



SECURITY

Whose responsibility?

Reflections on accountability of private security in Southeast Europe

Franziska Klopfer and Nelleke van Amstel (Eds.)



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Reflections on accountability of
private security in Southeast Europe

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The Editors,

Geneva, June 2017

CONTENTS

Introduction	8
Chapter 1: Defining private security accountability <i>Sorcha MacLeod</i>	9
Chapter 2: Closing the Private Security Accountability Gap <i>Nelleke van Amstel</i>	16
Chapter 3: Accountability of the Private Security Sector in Albania <i>Arjan Dyrmishi</i>	21
Chapter 4: Accountability of the Private Security Sector in Bulgaria <i>Anton Kojouharov and Rositsa Dzhekova</i>	26
Chapter 5: Accountability of the Private Security Sector in in Kosovo – Creating Fertile Ground for a Grey Market <i>Donika Emini and Mentor Vrajolli</i>	30
Chapter 6: Accountability of the Private Security in Serbia <i>Predrag Petrović</i>	35
Chapter 7: Roundtable Report <i>Cornelius Friesendorf with Nelleke van Amstel and Franziska Klopfer</i>	41
Chapter 8: Lessons Learned on Private Security Accountability <i>Franziska Klopfer</i>	52
List of Contributors	67
Project partners	69

Introduction

Private security companies (PSCs) play an increasingly important role in the security sector of most countries in Europe and elsewhere. As providers of security services, PSCs and their activities have a direct impact on security, human rights and a country's democratic order. It is therefore in the interest of the public that PSCs are effectively regulated and accountable for alleged wrongdoings.

States usually define some obligations and limitations for private security in their legal and regulatory frameworks, setting out the parameters within which private security is allowed to operate. Generally, accountability of private security is ensured through the application of these laws and the various control and oversight mechanisms they provide. If the private security sector is understood as a part of the wider security sector, accountability should contribute to advancing the good governance of the security sector, improved security and the protection of human rights. However, determining the role of the state in ensuring professionalism of PSCs and their contribution to good security sector governance remains a difficult endeavour.

An overview of the situation in Southeast Europe and beyond indicates that security sector oversight bodies, such as parliaments, so far have shown very little interest in overseeing the private security sector. There seems to be a lack of understanding of the role that private security plays in the security sector and how key principles of good security sector governance, such as transparency, participation, efficiency and accountability, apply to them.

It also seems that little emphasis is placed on ensuring professional accountability of private security. This includes the responsibility of a PSC to fulfil contractual obligations and professional standards that the industry has set for itself, such as codes of conduct. The aim of these standards should be the effective and efficient delivery of security, as well as ensuring that ethical considerations, especially the respect of human rights, are brought into industry operations. This last development should be considered against the backdrop of the consolidation of a framework of international human rights applicable to companies globally, even in the absence of specific domestic laws. Existing international standards aimed at the private security industry set out standards of behaviour, but generally do not yet provide for oversight and accountability mechanisms that ensure their implementation.¹

Accountability challenges in Southeast Europe

The Private Security Research Collaboration Southeast Europe (PSRC) is a three year research project led by DCAF and conducted by a team of researchers from four Southeast European countries and Switzerland, supported by the Swiss National Science Foundation (SNSF).² The project aims

1 See chapter 1 ("Defining Private Security Accountability" - Sorcha MacLeod) and the UN Guiding Principles on Business and Human Rights http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

2 Private Security Research Collaboration Southeast Europe (PSRC) (2014-2017). For more information on

to better understand gaps and challenges to private security regulation and to raise awareness on shortcomings regarding the oversight of this industry. In order to better understand what accountability means in private security governance, the PSRC organised an expert roundtable in Belgrade to exchange findings and test ideas with international and regional experts and practitioners on gaps and opportunities for private security accountability.

During the Roundtable on Private Security Accountability, Control and Oversight (Belgrade, Serbia, 8 to 9 December 2016), the participants discussed national similarities and differences in approaches to understanding private security accountability and controlling and overseeing PSCs. They also gathered general and country specific conclusions on needs and policy recommendations for their respective governments.

This volume is a collection of the contributions to the Roundtable. It includes a Roundtable Report drafted by Cornelius Friesendorf (Chapter 7) and four presentations delivered at the event: Sorcha MacLeod's contribution on private security accountability (Chapter 1) and Nelleke van Amstel's presentation on the gap in private security accountability (Chapter 2), as well as papers on the state of private security accountability on Albania (Arjan Dyrmishi, Chapter 3) and Serbia (Predrag Petrović, Chapter 6). Also included are papers on private security accountability in Bulgaria (Anton Kojouharov and Rositsa Dzhekova, Chapter 4) and Kosovo (Donika Emini and Mentor Vrajolli, Chapter 5), which were completed by the authors after the Roundtable. A concluding chapter by Franziska Klopfer (Chapter 8) draws lessons learned from the contributions and proposes future steps.

The volume begins with two attempts at defining the theoretical basis of private security accountability. MacLeod defines PSCs' obligations of accountability by applying national and international legal standards, especially the international human rights framework to the work of PSCs. Van Amstel looks at the sources of responsibility of both PSCs and the state in ensuring good governance of the private security sector. She highlights the limits in current national and international legal regimes and accountability mechanisms and finds that there is still a considerable gap in how accountability in the private security sector is ensured in contemporary Europe. The four country papers (Dyrmishi, Kojouharov and Dzhekova, Emini and Vrajolli, and Petrović) provide more detailed studies on why accountability is not fully ensured in the private security sectors of Albania, Bulgaria, Kosovo and Serbia. The authors all start by critically assessing the legislation on private security in their country. They examine what kind of regulation was imposed on PSCs and what this says about the (perceived) roles and responsibilities of PSCs within the national security sector. The studies look into the capacities of control and oversight bodies to oversee the private security sector and how the wider political and social context allows these bodies to be efficient – or not. The Roundtable Report compiles many of the points raised in the

six papers and puts them into a wider context by outlining the comments, ideas and experiences of all Roundtable participants.

Chapter 1: Defining private security accountability³

Sorcha MacLeod

Defining private security accountability

In this introductory presentation, I was invited to address two key questions:

- Why is private security accountability important from the perspective of constitutional law and human rights?; and
- How has the increasing privatisation of security changed our view about what kind of private security control and oversight is necessary?

Quite simply, because of the types of services that private security companies provide, they are in a position to violate human rights in numerous different ways. For example, PSC personnel may carry weapons which impacts on the right to life or they may be involved in detaining individuals which impacts on the right to liberty as well as the right to be free from torture and inhuman and degrading treatment. They may also be linked to negative human rights impacts through their government clients as well as their business relationships. In addition, the increasing privatisation and outsourcing of security by states means that the security industry is expanding rapidly into new spheres of operation, this in turn means that the risk of human rights violations increases.⁴ The difficulty is that there is limited oversight of PSCs in relation to human rights.

In order to address these issues in more detail, four separate elements must be considered:

1. The relationship between the state and security
2. State power, privatisation and the impact on human rights
3. Why human rights are important in relation to security
4. Human rights accountability

3 Paper presented at the "Roundtable on Accountability, Control, and Oversight of the Private Security Sector", Belgrade, 8 and 9 December 2016, organised by DCAF.

4 For examples of human rights violations see MacLeod, Sorcha. "Regulating Human Rights in the Context of Outsourcing Military Logistics and Armed Security" in Berndtsson, Joakim & Christopher Kinsey, eds. *The Routledge Research Companion to Security Outsourcing*, (New York: Routledge, 2016), 161.

1. The relationship between the state and security

“the claim to legitimate violence has long been understood to be the exclusive domain of states.”⁵

The provision of security is traditionally understood as being a state monopoly and so, historically, it is the state that creates and maintains e.g. a police force, armed forces and other forms of security service. In fact, Max Weber took the view that this monopoly on legitimate violence is what defines the ‘state’ from an internal perspective. Externally, public international law regulates what states are and what they do in addition to how and when they may use violence.

International law tells us that a state is accountable and legally responsible for the actions and omissions of organs of that state, including the violation of human rights. Questions arise, however, when private business actors take over certain state functions e.g. security functions. Who or what is accountable and responsible for human rights violations by private actors?

2. State power and privatisation

In the years following the end of World War II, privatisation of defence and security functions has become increasingly common. For example, in the United States, a mass contract-based ‘privatisation of defence function’⁶ takes place leading to an extensive system of federal contracts and to what President Eisenhower famously called the ‘military-industrial complex.’⁷ Despite this shift towards privatisation, Eisenhower nevertheless called for transparency, scrutiny and accountability of the industry, something which many observers and critics continue to seek today.

Throughout the 1970s and 80s privatisation of state functions in general becomes increasingly prevalent (see for example, the United Kingdom and Thatcherism) but it is not until the new millennium that the retreat of the state becomes more apparent in the defence and security sectors when it emerges in relation to the military interventions in Iraq and Afghanistan. Those interventions resulted in a significant number of private security contractors providing goods and services to the armed forces of participating states as well as the increased use of subcontractors. These contractors and subcontractors have been described as operating in a situation of ‘anarchy’⁸ and major concerns emerged about weak corporate governance and increasing reports of human rights abuses.⁹

5 Chesterman, Simon and Chia Lehnardt, eds. *From Mercenaries to Market*. (Oxford: 2007), OUP at 1.

6 Likosky, Michael, “The Privatization of Violence”, in Chesterman, Simon and Angelina Fisher, eds. *Private Security, Public Order: The Outsourcing of Public Services and its Limits* (Oxford University Press: Oxford, 2009), 14.

7 President Eisenhower Farewell Address to the Nation, 17th January 1961. Available at: <https://www.youtube.com/watch?v=8y06NSBBRtY>

8 Frost, Mervyn. “Regulating anarchy: the ethics of PMCs” in Alexandra, Andres, Deane-Peter, Baker and Marina Caparini eds. *Private Military and Security Companies: Ethics, Policies and Civil-military Relations*. (London, Routledge: 2008), 51.

9 Paper presented at the “Roundtable on Accountability, Control, and Oversight of the Private Security Sector”, Belgrade, 8 and 9 December 2016, organised by DCAF.

In the years since initial interventions in Iraq and Afghanistan, the use of private security contractors and subcontractors has increased substantially. PSCs are now a 'permanent feature of the international security environment'¹⁰ and are extending their operations into the domestic sphere. They are not only hired for operations in conflict, post-conflict and fragile environments but increasingly states are contracting private security companies to carry out other state functions. For example, private security companies are being contracted by governments to run prisons, operate immigration detention facilities, provide event security, transport prisoners, monitor offenders electronically, facilitate deportations and guard diplomatic assets. This is problematic from an accountability perspective, particularly in relation to human rights as the international rules governing states do not automatically apply to private security contractors and subcontractors.

3. Why human rights are important in relation to security

What are human rights? They are internationally recognized norms protected by international legal rules which govern the behaviour of a state towards its citizens and those within its territory. The international legal framework for human rights places a limitation on how states are entitled to treat individuals and groups of individuals. Furthermore, human rights obligations and standards are often reflected in and protected by national constitutions.

Human rights fall into different categories. For example they may be described as Civil and Political Rights whose aim is to ensure, among other things, the protection of the lives of individuals, the right to be free from torture or degrading treatment, the right to liberty, the right to a fair arrest and detention, and the right to freedom of expression and association. Alternatively human rights may be classified as Economic Social and Cultural Rights, those rights that aim to ensure that everyone has access to e.g. sufficient food, shelter, clean water, and protection of their culture. Human rights may also protect particular groups e.g. women, children, the LGBT community, religious minorities and indigenous communities.

A problem arises when considering the human rights responsibilities of private security companies because, as highlighted, international human rights law is aimed at states and imposes legal responsibility on states when they engage in human rights violations. International human rights law is therefore vertical in effect and governs the relationship between a state and an individual or a group of individuals. It is designed to act as a restraint on the power of the state. It was not designed to apply to a situation where a state has contracted some of its functions to private actors. In other words, there is no horizontal effect of human rights law which means that there is a gap in the law. An individual whose human rights are violated by a private security company cannot seek a remedy against the company under international human rights law because it is inapplicable.

10 Berndtsson, Joakim & Christopher Kinsey, eds. *The Routledge Research Companion to Security Outsourcing*, (New York: Routledge, 2016), 1.

Moreover, a state is not permitted to escape its international obligations by contracting-out, but the legal picture is further complicated when PSCs are operating outside of their home country.

4. The move towards accountability

As a result of increasing public awareness of the private security industry and its activities, there has been a concerted effort to raise standards. The aim of greater accountability is guided by two key human rights drivers.

Firstly, there is a specific desire to improve corporate governance standards across a private security industry that has been repeatedly tarnished by the misconduct of certain firms, particularly in relation to human rights. Secondly, there is a more general trend towards regulating the conduct of all business actors in relation to human rights across all industries and this trend has culminated in the adoption of one of the most important business and human rights initiatives of recent years, the United Nations Guiding Principles on Business and Human Rights (UNGPs).¹¹

There are four possible methods for holding PSCs accountable for their actions:

1. National legal systems and courts
2. Company codes of conduct
3. International and regional voluntary initiatives
4. International legal framework

Each is problematic in its own way. Firstly, very few states have in place legislative provisions to hold any corporate actors to account for their actions abroad. Secondly, company codes of conduct are not binding and carry little weight. Most progress has been made in relation to international and regional voluntary initiatives as well as the development of an international legal framework.

In terms of PSCs, an elaborate multi-stakeholder system has been created with the participation of states, civil society and the industry itself. Drawing on the Protect Respect Remedy pillars of the UNGPs, the Montreux Document and the International Code of Conduct for Private Security Providers (ICoC) reflect:¹²

- The STATE duty to protect human rights: an obligation to protect against human rights abuses by business actors through policies, legislation, regulation and adjudication;
- The CORPORATE responsibility to respect human rights: business actors should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved;

11 Ibid, 162-164.

12 Ibid, 164-166.

- Access to REMEDY: states and business actors should ensure guaranteeing access to judicial and non-judicial remedies where appropriate.

