DCAF REGIONAL PROGRAMMES

THE LEGAL FRAMEWORK OF SECURITY SECTOR GOVERNANCE IN GEORGIA

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2016 Updated

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The Geneva Centre for the Democratic Control of Armed Forces

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Geneva-Tbilisi, 2016

The publication of this book has been funded by the Directorate for Security Policy (SIPOL) – Swiss Federal Department of Defence, Civil Protection and Sports.

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I. Introduction

There is no unified and universally recognised definition of what constitutes the security sector. A report by the UN Secretary-General (A/62/659) on security sector reform defines the security sector broadly and includes the list of its basic elements.[1] According to this definition, the security sector includes the structures, institutions and personnel that take responsibility for the management, provision and oversight of security in the country. This document also determines the main essence of security sector reform.[2] According to this definition, the security sector reform aims at ensuring the security of the state and its people. Security sector activities should be in compliance with the rule of law and norms of international law.

This review does not represent a fundamental analysis of the regulations for the Georgian security sector. Its objective is to describe the applicable legal framework and to show its drawbacks or possibilities for further improvements. Norms regulating the system of the Armed Forces, Ministry of Internal Affairs and State Security Service will be briefly reviewed. The issue of enhancing parliamentary control of security sector activities is particularly emphasized in the comments.

With ongoing legislative changes in Georgia in the background, it is necessary to update such a review periodically. This commentary does not offer a profound analysis of the problematic issues of ongoing security sector reforms. Such an analysis regarding the issues of particular importance requires separate research. It looks at the legal base regulating the activities of the security sector and also indicates the problems of effective implementation of the law in force.

II. Constitutional Framework of the Georgian Security Sector

The Constitution of Georgia and Division of Powers within the Security Sector

The Constitution of Georgia, adopted on August 24, 1995, has been amended several times. Accordingly, the constitutional principles regulating the security sector have also been subject

[1] According to this definition, "a broad term often used to describe the structures, institutions and personnel responsible for the management, provision and oversight of security in a country. It is generally accepted that the security sector includes defence, law enforcement, corrections, intelligence services and institutions responsible for border management, customs and civil emergencies. Elements of the judicial sector responsible for the adjudication of cases of alleged criminal conduct and misuse of force are, in many instances, also included. Furthermore, the security sector includes actors that play a role in managing and overseeing the design and implementation of security, such as ministries, legislative bodies and civil society groups. Other non-State actors that could be considered as part of the security sector include customary or informal authorities and private security services", A/62/659-S/2008/39, paragraph 14, pp. 5-6.

[2] According to this definition, security sector reform is "a process of assessment, review and implementation as well as monitoring and evaluation led by national authorities that has as its goal the enhancement of effective and accountable security for the State and its peoples without discrimination and with full respect for human rights and the rule of law". See also *The United Nations SSR Perspective*. According to the report of the UN Secretary-General submitted on August 13, 2013, "the objective of security sector reform is to help ensure that people are safer through the enhanced effectiveness and accountability of security institutions operating under civilian control within a framework of the rule of law and human", "Securing States and societies: strengthening the United Nations comprehensive support to security sector reform" (Report of the Secretary-General) S/2013/480.

to various changes.[3] In 2013, due to constitutional amendments, the powers of the president were reduced and authorities of the government and prime minister over the security sector were increased.[4] The president remains the supreme commander-in-chief of the armed forces (Article 69, Paragraph 2). He/she appoints and dismisses officials. With the consent of the government he/she negotiates with foreign states and international organisations (Article 73, Paragraph 1a), declares a state of war and emergency (Article 73, Paragraph I h, i) and carries out other competencies. The Parliament determines the principal directions of domestic and foreign policy, and exercises control over the activity of the Government within the framework determined by the Constitution (Article 48). The Constitution consolidates different forms of parliamentary control including Parliament's budgetary powers..[5]

According to Article 99, Paragraph 1, the National Security Council is set up with the view of organizing the military structure and defence of the country, and carries out its functions under the guidance of the President of Georgia. According to Article 99 paragraph 2, the composition, competencies and the procedure shall be determined by an Organic Law.[6] According to Article 98, Paragraph 3, the president of Georgia shall approve the structure of the armed forces, while the strength thereof shall be approved by the majority of the Members of Parliament on the current nominal list, upon the submission of the National Security Council.

