulating this area. They have also ignored suggestions by the new Commissioner to delay implementation of the new law.<sup>233</sup> The new Law on Personal Data Protection imposes numerous obligations on the Commissioner and, unless the already unsatisfactory capacities of this institution are strengthened, serious backlogs in the work of the Commissioner’s office will be unavoidable. The Commissioner is already unable to respond in a timely manner to complaints about access to information of public importance and, for the above reasons, the situation may become aggravated further<sup>234</sup>, making the right to free access to information of public importance meaningless.

## The State Audit Institution

### *A Legacy of Good Practice*

Until 2017 the State Audit Institution (Državna revizorska institucija – DRI) recorded initial results on financial control of the security services. In that time it had conducted two audits of the annual financial reports and financial propriety of the BIA (2013<sup>235</sup>

227 General Data Protection Directive – GDPR.

228 Interview with an employee no. 2 at the Commissioner’s Office.

229 Directive (EU) 2016/680 of the European Parliament and of the Council. April 27, 2016. Official Journal of the European Union. L 119/89.

230 For more on the Police Directive (increasingly commonly known as the Law Enforcement Directive – LED), see: Pejic, J. (2019). *What is the EU Law Enforcement Directive?* Belgrade, Belgrade Centre for Security Policy.

231 Interview with an employee no.2 at the Commissioner’s Office.

232 For more on the Model Law on Personal Data Protection and the conclusions drawn during the public debate organised by the Commissioner, see: [http://bit.ly/Model\\_ZZPL](http://bit.ly/Model_ZZPL)

233 Milan Marinović wrote to the Speaker of the National Assembly asking that implementation of the new Law on Personal Data Protection be delayed by a year until 1 September 2020 so that institutions could prepare themselves and ensure the necessary capacities for its implementation: Pismo poverenika predsednici Skupštine: Odložiti primenu Zakona o zaštiti podataka o ličnosti na godinu dana. Insajder. 02.08.2019. Beograd, Insajder produkcija. internet: <https://insajder.net/sr/sajt/vazno/15229/>

234 Interview with an employee no. 1 at the Commissioner’s Office.

235 State Audit Institution. Izveštaj o reviziji godišnjeg finansijskog izveštaja i pravilnosti poslovanja Bezbednosno-informativne agencije za 2012. godinu (*Report on Audit of Annual Financial Statement and Regularity of Operations of the Security Information Agency for 2012*), Belgrade, August 2013

<http://dri.rs/php/document/download/184/1>

and 2017<sup>236</sup>), while the VBA and VOA were subjected to DRI audits as organisational sub-units of the Ministry of Defence in 2011 and 2013. The security services were also subjected to expediency audits for all direct budget recipients on two occasions: the use of official vehicles and accelerated pension benefits. Even though these checks revealed a number of weaknesses in the work of the DRI, they are nonetheless a significant step forward since, “nobody had ever poured over the finances of the services before.”<sup>237</sup>

### ***A New State Auditor and a Purge of the Undesirables***

This record of good practice at the DRI came to an end, however, with the appointment of its new president. The State Auditor, Duško Pejović, appointed in 2018 after a six-month delay, has made a number of decisions since coming into office that have contributed to a discontinuity with the previously good practices of this institution. Pejović removed the four supreme state auditors with extensive experienced two months before the expiry of their terms in office. The reports they produced were cited in international auditing journals and their work was assessed to be effective by the Committee on Finance. This purge was followed by the departure of the state secretary and three other DRI employees. Pejović did not only relieve the Supreme State Auditor, Svetlana Anokić, but he also closed down the entire sector she was in charge of – the Sector for Performance Audits<sup>238</sup> – even though in other democratic societies audits of expediency are particularly emphasised. It appears that he tried to conceal this reorganisation from the public as the DRI website no longer lists sectors by name, instead simply by number (Sector 1, Sector 2, etc.).<sup>239</sup> These dismissals were cause for a group of DRI employees to express their dissatisfaction in the media.<sup>240</sup> In much the same way as with the Ombudsman, this raises the question of how many employees remain at the DRI who have the knowledge and skills to audit the finances of the security sector and how many employees have security clearance certificates?

236 State Audit Institution. Izveštaj o reviziji godišnjeg finansijskog izveštaja i pravilnosti poslovanja Bezbednosno-informativne agencije za 2016. godinu (*Report on Audit of Annual Financial Statement and Regularity of Operations of the Security Information Agency for 2016*), Belgrade, December 2017

<https://www.dri.rs/php/document/download/1114>

237 Interview with former DRI employee no. 1.

238 See the new organisational structure at:

<https://www.dri.rs/upload/documents/Informator/informator%2030062019.pdf>

239 See, for example, the organisational structure of the DRI from 2017:

<https://web.archive.org/web/20170202112118/http://www.dri.rs/o-nama/organizacija-dri.134.html> and the current chart: <https://www.dri.rs/o-nama/organizacija-dri.134.html>

240 Vukašinić, S. (2018). Četiri meseca četiri smene: Novi predstavnik DRI čisti najbolje revizore *Blic*, 19.10.2018. Beograd, internet: <https://www.blic.rs/vesti/drustvo/cetiri-mesecacetiri-smene-novi-predsednik-dri-cisti-najbolje-revizore-jer-poseduju/pfv6jnt>

## Judicial Control

### *Sound Legal Assumptions*

Judicial control of the security services is primarily founded on establishing the legality of the implementation of special measures for covert data collection – i.e. it is accomplished through the fact that the security services must obtain written judicial approval for legal use of these measures. As has been explained on these pages, there are two legal regimes governing the use of these measures, consequently the courts play two roles in their approval. When security services collect data for the criminal proceedings before the courts – that is, for the identification of suspects and gathering evidence for a criminal prosecution – it is the Criminal Procedure Code that applies. In cases where the security services collect data for preventive purposes, the laws regulating these services (the Law on the BIA and the Law on the VBA and VOA) apply.