International Code of Conduct for Private Security Providers

While the Montreux Document addresses the obligations of states in relation to PSCs, the ICoC focuses on PSCs themselves and expects its signatory companies to “commit to the responsible provision of Security Services so as to support the rule of law, respect the human rights of all persons, and protect the interests of their clients”.¹³ The ICoC applies only to PSC services delivered in ‘complex environments’ which is defined in broad terms as:

any areas experiencing or recovering from unrest or instability, whether due to natural disasters or armed conflicts, where the rule of law has been substantially undermined, and in which the capacity of the state authority to handle the situation is diminished, limited, or non-existent.
(Definitions and para. 13)

As mentioned above, both the ICoC and its oversight organisation International Code of Conduct Association (ICoCA) reference and endorse the UN Protect Respect Remedy framework.¹⁴ The ICoC and ICoCA together envisage a monitoring and compliance process for member companies of the ICoCA which should be conducted by independent third party certification bodies or auditors. This includes on-site monitoring by the auditors of security services provided by the companies and other service provisions.¹⁵ They do not themselves articulate a specific audit or certification process, rather individual national and international standards bodies are free to develop certification standards which will potentially meet the ICoC criteria and against which PSC processes and policies can be measured. Thus, the American National Standards Institute (ANSI) and ASIS International¹⁶ developed the PSC1 standard as one possible mechanism for meeting these requirements. PSC1 has been piloted in the UK and adopted by both the UK government¹⁷ and the US Department of Defense.¹⁸ The International Organization for Standardization (ISO) has also developed its ISO18788 global certification standard for PSCs. The ICoC, ICoCA, PSC1 and

13 ICoC, Preamble, para. 3.

14 ICoC 2010, Paragraph 4 of the Preamble; ICoCA 2013 Article 2.2.

15 ICoC 2010, paras 7 and 8.

16 An international organization for security professionals, providing educational programs and materials that access broad security issues. More information at: <https://www.asisonline.org/About-ASIS/Pages/default.aspx>

17 Written Ministerial Statement to Parliament, ‘Private Security Companies.’ The author was a Human Rights Subject Matter Expert in the UK PSC1 Pilot and continues to audit PSC human rights policies against the PSC1 standard.

18 ‘Section 833 of the National Defense Authorization Act of 2011 required the Defense Department to use business and operational standards in contracting and management of PSCs, with the intent of raising the overall standard of performance of these companies. Pursuant to this requirement, the Department of Defense facilitated the development of consensus based quality management standards. These standards were recognised by the American National Standards Institute in March 2012. Since May, 2012, all Defense Department contracts for private security functions performed overseas require conformance with this standard.’ US Office of the Deputy Assistant Secretary of Defense, ‘Private Security Companies (PSCs)’, 21 February 2014, available at <http://www.acq.osd.mil/log/PS/psc.html>

ISO18788 expect, and in the case of the two audit standards, require, companies to implement human rights policies, undertake human rights risk analyses, conduct human rights due diligence in relation to their supply chains and provide a whistleblowing and third party grievance mechanisms for the handling of internal and external human rights complaints.

What does Protect Respect Remedy mean for PSCs?

There are two clear goals:

1. preventing human rights abuses by business actors; and
2. ensuring that the victims of such abuses have effective access to redress.

A question then arises, how is this to be achieved? The UNGPs envisage that respect for human rights and the provision of company remedies will emerge as a result of changing corporate behaviours. In brief, it means that PSCs are expected to do the following:

- Develop and publish human rights policies
- Undertake human rights risk and impact assessments
- Carry out human rights training of all personnel
- Vet all personnel for past human rights violations
- Develop internal reporting mechanisms for human rights issues
- Develop whistleblowing mechanisms for personnel
- Develop third party mechanisms for human rights complaints

Summary

In recent years the provision of security has been increasingly privatised and outsourced. This has raised questions of accountability for PSCs. The potential for negative human rights impacts is clear but how is accountability to be achieved? All of the regulatory mechanisms aimed at the security industry incorporate an expectation that companies themselves will adapt their company cultures and will incorporate concrete human rights policies and mechanisms into their corporate structure.

Finally, it is important to note that the UN Guiding Principles are important for private security companies no matter where they do business because:

1. They apply to ALL business actors including business clients and sub-contractors.
2. The Protect Respect Remedy principles are integrated into the International Code of Conduct for Private Security Providers and the International Code of Conduct Association.

Chapter 1: Defining private security accountability

3. Due diligence, human rights policy, human rights risk assessment/impact assessment, stakeholder consultation, training, vetting, remedy requirements etc. are ALL part of certification standards for private security companies e.g. PSC1, ISO18788.

These principles apply whether or not a PSC is a signatory to the ICoC or a member of the ICoCA, and must be promoted in order to ensure accountability and responsibility within the private security industry.

Chapter 2: Closing the Private Security Accountability Gap¹⁹

Nelleke van Amstel

Private security Companies (PSCs) are private actors, accountable to national laws and subject to control over their compliance to those laws, like any other business entity or individual. However, it can be argued that these companies should be subject to more specific and stringent laws, control and oversight than most other businesses or individuals, for several reasons.

Firstly, due to the nature of activities and services provided by PSCs and the traditional role of the state in having a monopoly on the use of force; this is well emphasized and analysed by MacLeod in Chapter 1. Secondly, the nature of the work of PSCs means that they operate in publicly accessible places, with the quality of their work either increasing the level of or threatening the security of ordinary citizens. It thus becomes important that PSC personnel receive the appropriate training and work with suitable equipment, and that a higher level of scrutiny is applied to them. Given the effect of the private security industry on security sector governance and the potential impact on human rights and liberties, it is appropriate and necessary that a higher level of accountability and oversight is required. PSCs are professional actors with a formalised role in security provision, this gives more reason and opportunity to require training, management structures and sound internal policies that ensure professional operations in conformity with the law and respect for human rights.

However, as seen in prior publications of the PSRC Southeast Europe,²⁰ the opposite seems to hold true; oversight and accountability of PSCs is often insufficient. A gap still exists when it comes to holding private security providers accountable for violations of the law and oversight actors responsible for other challenges to do with this industry, that impact on security and the human rights of the population. Firstly, the nature of PSCs complicates the development of adequate regulation and oversight. The industry has grown exponentially over the past decades, and now delivers a variety of services. Specialized knowledge of private security operations within regulatory authorities is necessary to fully understand how PSCs can be controlled and what their internal policies should entail. Expertise in the drafting process of laws and licensing schemes is needed to understand what criteria PSCs can and should comply with. Also, since the nature of private security is ever-changing, regulation is often lagging behind technological developments.

19 Paper presented at the "Roundtable on Accountability, Control, and Oversight of the Private Security Sector", Belgrade, 8 and 9 December 2016, organised by DCAF.

20 Klopfer, Franziska and Nelleke Van Amstel eds. *A Force for Good? Mapping the Private Security Landscape in Southeast Europe* (Belgrade and Geneva: DCAF, 2015); Klopfer, Franziska and Nelleke Van Amstel eds. *Private Security in Practice: Case studies from Southeast Europe* (Geneva: DCAF, 2016). The volumes can be found at: <http://www.ppps.dcaf.ch/en/private-security-research-collaboration-southeast-europe-2014-2017>

Chapter 2: Closing the Private Security Accountability Gap

This results in new techniques or equipment not being covered by regulation because laws are seldom updated and do not correspond to the latest developments in the industry.

Strong ties between private security and the public security sector or government are not uncommon due to the increase in the privatisation of security services. This further aggravates the lack of oversight by state bodies and inspectorates as such ties may result in a bias or even nepotism, impairing any existing mechanisms for oversight and accountability. Paradoxically, private security actors are not seen as an integral part of the security sector, and hence are not considered under the oversight structures that ensure wider security sector governance. Indeed, the kind of democratic oversight and accountability that is exercised over the public security sector would be unfeasible and inappropriate for a private company. There is a resulting lack of understanding of how elements of good security sector governance apply to a private company. Oversight bodies, such as parliaments and independent state bodies generally do not consider the activities of private security. Private security companies are commercial actors, but nevertheless perform highly sensitive and impactful services which, if performed by a state institution, are overseen by formal internal and external mechanisms.

What, if anything, can then be done to improve oversight and accountability structures for the private security industry? All of the factors outlined above concerning PSCs - the impact of their work; their role in society; the flaws in their regulation and control so far; nepotism and conflict of interest surrounding their relationships with public institutions - indicate that stronger oversight and accountability is needed, and that this can only be achieved by drawing on all actors which can have a meaningful role in ensuring a professional and accountable private security sector.

In order to detect the different ways in which private security providers may be held accountable for their actions, in more traditional or more innovative ways, the following three questions go to the heart of what is meant by accountability when talking about the private security industry:

- Who is accountable for the actions of private security providers?
- For what exactly are they accountable, which responsibilities form the benchmark, and towards whom can they be held accountable for that responsibility?
- Lastly, by whom; which actor is responsible for ensuring that accountability?

Who is accountable for the actions of private security providers?

When answering the question of who is accountable when operations of private security providers have an adverse impact, it is obvious to point to the company itself; PSCs are accountable for what they do and how they perform. As a corporate entity with commitments under national and international law directly applicable to their work, as well as in their role as a contracting party with contractual obligations, PSCs are primarily accountable to their clients for their behaviour. Besides the accountability of the company as a legal entity, individual PSC personnel are responsible for their own conduct. Additionally, the state may also be considered responsible for actors within the private security industry, as the state itself has a responsibility toward its citizens to preventing human rights violations and for controlling and overseeing the security sector as a whole, as well as the responsibility for overall security within the state as a public good.

For what exactly are these actors accountable, which responsibilities form the benchmark, and towards whom can they be held accountable for that responsibility?

Examining what private security sector actors are accountable for includes measuring their performance and behaviour against national laws governing the PSCs as private entities and as security providers. Labour laws, tax laws and human rights principles which should be incorporated in national law also govern the work of PSCs. The state defines some obligations of PSCs in its legal and regulatory framework, with most countries setting formal licencing criteria. This legal accountability sets out the parameters within which private security is allowed to operate in a country. Additionally, if not compliant with international human rights obligations as far as they apply to business actors, PSCs should be held responsible for non-compliance.²¹

Secondly, PSCs can be held accountable for any determinations and criteria within their contracts with clients. Certain professional conduct and behavioural standards are increasingly part of such contracts. Professional accountability required of PSC can be a driver for these companies to adhere to operational norms or codes of conducts. This is not mere theory: globally there have been national and international initiatives by the industry to draw up voluntary codes of conduct when regulation is lacking. This indicates an awareness of an inherent responsibility to adhere to certain operating standards, and though formal accountability structures are not always accompanying these codes, arguably a clear commitment from a company makes it accountable



21 UN Guiding Principles on Business and Human Rights "Protect, Respect and Remedy Framework", 2011. Available at: http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

for violations. PSCs can be held accountable by actors such as the media and civil society, which can expose company behaviour if self-imposed codes are violated.

However, besides this more evident accountability for violations of applicable laws, contracts, or voluntary codes of conduct and industry standards, less clearly delineated areas of responsibility can be identified. Considering the specific nature of PSCs as providers of security, the question arises if PSCs could be considered responsible for wider security in society. On the one hand, PSCs are business contractors who are only paid and mandated to perform the tasks in their contract, for their clients, under the agreed contractual requirements and under the laws that govern their lucrative activities. On the other hand, they are also security actors that have the power to impact citizens' security for better or worse. Though they do not have a formalized obligation to ensure public security, as police or other public security forces do, it can be argued that by the nature of their tasks such a responsibility inherently arises. The extent of that responsibility however is hard to determine. It is difficult to determine how far the contractor should deviate from his assigned area to ensure security. But it is also difficult to determine substantively; to what extent should the security provider be responsible for preventing crimes and providing security of persons outside the scope of his assignment and can we hold them accountable in case of not doing so?

By whom; which actor is responsible for ensuring accountability?

In order to develop new ideas about ways in which PSCs can be held accountable, it is important to think about the whole spectrum of actors that can play a role in oversight and accountability, whether through formal means, by publishing information and conducting investigations, or through more informal ways such as generating debate among the public.

Regulators, policy makers, and wider interested stakeholders need to consider how all of these levers can be used to increase accountability of a growing and highly influential actor. Lacunas in one type of oversight, such as regulatory oversight, caused by flaws or challenges such as conflict of interest, can be off-set by an active alternative overseer, such as the parliament in its oversight role of the regulator, or the media in overseeing the government.

A variety of actors can be identified for a role in establishing and maintaining oversight and accountability of PSCs. Each actor has limitations but also opportunities to help further accountability. Some actors are more obvious, others can be used to leverage their specific role for this industry. The different roles that a variety of actors can play will be addressed in subsequent chapters.²² Also, for a quick overview, a full table of actors, with the limitation and opportunities identified for each during the workshop, can be found in Annex I.²³

Currently, the potential of the various actors is not used to the fullest. The roles of different actors explored in this volume serve as a reminder that accountability of the private security industry can

22 See chapter 7 and Conclusion to this publication.

23 See for further detail Annex I to this publication.

only be achieved by thinking through the issue from the perspective of different actors, which can all play a role in better oversight and a more accountable private security industry.

Chapter 3: Accountability of the Private Security Sector in Albania²⁴

Arjan Dyrmishi

Summary

Albania has a legal and institutional framework for holding private security companies (PSCs) accountable, which was established after the emergence of the private security market in the early 1990s. Although this system has evolved over the years, in practice accountability is partial and fragmented. This situation has resulted mainly from the combination of three main factors: (1) the inherent challenges that stem from maintaining the right balance between ensuring that the PSCs operate as business entities while acting as security providers, (2) an overall corrupt and politicised public administration, and (3) generally poor accountability of the executive and the public security sector.

Privatisation of security and accountability

Since the emergence of the private security market in the early 1990s, the accountability of PSCs has posed different challenges as the market itself and the concept of accountability in the private security industry have evolved. Currently, the main challenge in Albania has been to ensure the right balance between PSCs as security providers and PSCs as business entities. Practice has shown that the failure of one has negatively impacted the other, leading thus the overall accountability system toward the lowest common denominator.

Starting in the years between 1992 and 2001, when the private security market emerged and began to consolidate, there was no clear division between state and private security providers. This was reflected in the accountability system. PSCs were generally considered an extension of the state police so the accountability system was focused more on ensuring that they fulfilled their obligations as security actors and much less on abiding by the business legislation which at the time was much less developed. Consequently, the process of issuing a business licence was rather a simple procedure with minimal requirements while the State Police was the ultimate authority to issue licences for PSCs based on vetting and security concerns and to control their performance.

When PSCs first started to appear in Albania state institutions were unsure about their power and motives. A number of accountability mechanisms and restrictions were introduced in 1993 through a first law on PSCs, which essentially aimed at allowing the State Police to easily overpower the PSCs

24 Paper presented at the "Roundtable on Accountability, Control, and Oversight of the Private Security Sector", Belgrade, 8 and 9 December 2016, organised by DCAF.

in case they would pose a threat to state and public security. The limits imposed on PSCs included the prohibition to operate beyond the district where the companies were licensed, limitations on the number of personnel and weaponry, the prohibition to self-organize in associations, etc. Although this system allowed having fairly good control over PSCs, it impeded their development as business entities.

The situation began to change as of 2001 when the business legislation evolved considerably and PSCs were required to operate as business entities. Such developments led to the need of repealing the 1993 law in 2001, and in 2014, the 2001 law on PSCs was also repealed. The new legislation developed towards introducing rules that oblige the PSCs to operate in a more open market and to place safeguards ensuring they operate without jeopardising human rights while responding to increased demands for private security, both in quantity and quality.