Chapter 7 of the Constitution refers to state defence. It equally contains provisions on parliamentary control over the use of armed forces. The president adopts a decision on the use of the armed forces and the Parliament approves it within 48 hours. It should be noted that the Constitution does not stipulate parliament approval after using the armed forces. In addition, "the Armed Forces shall not be used for the fulfillment of international obligations without the consent of the Parliament of Georgia".[7] This constitutional provision has to be interpreted in such a way as to also cover parliamentary consent to the participation of the armed forces not only in international peace operations but also in military operations planned as part of other bilateral or multilateral military cooperation. Additionally, Parliament should also be able to carry out further control from the moment of deploying armed forces abroad.

[3] For a review of the legislation at an earlier stage of security sector reform, see M. Vashakmadze, "Democracy and Security: The Legal Framework for Security Sector Governance", in Ph. H. Fluri and E. Cole, *From Revolution to Reform: Georgia's Struggle with Democratic Institution Building and Security Sector Reform*, Vienna, (2005): 25-50.

[4] See the text of the Constitution, available on the website of the Parliament of Georgia, www.parliament.ge.

[5] In its Opinion of 2010 concerning the constitutional amendments, the Venice Commission indicated the necessity of increasing the powers of Parliament. The Commission considers … that it would be desirable to further strengthen the powers of parliament. In this respect, the provisions on the formation of the government and especially those on the motion of non-confidence as well as those about the parliament's powers in budget matters should be reconsidered', Venice Commission, Final Opinion on the Draft Constitutional Law on Amendments and Changes to the Constitution of Georgia, 15 October 2010 CDL-AD(2013)028, para 111.

[6] The international practice knows examples, in which the functions, powers and the composition of the (National) Security Council are enshrined in the Constitution itself. See, for example, Article 240 of the Kenyan Constitution.

[7] Article 100 paragraph 2 of the Georgian Constitution.

The Constitution left the question open as to whether the President is entitled to independently change the particular modes of the military mission. Besides, the role of Parliament in ending military operations is not clearly determined. However, we can draw a conclusion from the current Constitution that in case of a withdrawal of parliamentary consent the respective military operation has to be ended.[8]

According to Article 100, Paragraph 2, "For the purpose of state defence in the exclusive cases and in cases envisaged by law, the decision about the entrance, use and movement of the armed forces of another state on the territory of Georgia shall be adopted by the president of Georgia. The decision shall immediately be submitted to the Parliament for approval and shall be enforced after the consent of the Parliament". Further details are not regulated in the Constitution. The requirement of parliamentary approval should be understood broadly – according to this understanding, the Parliament shall consider and approve not only the deployment of troops from another country on the territory of Georgia but also their further use and significant changes of the modalities of their deployment. The Constitution does not indicate what legal consequences ensue if the Parliament does not approve the introduction foreign armed forces into the territory of Georgia or withdraws its consent in the course of the implementation of the military mission. However, in such a case foreign military presence in Georgia would be unconstitutional and has to be ended.

III. National Security

The National Security Concept of Georgia

The National Security Concept of Georgia determines national values and interests, threats and challenges, and the main directions of security policy.[9] According to the concept, Georgia aims to create a security system that guarantees the further development of Georgian statehood and the security of its citizens.[10] The main directions of the security policy among other issues include developing state institutions, strengthening democracy, and implementing the engagement policy. According to the concept, the cornerstone of the state security system reforms is the National Security Review process that includes institutionalized policy coordination among state agencies, increased cooperation between military and civil institutions, and the development of specific strategies for all agencies involved in the security sector.[11] Obviously, it is necessary to develop further the legislative base, which will enable the effective implementation of these reforms.

[8] In some countries, the specificities of parliamentary participation in the decision to send the armed forces abroad are regulated by a separate law. See, for example, Article 5 of the respective German Law (Gesetz über die parlamentarische Beteiligung bei der Entscheidung über den Einsatz bewaffneter Streitkräfte im Ausland) Parlamentsbeteiligungsgesetz vom 18. März 2005 (BGBl. I S. 775).