Generally speaking, the Criminal Procedure Code regulates the role of judicial control and oversight of covert data collection much better and more precisely. Thus, according to the Criminal Procedure Code, the judge for preliminary proceedings does not only approve the use of a covert data collection measure but also oversees its implementation by reviewing the reports that the security services are required to provide. The judiciary is also authorised to decide how much of the gathered material will be admissible in court. In the event that the judicial proceedings are halted, all material gathered through the use of covert data collection must be destroyed.

In contrast to this, when the security services use covert data collection measures for preventative purposes, the role of the courts is only to approve their initial use and the extension of their time limits. Moreover, the laws that regulate the security services do not contain provisions obliging them to destroy gathered materials after a certain time, so it follows that they can store the collected data indefinitely.

### *Unsatisfactory Practice*

In addition to these legal shortcomings, much more important issues arise in the actual practice of approving special measures. For the lawful and proper use of special measures – i.e. the existence of a reasoned proposal from the security service and judicial approval – it is also necessary to fulfil the fundamental reasons for their implementation. This means that there must be grounds for suspicion of a security threat – that is, the preparation of a criminal offence or one that has already been committed – and that it is these measures that are necessary for the investigation

(the principles of necessity and proportionality).<sup>241</sup> As was explained in the section on Covert Surveillance in Practice, it is highly questionable whether judges assess if the fundamental reasons for the use of special measures have been fulfilled, especially when these measures are being applied preventatively in protection of national security. The concept of national security is, everywhere in the world, one that is very elastic and an important question is whether judges dare to challenge the security services' understanding of the term. In addition, the security of the judges who handle and decide on the most difficult cases depends on the security services themselves, so judges will find it difficult to cast doubt on their applications to use special measures.

The easy and carefree use of special measures for covert data collection is further ensured by the appointment of those loyal to the ruling party and its leader, Aleksandar Vučić, to prominent positions in the judiciary.<sup>242</sup> And even before these appointments, research shows that it was rare for a judge to dare to challenge special investigative measures requests filed by security services to them, mainly due to two facts. Firstly, they try to high profile criminals and judges' personal safety and security depend on the very same security services (and police). Secondly, judges are not familiar enough with the notion of national security which is often vague and they are afraid not to make a mistake and thus to endanger national security.

A serious issue for independent oversight of the use of special measures is the fact that there are no decent records kept by courts of their implementation, so even if the security services published their statistics on these measures, it would not be possible to determine their credibility as there would be nothing to compare them against. An important component of any future reform of the security and intelligence system must be to oblige the security services, prosecutors and courts to keep detailed records of the measures implemented and to publish them on an annual basis.<sup>243</sup>

## Internal Control of the Security Services

Internal control of Serbia's security services has developed differently in each service, resulting in different protocols. The Law on the VBA and VOA provides dual control mechanisms – separate Inspectors General for the VBA and VOA and internal control departments for each of these military agencies. These control units have been granted sound powers for controlling the legality of the agencies.<sup>244</sup> The problem here, however,

<sup>241</sup> For more on this, see: Petrović, P., Ed. (2015). *Special Measures for Covert Data Collection: Oversight Handbook*. Belgrade, Belgrade Centre for Security Policy, internet: [http://www.bezbednost.org/upload/document/posebne\\_mere\\_tajnog\\_prikupljanja\\_podataka\\_-\\_vodica.pdf](http://www.bezbednost.org/upload/document/posebne_mere_tajnog_prikupljanja_podataka_-_vodica.pdf)

<sup>242</sup> For more on this, see the section on Party Patronage

<sup>243</sup> Petrović, P., Ed. (2015). *Special Measures for Covert Data Collection: Oversight Handbook*. Belgrade, Belgrade Centre for Security Policy, internet: [http://www.bezbednost.org/upload/document/posebne\\_mere\\_tajnog\\_prikupljanja\\_podataka\\_-\\_vodica.pdf](http://www.bezbednost.org/upload/document/posebne_mere_tajnog_prikupljanja_podataka_-_vodica.pdf)

<sup>244</sup> One significant restraint holding back effective control by the inspectors general of the military services is that they are not able

is that these mechanisms are not provided with sufficient resources or independence and integrity to successfully fulfil their role. A consequence of this is that VBA and VOA personnel are forced to turn to external oversight and control mechanisms, chiefly the Ombudsman. In carrying out checks of the VBA and VOA the Ombudsman has identified a series of deficiencies in these internal control mechanisms. These indicate that internal control tends to be used by the agencies' leaderships as a mechanism for exerting pressure on employees who intend to or have pointed out irregularities or illegalities in the work of the VBA, rather than for the timely identification and resolution of these problems.<sup>245</sup> In their submissions to the Ombudsman's office, some VBA employees have complained of being "in the crosshairs" of their internal control departments and that they had been forced to undergo polygraph testing to confirm whether they had been in contact with the Ombudsman's office.<sup>246</sup>

In contrast to internal control within the military agencies, which is subordinated to the agency directors, the Inspector General of the VBA and VOA answers to the Minister of Defence. That functional distance from the agency directors is not, however, sufficient to enable the Inspector General to be effective. For example, when the Inspector General found that the rights of VOA employees were being violated, the VOA did not act on his recommendations or the conclusions of his report.<sup>247</sup>

The Inspector General's conduct during the control procedure initiated by the Ombudsman following the incident at the pride parade in September 2014 is also highly controversial. On the orders of the Minister of Defence, the Inspector General requested that the Ombudsman hand over all evidence gathered so that the Inspector General could conduct controls of the agencies. The Inspector General also released information that contradicted the findings of the Ombudsman, making it reasonable to suspect that in doing so he was trying to conceal unlawful conduct by the VBA leadership.<sup>248</sup> The reason for this kind of conduct by the Inspector General can be

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to carry out checks of ongoing operations.