Currently the accountability system focuses on ensuring that (a) PSCs provide security by effectively preventing crimes while also respecting the human rights of citizens, and that (b) PSCs comply with free market and free competition rules so that they provide affordable and quality services. The State Police, the Ministry of Interior, independent state institutions and the Parliament are responsible for ensuring accountability.

The Ministry of Interior and the State Police are responsible for the licensing of companies and personnel, for issuing guidance and controlling the implementation of staff training, storage and use of weapons, as well as the overall operational aspects that are related to crime prevention and the provision of security. In addition, the Ministry of Interior is responsible for controlling the State Police in order to ensure that the State Police fulfils its tasks properly. The work of the Ministry of Interior itself is then controlled by independent state institutions, such as the audit office and overseen by the human rights ombuds-institution. The Parliament also oversees how the Ministry fulfils its control tasks and makes sure that the PSCs are held accountable.

The Ministry of Finances and the Ministry of Labour with their respective agencies are charged of ensuring that market, competition and labour rules are respected. As a rule the agencies are responsible for the overall control of PSCs operations as business entities while the Ministries are responsible for ensuring the agencies perform these tasks properly.

Under the Ministry of Finances, the Competition Authority is responsible for ensuring that free and fair competition rules are respected, the National Registration Centre and the General Tax Directorate are responsible for ensuring that the PSCs fulfil their business and taxation obligations.

Under the Ministry of Labour, the Labour Inspectorate is responsible for ensuring that the PSCs fulfil their obligations regarding labour rights and standards (see table below).

Table 1: Accountability Framework for Private Security in Albania

Parliament		
Ministry of Interior	Ministry of Finances	Ministry of Labour
State Police	<ul style="list-style-type: none"> - Competition Authority - National Registration Centre - General Tax Directorate 	Labour Inspectorate
Security provider	Business entity	
Ensure security provision and effective prevention of crime while respecting human rights	Ensuring abidance by free and fair competition rules and business and taxation obligations	Ensuring PSCs fulfil their obligations on labour rights and standards
Private Security Companies		

Bureaucratic and political corruption

The institutional and legal framework for PSC accountability is in place in Albania, however the laws are not fully implemented and the relevant bodies do not make full use of their powers. For example, the bodies responsible for controlling security accountability and those responsible for ensuring business accountability do not cooperate well. By and large this is the result of widespread corruption at administrative and political levels.

The experience from the 1990s, when the PSCs were closely controlled by the Albanian State Police still helps the police today in controlling PSCs as security providers. As a result, overall the State Police is able to hold PSCs accountable on how they provide security and how they respect human rights.

However, in practice the ability of the State Police to license and to control the PSCs is impeded by the systemic corruption within the State Police. The motives for such corruption are not only financial but also political. Since the 1990s, political affiliation has been used as a means of controlling PSCs and in turn has also been used as an important precondition for issuing licences; in addition PSCs have been aligning along political lines. Research has shown that certain PSCs thrive when a certain political party is in power, mainly because of their easy access to public contracts while they switch to 'survival mode' when a given political party is in opposition.²⁵

25 Dyrmishi, Arjan and Gentiola Madhi, "Albania" in Klopfer, Franziska and Nelleke Van Amstel eds. *A Force for Good? Mapping the Private Security Landscape in Southeast Europe* (Belgrade and Geneva: DCAF, 2015).

It seems even easier for PSCs to avoid accountability regarding their obligations as business actors. There is evidence that PSCs can easily report falsely on income, tax and the data on the number of licensed and registered employees in order to cut down on wages and social and health insurances and maximise their benefit, while the cooperation between the agencies under the Ministry of Interior, Ministry of Finances, and Ministry of Labour is poor or inexistent.

A lack of business accountability then leads to market distortion: by avoiding taxes and other payments these companies can outbid their competitors. Corrupt practices in public procurement of security further lead to the distortion of competition. The poor accountability, or almost lack thereof, of the government contracting authorities has contributed to undermining the competition rules. In an environment of distorted competition the PSCs resort to offering the lowest possible offers in the tenders.

Over the years this has led to a constant lowering of market prices which the owners of PSCs have tried to offset by overworking and underpaying their employees, violating labour law, and by avoiding taxes and hiding revenues breaching tax legislation.

Poor accountability of the security sector and executive

Despite the problems and shortcomings over a number of years, the relevant ministries have failed to effectively control the performance of the respective agencies and to present to the public the causes of their underperformance and ways of addressing the problem. In the procurement domain the complaints filed by the PSCs in 2015 on tender irregularities made up 60% of all the cases at national level.

Similarly, the Parliament has also failed to organize any hearings to raise the issues that concern the private security sector and hold accountable the respective ministries for their failures. The adoption of the 2014 Law on PSCs presented a good opportunity but nonetheless, no meaningful discussion took place. The main point of debate in the Parliamentary Committee on National Security was whether to set an increase of the minimum salary of PSCs personnel by law or to leave it to the market to regulate it, while the discussion did not include any deeper analysis on the causes of such low salaries for guards.²⁶

In the two years since the adoption of the law at least three incidents occurred where PSCs failed to prevent multimillion Euro thefts. Such major failures by PSCs are a new development but hardly surprising if one considers that in all three cases the thefts were possible because the private security officers in charge were unprepared or badly equipped. Because PSCs hesitate to invest in an insecure business environment, this chronic lack of investment in equipment and training leaves private security staff exposed to infringements to their labour rights and the potential for wrong-doing while on the job. This shows that poor accountability has led to an overall worsening

26 Minutes of the meeting of the Parliamentary Committee on National Security, date 08.07.2014, (pages 29-44). https://www.parlament.al/wp-content/uploads/2015/11/komisioni_i_sigurise_date_08_07_0214_18382_1.pdf

Chapter 3: Accountability of the Private Security Sector in Albania

of the performance and credibility of the PSCs and that accountability as business operator and security provider are interrelated.

Yet the Parliament has not further explored what worked well with the new Law or the deeper causes of such failures and ways and means to curb such trends.

Chapter 4: Accountability of the Private Security Sector in Bulgaria²⁷

Anton Kojouharov and Rositsa Dzhekova

Summary

Bulgaria has implemented a relatively loose regulatory framework for control over the private security sector, wherein specialized oversight provisions are lacking. Hence, private security companies (PSC) are being held accountable to a weak specialized legislation that regulates security concerns and to general laws and provisions, which cover accountability issues in the fields of taxation, social and medical contributions, labour rights, public procurement, conflict of interest, and fair competition protection, among others.

Delineating the private security reality

The accountability of the private security sector in Bulgaria has largely been addressed through government efforts to find a balance between open market arrangements and regulating an up-and-coming market whose first major players had close ties with organised crime in the 1990s. Regulation of the market was gradual and evolved in two main stages. The first stage was completed in the 1990s and included efforts to thwart criminal activity of private security and private insurance companies. With the passing of Ordinance №14 for the Issuance of Permits for Guarding of Sites and Private Individuals by Physical and Legal Persons in 1994 and the prohibition of insurance companies to provide private security activities issues in 1998, the government aimed at lowering the number of criminal elements in the private security market. The Ordinance stipulated that PSCs which employ or are founded by persons that are under investigation, have criminal records or have not paid taxes cannot receive licences. Since that was true of almost all PSCs, many were closed down. Many of the PSCs which could not receive a licence for security were transformed into insurance companies. Under the new guise the same practices continued and the companies simply replaced forced insurance with forced protection until the government interfered in 1998 to prohibit security activities of insurance companies. As the market largely matured and moved away from criminal activities, further rules and regulations were adopted in 2000 with Ordinance №79 on the Conditions and Order for Carrying out Private Security Activities, whereby stricter control was imposed through inspections of PSCs.

The most important legislative initiative regulating the private security sector came in 2004, in the form of the Law on Private Guarding Activity (LPGA) which was meant to introduce best practices from Western countries. The Law defined private security and set out the five types of permitted

27 Paper prepared for the "Roundtable on Accountability, Control, and Oversight of the Private Security Sector", Belgrade, 8 and 9 December 2016, organised by DCAF.

Chapter 4: Accountability of the Private Security Sector in Bulgaria

security; it established an obligatory basic training course for PSC employees and reduced administrative procedures on renewing licences, thus freeing police capacity to focus on control. The control over PSCs was mandated entirely to the police and the Ministry of the Interior (Moi), where a specialised Directorate for “Control of the Private Security Activity” was established. A significant change of the Law on Private Guarding Activity occurred in 2011, which allowed PSCs registered in the European Union (EU), the European Economic Area or Switzerland to operate on equal footing with Bulgarian companies after it has been determined that local conditions are met.

Several other national regulations affect PSCs and complete the general accountability framework including, among others, the Law for Public Procurement (LPP) and the regulatory regime on the use of weapons. Further developments in the area have been made following the requirements and regulations of the European Union in connection with Bulgaria’s accession to the EU in 2007, as well as international obligations and commitments. Table 1 provides a brief summary of the major institutions that play a role in the accountability of PSCs.

Table 1. Control and accountability arrangement for PSCs in Bulgaria

PSCs as business actors	PSCs as security actors
Commission for Prevention and Ascertainment of Conflict of Interest - Conflict of interest - Governance - Public Procurement	Ministry of Interior - Law on Public Guarding Activities - Law on Law on Weapons, Ammunitions, Explosive Substances and Pyrotechnics - Critical Infrastructure protection
Ministry of Labour and Social Care - Labour rights	State Agency National Security - Strategic infrastructure protection
Ministry of Finance - Taxation	
Commission for Protection of Competition - mergers and acquisitions - market regulations	
Public Procurement Agency - procurement process	

Problems and challenges

The LPGA covers most relevant guarding activities but is not always coherent, comprehensive and precise. Definitions are insufficiently detailed and formulations are not always clear. There is also no specific document or bylaw setting out the procedure for the implementation of the Law. Weaknesses can also be found in: the lack of implementation of an effective control of activities,

lack of precise regulations of the relations between contractors and third parties, as well as the lack of cooperation among the Ministry of Interior (Mol) and its structures and other public bodies. In addition, accountability for the use of weapons is marred by ambiguous and inconclusive definitions and provisions in the law. For example, the law stipulates that security activities can be carried out by unarmed or armed guards. They can use auxiliary devices, but are limited to handcuffs, rubber and plastic truncheons, no further devices are allowed. The Law says that guards are entitled to use physical force and auxiliary devices only under specific circumstances, but does not define in which cases the weaponry could be used. Reference could therefore be made to the Bulgarian Criminal Code which says that it is only acceptable in general cases of inevitable self-defence. The registration procedure for weapons carried by private security guards is equivalent to that of regular citizens and is regulated by the Law on Weapons, Ammunitions, Explosive Substances and Pyrotechnics and the respective bylaws of LPGA. Private security guards have to apply for a permit to the Mol. PSCs have to apply for an additional permit for the carry and use of firearms by their employees.

Although PSCs as security actors are supposed to be fully accountable to the Mol, in reality this accountability is ineffectively controlled due to severe staff shortages in the respective Mol departments. With the staff numbering only several inspectors the task of controlling thousands of issued licences seems overly optimistic at best. In addition, there is a lack of effective mechanisms to verify the technical and human capacities of PSCs applying for licences, or their compliance with labour regulations, which undermines the quality of services provided and results in undue market advantages for non-compliant firms.

Accountable to whom?

Although the control over licensing and the administrative control of PSCs is by legislation centralised within the Mol, operational control and oversight becomes divested from the Mol in cases wherein PSCs provide security services regarding strategic infrastructure. The Mol has the overall responsibility and authority for control through the licensing and inspections regimes provided in the LPGA. However, the degree of criticality and strategic importance of a facility or service may put operational control under the remit of the State Agency for National Security (SANS). The security of facilities and services, which are given the status of strategic importance for the national security, is controlled operationally by SANS. In this case PSCs report directly to SANS for approval of security measures, while security priorities and plans are drafted by SANS and handed to PSCs to execute.

Self-regulation and self-accountability – the way forward?

Regulations and accountability arrangements seem to be lagging behind since the post-transition genesis of the private security market in Bulgaria. The nature of market actors has changed significantly from a reality where thugs and organised crime ruled the sector in the 1990s to a largely open and free market environment where many legitimate companies compete for a fair

Chapter 4: Accountability of the Private Security Sector in Bulgaria

market share. Market growth and saturation, however, coupled with lax legislation and weak accountability mechanisms put legitimate companies at a disadvantage. Rigged procurement processes, lack of requirements for technical and other expertise when issuing an operating PSC license and a sizeable part of the guarding workforce in the grey sector, are among the current drivers behind a growing trend in the sector toward self-regulation and exerting organised pressure on the Mol and the legislator to reform the LPGA. Most professional PSC organisations push for a stricter regulatory regime and more accountability that is necessary to guarantee market fairness and take the sector out of the grasp of the informal economy.

One of the key drivers behind control and oversight mechanisms stems from a specific desire to improve corporate governance standards across the PSC industry that has been repeatedly tarnished by the misconduct of certain firms, particularly in relation to human rights, allegations of ties with criminal kingpins and grey economic practices. There is a demonstrated willingness in several large Bulgarian PSC business associations to self-regulate toward a more effective oversight. An indicator of this internal driver is a recent industry initiative to implement an electronic register of active PSC licenses in the country – a measure that had been planned for implementation by the Mol but never materialized. The register is maintained by “Industrial Cluster Security” – a not-for-profit organization of PSC and security experts.

Conclusion

Regulating the private security sector has been largely an issue with low political saliency in Bulgaria. After initial attempts in the 1990s which aimed at stripping the sector of its criminal features, the 2004 LPGA left PSCs to operate in an almost de-regulated state. As a result, a significant portion of the market has been submerged in the grey economy, thus creating unfavourable conditions for PSCs who aim to operate exclusively in a legitimate manner. In addition, in recent years public concern about the control over PSCs has caused limited political attention, particularly following incidents with guards violating human rights and/or engaging in aggressive and violent behaviour. The present trend of pressure for reforms of the regulatory framework with a view of legislating stricter accountability and control provisions exerted from PSC professional organisations is expected to continue and be the major drive behind the shaping of the sector in the near future.

Chapter 5: Accountability of the Private Security Sector in Kosovo – Creating Fertile Ground for a Grey Market²⁸

Donika Emini and Mentor Vrajolli

Summary

The rapid expansion of the private security sector²⁹ in Kosovo occurred after Kosovo declared independence in 1999. Shortly after, the administration of the United Nations Mission in Kosovo (UNMIK) issued Regulation 2000/33 “Licensing of the Security Service Providers in Kosovo and the Regulation of their Employees”. This short legal document regulating the licensing of private security did not include mechanisms for oversight of the industry, and instead attempted to control the industry by prohibiting local PSCs from offering services that require the use of weapons (only international PSCs operating in Kosovo were allowed to do so).