[9] See Analysis and Criticism of National Security Concept of Georgia, S. Neil MacFarlane, "Georgia: National Security Concept versus National Security", Chatham House Russia and Eurasia Programme Paper REP PP 2012/01 (August 2012).

[10] National Security Concept of Georgia, p.14.

[11] Ibid, p. 38.

Creating a unified and effective system of crisis management is a significant priority of security policy. This system should ensure the ability to forecast possible crises and their prevention.

Strengthening the country's defence capabilities is the main intent of Georgia's security policy. It considers education and training system compliance with contemporary standards, further development of the personnel management system, improvement of the command and control system, and increased interoperability with NATO. It is particularly important to establish close cooperation among the military and civilian components related to crisis management.[12] Accordingly, it is required to review Georgian legislation to ensure that it enhances the fulfilment of these objectives.

Interestingly, according to the National Security Concept, Georgia's defence planning is based on the principle of "total defence", which "requires the successful implementation of a civil defence system, along with related education and training, the development of proper infrastructure, and the creation of an effective military reserve".[13] The Concept emphasizes that, "to develop the reserve and mobilisation system, it is important to cooperate with partner countries and to learn from their experience".[14]

According to the concept, "the increased interoperability of the Georgian Armed Forces with NATO remains the priority of Georgian defence reform".[15] The momentum of Georgian security sector reform is the cooperation of the country with NATO, and in general, the prospect of joining NATO. NATO regularly considers Georgia's current reforms and makes relevant assessments. After the Russian-Georgian armed conflict in 2008 the process of NATO integration somewhat slowed down.

In some experts' opinion, the National Security Concept of Georgia does not reflect all aspects of security policy and it is intended for the internal or external audience rather than to demonstrate and analyse significant aspects of security policy. British expert S. Neil MacFarlane criticizes the Concept, and claims that, "the security policy function of the Concept and its role in a framing narrative for the government in terms of internal and external audiences are in tension. To the extent that the latter overpowers the former, the utility of the concept as a basis for the development of security policy and strategy is diminished".[16]

The 2015 Reform and the Creation of the State Security Service

As a result of reforms adopted in June 2015 a new security sector agency - State Security Service of Georgia has been separated from the Ministry of Interior and established as a distinct institution on 1 August 2015. The Law of Georgia on State Security Service adopted

[12] Ibid p. 39.
[13] Ibid p. 39.
[14] Ibid p. 40.
[15] Ibid.
[16] S. Neil MacFarlane, "Georgia: National Security Concept versus National Security", Chatham House Russia and Eurasia Programme Paper REP PP 2012/01, (August 2012), 41.

on 8 July 2015 regulates the activities of the newly formed State Security Service. [17] Article 5 of the Law determines main activities of the Service. They include: to protect constitutional order, sovereignty, territorial integrity and military potential of Georgia from illegal acts of special services and certain individuals of foreign countries; to detect unconstitutional, violent change of constitutional order and state authority of Georgia and ensure their protection; to ensure economic security of the country; to fight against terrorism; to fight against transnational organized crime and international crime; to take measures aimed at preventing, detecting and eliminating corruption; to protect state secrets, to take measures to ensure the protection of state secrets and monitor their implementation; finally to protect the country from foreign threats.

According to Article 11 of the Law, the functions of the Service shall be prevention (conducting preventive measures), detection, suppression and investigation of crimes under investigatory competences assigned to the Service, in accordance with the directions for the activities of the Service. Besides, the function of the Service is to analyse such crimes, potential threats, risks and challenges. Thus, the Service not only takes measures to prevent crime and carries out investigations but also analyses and detects potential threats. According to the Law, the Service can equally take certain coercive measures.