245 For example, internal control procedures were initiated against a VBA employee on suspicion of his unlawful conduct. However, an additional employee who was added to the internal control team had previously been subjected to an investigation by the employee who was the target of the control procedures. When the internal control investigation concluded that the target had been guilty of unlawful conduct, he was dismissed without the initiation of disciplinary procedures or of misdemeanour or criminal proceedings. For more, see: Zaštitnik građana (*Ombudsman*). Krivična prijava šest meseci nakon penzionisanja (*Criminal Proceedings Six Months After Retirement*). Beograd, 17/02/2016: <https://goo.gl/pbaZQS>

246 Needless to say, contacting the Ombudsman is not illegal or improper and it should not be possible for this act to become grounds for the initiation of internal control procedures. Zaštitnik građana (*Ombudsman*). Javne preporuke za razrešenje ministra odbrane i direktora VBA (*Public Recommendation for the Resignation of the Minister of Defence and the Director of the VBA*). Beograd, 21/09/2015. <https://goo.gl/4YRxzn>

247 Zaštitnik građana (*Ombudsman*). Utvrđene nepravilnosti u radu Vojnoobaveštajne agencije Ministarstva odbrane (*Irregularities Identified at the Military Intelligence Agency of the Ministry of Defence*). Beograd, 28/05/2013. <https://goo.gl/kRnWhn>

248 Zaštitnik građana (*Ombudsman*). Javna preporuka za razrešenje ministra odbrane Bratislava Gašića i Javna preporuka za razrešenje direktora Vojnoobaveštajne agencije Petra Cvetkovića (*Public Recommendation for the Resignation of the Minister of Defence Bratislav Gašić and Public Recommendation for the Resignation of the Director of the VBA, Petar Cvetković*), No. 625-1728/14. Beograd, 21/09/2015. <https://goo.gl/4Uw8G3>

sought in the fact that the Inspector General, prior to his appointment in 2014, had been a retired VBA officer who had headed the Agency's unit for operational and technical measures. This means that the Inspector General would have had to investigate the illegality of his own work.

Also impacting the inadequate performance of the inspectors general is the fact that their guaranteed term in office is regularly disregarded. The Law on the VBA and VOA stipulates that an inspector general is appointed by the Government for a period of five years on the recommendation of the Minister of Defence and taking into account the opinions of the National Security Council. Prior to the expiration of the five-year term they can be dismissed in only four cases:

1. At their own request;
2. If a lasting health condition makes them incapable of continuing to perform their duties;
3. If they are convicted of a criminal offence carrying a sentence of unconditional imprisonment for more than six months or if they commit an offence rendering them unworthy of the office;
4. If they do not act in accordance with the Constitution, the law and other regulations, according to the standards of the profession, impartiality and political neutrality.

However, the inspector general of the military services are dismissed on a practically routine basis without any explanation from the Government or the Ministry of Defence. In response to a BCSP question on the reasons for early dismissal of the inspectors general, the Ministry of Defence referred us to the Government as the inspectors general are prematurely dismissed by Government decree and it is the Government that is empowered to evaluate, "whether it is fitting for these decrees to be declassified."<sup>249</sup> The BCSP received no response from the Government. The fact that the reasons for dismissal are classified is highly problematic. In any case, the dismissal rulings are themselves publically available but do not provide any explanation of the reasons for the dismissal of the inspector general.

These frequent dismissals came to an end with the appointment of Radovan Mitrašinović during Bratislav Gašić's time in office as Minister of Defence. However, Mitrašinović continues to serve as Acting Inspector General, five years after his appointment. The BCSP could not learn from the MO why Mitrašinović continues to have this status, since the MO has referred the BCSP to the Government for this question.<sup>250</sup>

<sup>249</sup> Response by the MO to a BCSP question, No. 508-13/19 from 7 October 2019.

<sup>250</sup> Response by the MO to a BCSP question, No. 508-13/19 from 7 October 2019.

In contrast to the VBA and VOA, the internal and budgetary control of the BIA is not regulated by law but by an internal regulation issued by the Agency's director and classified as secret. Hence, legal uncertainty about internal control of the Agency is extremely high. The head of the department at the Agency that is responsible for internal control answers directly and only to the director, to whom they must submit regular and periodical reports.<sup>251</sup>

The fact that the current BIA director is one of the founders of the ruling party and that the BIA is once again in search of "internal enemies" renders any internal control of the Agency as completely meaningless. In such circumstances, internal control can only serve as a mechanism of political control and to discipline BIA personnel.

Minister of Defence	Time in Office	Inspector General	Time in Office
Dragan Šutanovac	15 May 2007 – 27 Jul 2012	Božidar Banović	10 Feb 2011 – 4 Jan 2013
Aleksandar Vučić	27 Jul 2012 – 2 Sep 2013	Miladin Vujanović	4 Jan 2013 – 16 Jan 2014
Nebojša Rodić	2 Sep 2013 – 26 Apr 2014	Milan Letić	16 Jan 2014 – 25 Dec 2014
Bratislav Gašić	26 Apr 2014 – 5 Feb 2016	Radovan Mitrašinić (Acting Inspector General)	25 Dec 2014 –
Dušan Vujović	5 Feb 2016 – 2 Mar 2016		
(Acting Minister of Defence)	2 Mar 2016 – 29 Jun 2017		
Zoran Đorđević	29 Jun 2019 –		
Aleksandar Vulin			

*Table 3 Comparative overview of mandates of Defense Ministers and Inspector Generals*

## Transparency

The public openness of governmental institutions is one of the most important foundations of all democratic orders. Secrecy is, on the other hand, a key principle of how security services function. As, however, security services operate in a democratic order and one of their main tasks is the preservation of this order, they must retain a degree of public openness. This is ensured by constitutions and legislation. Accordingly, the right to be informed is guaranteed by Article 51 of the Serbian Constitution, the second paragraph of which stipulates that, "[everyone] shall have the right to access information kept by state bodies and organizations with delegated public powers, in accordance with the law." The most important legislation that operationalises this right are the Law on Free Access to Information of Public Importance and the Data Secrecy Law, while the most important institution for the enforcement of the right

<sup>251</sup> Petrovic, P. and K. Djokic (2017). *Slippery Slopes of the Reform of Serbian Security Services*. Belgrade, Belgrade Centre for Security Policy, internet: [http://www.bezbednost.org/upload/document/slippery\\_slopes\\_in\\_the\\_reform\\_of\\_serbian\\_security\\_.pdf](http://www.bezbednost.org/upload/document/slippery_slopes_in_the_reform_of_serbian_security_.pdf)

and this legislation is the Commissioner for Information of Public Importance and Personal Data Protection. Similarly, Article 15 of the Law on the Bases Regulating Security Services of the Republic of Serbia stipulates that the security services have an obligation to inform the public about the tasks they conduct, in accordance with the law.