An expansion of the market called for a better legislative and regulatory framework, hence the Law on Private Security Services in Kosovo (hereinafter Law on PSCs) was adopted in 2011. The Law on PSCs set local PSCs on par with international ones, allowing them to offer all their services, including those requiring the use of weapons. This change improved the commercial environment for local PSCs. Rapid market growth and the newly established rules in turn called for better oversight by state institutions and independent agencies, requiring a regulatory system that would ensure transparency of PSC operations, guarantee free and fair public procurement procedures (especially to do with the contract signed between the state institutions and PSCs), ensure oversight over the use of weapons and use of force, and reduce the opportunities for unethical or illegitimate activities by PSCs.

Accountability to the state or just the client?

During interviews that the authors conducted with PSC owners in Kosovo, it became clear that there is a perception amongst PSCs that they are more accountable to their clients than to the state-level body responsible for the oversight of PSCs – the Division on Private Security Companies (DPSC).

28 Paper prepared for the “Roundtable on Accountability, Control, and Oversight of the Private Security Sector”, Belgrade, 8 to 9 December 2016, organized by DCAF.

29 Private security sector in Kosovo has been developed mainly by Private Security Companies – this excludes Private Military Companies and Private Detectives, which have never been included in the legal framework regulating the private security sector.

Chapter 5: Accountability of the Private Security Sector in Kosovo – Creating fertile ground for a grey market

PSCs found that they were more accountable to the state only when the state was a client, given that they had to satisfy the clientele and ensure profits. There seems to be very low awareness that they ought to answer to or be controlled by state oversight institutions and/or independent state bodies and agencies, such as the national Ombuds-institution.

Further analysis has indicated that institutions that oversee the sector are disjointed while performing oversight activities; this is explored in the remainder of the report.

Lack of capacities and willingness to increase oversight

The private security sector in Kosovo is growing rapidly, with the number of PSC employees nearly exceeding the number of Kosovo Police officers. Private security should be seen as an important factor in the overall security architecture, including within the security sector review, and its regulation and governance should be a priority. Better regulation of the sector would not only ensure professionalism, but would considerably increase the quality of the services offered by PSCs.

However, PSCs have not been seen as a sector of importance in Kosovo. This is also reflected by the lack of proper legislation to regulate the sector and the minimal oversight of the sector. According to the Law on PSCs, the Ministry of Internal Affairs (MoIA) is legally responsible for regulating and overseeing the private security sector in Kosovo. The main licensing authority is the Division on Private Security Companies (DPSC), which operates under the MoIA. The DPSC is responsible for registering and licensing PSCs, performing the admission tests for PSC staff and training curricula – the licensing is quite an elaborate process both for the PSCs and for the DPSC.

To receive a licence, both the owners and employees must submit a wide range of documents and undergo a background check, which looks into their financial and criminal background. This process has to be repeated every three years, coinciding with the renewal of the license. The DPSC is also in charge of controlling the sector through regular PSCs inspections, but this still remains a challenge. Based on the data collected by field research the authors came to the conclusion that there is insufficient oversight by the DPSC. This may increase the possibility for the “grey market” to emerge as many PSCs offer the services they are not licensed to offer.

Given all the important tasks that the DPSC has, the division is severely understaffed. Although it is responsible for regulating a diverse and large sector of nearly 6’000 persons and 60 companies operating in different parts of Kosovo, the DPSC is comprised of only three inspectors and a director. The MoIA should see the DPSC as a relevant division and invest in both its human resources and professional capacity building. Aside from its oversight and control, the DPSC should cooperate with PSCs on a regular basis rather than only when inspecting the PSCs or when registering and licensing them. Regular meetings should take place to ensure that PSCs’ needs are met and that the DPSC oversees the sector properly.

Though it cannot oversee the sector as directly as the MoIA via the DPSC, the Assembly of Kosovo is another relevant institution for PSC oversight. Since the Law on PSC was adopted in 2011, the Committee on Internal Affairs and Security has not dealt specifically with the private security sector. The Committee should be interested to ensure that the security sector – state and private – is sufficiently regulated and hold the MoIA to account in control and oversight of the sector. Still, the Committee has not organised any hearings or discussions with the Minister of Internal Affairs even though numerous incidents³⁰ show that the sector is insufficiently regulated.

The role of the Labour Inspectorate also seems to be limited when it comes to identifying the main labour rights violations taking place in the private security sector. Though employees are often underpaid, required to work excessively long hours and forced to pay for their own uniforms, the PSC sector fails to make the Labour Inspectorate a priority despite numerous known labour rights violations. Past research by the authors³¹ has shown that the Labour Inspectorate lacks capacities to properly control the labour conditions in the sector.

The role of independent agencies should be considered crucial in ensuring that violations of basic human rights do not remain unnoticed. In the case of Kosovo, the role of the Ombudsman in examining alleged human rights violations in the private security sector has been limited. In addition, recommendations provided by the Ombudsman are not legally binding for the institution. Past cases of labour rights violations in other sectors where the Ombudsman had made recommendations for change were not taken into account by the relevant state institutions.³² The Ombudsman has identified some cases of violations, but there were no concrete actions taken to address these concerns. Table 1 below illustrates the main actors and bodies responsible for the oversight of the private security sector.

30 See Emini, Donika and Mentor Vrajolli 'Identifying Patterns of Private Security Sector Shortcomings in Kosovo – The Albi Mall Case'. In F. Klopfer and N. van Amstel *Private Security in Practice: Case Studies from Southeast Europe* (Geneva: DCAF, 2016) . pp. 121 – 132.

31 Emini, Donika and Mentor Vraholli 'Kosovo'. In Franziska Klopfer, Nelleke Van Amstel eds. *A Force for Good? Mapping the Private Security Landscape in Southeast Europe* (Belgrade and Geneva: DCAF, 2015).pp. 61-83.

32 Interview with representatives from the Ombudsman (December 2016)

Table 1. Control and accountability of PSCs in Kosovo

Oversight of the Private security sector		
Parliament		
Committee on Internal Affairs and Security		
Ministry of Interior Affairs	Ministry of Labour	Independent Bodies/ Agencies
Law on Private Security Services <i>Law on Weapons</i>	Labour Law	
Division for the Private Security Sector	Labour Inspectorate	Ombudsman

Political influence over the private security sector: hampering democratic function of the sector?

The private security sector in Kosovo emerged during a crucial time in which the security sector as a whole was undergoing important transitions. While the dissolution of the former Kosovo Liberation Army (KLA) was taking place, only a few of its members managed to re-integrate and become part of newly established state institutions such as the Kosovo Protection Service (KPS) and the Kosovo Police Service (KPS). Thus, many of those who were not accommodated by the new state security institutions used private security companies as a platform to remain relevant in the security sector. Many other former KLA members became part of state institutions such as the parliament and the government. Others joined the KPS, which was providing services similar³³ to those of private security for a long time. Through this network of former KLA members, private security actors were not only linked with public security agencies but also the bodies meant to control and oversee them – the parliament and the executive government. This raises concerns about a possible lack of impartiality by the private security control and oversight actors, and about the quality of oversight mechanisms.

The strong ties between politicians and persons standing behind some of the most relevant and large PSCs in Kosovo have been evident in many cases, although persons interviewed for the purpose of this research hesitated to provide details. PSC owners or managers have strong ties with politicians, influencing the democratic function of the sector. The case of the Kosovo Energy Corporation reflects the political ties behind the PSCs. This case is still in court and involves the family members of a key politician in Kosovo. Other cases have shown persons involved in the private security sector also actively working for the government. As such, these cases lead to a perception that there is corruption or cases of conflict of interest, especially in contracts signed with the PSCs for guarding state institutions and their assets.

33 Before 2011 services such as the cash in transit, guarding buildings of critical infrastructure (embassies, international organizations, some government buildings) were performed by the Kosovo Police.

Public Procurement Procedures: a source of corruption, or the only way to oversee the sector?

Procurement procedures and the trend of extremely under-priced contracts are serious challenges in the private security sector. This not only influences the quality of the services offered by PSCs and implementation of the contract, but also has a greater impact on the treatment of the PSC personnel and labour rights and is the source of personnel exploitation. Procurement procedures in this sector represent a key challenge as it brings together three different laws, which in many cases either overlap or oppose each other. The Law on Private Security Services, the Law on Public Procurement and the Labour Law should be taken into consideration during each procurement procedure.

Public procurement procedures are prone to corruption in the private security sector. Furthermore, the unfair bids and political influence over the procurement bodies has led to serious clashes between PSCs, mostly related to the price range per service.

Public procurement procedures pose the main challenge in the sector, but it is by now perhaps one of the most successful ways of controlling and overseeing the sector. This is mainly done by the clients to oversee the quality of services offered by the companies. Nevertheless, this does not ensure proper oversight as it should be performed by the relevant institutions.

Chapter 6: Accountability of the Private Security in Serbia³⁴

Predrag Petrović

Summary

The Serbian Law on Private Security³⁵ was finally passed at the end of November 2013. It was advertised as a panacea for all problems related to private security in Serbia, and most importantly it was expected that it would create all necessary legal conditions for comprehensively making private security accountable. Even though this Law is vital and prescribes a set of mechanisms for safeguarding the public interest³⁶ in relation to private security, discussions surrounding the Law neglected that other regulatory frameworks (Labor Law, Public Procurement Law) and bodies (Labor Inspectorate, procurement bodies, Parliament) are also indispensable in holding private security accountable. In short, the complexity of the private security accountability system has been ignored and not enough attention has been paid to all the mechanisms that could be available for holding private security in Serbia accountable.

Understanding the complexity of private security

Accountability of private security is complex and difficult to achieve. It is uncontested that private security companies (PSCs) are private businesses selling security services to their customers, meaning that they are mainly accountable to their clients. However, matters become complicated when one takes into account that there are many types of clients – private, state, international, multinational, NGOs – who are provided with similar but also oftentimes differing types of security services by PSCs. Different clients have different security needs and requirements meaning that regulatory and accountability regimes for PSCs are different in regard to their clients. However, private security companies do not provide “ordinary” services, rather they provide security to their clients and may therefore be authorised with competences similar to that of the police. While providing these services they can harm citizens (e.g. excessive use of force) and even their own personnel (underpaying them). Therefore, they should not only answer to their clients but also be accountable to the public. Furthermore it remains the duty of state authorities to safeguard public interest in regard to private security.³⁷

In order to make private security accountable in all of these respects, various control and oversight mechanisms are prescribed by numerous regulations. However, having established control and

34 Paper presented at the “Roundtable on Accountability, Control, and Oversight of the Private Security Sector”, Belgrade, 8 and 9 December 2016, organised by DCAF.

35 Law on Private Security, Official Gazette RS 104/2013.

36 Prescribes licensing regime for and inspections of PSCs, among other things.

37 See: Schreier, Fred and Caparini, Marina. *Privatising Security: Law, Practice and Governance of Private Military and Security Companies*. (Geneva, DCAF: 2005). Available at: <https://goo.gl/K2oK3k>

oversight mechanisms does not ensure accountability of private security. How these mechanisms work in practice (or not) depends largely on the political, social and economic context. In the following pages we will present how control and oversight mechanisms work in the Serbian context. Accountability mechanisms are grouped according to whom private security should answer to for their conduct – to public clients and private clients, as well as to the public at large.

Private clients make PCs accountable, to some extent

The private sector is very diverse and the practices of hiring PSCs differ from company to company. Some companies hire PSCs directly and others invite a small number of PSCs to submit tenders. However, for all private companies it is common to pay close attention to funds spent and require a level of quality for their investment. As a consequence, private businesses tend to rely more on technical security systems combined with monitoring centres and mobile intervention teams since they are more cost effective than engaging only or mostly security guards, as it is the practice in public institutions.³⁸ This practice requires that a private company either outsource security managers for the purpose of procuring private security or to employ these professionals on a full time basis. The latter is a common practice in bigger businesses, such as banks, oil and metallurgy companies.

However, private companies do not only pay close attention in defining their security needs precisely and correlating them with available budgets, they also control if contracted private security services are delivered properly. It is common practice for security managers of private companies to conduct inspections in order to check, for instance, if the number of posted security guards is the same as contracted. Also, they speak with employees about their working conditions and salaries. It is not unusual for private businesses to cancel contracts with PSCs that either do not pay or underpay their personnel. Private companies pay for quality which also translates to well-motivated security guards. One bank security manager confirmed that he demands highly qualified and motivated security guards for security detail in a bank. As an example, he said that it is not uncommon for his bank to offer security guards a job in a bank because they proved to be exceptional in performing security duties.³⁹

The security manager also mentioned that he ensures constant quality of private security services by contracting two PSCs at the same time. Contracted PSCs have a clear division of duties and labour, but the very fact that one could be replaced easily with the other, compels them to deliver high quality security services. This strategy is also employed by security managers in other big private businesses (such as oil companies).

38 Petrović, Predrag and Milošević, Marko. "Serbia", in Klopfer, Franziska and Nelleke Van Amstel, eds. *A Force for Good? Mapping the Private Security Landscape in Southeast Europe*, (Belgrade/Geneva, DCAF: 2015), 93.

39 Petrović, Predrag and Marko Milošević, eds. *Novi-stari izazovi privatnog sektora bezbednosti u Srbiji [Old and New Challenges in the Serbian Private Security Sector]*, (Belgrade, Belgrade Centre for Security Policy: 2015), 32-34.

In short, successful private businesses pay close attention to the whole procurement cycle from planning and drafting technical specifications, to awarding and controlling contract execution in practice. They are also interested in having qualified and fairly paid security guards, therefore private companies do not shy away from speaking with security personnel about their working conditions. The reasoning is simple – private businesses cannot afford to waste money on ineffective services.

The State as a client – a cash cow for PSCs

As the Serbian economy, especially the private sector, started suffering from the negative consequences of the 2008 economic crisis, doing business with state institutions became very important for private security companies. It is estimated that in Serbia around 50% of private security contracts that engage no less than 80% of static private security are concluded with state institutions.⁴⁰ As one private security manager put it, despite the fact that state institutions are very late in paying the bills, in the end they always pay and they do not require quality. State institutions became a very important source of profit for private security since PSCs are not required to invest much in security services. For these jobs PSCs can usually engage “write-off” security guards (guards hired on a needs basis). This is possible since accountability for private security working for state institutions is non-existent, despite the fact that numerous control and oversight mechanisms are envisaged by the regulation and are in place, but they are not implemented properly. These mechanisms (and their shortcomings) are analysed in more detail below.