The indicators that are most important for assessing the level of transparency of a given institution are as follows: proactive dissemination of information through regularly published information booklets; an up-to-date website; annual reports; prompt, comprehensive and meaningful responses to freedom of information requests<sup>252</sup> that do not rely on various creative (or not so creative) excuses to find a legal basis for avoiding a response<sup>253</sup>; conclusive responses to the Commissioner's decisions; the designation of an official to be in charge of media communications and the handling of freedom of information requests.

Establishing the right to access information and increasing the transparency of the security services has been a slow and painstaking process. And not as a result of ineffective legislation, rather, this is due to the legacy of secrecy the security services, which have become accustomed to complete secrecy and not publically disclosing their activities since their very inception. It is precisely because of this that the 2006 Report by the Commissioner for Information of Public Importance states that the BIA represents the most drastic example of disregard of the Commissioner's decisions (referring to six decisions brought in 2006) and that, "in [the BIA's] case the issue was not merely violation of the right to access information in the possession of the authorities but a complete failure to implement the Law on Free Access to Information of Public Importance".<sup>254</sup> In one instance, the BIA failed to act on a judicial ruling on the number of persons subjected to wiretaps during 2005, claiming the information was top secret. The BIA also did not submit an annual report on implementation of the Law to the Commissioner nor did it publish an information booklet on its activities.<sup>255</sup>

Through the persistent efforts of the Commissioner, civil society and research

252 This presupposes that institutions respond to each question in a request individually, rather than collectively, a practice in which they usually manage to "leave out" certain questions. Also that they genuinely answer submitted questions instead of offering up generalised statements such as, for example, "this is in accordance with the law".

253 The most common of which are: that the requested information is contained within more than one document so that the institution would have to produce a new document, something that it is not legally obligated to do; that the requested information is recorded in a different manner; that the requested information refers to other institutions even though the contacted institution also has the said documents on record or was the body that produced them; that the quantity of requested information is too great so the institution is not obligated to respond.

254 Report on Implementation of the Law on Free Access to Information of Public Importance for 2006, Commissioner for Information of Public Importance, March 2016, Belgrade. See: [https://www.poverenik.rs/images/stories/Dokumentacija/61\\_cdok.pdf](https://www.poverenik.rs/images/stories/Dokumentacija/61_cdok.pdf)

255 Milosavljević, B and Petrović, P (2009), Security-Intelligence Services of the Republic of Serbia, *Yearbook of Security Sector Reform in Serbia 2008*, M. Hadžić, Belgrade, Centre for Civil-Military Relations: 208-235.

organisations there had, however, been significant improvement in this area. The BIA did, for example, ultimately publish an information booklet on its activities, which it both updated regularly and also improved the quality of the content therein. The Agency had also improved its responses to requests for free access to information of public importance, becoming one of the governmental institutions with the fastest response time to freedom of information requests. Moreover, the quality of the Agency's responses was also improving significantly.<sup>256</sup> Due to the visible progress made by the Agency, in 2014 the Commissioner concluded that in Serbia there existed a kind of paradox in which the security services were more transparent than state-owned companies. "The percentage of failure to comply with decisions brought by the Commissioner for Information of Public Importance by the security structures, which are everywhere in the world 'closed', is around 2 percent, while for structures that command enormous quantities of public money this rate is around 20 percent – i.e. around ten times as great!"<sup>257</sup> In addition to the BIA appointing an experienced employee to respond to freedom of information requests, it also determined that the head of the Cabinet of the BIA should be in charge of media relations. This contributed significantly to improving the image of the Agency from a secret police force into a security and intelligence service, as befitting a democratic order.

Much the same was true of the military security services. Both of the military security services launched websites that inform the public of their activities. The VBA and VOA also responded to freedom of information requests in a timely manner. A major drawback regarding the transparency of the military services is the fact that they never initiated the practice of publishing information booklets on their activities, something they were not directly legally obligated to do. Instead, the Ministry of Defence information booklet contains (rather meagre) information on these services. Svetko Kovač, the Director of the VBA, did not shy away from media or public view, which, similarly to the BIA, contributed to the image of this military service.

### ***A Reversal of Positive Trends***

In recent years, there has discernibly been a trend of deterioration in the transparency of the security services. The transparency of the services' budgets has, for example, vanished almost completely. In the 2014 Law on the Budget the budgets of the VBA and VOA were completely assimilated into the budget of the Ministry of Defence, without showing even their total amounts, while in 2015 the budget of the BIA ceased to be

<sup>256</sup> Petrović, P. (2016), *The Security Information Agency, Integrity Assessment in Security Sector in Serbia*, P. Petrović, Belgrade, Belgrade Centre for Security Policy: 100-149.

<sup>257</sup> Šabić, R. (2014), *Kako su „tajne“ službe transparentnije od „javnih“ preduzeća (How the "secret" services are more transparent than "public" enterprises)*, B92 Blog, 134/06/2014, Belgrade, online source: <http://blog.b92.net/text/24320/KAKO-SUTAJNE-SLUZBE-TRANSPARENTNIJE-OD-JAVNIH-PREDUZECA/#>

presented according to economic categories and was shown only as a total amount. Much the same occurred with BIA budgetary expenditure for procurement, wherein the Agency ceased publishing total amounts spent on public and classified procurement, as it had previously done in its information booklet.<sup>258</sup> It is now not possible to obtain this information even through freedom of information requests as the BIA considers this information to be classified, explaining that revealing it would compromise the security of the country.

Here we encounter the next problem – that there has been a deterioration in the quality of information provided by the security services in response to request for free access to information of public importance. Indeed, in many cases they decline to provide the information, stating that it is classified or that they are not in possession of the relevant document, even where they had previously been in possession of the information and had provided it on request. For example, the BCSP had been able to access information on the ratio of suggested applications of special measures to approved application of these measures for both legal purposes for their application: collecting information with the aim of gathering evidence for criminal proceedings and protection of national security.<sup>259</sup> Moreover, the BCSP had previously been able to access information on the numbers of new and departing BIA personnel by year for 2010, 2011, 2012 and 2013.<sup>260</sup> In the meantime, this information has become classified. The BIA refuses to make available even its own documents on covert surveillance, which indicate potential abuses for personal or party political purposes, even though these were read out by President Aleksandar Vučić on live television,<sup>261</sup> and in spite of the fact that he stated that he had declassified them in accordance with the law.<sup>262</sup>

Furthermore, even though the European Court of Human Rights ordered the BIA through a unanimous decision in 2013 to make available information on the number of people subjected to surveillance in Serbia in 2005, as requested by the Youth Initiative for Human Rights,<sup>263</sup> the BIA still does not make available information on the

258 Petrović, P. (2016), The Security Information Agency, *Integrity Assessment in Security Sector in Serbia*, P. Petrović, Belgrade, Belgrade Centre for Security Policy, pp. 100-149.

259 See, for example: Petrović, P. (2012), *Nadzor službi bezbednosti na Zapadnom Balkanu: slučaj Srbija (Security Service Oversight in the Western Balkans: The Case of Serbia)*. Geneva, DCAF, p. 6

260 Petrović, P. (2016). *Serbia: An Awkward Legacy*. The Handbook of European Intelligence Cultures. B. Graaff and J. Nyce. Lanham, Rowman & Littlefield: 321-334. pp. 326-327.

261 Ovo su dokumenti koji potvrđuju da su pratili i prisluškivali Aleksandra Vučića! (*These are documents that confirm that the BIA had followed and wiretapped Aleksandar Vučić!*) *Pink*, 01/08/2019. Belgrade, online source: [https://pink.rs/vesti/146727/dokaz-da-je-predsednik-srbije-bio-pra%C4%87en!-ovo-su-dokumenti-koji-potvr%C4%91uju-da-su-pratili-i-prislu%C5%A1kivali-aleksandra-vu%C4%8Di%C4%87a!-\(foto+video\)](https://pink.rs/vesti/146727/dokaz-da-je-predsednik-srbije-bio-pra%C4%87en!-ovo-su-dokumenti-koji-potvr%C4%91uju-da-su-pratili-i-prislu%C5%A1kivali-aleksandra-vu%C4%8Di%C4%87a!-(foto+video))

262 Vučić: Skinuo sam oznaku tajnosti u skladu sa zakonom, brine ih šta još mogu (*I declassified [the documents] in accordance with the law, they're worried about what else I can do*). *N1 Info*, 03/08/2019, Belgrade, online source: <http://rs.n1info.com/Vesti/a504822/Vucic-Skinuo-sam-oznaku-tajnosti-sa-dokumenata-o-prisluškivanju-u-skladu-sa-zakonom.html>

263 For more on this case and on why the Initiative had to turn to the European Court of Human Rights, see: *Slučaj BIA (The Case of the BIA)* 27/06/2013, Belgrade, Peščanik, online source: <https://pescanik.net/slucaj-bia/>

number of people under surveillance in response to requests. In order to access this information, the applicant must submit a complaint to the Commissioner when the security services decline to provide information, most often citing security concerns, and must then wait for the Commissioner to issue a decision ordering the services to provide information on the number of persons under surveillance.

The BIA no longer has a person tasked with media relations as the then head of the Cabinet of the BIA, Jovan Stojić, left the Agency in 2015. Media organisations report that Simo Čulić was for a time in charge of media relations at the BIA, having acquired his PR skills as a member of the SNS party.<sup>264</sup> It is possible to deduce that the unprofessional conduct of the BIA towards journalists at the 2017 celebration of BIA Day is a consequence of the above. On that occasion the BIA barred Vesna Radojević of the KRIK network and Politika reporter, Dušan Telesković, from the celebrations even though they had received their accreditation through the proper channels. At the entrance to the event the KRIK journalist was told at that she could not enter because she “did not meet security requirements”<sup>265</sup>. Confirmed cases of information gathered by the BIA being leaked to pro-government tabloids and used to discredit individuals<sup>266</sup>, as well as numerous unconfirmed cases<sup>267</sup> only serve to fuel suspicions that the BIA no longer communicates with the public and instead leaks information and is becoming a tool of the governing party. Neither have sporadic media appearances by high-ranking BIA officials<sup>268</sup> – such as Marko Parezanović, Head of the Security Sector, and Relja Željki, Head of the Analytical Department<sup>269</sup> – had much effect on the above.