Public procurement

State institutions procure security services through a public procurement process which is regulated by the Serbian Public Procurement Law (2012). The Public Procurement Law stipulates that an open procedure has to be used and leave it to the buyer to decide if the contract will be awarded according to lowest price or value for money criteria. In practice, Serbian state institutions not only usually apply the lowest price criteria when contracting PSCs, but the contracted price is often unrealistically low, meaning that PSCs cannot cover social contributions and taxes. It was brought to the attention of the authors that even the Serbian tax authority procured security services with unrealistically low prices.⁴¹ Such malpractice is possible when existing control and oversight mechanisms are not used properly. For example, our research showed that members of tender commissions know little or nothing at all about security. It can then be hardly surprising that they could not draft a tender in which the value for money criteria would be used, because this would require them to be able to define quality in security. However, the Public Procurement Law prescribes that if a buyer does not have in-house expertise in the procurement subject it can then engage experts outside of the institution on an ad-hoc basis. The authors did not find any

40 Petrović, Predrag and Milošević, Marko. “Serbia”, in Klopfer, Franziska and Nelleke Van Amstel, eds. *A Force for Good? Mapping the Private Security Landscape in Southeast Europe*, (Belgrade/Geneva, DCAF: 2015), 91.

41 Petrović, Predrag and Marko Milošević, eds *Novi-stari izazovi privatnog sektora bezbednosti u Srbiji* [Old and New Challenges in the Serbian Private Security Sector], (Belgrade, Belgrade Centre for Security Policy: 2015), 53-55.

information that any public institution has engaged private security managers to take part in the tendering procedure.

Another problem is the fact that within public institutions no one controls how PSCs fulfil their contracts and provide security. Without any control, contracted PSCs can resort to an array of improper practices. This usually means they attempt to increase savings in order to stay within the unrealistically low budget that they had presented so as to win the tender. However, political appointees often promote the interest of the political party and the private businesses connected to the political party. The authors often found that PSCs contracted by state institutions will: engage fewer security guards than the contract stipulates, engage unqualified security personnel (typically pensioners for whom they do not need to pay social contributions), and do not pay their staff for additional hours or night work.⁴²

Heads of public institutions are responsible for public procurement within their institutions. They approve financial and procurement plans, and form the procurement commissions. They could also engage security managers, either on their own initiative or by proposal from certified procurement officers. Heads of public institutions therefore have a lot of decision-making power. However, since they are usually political appointees, there is a concern that they will not procure security having the public interest in mind but rather that they will favour companies that are close to their political party.

Public interest is left unprotected

The regulatory framework in Serbia sets out several important mechanisms to ensure that the activities of PSCs do not harm citizens or the public interest. Firstly, the Ministry of Interior (Moi) holds the greatest burden in this regard since it is obliged by the Law on Private Security to monitor the implementation of the Law. The Moi is mandated to conduct direct and announced inspections of private security during which it could check an array of very important issues: if PSCs meet the requirements for human and material resources set out in the Law, have valid contracts with clients, store fire arms properly and employ licensed personnel.⁴³ The Law on Private Security was adopted only in 2013 and has begun to be fully implemented only since January 2017. At the time of writing, the Moi has not carried out any control inspections.

Another very important mechanism for making private security accountable is the licensing regime. The Moi is responsible for setting the conditions that training centres for private security must meet in order to be accredited, defining curricula for private security trainings and organizing final examinations. Through this set of instruments Serbian authorities can influence PSC staff in conducting their duties professionally, respecting not only contractual obligations to their clients

42 Petrović, Predrag and Milošević, Marko. "Serbia", in Klopfer, Franziska and Nelleke Van Amstel, eds. *A Force for Good? Mapping the Private Security Landscape in Southeast Europe*, (Belgrade/Geneva, DCAF: 2015), 95 – 96.

43 Articles 70-75.

but also citizens' rights. However, recent research shows⁴⁴ that training curricula, trainings, and final examinations are fraught with flaws, meaning that current licensing does not fully guarantee professionalism of PSC staff.

PSC services cannot be delivered professionally by chronically underpaid security guards, which is a widespread practice in Serbia. The Labour Inspectorate could significantly improve the situation in this regard, but the Labour Inspectorate has to be systematic and persistent in controlling private security. Several of the inspections of private security conducted in 2013, 2014 and 2015 revealed various violations of labour rights. Inspections in 2014 revealed that almost one third of private security personnel worked without proper labour contracts. As a direct consequence of this, controls in 2015 recorded significantly fewer irregularities proving that inspections are effective. However, the inspections have in reality become less thorough and effective. Considerably fewer PSCs were inspected in 2015 in comparison to 2014. Moreover, private security managers complained that labour inspections controlled PSCs connected to the previous government more thoroughly, and that even some PSCs close to the current government avoided inspections. The Labour Inspectorate declined to provide the authors with a list of inspected PSCs and irregularities found within each company.⁴⁵

The widespread practice of underpaid security guards has a direct relation to unrealistically low prices of private security contracted by a public institution that is not sanctioned by the Commission for Protection of Bidders' Rights. Research has shown that Commissions composed of the same members had passed utterly opposite decisions when deciding on unusually low bids of private security services. Contradictory decisions by the Commission discouraged many PSCs from continuing to file complaints for low prices on the tenders.⁴⁶ However, what is more concerning is that the State Audit Institution is not interested in conducting (performance) audits of private security procurements in public institutions.⁴⁷

A potentially important mechanism for harmonizing public and private interest in the field of security is the newly established Council for Improving Private Security and Public Private Partnership in Security. This body is envisaged by Article 75 of the Law on Private Security and was recently established by the Minister of Interior. The Council held only a few meetings during which it focused on problems in PSC licensing. One positive outcome was that the MoI changed the rulebook regulating curricula for technical security trainings.⁴⁸ An issue that may hinder the effectiveness of the Council may be that PSCs are represented there only through their associations, meaning that bigger PSCs could overshadow the interests of mid- and small sized PSCs.

44 Petrović, Predrag. *Anatomy of the Failed Private Security Licensing*. (Belgrade, Belgrade Centre for Security Policy: 2016). Available at: <http://www.bezbednost.org/All-publications/6427/Anatomy-of-the-Failed-Private-Security-Licensing.shtml>

45 Petrović, Predrag and Marko Milošević, eds *Novi-stari izazovi privatnog sektora bezbednosti u Srbiji* [Old and New Challenges in the Serbian Private Security Sector], (Belgrade, Belgrade Centre for Security Policy: 2015), 73-75.

46 Ibid, 76.

47 Ibid, 75.

48 Interview with representative of the Association of Private Security, December 2, 2016.

The Serbian National Assembly and its competent parliamentary committees should oversee all efforts of various control bodies in safeguarding public interest. Committees should analyse and discuss reports in separate or joint sessions and make changes to the regulation, as well as recommending modifications of bylaws to competent ministries. The greatest responsibility here lies within the Committee on Defence and Internal Affairs which in only one instance discussed the prolongation of the deadline for licensing of private security. However, the Committee members decline to discuss other issues regarding private security, arguing that the Law on Private Security does not clearly stipulate that they are to oversee this sector. The Committee members are neglecting that the Law requires them to oversee the Mol, as well as the Mol's control of private security. Similarly, the Committee on Labour could discuss Labour Inspectorate activities with respect to private security. Also, current legal regimes make it possible for parliamentary committees to organize joint meetings in order to discuss transversal problems in greater detail and from several aspects. The very root of the problem of the inactivity of Members of Parliament lies in the fact that chairpersons of the most important committees are from the ruling coalition, which as a consequence means that they do not want to raise any issue that might seem problematic to their party colleagues in the executive branches of the government.

Fight politicisation – The road to greater accountability of PSCs

In line with the relevant laws, Serbia has set up control and oversight mechanisms that should enable both private and state clients, as well as public authorities, to make private security accountable. How they are to be effective in practice depends largely on the level of political party influence on the clients and control bodies. Since this influence is much smaller in private businesses, there is a greater level of control over PSCs. Private business accountability is an integral part of market and economic philosophy – taking care of getting the best possible quality for invested money. The example of the Labour Inspectorate is very illustrative in showing how labour inspections as control instruments over private security could be effective in diminishing the grey market, while also being ineffective due to targeted control inspections of PSCs that were not close to the government. Accountability mechanisms in Serbia are rarely used, but when they are used it is for the purpose of side-lining the competition which is composed of PSCs not close to the current government, as some security managers accuse the Labour Inspectorate of doing.

The problem of politicisation is well known not only for the private security sector but also for other economic and social sectors in Serbia. The main question is how to address politicisation because it is deeply rooted in society. More importantly, almost all policy recommendations intended for tackling this problem are to be implemented by the government which is composed of the ruling parties. The only strategy that remains is to exert constant pressure on the government by revealing research findings disclosing the damaging influence of politics on private security and society. It is of utmost importance to increase transparency of all stakeholders.

Chapter 7: Roundtable Report⁴⁹

Cornelius Friesendorf with Nelleke van Amstel and Franziska Klopfer

The private security market in Southeast Europe has expanded significantly since the end of communism and socialism in Southeast Europe and this has had a considerable impact on security, human rights and democracy in the countries of the region. Despite private security companies (PSC) playing a prominent role in the protection of facilities, goods and persons, control and oversight of PSCs has been lacking, and accountability of the private security sector has not been guaranteed. The Roundtable on Accountability, Control, and Oversight of the Private Security Sector, organised by the Geneva Centre for the Democratic Control of Armed Forces (DCAF) in Belgrade from 8 to 9 December 2016, brought together representatives of the private security industry, civil society, government and academia who examined the implications of security privatisation for effective and democratically accountable security sector governance in Southeast Europe. The present report summarizes the discussions and main findings of the Roundtable, whose participants acknowledged significant accountability gaps and identified practical steps toward better governance and regulation of the private security sector.

To whom are PSCs accountable, what for and why?

Effective control and regulation of private security services is a vital element of security policy given the impact that PSCs have on states and their societies. Whereas state institutions have the responsibility to provide security to all, PSCs are profit-based and will therefore only provide security to their paying clients. While PSCs can help improve security in the areas in which they operate, they may also contribute to degrading security for those who cannot afford it.

From a Weberian perspective, a state monopoly on the legitimate use of violence is a characteristic of the modern state. Private security has come to challenge this notion as the contracting and sub-contracting of security has increased, in fragile and conflict environments, as well as areas such as immigration and criminal detention. The wide implications of private security for constitutional law and human rights make the accountability of PSCs pivotal.

The presentations and discussions of the Roundtable recognized how PSCs may impact a variety of civil and political rights, including the right to life and the freedom of expression and association; they may also impact economic, social, and cultural rights and infringe on the rights of women and religious minorities. More generally, the relationship between the state and private security actors raises issues about the effect of PSCs on democratic security sector governance. When security is provided by the state, citizens can influence government security policies by casting their vote for the party with whose security agenda they most agree, but in many ways they are unable

⁴⁹ Report summarising the discussions of the “Roundtable on Accountability, Control, and Oversight of the Private Security Sector”, Belgrade, 8 and 9 December 2016, organised by DCAF.

to influence the private contracting of security services. Additionally, democratic oversight and transparency that would be required of public security services is not similarly in place for PSCs.

The Roundtable participants identified a variety of actors and institutions to which PSCs are accountable. The most obvious are clients hiring PSCs for the purpose of guarding premises, for example. These include private actors, but may also be the state in a contracting role. Moreover, PSCs are accountable to authorities controlling or regulating them, in particular executive state bodies such as licensing authorities and the police, but also other state representatives deciding over security policy, including parliaments. Additionally there may be state institutions to which PSCs are accountable, such as the labour inspectorate or tax authorities. Through such oversight mechanisms, PSCs are obliged to comply with existing laws and regulations. PSCs should furthermore answer to their own employees; especially concerning terms of employment contracts and in ensuring that labour standards are observed. A more controversial point is whether PSCs are accountable to society at large, such as local residents at sites where PSCs operate but who have not hired a PSC. The “levers of change” section of this report will further develop the overview of accountability lines that may exist and can be used to enhance oversight of the private security sector.

Does any international framework provide accountability solutions?

Over recent years increased efforts have been undertaken to improve the accountability of PSCs, spurred by publicized human rights violations and efforts to regulate the conduct of private sector actors in relation to human rights across all public policy areas. According to one legal expert participating in the Roundtable, four types of institutions can ensure accountability of PSCs: national legal systems and courts; company codes of conduct; international and regional voluntary initiatives; and international legal frameworks. Looking at the international level, a system that garners broad international support and is widely accepted is built on the United Nations Guiding Principles on business and human rights (see below).

Three principles undergird efforts to establish accountability: to protect, to respect, and to remedy. According to these principles, the state has to protect human rights; private companies must respect human rights; and both states and companies must provide access to remedy to victims of human rights violations (such as grievance procedures through which a person can address a company).

This means that states have a responsibility to protect the human rights of people against potential violations of PSCs through regulation and oversight of their actions within their jurisdictions. Additionally they need to ensure accountability, be it judicial or non-judicial, if accusations of violations do occur. For PSCs, these principles mean that they must refrain from and prevent human rights abuses and ensure that victims have effective access to redress. This can be achieved

through policy and operational changes such as human rights policies; due diligence/human rights risk assessment procedures; human rights training; vetting; incident reporting; whistleblowing mechanisms; and grievance processes. In order to put these obligations into practice, specific instruments have been developed regarding the private security sector, which were depicted by one of the speakers as follows:

Figure 1: Accountability system for PSCs at international level

The graph above shows the current international regulatory model in which the UN Guiding Principles inform both state and company instruments to ensure human rights compliance.

The Montreux Document on Pertinent International Legal Obligations regarding Private Military Security Companies (PMSCs) sets out the existing obligations of international law that states must comply with when engaging with PMSCs as a contractor, as a country of jurisdiction of their operations or of their headquarters. It also gives guidance on how states can implement these obligations through national laws. At the time of writing, a possible international binding treaty that specifically deals with PSCs is being discussed at the international level within the UN.

Regarding companies, several industry standards and industry or multi-stakeholder codes of conducts have aimed to put PSCs' human rights obligations into practical guidance. On the international level, the International Code of Conduct (ICoC) for Private Security Service Providers was created by industry, governments and human rights organisations to clarify human rights obligations that PSCs should implement into their company policy and operations. These also include a company grievance mechanism to address the obligation to provide for effective redress. In order to make these ICoC human rights provisions practical to implement for a business, and auditable by an independent certification system, industry standards PSC1 and ISO 18788 were developed, which include the human rights provisions of the ICoC as well as broader good management practices for PSCs. An independent ICoC Association (ICoCA) now oversees the compliance of its member PSCs with the ICoC.