Deteriorating transparency is also notable at the military services, which also deem large swathes of information sought for through freedom of information requests to be classified. Proactive publication of information by the VBA is also in decline, with the website of this military agency last having been updated two years ago (in 2017).<sup>270</sup> The VBA has one unfulfilled order from the Commissioner from 2018<sup>271</sup> and two from

264 For more on this, see the section on Party Patronage.

265 Nekim novinarima zabranjen ulaz u BIA, Vučić otkazao dolazak (Some journalists barred from the BIA, Vučić cancels appearance), *Danas* 17/10/2017, Belgrade, online source: <https://www.danas.rs/drustvo/nekim-novinarima-zabranjen-ulaz-u-bia-vucic-otkazao-dolazak/>

266 For more on this, see the section on The BIA Fighting an Internal Enemy of the State.

267 See the case of the Deputy Republic Prosecutor, Goran Ilić: Tužilac Goran Ilić: Postupak pred Etičkim odborom pokušaj diskreditacije (*Prosecutor Goran Ilić: The proceedings before the Ethics Committee an attempt to discredit*), *Insajder*, 10/09/2019, Belgrade, online source: <https://insajder.net/sr/sajt/tema/15524/>

268 For an account of Marko Parezanović’s public appearance, see the section on The BIA Fighting an Internal Enemy of the State.

269 Željki was interviewed on several occasions with regard to the Russian spy who exchanged information with a former officer of the Serbian Armed Forces. *Koje strane službe i čiji špijuni deluju u Srbiji? (Which foreign intelligence services and whose spies operate in Serbia?)*, TV Prva, 23.11.2019. Belgrade, online source: <https://www.youtube.com/watch?v=1xDIUCtUTko&t=117s>

270 See the BIA website: <http://www.vba.mod.gov.rs/>

271 An overview of decisions brought by the Commissioner in 2018 that have not been complied with or where the relevant institution has not informed the Commissioner that the decision has been complied with (as of 01/02/2019), no. 073-1772/2018-01, dated: 01/02/2019. Belgrade, Commissioner for Information of Public Importance and Personal Data Protection, <https://www.poverenik.rs/images/stories/dokumentacija-nova/izvestajiPoverenika/2018/neizvršenaresenja2018.doc>

2016,<sup>272</sup> which relate to records showing instances of access to stored data and the incident at the pride parade in 2014. This agency insists that the requested information is classified and, on its recommendation, the Republic Public Prosecutor's Office as filed a suit against the Commissioner at the Administrative Court for 'endangering the public interest'. Assessing the level of transparency of the military security services is hampered by the fact that records of the number of freedom of information requests are maintained for the Ministry of Defence as a whole.

### **Citizens Also Want More Transparent Services**

The latest public opinion research conducted by the BCSP (in March 2019) about the openness of the security sector shows that ordinary citizens understand that security services need to be more secretive than other governmental institutions but believe nonetheless that they should be more open than they are now. Two thirds of those polled think that the services are currently closed, with almost half saying that they should be either mainly or completely open about their activities. Due to how closed the security services are, it should come as no surprise that almost half of those polled had no opinion about or knew little of the activities of the BIA, VBA and VOA.<sup>273</sup>

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272 An overview of decisions brought by the Commissioner in 2016 that have not been complied with or where the relevant institution has not informed the Commissioner that the decision has been complied with (as of 10/02/2017), no. 021-01-00278/2016-01, dated: 10/02/2019. Belgrade, Commissioner for Information of Public Importance and Personal Data Protection,

<https://www.poverenik.rs/images/stories/dokumentacija-nova/izvestajiPoverenika/2016/neizvršenaresenja2016.doc>

273 For more on this public opinion polling, see: Pejić Nikić, J. and Ignjatević, M. (2019), *Stavovi građana o otvorenosti sektora bezbednosti u Srbiji (Public Opinion on the Openness of the Serbian Security Sector)*, Belgrade, Belgrade Centre for Security Policy, p.

## Concluding Thoughts

The Enlargement Strategy of the European Union indicated that elements of state capture exist throughout the Western Balkans. Our research on the security and intelligence sector in Serbia has shown that this assessment of Western Balkan states by the European Commission is very restrained as not only are there more than mere “elements” of state capture but whole institutions (security services) and sectors (security and intelligence) have been captured by the ruling party. The ruling party has succeeded in capturing the security services by applying a combination of legislative measures (adopted using fast-tracked legislation procedures) and the appointment of loyal personnel to key positions in the security and intelligence sector, who have then continued to recruit along these lines at all other levels. The key positions of these institutions are now staffed by those with close ties to the President of Serbia and leader of the SNS party, Aleksandar Vučić, or by those who are even founding members of the party, as is the case with the BIA Director, Bratislav Gašić, and the Secretary of the National Security Council, Nebojša Stefanović.

In order to facilitate the smooth operation of the security services in pursuing personal and party interests, the ruling party has undermined oversight and control of the security services, rendering it meaningless. Particular focus was placed on external oversight and control. The ruling party’s majority obstructs the work of the National Assembly making it impossible to even debate the 2019 Law on the Budget (which significantly increases security sector spending). The Security Services Control Committee adopted changes to the Law on the BIA in just 10 minutes, even though 40 amendments had been submitted to these changes, all of which were rejected. What is more, over the past year the Committee has been transformed into a “cheering committee” for Aleksandar Vučić and has awarded plaques to party officials working in the MUP and Ministry of Defence, even though these institutions fall outside of its purview.

Of particular concern is the finding on the deliberate undermining of those independent governmental institutions that had achieved the most significant results in terms of oversight and control of the security services. Once the ruling party had appointed a new Ombudsman and a new State Auditor, employees with extensive experience and knowhow began to leave these institutions, which is why these institutions no longer conduct controls of the security services. This is a devastating finding as the work of the Ombudsman in overseeing the legality and propriety of the security services had become an example of best practice, not only in the Western Balkans but even for developed European Democracies. In terms of oversight of the security services, the

Ombudsman has now become an institution that is purely window dressing.

The transparency of the security services is in terminal decline. Information that was previously made available to researchers by the security services in response to freedom of information requests (e.g. statistical data on special measures, procurement, employees, etc.) is no longer provided on the pretext that it is classified. The BIA as a “secret service”, which was for a time assessed by the Commissioner to actually be more transparent than state-owned enterprises, is part of this negative trend. The head of the BIA Cabinet was once responsible for media and public relations but this role is now taken on by various heads of department at the Agency as and when needed, which is more reminiscent of agenda-setting than of communication.