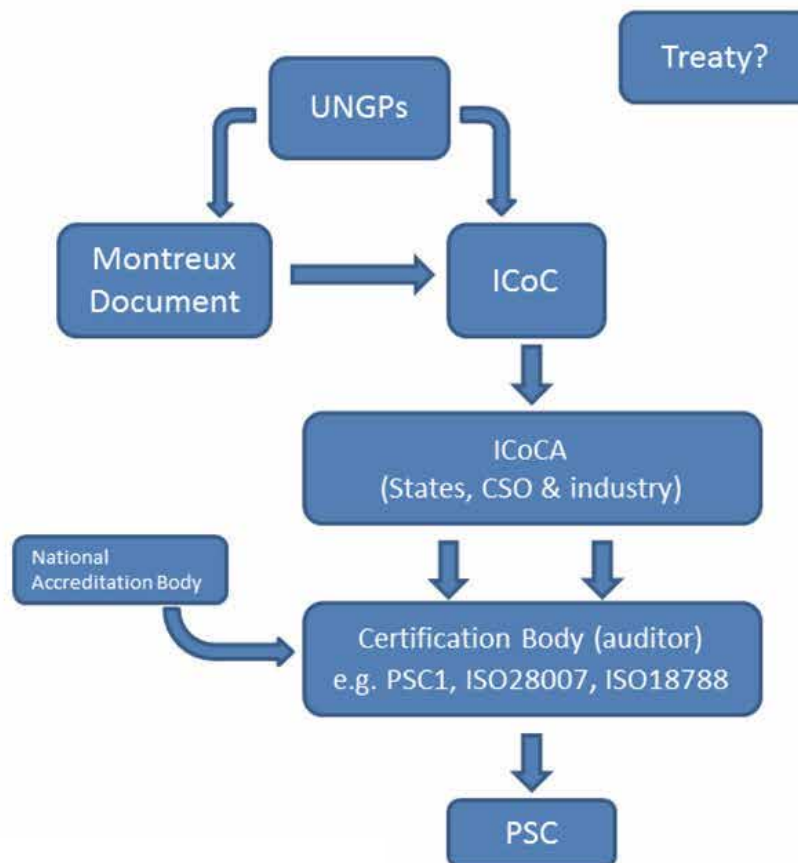
Is there an accountability gap? Why? Which rights are not being ensured?

The Roundtable participants discussed at length the accountability gaps created by the non-enforcement of existing regulations and challenges in the control and oversight of PSCs. The following subsections summarize the discussion on conceptual gaps, – that is, cases where responsibilities were not fully clarified and where actors were not even considered accountable – and the shortcomings of oversight and security and control actors.

Conceptual gaps

Despite improvements in national and international regulatory frameworks, the Roundtable participants agreed that holding PSCs accountable remains difficult. On the international level, International Human Rights Law prescribes that states must oversee the conduct of state organs. However, it is unclear how responsibility is attributed for violations perpetrated by private actors.

The challenge of attribution of responsibility was raised several times during the Roundtable.



S. MacLeod DCAF Roundtable Dec. 2016

Especially in cases where one or more PSCs have been sub-contracted to provide security on behalf of the state, it is not always clear who should be accountable for what. One participant discussed the private security industry in Afghanistan which had boomed largely due to international demand by NATO and other organizations, and caused a variety of problems, including severe human rights violations by PSC staff. Sub-contracting led to long chains in which principals lacked information on the activities and interests of the agents. Corruption and patronage was reflected in, for example, influential families, politicians, militias, and warlords controlling PSCs. With regard to regulation, different agencies stipulated different rules, and local laws and regulations were only

weakly enforced. In this long chain of subcontracting it was difficult to clarify who had ultimately caused an incident and to attribute responsibility.

It was pointed out that the further the person executing an order is removed from the person responsible for the security, the more difficult it will be to ensure accountability. For state security, chains of control and responsibility are usually well defined. For instance, the police have accountability mechanisms (such as public complaints bodies), and there is a large body of jurisprudence on state obligations to respond to police violence; in the case of PSCs, however, similarly stringent control mechanisms do not exist. The privatization of security thus creates an accountability gap as the state is retreating from the security sector, allowing for increasing potential for human rights violations committed with impunity.

Hence, the discussion raised the question of whether the extent to which security services should be outsourced to private firms, and the type of regulation, should depend on the specific conditions in a country, in particular the effectiveness and accountability of state bodies responsible for ensuring oversight and accountability of PSCs. In conflict zones and states with high levels of corruption, for instance, the privatization of security is riskier than in stable countries with effective state bodies. Some participants suggested that those deciding over outsourcing should take into account such contextual conditions, and refrain from outsourcing security services involving the use of force in unstable environments, for instance. At the same time, this would deeply change the character of the industry, which has a strong presence in numerous conflict zones.

Elsewhere, it was argued that the law often does not sufficiently cover the question of accountability of PSCs. For example, laws usually do not hold PSCs accountable for not providing security (well or at all) – only their client might do that. Such arrangements do not consider cases where the work of PSCs does not only have an impact on their clients but on a whole community. This accountability might not necessarily be translatable into a legal obligation, but it might lead to a moral accountability.

Shortcomings of oversight and control actors

The national level is marked by legal grey zones and capacity issues. Executive bodies of governments often lack the political will, financial and personnel resources, and the requisite knowledge for establishing effective control over the private security market. Many Roundtable participants highlighted the problem that state organs do not properly fulfil their regulatory functions. For instance, labour inspectors which are required to verify that PSCs comply with labour standards often do not systematically control PSCs. There seems to be a Catch 22: the state is vital for regulating PSCs and implementing regulation, yet in many countries state bodies are ineffective and/or partial.

Other state institutions also provide no panacea. Parliaments pass laws, control the executive, and decide on budgets. So far, however, parliamentary committees mandated to oversee the

defence and security sector do not engage effective oversight of private security actors. Courts in the Southeast European countries often have a large case-backlog and are not an effective mechanism of controlling alleged criminal offences committed by PSC employees. Ombuds-institutions are generally limited to providing recommendations, i.e. they cannot sanction PSCs and often do not have a mandate to address private actors at all.

Civil society plays an important role in holding PSCs accountable, by ensuring that private security governance gets onto the agenda of policy makers and by informing the wider public about the importance of making these actors accountable. In practice, however, the actors they address, such as state institutions, do not pay much attention to private security. Journalists tend to cover only hot topics, not more apparently mundane problems pertaining to privatized security such as the underpayment of guards.

The practices of PSC clients – be they public or private – may influence the behaviour of PSCs. PSCs' compliance with standards and codes of conduct hinges not least on pressure from clients. However, this potential lever is not always used for the better. For one, clients often want to cut costs themselves, thereby opting for the cheapest PSC on the market, which in many cases means the PSC that invests least in training, equipment, personnel well-being, and other elements that would ensure human rights compliance and professionalism of services. Also, clients are often dependent on the services of specific PSCs, for example because they have worked with them for a long time or because they are the only operator offering a certain service, and therefore are not always likely to terminate a contract if a PSC does not comply with standards.

Which efforts have been undertaken to hold PSCs accountable in Europe, and which lessons can be drawn?

Roundtable participants presented on the role of PSCs in three European countries: Albania, Serbia, and Sweden. Each of these countries has distinct regulatory mechanisms and challenges regarding PSCs, indicating that further regulatory efforts must take into account historical legacies and present contexts.

In Albania, more than 10,000 persons work in private security, almost the same number as in the police. With an annual turnover of over 50 million Euros, this industry is significant. Unlike other Southeast European countries, Albania already developed regulation of the private security industry in the 1990s and the law reflected the legislators' concerns about a loss of control over the private security sector and the reluctance of the state to privatize security. Since then, the legal framework has seen numerous amendments. However, accountability mechanisms have been lagging behind. Due to high levels of corruption within state organs, it is difficult to demand PSCs to be more accountable than state actors such as the police.

In Serbia, the private security sector employs between 30,000 and 50,000 persons. The law on PSCs was adopted only recently, in 2013, and set January 2017 as a deadline for the completion

of licensing and training of PSC guards. The Serbian case confirms there is no accountability if governmental agencies controlling PSCs do not function properly. For instance, a Serbian civil society organisation tried to obtain information about labour inspections of PSCs by the designated state body but was not provided that information. There is reason to believe that inspections are politically biased against companies associated with previous governments. Moreover, as in other Southeast European countries, companies sometimes won bids that offered too low a price to deliver high-quality services. As a consequence, some clients of PSCs (though not the state) cancelled contracts with PSCs due to issues with service quality.

Another case study focused on a Swedish-based PSC that operates, among other sites, in Somalia. The company is tightly regulated, being certified and approved by international authorities, industry bodies, and business partners. Regulation by international accountability mechanisms, including ICoCA, is especially strict for close protection officers. Also, employees of the company receive approximately two months of basic training. Field staff are monitored by other in-field employees through psychological screening and post-mission screening.

The example showed that regulation of the Swedish private security market is stricter than in other European countries (although this company exceeds mandatory regulatory mechanisms and standards). In Sweden, the number of police and private security is about equal, a large territory and a small population make a large police service unviable. Only companies involved in critical infrastructure protection and close protection are allowed to carry weapons. State bodies on a regional and central level conduct annual reviews of authorized companies and individuals (including board members). Accountability through ICoCA, according to a PSC representative, increases standards but is also complex and expensive, and thus may be a barrier for small or non-US/UK PSCs.

In the discussion, several participants argued that conditions facilitating effective regulation in Sweden were partially absent in Southeast Europe. For instance, Kosovo PSCs would not be able to afford the extensive training offered to the employees of the Swedish PSC. Moreover, the Kosovo Ministry of Interior (MoI) has too few staff to effectively monitor PSCs; also, as in Serbia, regulations suffer from political biases whereby the MoI sanctions only specific companies. Capacity problems and biases also make cooperation between PSCs and the police problematic. Cooperation between police and PSCs has benefits, such as relieving police of tasks that might not be of core competencies, including guard duties. But in countries where patronage networks are common, cooperation may multiply problems. Another common form of 'cooperation' involving police officers 'moonlighting' for PSCs also holds many challenges. As one participant remarked, in the Democratic Republic of Congo, companies (that are not allowed to be armed) informally cooperate with police, by hiring armed police who then operate in the interest of the company, not the public.

Accountability gaps and the dynamics of the private security industry have negative consequences not least for PSC employees who frequently experience infringements of their labour rights. Violations often result from the fact that companies offering the lowest prices win bids and then engage in practices such as underpaying guards and not offering training, which in turn increases the risk of violations committed by PSC employees. Clients ask for low prices while at the same time requiring high standards. One participant noted that international clients in Kosovo demanded English-speaking guards with insurance cover while at the same time favouring lowest-bidding companies. This raises the problem that one “can be cheap or can be good but one cannot be cheap and good”, as another participant remarked. Also, there may be a gap between official procurement policies reflecting human rights concerns that may be stipulated by the headquarters of international organisations, and the implementation practices by procurement officials on the ground. There are further factors enabling violations of labour rights: PSC employees are generally not unionized, and privatized security is not a priority for parliaments.

What are the “levers of change” and options available to ensure accountability of the private security sector?

The Roundtable participants discussed both actors and approaches that would allow better accountability in the private security sector.

Approaches

As regards approaches to change, some participants suggested that real change would only be brought about by an international legally binding instrument – a view that was strongly contested by others.

The importance of dialogue between different stakeholders was repeatedly raised. It was argued that sometimes a legal response is neither possible nor the most appropriate solution for certain accountability challenges. To deal with ‘softer’ problems such as issues which are not hard human rights issues but are still important (e.g. level of salaries) through a social dialogue might provide better chances of success. The example of Sweden was mentioned where well established industry associations and employee unions as well as civil society have managed to improve private security standards through constructive dialogue. Of course, this model might be difficult to replicate in contexts where there is little belief in responsibility, social or otherwise, and where there is no tradition of strong industry or worker unions.

Actors

The Roundtable participants identified a variety of actors and institutions that can contribute to enhanced accountability of PSCs. These are PSCs themselves, clients of PSCs, state institutions, and civil society.

- Private security companies

PSC are often driven by short-term interests to cut costs. However, complying with laws, norms, and regulations can also benefit PSCs, by enhancing reputation and thus profits. PSCs can enhance accountability through a variety of means, such as codes of conduct.⁵⁰ To increase compliance with existing laws, norms, and regulations by PSCs, those promoting accountability could make the business case for compliance.

- Clients of PSC

Clients are vital for holding PSCs accountable by demanding high standards of professionalism from PSCs. Such professionalism should include respect for the interests and security of third parties (such as local populations in areas where PSCs operate) as well as PSC employees. This again requires that clients are not primarily driven by short-term interests such as cutting costs to a level where professionalism is no longer feasible.

- State bodies

State bodies are arguably the most important actors ensuring PSC accountability. Existing control bodies such as regulatory units within Ministries of Interior need more capacity to fulfil their functions and should be depoliticized in cases where political biases favouring specific PSCs exist. Procurement processes should be more transparent, and security specialists should be involved in the definition of bids. Moreover, participants suggested that the three pillars of oversight – those overseeing procurement, labour rights, and licensing – might invest more in information sharing. As an example, one database including all relevant details about registered companies and be used by the labour inspectorate who would then have access to information about employees given by the company to the regulator when applying for a license. PSCs which are registered in the register of commerce would be automatically shown to licensing bodies and labour inspectorates. States should also institutionalize public complaints mechanisms falling short of legal procedures, such as ombuds-institutions (who so far hardly deal with PSCs), blacklisting, and ratings. To avoid problems with blacklisting (which may be affected by weak evidence of complaints), Ecuador has produced a White List of PSCs complying with standards; this mechanism may serve as an example for Southeast Europe as well.

Parliaments, according to many Roundtable participants, should play a bigger role in holding PSCs accountable. Parliaments may, for instance, pass laws that define the limits of privatized security with regard to public and semi-public spaces and cooperation between police and PSCs. Parliaments are also vital for controlling executive organs such as Ministries of Interior. In Montenegro, for example, a parliamentary committee overseeing security has debated how to better control the private security market (yet when the committee invited private security

50 One participant noted, however, that higher accountability standards might benefit companies that are already on the market and that comply with existing standards, by increasing transaction costs for other companies.

representatives to committee meetings, these often did not attend). Involving parliaments is especially pressing in countries where executive bodies do not properly fulfil their regulatory and oversight functions. To be sure, parliamentary pressure is not a panacea if parliaments themselves are dominated by vested interests. Nevertheless, in Southeast Europe it is vital to involve members of parliament in a social dialogue so that they better understand the realities of privatized security and accountability gaps.

In improving oversight of PSCs, lawmakers could learn from regulation in other sectors. One is the financial sector where, in several European countries, regulatory authorities have sanctioned companies. The health and safety sector as well as the environmental sector may offer lessons: companies operating in these sectors routinely conduct risk assessments and internalize norms, which help to prevent problems from arising. Parliaments should be aware that private security and its regulation impacts on various legal domains, including licensing, public procurement, tax policy, labour law, the use of force, privacy and data retention, human rights, criminal law, corporate law, administrative laws and regulations, and anti-corruption efforts.

Accountability of PSCs is unlikely without real sanctioning in case of wrong-doing. Sanctions include court decisions, such as in the domains of criminal law and corporate criminal law in case of legal breaches by PSCs. Exemplary court cases against PSCs blatantly violating existing laws are likely to galvanize public opinion and force governments into action.

As mentioned above, ombuds-institutions could play a more prominent role in holding PSCs accountable. They should stress the urgency of the issue of regulating private security, and they should issue recommendations and also push for a widening of their powers. This requires, in turn, that ombuds-institutions increase their knowledge of the private security market. However, the role that ombuds-institutions can play is bound to the limits of their mandates and how far they can act on matters not linked directly to the public institutions.

Local government bodies were also identified as potential levers of change. Local authorities such as municipal governments have the advantage of being close to the sites where security services are delivered and have a good understanding of the local context, including the problems pertaining to privatized security and effective oversight mechanisms.

- Civil society

Civil society organizations are vital for developing norms governing security. In Serbia, for instance, civil society organisations, as part of a multistakeholder initiative, have participated in preparing the law governing PSCs. Moreover, civil society organisations are important because they demand compliance with standards and – together with the media – investigate and publicise cases of wrong-doing. Furthermore, civil society representatives put pressure on state bodies, such as labour inspectors, to fulfil their regulatory functions. Civil society organisations should promote a public debate over the privatisation of security and give third parties affected by the presence of PSC a voice.

What are specific recommendations for increasing key accountability challenges for private security in SEE countries?

In working groups, the participants studied possible solutions and the roles of different stakeholders with regard to four issues: labour rights, human rights, patronage, and the protection of critical infrastructures and public spaces.

Labour rights can be strengthened on the individual level by PSC employees joining labour unions. PSCs can help ensure compliance with labour rights by training managers. Clients may issue and demand respect of existing codes of conduct banning human trafficking for example. The state may require PSC employees to be represented by a union or other types of professional associations; it may also provide certificates for sensitive services or for PSC managers.

To safeguard *human rights*, PSC employees engaging in wrong-doing may be blacklisted. Social media can help draw attention to misconduct, including the violation of labour rights by companies. Moreover, employees can be required to carry IDs or badges. PSCs may be obliged to report to the police and ministries, and their conduct should be scrutinized by courts and the media. To ensure proper behaviour by their employees, PSCs may prescribe the latter to use body cameras and also institutionalize complaints lines. Means to ensure that clients take steps to safeguard human rights include the blacklisting of clients; insurance companies demanding certifications and offering reduced rates to compliant PSCs; and shareholders pushing for corporate social responsibility. The state may close PSCs violating rules or demand formalized training by police or licensing bodies. It may also expand the competencies of ombuds-institutions to include PSC oversight.

To avoid *patronage networks* from undermining the effectiveness and accountability of PSCs, licenses may be issued for individual PSC employees in order to increase their independence from specific companies, and employees may unionize. Clients can contribute to transparency by using risk assessment tools for the selection of PSCs and by joining professional associations such as CoESS. State bodies may prevent the creation of patronage networks by setting up competition commissions and by disclosing the evidence leading to the selection of specific PSCs.

Last, accountability over the privatisation of the *protection of critical infrastructure and public spaces* can be achieved, on the individual level, through collaboration between PSC employees and the police. PSCs should be scrutinized by civil society and the media with regard to the way they protect critical infrastructure and public spaces. Clients are responsible for selecting PSCs which act responsibly, and they should provide information on bidding and selection processes. State bodies should monitor the performance of PSCs and, in order to incentivize investments, for example into training of PSC employees, and offering PSCs longer contracts.

Chapter 8: Lessons Learned on Private Security Accountability

Franziska Klopfer

Accountability and responsibilities in private security are complex and difficult subjects and researchers and policy makers have long struggled to come to a generally accepted definition of these concepts. The Roundtable on Private Security Accountability organised by the Private Security Research Collaboration (PSRC) Southeast Europe was therefore a very timely event, which helped its participants focus their thinking on private security accountability in Southeast Europe. Their ideas and deliberations are captured in this volume which assembles the contributions of PSRC researchers and guest speakers. In Friesendorf's account of the Roundtable discussions (Chapter 7) the main ideas of all contributors are summarised and compared. This concluding chapter will therefore not offer another detailed summary of the contribution. Rather, it will look at cornerstones of a functioning accountability mechanism (legislation, management, control and oversight bodies, and non-legislative regulatory mechanisms) and put forward key lessons learned from the Roundtable discussions, the work of the PSRC and other relevant research. The lessons aim to clarify some questions, pose new ones and hope to inspire policy makers and others involved in researching or developing policy solutions for better private security accountability.

1. Legal and policy framework

A comprehensive legal framework has to define obligations and responsibilities of PSCs, the government and other relevant actors. The contributions to this volume show how important a comprehensive legal framework is for accountability in private security and that it is crucial that the obligations of PSCs, the government and other relevant actors are well defined in law and aim to ensure that private security contributes to more, not less, security and human rights protection. As van Amstel notes, obligations of PSCs are generally defined in the contracts they have with their clients and their employees and by the national legal framework of the countries in which they operate. Yet, as Friesendorf writes in his account of the Roundtable discussions, the general impression in Albania, Bulgaria, Kosovo and Serbia is that private security accountability is failing because legislation does not make PSCs responsible for all the instances in which it can impact on people's rights as well as on the security of the state and the individual.

Laws in Albania, Bulgaria, Kosovo and Serbia can still improve to better address the real challenges and opportunities of PSCs and put greater emphasis on human rights protection. The chapters by Dyrmishi, Kojouharov and Dzhekova, Emini and Vrajolli and Petrović give short overviews about the development of legislation in the four Balkan countries. Private security markets emerged only in the past fifteen to twenty years in the four countries, after the

end of communism and in Kosovo after the end of a conflict. The objective for the first laws on PSCs in the countries seemed to be primarily to restrict the sector because their activities were seen as threatening to the public order or the government's monopoly on the use of force.⁵¹ Over time, as the demand for private security grew and the suspicions against PSCs declined, governments revised their laws. Laws now aim to professionalise the sector and increase business opportunities⁵² but still show major shortcomings. In particular, laws still have not been able to control the activities of PSCs in such a way that they can better contribute to and not limit security and human rights protection.⁵³

What are the human rights obligations of PSCs? MacLeod notes that PSCs, especially when they act as de facto representatives of the state in providing security on their behalf, can violate individuals' human rights. Still, it is not straightforward to hold them accountable under international human rights law. In international law only the state is responsible for human rights violations committed by state organs. The question whether human rights law automatically applies horizontally to private actors is still contested. Currently, international human rights regimes would not allow individuals to file a complaint against a private security company for an alleged human rights violation. This is why it is important to transpose these human rights standards into real obligations for PSCs.

Legislation needs to be informed by the real impact of PSCs' activities and the privatisation of security. Legislation has to be developed with a better understanding of the obligations and responsibilities of different actors involved in the private security sector. This understanding in turn has to be informed by an assessment of how the privatisation of security as well as the activities PSCs impact on the rights and security of individuals. The assessment will turn out differently in different countries. Some general tenets can be determined nonetheless. The privatisation of security should not absolve the state from its duty to provide security for all.⁵⁴ National law should reflect the clear duties of the state to provide a certain level and quality of security. For example, security should contribute to protecting and promoting individuals' human rights. PSCs are private actors, responsible only to those entities that they have a contract with (their clients or their employees, for example). However, national laws also have to show an awareness that PSCs'

51 In Albania, PSCs were suspected of challenging state authority, the law tried to limit the number of PSCs and PSC officers. In Kosovo, PSCs were prohibited from using weapons to avoid a resurgence of conflict. In Bulgaria, strict conditions for registration of PSCs were introduced to squash the many PSCs connected to or involved in organised crime.

52 Dyrmishi writes that the current law on PSCs in Albania aims to balance the protection of individuals' human rights with the needs of a dynamic commercial private security market.

53 Kojouharov and Dzhekova find that the current Bulgarian legal framework is too loose and allows PSCs too many opportunities to work in the grey market. All four chapters is also remark that PSCs seem to violate the human rights of citizens and their employees but that they are not really held to account.

54 In this context, see also: Extra Assembly of the Parliamentary Forum on Small Arms and Light _ 2007_Policy Statement on Privatisation of the Security Sector : The role of the state is, in this respect, to provide security, as a public good, for its citizens. It should provide this right equally to all citizens and in a way that upholds human rights and democratic principles.

activities can have an impact on human rights of third parties, and especially when PSCs play a significant role in the security sector, the legislator has to ensure that the professional standards of PSCs are such that the risks of violations of third parties' rights are avoided.

Legislation has to be seen as one part of the broader regulatory framework. National or international legislation is not the only tool to define both obligations and limits of PSCs. Legal provisions can work in unison with other regulatory tools, such as self-regulation, social contracts between employers and employees or even the regulatory forces of market competition. The extent to which such non-legislative accountability approaches work in reality will be discussed in the sections below. They certainly do not replace legislation, control and oversight, but should be considered as additional means of strengthening accountability.

Legislation has to take account of the broader social, economic and political context. It is equally important to remember the wider context in which PSCs operate and how many challenges to the good functioning of PSCs have deeper causes related to the broader social, economic and political background in which PSCs operate. Not all of these can be addressed simply through private security legislation. The chapters of this volume showed very clearly that a weak economy and systemic corruption are causes for the bad quality in the services of PSCs and the low level of accountability (this will be further discussed in the sections below). Policy makers need to address these wider problems without which the professionalism and accountability of PSCs cannot be ensured.

2. Functioning management and executive control bodies

Lack of competence and resources as well as politicisation weakens executive control bodies. Petrović, in his paper on Serbia, wonders whether the long-awaited law on private security, which was not adopted until 2013, really helped to improve private security accountability. He argues that the positive impact of the law is limited by the politicisation of PSC control mechanisms. In all four countries, specialised bodies in charge of ensuring that PSCs act according to the law as well as labour inspectorates that control the application of labour laws are underfunded and understaffed. Petrović's and Dyrnishi's research suggests that the training and vetting institutions in Serbia and Albania which are supposed to ensure the professionalism of all PSC staff are also considered partial or vulnerable to nepotism and corruption.

Bad public procurement practices mean that there is no accountability for security delivered by PSCs to the public sector. The public sector is the biggest client for private security in Albania, Bulgaria, Kosovo and Serbia and the control of public procurement will therefore have a major impact on the professionalism of PSCs in these countries. As matters stand, bad public procurement practices are one of the main obstacles that hold back private security accountability in these countries. Petrović's chapter focuses much attention on how public procurement officers in Serbia rarely control the quality of services provided by PSCs. They might not feel the same sense of

responsibility to ask value for the (public) money they spend in the same way as private clients do. They also seem to lack the expertise to assess quality. Moreover, Petrović suspects that corruption in the public sector means that tenders go to those PSCs which are close to the government. The authors of the other chapters also found that public procurement officers choose unrealistically low priced bids with little regard to whether the PSCs can or will provide the required services.

Lack of accountability in public procurement of security leads to generally low quality in PSC services. In his paper on Albania, Dyrmishi explains a vicious cycle of corruption, lack of accountability and bad private security services, which is also reflected in variations in Bulgaria, Kosovo and Serbia. Because PSCs win public tenders through political nepotism or by proposing un-realistically low bids and because there is no control by the (public) client on how services are delivered and little control by the state control bodies, there is no incentive for the PSCs to invest in their staff or equipment. Other companies, which fail to secure contracts, struggle to survive and also save money by evading taxes or underpaying their staff. As a result staff are abused and unmotivated and fail to deliver security well.

Outsourcing security poses challenges to ensuring managerial control and accountability. Corruption is not the only obstacle to ensuring adequate executive control over outsourced security. A more fundamental problem is that, by its very nature, there is less managerial control in private than in public security.^{55, 56} Often security is outsourced from the state to PSCs, which then sub-contracts some of its services to yet other private providers. This raises a number of problems, which are discussed by Friesendorf in the Roundtable Report. In a chain of contractors and sub-contractors, it becomes difficult to determine where responsibilities lie when something goes wrong. The Report also points out, that long chains of outsourcing mean that the entity responsible for ensuring security is further and further removed from the people executing the order and the level of managerial control forcefully decreases.

The professionalism and good functioning of PSC control bodies has to become a government priority. To achieve accountability in state bodies in charge of outsourcing, managing and controlling the work of PSCs themselves have to be more professional and accountable. Governments which outsource security tasks, including those of Albania, Bulgaria, Kosovo and Serbia, have to show a greater awareness of the importance of good public procurement practices; not just for ensuring that the security that public money is spent on is actually delivered but also to avoid the impression that professionalism in private security is somehow optional. This will mean a much greater investment in training those responsible for the public procurement of security and ensuring that more clarity and control exists over criteria for procuring security.

55 Liberty et al. "Selling Out on Policing: The Real Cost of Privatisation". Joint Briefing 7 September 2012. Available at: <https://www.liberty-human-rights.org.uk/sites/default/files/selling-out-on-policing-joint-briefing-7-sept-2012-.pdf>

56 Bieri, Matthias. „Beständiger Aufstieg: Private Sicherheitsunternehmen in der Schweiz“, in Nünlist, Christian and Oliver Thränert, eds *Bulletin 2015 on Swiss Security Policy*, (Zurich, Center for Security Studies (CSS): 2015), 63-86.

Risks related to outsourcing security need to be acknowledged. There also needs to be a more open and stringent assessment of the risks related to the outsourcing of security. The impact of corruption in public procurement on the quality of security provided has to be discussed. Governments have to show greater understanding that outsourcing of security will always mean less control and less accountability.

3. Self-regulation, social dialogue and other alternative mechanisms for ensuring greater accountability in private security governance

PSCs can join or be inspired by international self-regulatory initiatives. MacLeod notes that another way of achieving greater accountability in private security is for PSCs themselves to acknowledge their human rights responsibilities and voluntarily commit to respect human rights. Self- and co-regulatory mechanisms at company, national or international levels, such as the International Code of Conduct for Private Security Companies (ICoC), and its Association, are examples that show that some companies have understood their responsibility to prevent human rights abuses and to give victims of abuse access to redress.

If market forces cannot make self-regulation attractive then clients could push for more accountability. Self-regulation gives the PSC a competitive advantage because it shows the client that the PSC is committed to deliver services professionally and responsibly. But this logic only applies in a healthy market where clients demand and are willing to pay for quality in services and are concerned about the impact of PSCs' work on the wider society. If this is not the case, as it often seems to be in Albania, Bulgaria, Kosovo and Serbia, then self-regulation loses much of its appeal and power.⁵⁷ Major clients could be called upon to make adherence to a code a requirement for the hiring of a PSC. This is why, for example, the ICoC Association includes not only PSCs, but also their clients (as well as civil society representatives). Advocacy efforts should therefore be as much addressed to PSC clients at national level. In some countries, it would be important to work on creating a culture of responsibility, where it is acknowledged that clients and PSCs have a responsibility and role to play in ensuring that PSCs work professionally. It must also be acknowledged that self- or co-regulation can only have a supportive function in the regulation of PSCs. Private clients might require quality but this does not necessarily mean that PSCs are fully adhering to the law but rather are efficient in performing their duties as requested by the client. Self-regulation must therefore explicitly request adherence to human rights standards and national laws. It can also never replace national legislation but only support it.