The capture of the security services began with the 2012 rise of the Serbian Progressive Party to power in both branches of the executive but reached its full velocity only once the SNS had achieved an absolute majority in the National Assembly after snap elections in 2014. Parliamentary majority meant the SNS no longer had to share authority and key positions in the security institutions with its coalition partners and enabled it to establish over these institutions absolute control that is founded on personal and party relations rather than on the constitution and the law. This victory also enabled the leader of the SNS to consolidate power within his party and to settle scores with internal party opposition forces, even those only he could see.

It is important to note, however, that the conditions for the capture of the security services were created while the Democratic Party was in power. After the restoration of Serbia’s independence, a packet of legislation on the security sector was passed, including the Law on the Bases Regulating Security Services, which retained (weak and contentious) provisions that suited the needs of the then President of Serbia, Boris Tadić, rather than the security needs of the country. These provisions enabled Tadić to control the security services through his chief of staff. This is significant for two reasons. First, it created the unwritten rule that the security services “belong” to the political leader with the greatest power, regardless of which position in government they occupy and whether the constitution grants them jurisdiction over the security services. Secondly, these were early indicators of the capture of the security services which caused some members of the Serbian expert community to raise concerns that were labelled as theoretical and academic hair-splitting by the rest of the expert community, both in the country and internationally. The practical consequences of this are now severe.

## Consequences

In captured states the security services are in the service of political leaders, which means that they work to protect their political interests rather than the constitutional order, national interests and the security of citizens or the state. Protection of the constitutional order – one of the most important tasks of the security services – becomes protection of the ruling party, its leader and their supporters. Security services that recruit personnel according to personal and party loyalty, rather than on the basis of knowledge and capability, cannot be a pillar of the fight against (organised) crime, extremism and terrorism or any other risks or threats – particularly those that are new or and modern.<sup>274</sup> Such security services turn a blind eye to organised crime groups with links to the ruling party or become their protectors.<sup>275</sup> They instead turn to targeting critics of the authorities, those who call for government accountability and whistleblowers who expose corruption or criminality by those in power and their cronies. It becomes questionable whether they are able to perform one of their main functions – to forecast the course of events and react to them in a timely manner.<sup>276</sup> Captured security services cannot be a useful and reliable partner to foreign security services, which come to (always) suspect the intentions and quality of information exchanged.

More important still are the long-term consequences pertaining to the culture within these institutions. When security services begin to serve the ruling party, the relationship between them and the world of politics comes to be regulated by clientelist relations

<sup>274</sup> The incident of a drone at the football match between Serbia and Albania aptly illustrates this. On that occasion, Albanian football supporters managed to fly a drone carrying the flag of a greater Albanian state into the stadium. The match was attended by the leadership of the Serbian government and many saw this as a significant security failure as the drone could have been armed. Albania Awarded 3-0 Win After Serbia Match Abandoned over Drone Stunt. *Guardian Sport*, 10/07/2015, London, The Guardian.

<sup>275</sup> The Ultra Kop and Jovanjica affairs are illustrative of this. Construction company Ultra Kop, backed by the leader of a group of hardline supporters of the Red Star Football Club who has an extensive charge sheet, participates in critical infrastructure overhaul projects. Firma iza koje stoji vođa navijača Zvezde zajedno s gradskom firmom dobila posao od EPS-a (*In conjunction with a publicly owned company, a company backed by the leader of a Red Star supporters group wins EPS contract*). *Insajder*, 19/12/2018, Belgrade, Insajder produkcija.

The Jovanjica case revealed that a large quantities of marihuana were being produced on the land of an organic food company owned by an individual with close ties to SNS officials. According to the President of Serbia, the production of the narcotic was secured by individuals from the police, the military and the BIA. Mastilović Jasnić, I. (2020). Veliki Novogodišnji intervju: Vučić za "Blic" o aferama, pričanju na kineskom, šta zamera svojim ljudima, i zašto se ne bi opet kandidovao za predsednika (*Big New Year Interview: Vučić talks to us about scandals, speaking Chinese, what he begrudges his people and why he wouldn't run for president again*), Blic, 01/01/2020, Belgrade, Ringier Axel Springer d.o.o., Online Source: <https://www.blic.rs/vesti/politika/vucic-intervju/3x35g7r>

<sup>276</sup> Besides the drone incident, which situational in character, also important is the Živaljević case. Goran Živaljević was a Serbian embassy official and the official BIA representative in North Macedonia. Political conflict between two Macedonian parties (SDSM and VMRO) over formation of a government escalated when protesters broke into the parliament building to prevent SDSM from forming a government. Živaljević was at the scene during the violence taking selfies. According to him, he had been admitted to the parliament building on the approval of the Macedonian president's security adviser who is a member of VMRO. This case is not only a display of unprofessional conduct by the official representative of BIA in North Macedonia but also shows that the Serbian security services are not capable of foreseeing the political events trends and their outcomes, since it was SDSM that ultimately formed the government in North Macedonia. Furthermore, investigative journalists subsequently discovered that Živaljević had been involved in pro-Russian propaganda efforts in support of VMRO. For more on the Živaljević case, see the KRIK website: <https://www.krik.rs/en/serbias-involvement-in-the-macedonian-crisis/>

rather than by the constitution and the law. Security service personnel who have no party affiliation and who cannot accept these “rules of the game” are in most cases seen as a nuisance and demoted to lower and less important positions. Indeed, their work environment becomes unbearable and many leave the service.

All of this puts future governments into a very difficult position. They cannot know with any certainty whether such security services will be loyal to them according to the law and the constitution or whether they will make their loyalty conditional with a new clientelist relationship according to the old model and, in so doing, become their captors. In these circumstances it will be very difficult even to return the security services to “normal” as high-quality personnel are the minority inside and outside the services. Successful reform of the security services must therefore include deep cuts to human resources, otherwise incoming personnel will be socialised in the clientelist culture. This of course requires large quantities of both time and resources.

### **Reversing the Trend**

The first step towards freeing the security services and the security and intelligence sector is to establish the true state of affairs and to determine the extent of damage caused by the capture of this sector. This study is merely an outline of the (poor) state of affairs and trends in the security and intelligence sector and, at the time of writing, the scale of the problem is much greater than we have been able to investigate and describe for the purposes of this report. For example, it has recently come to light that Zoran Petrović has been employed by the BIA, even though US authorities had blacklisted him for illegal arms trading while he worked for Partizan Tech.<sup>277</sup> The Jovanjica case is even more revealing since the President of Serbia, Aleksandar Vučić, stated that members of the police, military and BIA have been providing security for illegal drug production at the company’s property.<sup>278</sup>

It is imperative, therefore, to first conduct a comprehensive and detailed analysis of the scope and depth of the capture of Serbia’s security and intelligence sector, the drafting of which should involve various actors who would contribute their expertise from various fields to ensure the overview of this sector is as accurate and detailed as possible. Indeed, such a study would make it possible to improve existing recommendations and to determine the scope and depth of any intervention, as well as a timetable for

277 Jeremić, V. (2019), Radnik BIA pod sankcijama SAD (*BIA employee under US sanctions*), *Danas*, 12/12/2019, Belgrade, DAN GRAF d.o.o.

278 Mastilović Jasnić, I. (2020). Veliki Novogodišnji intervju: Vučić za “Blic” o aferama, pričanju na kineskom, šta zamera svojim ljudima, i zašto se ne bi opet kandidovao za predsednika (*Big New Year Interview: Vučić talks to us about scandals, speaking Chinese, what he begrudges his people and why he wouldn’t run for president again*), Blic, 01/01/2020, Belgrade, Ringier Axel Springer d.o.o., Online Source: <https://www.blic.rs/vesti/politika/vucic-intervju/3x35g7r>

the implementation of recommendations. It has been known for several years that reform of the Serbian security services is necessary. For example, it is widely accepted that the BIA's police powers should be rescinded, that the monitoring centre for covert interception of communications should be relocated from the Agency's premises and entrusted to a separate body, that mobile equipment for covert surveillance should be subject to controls and that human resources are in need of reform.<sup>279</sup> The specific modalities for implementing these solutions and the manner and scope of reform of human resources remain unknowns. This is because, at present, it is not possible to know how many security service personnel work with organised crime groups or are loyal to party leaders rather than to the laws and constitution of Serbia. Much the same is also true of the rest of the country's security and intelligence sector.

In terms of conducting comprehensive analysis of the state of the security and intelligence sector and the re-formulation and consolidation of recommendations, Serbia can draw on the already rich experience of neighbouring North Macedonia. North Macedonia based reform of its security services on precisely such a comprehensive report (known as the Pribe Report). The Belgrade Centre for Security Policy and the PrEUgovor coalition have for over a year advocated that Serbia and other Western Balkan countries on the path to EU accession should produce similar reports as soon as possible, rather than waiting for the big scandal and for the political situation to escalate.<sup>280</sup> Additionally, the experience of South Africa, whose president was a key figure in the capture of state institutions, could also be useful for the de-capturing of the Serbian state.<sup>281</sup>

279 For recommendations on reform of the security services, see:

- Pravne, organizacione i praktične preporuke za unapređenje stanja (*Legislative, organisational and practical recommendations for improvement of the status quo*), 06/07/2012, Belgrade, Ombudsman and Commissioner for Information of Public Importance;
- Milosavljević, B. (2016), *Analysis of the Legal Framework regulating the Security and Intelligence System of the Republic of Serbia*, Belgrade, Belgrade Centre for Security Policy;
- Petrović, P. And Đokić, K. (2017), *Slippery Slopes of the Reform of Serbian Security Services*, Belgrade, Belgrade Centre for Security Policy;
- Petrović, P. (2020), *Key Aspects of Security Service Reform: The Experiences of Serbia, North Macedonia and Montenegro*, Belgrade, Belgrade Centre for Security Policy.

280 Pejić, J. and S. Stojanović Gajić. (2018). *Why Do We Need the Pribe Report As Well? How to Reverse the Trend of State Capture in the Western Balkans*. Belgrade, Coalition prEUgovor.

281 For more on the South African experience, see:

Madonsela, T. (2016). *State of Capture - A Report of the Public Protector*. 14 October 2016. Pretoria, Public Protector of the Republic of South Africa, and Alence, R. and A. Pitcher (2019). "Resisting State Capture in South Africa." *Journal of Democracy* 30(4): 5-19, and February, J. (2019). *State Capture: An Entirely New Type of Corruption*. Pretoria, Institute for Security Studies.

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## About the Author

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## About BCSP

Belgrade Centre for Security Policy (BCSP) is an independent think-tank founded in 1997 and dedicated to advancing security of the citizens and society on the basis of democratic principles and respect for human rights. n the focus of the BCSP's interest are all policies aimed at the improvement of human, national, regional, European, and global security.

BCSP supports consolidation of security sector reform and integration of Western Balkan countries into the Euro Atlantic community through: research, analysis and policy recommendations, advocacy, education, publishing, expert support to reforms, and networking of all relevant actors.

Specifically, BCSP probes into the dynamics and achievements of reform of Serbia's state apparatus of force, as well as problems of placing this sector under democratic civilian control and oversight.

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The up-to-date programme strategy based on three overarching areas – Capacity Development, Policy Development and Regional Cooperation – is channelled via flagship programmes and selected projects, complemented with a set of actions arising from EFB's regional identity as a relevant player in its fields of focus.

Their synergetic effects are focussed on continuous "Europeanisation" of the policies and practices of the Western Balkans countries on their way to EU accession, through merging of the region's social capacity building with policy platform development, and a culture of regional cooperation.

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