57 Kojouharov and Dzhékova find that in circumstances when quality and adherence to laws is not controlled and rewarded, self-regulation holds little appeal. In Bulgaria, there has been a strong willingness on behalf of some PSCs to set up company or national industry codes of conduct; but PSCs feel discouraged when they see that their efforts will not be rewarded. This feeling was also echoed in the Roundtable discussions, where it was also noted that PSCs from Southeast Europe might not have the funds to give their staff the training required by standards such as the ICoC.

Social dialogue could provide an opportunity to ensure greater accountability for the respect of employees' rights. If the legal framework, labour inspectorates and other traditional control mechanisms cannot ensure the full respect for labour regulations then more innovative ways have to be found to make sure that PSCs employees' rights are protected. Initiatives should aim at making PSCs accountable for their obligations towards their employees but should also aim to support overall efforts to increase the professionalism of PSC staff. The responsibility of PSCs to provide quality to their clients and the responsibility of states to at least indirectly ensure that PSCs contribute to security rather than insecurity means that governments and the private security sector have an obligation to improve the working conditions of PSC personnel. This can be achieved for example through more stringent licencing criteria and workplace inspections. The introduction of a minimum wage for PSCs or at least a recommendation for adequate salaries for PSC employees would be a start. PSC employees would need more power and leverage to engage in a social dialogue with their employers about working conditions. This seems a particular difficult feat in Southeast Europe where trade unions nowadays are very weak. Few PSC employees in the four target countries are organised in labour syndicates. It would therefore be important for governments to strengthen the rights of employees to self-organise. More importantly, the government should make efforts to support a dialogue between PSC management and PSC employees.

4. Democratic control and Security oversight bodies

Participation in security is important for ensuring accountability.

...[C]ontracting out tasks central to the function of the police force to private companies undermines this tried and tested structure of policing accountability. Policing by consent – The British police service polices with the consent of the people they serve as part of the historic tradition that the police are the public and the public are the police. The police service not only needs to engage with the communities it serves but reflect their wide diversity. This is a long term project not for short term gain.⁵⁸

Accountability is one of the key principles underpinning the good governance of the security sector. The others are transparency, efficiency, effectiveness and participation. As the above quote makes clear, participation and accountability are mutually reinforcing.⁵⁹ If the wider community is involved in the activities of security actors, they know more about them and can, through an informed involvement, help improve their work. Accountability as a process does not only have to report on successes and failures, it also has to have mechanisms where lessons learned are used to improve future action. Privatisation of security prevents citizens from engaging in the activities

58 Liberty, "Selling Out on Policing: The Real Cost of Privatisation". Joint Briefing 7 September 2012. Available at: <https://www.liberty-human-rights.org.uk/sites/default/files/selling-out-on-policing-joint-briefing-7-sept-2012-.pdf>

59 Equally important for accountability is transparency as it is difficult to hold somebody to account if there is no access to information about their activities.

of security actors. As noted in the Roundtable Report chapter: citizens can influence state security policy by casting a vote in elections but they are not able to equally influence the priorities of private security.

This is not a problem per se, as PSCs are private commercial providers and their priorities should be decided by their clients and them. But it is clear that they are not likely to provide the same kind of participation as public security should and this will mean that they are never as accountable as public security. This again is not problematic, unless the security sector is privatised to such an extent that most, or all essential security is no longer provided by the state directly but outsourced to private providers.

Private security should be part of the oversight of good governance in the security sector.

One of the main findings of the chapters in this volume is that the role of security oversight bodies in the control of private security has to be seriously re-considered. Oversight bodies mandated to oversee the general development of the security sector and ensuring good security sector governance clearly have to be more active in ensuring good governance in the security sector. Security sector oversight bodies, such as parliaments, should therefore be engaged in examining how PSCs working on behalf of the state perform, and how public bodies control them.

Security sector oversight needs to critically look at the outsourcing of security. Finally, security sector oversight bodies should ensure greater accountability on the outsourcing of security, and state bodies should be reminded to get value for the public money spent on security. State audit offices and parliaments have to ensure that the outsourcing of security is done according to professional standards that the delivery of those services is checked and that favouritism and other corruptive practices are avoided. They also have to consider how the privatisation of security might limit access to security and limit individuals' human rights. They need to ask whether sufficient security is accessible to all or whether basic security is only available as a commercial product for those who can afford it.

Because of PSCs' impact on human rights and the impact of privatisation of security on human rights, human rights oversight bodies should also be concerned with private security. In their control of state bodies they should look at state practices in outsourcing security services. Human rights ombuds-institutions should look at the human rights challenges either caused by the privatisation of security, by the activities of PSCs on citizens or the rights of PSC employees.

5. Way forward

Many different stakeholders need to work together to ensure accountability in private security. In Albania, Bulgaria, Kosovo and Serbia, all stakeholders need to do more to improve accountability in private security. PSCs and their clients need to engage more in self-regulation. External oversight bodies such as parliaments need to accept their responsibilities in overseeing government control over PSCs and the privatisation of public security. CSOs and academia need to play a bigger role in

researching and advocating on good practices in private security governance. However, amongst the many challenges to accountability in private security in the four countries, improving private security control bodies seems to be the most urgent. The lack of effective control by agencies licensing and inspecting the activities of PSCs and those that manage the public procurement of private security have turned the sector into an inefficient and unaccountable industry. The public sector in all four countries generally lacks resources, with widespread corruption and nepotism other state control bodies. However, without greater efforts to increase the effectiveness of the control of PSCs, a private security sector which is accountable cannot develop, public money will be wasted and no real security will be provided by PSCs. In addition to increasing the resources of control bodies, best practices on addressing corruption and conflict of interest as well as best practices in public procurement of private security⁶⁰ need to be explored by local governments.

On a European or even international level, the question of accountability in private security has to be answered in more principled terms. In this volume, the researchers and experts tried to define private security accountability with reference to states' human rights obligations and the needs and constraints of the security sector in the four case study countries. How do the specific and general lessons drawn from this research resonate in other countries? What principled rules to control private security, especially when considering the duties of the state, PSCs and their clients, can be drawn from this?

It is important that such discussions are based on the clear premise that the final aim of accountability in the private security sector should be to foster the protection of the state's democratic order and people's human rights. Regulation and control should therefore be attentive to the security needs of a country and its citizens. There need to be more detailed discussions, taking into account the status of good governance, the human rights situation and the security needs of different countries in Europe and elsewhere to better define the role that private security should or should not play in providing security and how regulation and control need to be adapted to foster their opportunities and avoid their challenges.

60 As an example of a guide on best practices in public procurement in private security, see Boddi, Emmylou, Anna Marie Burdzy and Nelleke van Amstel *Putting Private Security Regulation into Practice: Sharing Good Practices on Procurement and Contracting 2015- 2016 – A Scoping Study*, (Geneva,; 2016). Available at: http://www.ppps.dcaf.ch/sites/default/files/uploads/DCAF_Procurement_v4.pdf

Annexes

The following two annexes are working documents that the PSRC research group used as tools for thinking through the roles of private security control and oversight actors and explore the different types of control, self-control or oversight mechanisms that would be best suited to address accountability gaps they had identified in their research on the private security sectors in Albania, Bulgaria, Kosovo and Serbia.

Annex I: PSRC Working Document – Table of Private Security Accountability Actors

Actor:	Limitations:	Opportunities
Executive as control mechanism	Lack of resources financially / number of staff Lack of specialized knowledge	Operating public registries which link data from the registry of commerce, the licensing register and the labour inspectorate. Including a white list of PSC guards with no criminal record who have undergone certification and training Producing a National Action Plan to implement the UN Guiding Principles on Business and Human Rights that influences all actions of the executive
Executive as contractor	Lack of resources to put into place a fair and thorough procurement process Lack of specialized knowledge in contracting departments Lack of clear rules on security needs, e.g. defining Critical Infrastructure	Transparency of procurement decisions Involvement of security specialists in defining bids

Parliament /Legislator	Traditional role is limited to law making, representation of society, and oversight. It should be checking and challenging the work of the Executive, holding it accountable for its decisions and controlling and overseeing the spending of the Government.	Pushing public debate, and include PSCs in the discussion Stressing the urgency of this topic, if made aware of the realities of executive's role
Judiciary	Judicial accountability is dependent on the access to court, which again depends on resources and prioritization, as well as the possibilities provided by the legal framework	One exemplary case can push public opinion and force executive into action
Ombuds Institutions & National Human Rights Institutions	Depending heavily on specific mandates, ombuds institutions and NHRI can investigate complaints and attempt to resolve them, though usually only by recommendations.	Issuing recommendations as an accessible forum Stressing the urgency of this topic: systematic issues leading to poor public service or breaches of people's rights may sometimes be addressed – e.g. contracted service providers.
Civil Society Organisations (CSOs)	Civil Society Organisations can play a key role in awareness-raising and in promoting transparency and accountability but their role is only valuable if they get listened to and can get actors to act .	CSO can bring many different elements: pushing for new law or policies , holding governments to account on their commitments, ensuring that national policy hears all voices, engage with the media to reach the general public, assemble information on operations of PSCs

International Organisations or initiatives	<p>Relevance in specific contexts needs to be established</p> <p>Lack of compliance with good practices by IOs themselves reduces credibility</p>	<p>International Organisations can raise awareness, promote transparency and accountability. It can play an exemplary role in the definition and adoption of international standards and regulatory initiatives</p>
Media	<p>When a lack of interest from the public exists, media interest reduces</p>	<p>The media has a key role in the creation and shaping of public opinion and raising problems. The media acts as a watchdog to protect public interest against malpractice and it holds, together with CSOs, a major role in awareness-raising.</p>
Self-Regulation	<p>If the client does not require higher standards and / or is unwilling to pay for it, self-regulation implementation depends on good will of the PSC</p>	<p>Professionalisation of services makes business-sense as it makes business more efficient and should attract more clients. The business-case for higher standards should be emphasised.</p> <p>Clients should be pushed to demand higher standards</p>
Clients	<p>Clients have a wide range of interests on which contracting decisions are made, not merely to do with the quality of the PSC</p>	<p>Contracting PSCs that do not perform well is a major liability. Awareness raising with clients could improve contracting criteria</p>

Annex II: PSRC Working Document: Check List for Developing an Accountability Framework for the Private Security Sector

1) You have identified an accountability gap in the private security sector. What would be the regulatory response needed to address this problem/risk?

Types of regulatory responses:

- legislation (civil or criminal)
- self/co-regulation
- policies supporting self-regulatory forces (such as free and open competition; labour movements, etc.)

2) Which are the **appropriate** actor(s), i.e. those which by their mission/constitutional role could enforce the regulation / oversee the enforcement of the regulation?

The **appropriate actor**: actor is competent in the subject area, competent in the type of action necessary, and is positioned at the right level in the governance architecture

- actor is competent on the subject area

Examples of subject areas:

- Labour law
- Education
- Integrity in public procurement
- Contractual obligations
- National security

- actor is competent on the type of action

Examples of types of action:

- Controlling application of laws
- Overseeing application of laws
- Receiving complaints
- Taking initiative to investigate crimes
- Dealing with individual cases / dealing with systemic failures
- Adjudicating alleged crimes
- Mediating conflicts

- actor is competent to intervene at the level in the governance structure

- Examples of types of level in the governance structure:
- Body responsible for the enforcement of regulation
- body responsible for overseeing the enforcement of regulation by another (state) body
- Court of first instance /second instance;
- appeal body
- Local level / municipal level / state level

3) The current governance architecture and its actors do not provide an adequate response (both in terms of prevention and remedy), because... (consider the reasons, find the right response)

a) An actor has been designated but...

- the appropriate actors to provide remedy / prevention exist but cannot / do not want to provide an adequate response

Possible responses:

Provide greater support to these actors (e.g. financial, expertise etc)

Increase the independence of these actors (e.g. minimizing political influence, conflict of interest, etc)

Increase the impact of these actors (e.g. giving them greater power to sanction etc)

(if none of the above are possible:) Designate a new actor to provide required remedy / prevention

b) A new actor needs to be designated. This could be either...

- an actor exists whose mission would allow it to provide an adequate response in form of a remedy / prevention but the actor does not have the necessary mandate and powers yet

Make sure to:

Define the necessary mandate for the actor

Define the actor's mission, mandate, powers and financial and human resources to ensure that it has the level of professionalism, expertise, accountability, independence necessary to provide the adequate response

... Or...

- a new actor which could provide the adequate response in form of remedy / prevention needs to be set in place

Make sure to:

Identify exactly the tasks this actor would have to carry out and how that actor is positioned in the PS governance structure (mission)

On that basis identify the powers that the actor must have and should be allow to have (powers)

Define the actor's mission, mandate, powers and financial and human resources to ensure that it has the level of professionalism, expertise, accountability, independence necessary to provide the adequate response

List of Contributors

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Project partners

The Geneva Centre for the Democratic Control of Armed Forces (DCAF) is one of the world's leading institutions in the areas of security sector reform and security sector governance. DCAF provides in-country advisory support and practical assistance programmes, develops and promotes appropriate democratic norms at the international and national levels, advocates good practices and conducts policy-related research to ensure effective democratic governance of the security sector.



www.dcaf.ch

The Center for the Study of Democracy (CSD) is an interdisciplinary public policy institute founded in 1990 dedicated to the values of democracy and market economy. CSD is a non-partisan, independent organisation fostering the reform process in Bulgaria through impact on policy and civil society.



www.csd.bg

The Institute for Democracy and Mediation (IDM) is an independent, non-governmental organisation, founded in November 1999 in Tirana, Albania. It works to strengthen the Albanian civil society, to monitor, analyse and facilitate the Euro-Atlantic integration processes of the country and to help the consolidation of good governance and inclusive policy making. IDM carries on its objectives through expertise, innovative policy research, analysis and assessment-based policy options.



www.idmalbania.org

The Kosovar Centre for Security Studies (KCSS) is a non-governmental and non-profit think tank established in 2008 with the main aim of developing research studies in the security sector. KCSS conducts research and organises conferences and seminars in the related fields of security policy, rule of law, justice, and monitoring of the security sector. KCSS activities contribute to strengthening the principles of democratic oversight of security institutions in the Republic of Kosovo.



www.qkss.org

The Belgrade Centre for Security Policy is an independent research centre that devotes its efforts to improving the security of individual citizens and society as a whole. The focus of the Centre's interests are policies aimed at the improvement of human, national, regional, European and global security. The Belgrade Centre for Security Policy realises its objectives through research, analysis and practical policy proposals, advocacy, education, publishing and specialist support for security sector reform in Serbia.



www.bezbednost.org