The Ministry of Interior stressed that 'from the moment of adoption of the Law the police will focus on protecting the societal security and order while the security institutions on protecting state security'. [18] However, some independent non-governmental organisations maintained that there is a real threat of duplication of functions between the Service and the police. [19]

According to international good practices, there must be a structural and functional separation between the police and the security services. [20] Accordingly, the security services should not be dealt with law enforcement functions and vice versa. Some states notwithstanding global security threats maintain a strict separation between analytical functions of security services and traditional functions of law enforcement agencies. For example, according to Article 1 of the German Law on Foreign Intelligence Service, the main function of this Service is to gather and analyse information about external security threats. Article 2, paragraph 2 of this Law determines that the Service does not fulfil police functions. [21] A similar provision is contained in Article 8, paragraph 3 of the Law on the Federal Office for the Protection of the

[17] Law of Georgia on State Security Service, 8 July 2015, N3921-RS.

[18] ‚MIA: NGO criticism of the reform process is not objective', www.tabula.ge, 14 July 2015.

[19] See, for example, Transparency International Georgia, ‚Assessment of the Ministry of Interior reform', 9 July 2015.

[20] Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism Martin Scheinin, A/HRC/14/46 (17 May 2010), practice 27.

[21] BND-Gesetz vom 20. Dezember 1999 (BGBl. I S. 2954, 2979), das zuletzt durch Artikel 7 des Gesetzes vom 20. Juni 2013 (BGBl. I S. 1602) geändert worden ist.

Constitution (domestic intelligence service of the Federal Republic of Germany), which explicitly prohibits the exercise of police functions by the Office.[22]

The separation between police and state security agencies is necessary to ensure an effective implementation of fundamental rights. At the same time, the separation between structures and competences does not preclude law enforcement and security agencies from cooperating closely against serious security threats. However, forms of such cooperation need to clearly be determined by law and exclude any overlap of functions. For example, when the agencies exchange information including personal information, it is essential that the principle of informational separation be observed. In a decision on antiterrorist data issued in 2015, the German Federal Constitutional Court maintains that the requirement of informational separation stems from the fundamental individual right to informational self-determination. According to this requirement, the exchange of personal information between police and security agencies is not permitted.[23] Such exchange can only take place if an important public interest so requires and this exception is clearly prescribed by law. This approach is based on an assumption that the police and the security agencies collect information for different purposes. The police gather such information to prevent a concrete threat (to law and order) while the security agencies may collect information to analyse and prevent more general security threats. Such strict separation of competencies seems rather difficult when a single institution is in charge of collecting and analysing information for both law enforcement and national security purposes. It needs to be prevented that the information gathered for national security reasons is used in law enforcement. The requirement of a clear separation of competencies can equally be derived from the principle of clarity of law.

Limitation of law enforcement and investigatory functions of the State Security Service, a clear separation of competencies will facilitate more effective democratic accountability. Agencies that exercise control over the activities of the Service will be able to focus on the implementation of clearly determined competencies.

The constitutional structure in Georgia and its recent history also confirm that a strict separation is necessary. The collection and use of personal information within the system of the Ministry of Interior has not been subject to effective control until recently and overall, it hardly satisfied the existing international standards on the protection of personal information.

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Article 12 of the Law authorizes the State Security Service to take a wide array of measures in order to fulfill its preventive function. For example, the Service is authorized to collect information from open and secret sources and to conduct its analytical processing and generalization (Article 12 paragraph 1 lit. j). Moreover, the Service, in order to respond to threats to State security, shall be authorized to conduct investigation, search and detention of

[22] Bundesverfassungsschutzgesetz vom 20. Dezember 1990 (BGBl. I S. 2954, 2970), das zuletzt durch Artikel 6 des Gesetzes vom 20. Juni 2013 (BGBl. I S. 1602) geändert worden ist.
[23] 1 BvR 1215/04, 24 April 2013.

suspects and perpetrators (Article 12 paragraph 1 lit. a). The Service also conducts investigative and covert investigative activities. It participates in measures to fight organized crime, corruption and drug trafficking together with the organs of the Prosecutor's office, Ministry of Internal Affairs, Special State Protection Service and other authorities (Article 12 paragraph 2 lit. c). The Service is equally authorized to conduct counter-intelligence activities in order to prevent, detect and suppress intelligence activities of special services and organizations of foreign countries directed against Georgia (Article 12 paragraph 2 lit. a). Besides, the Service conducts counter-intelligence activities in the armed forces of Georgia (Article 12 paragraph 3 lit. b). Additionally, the Service implements measures together with other state agencies determined by the law, in order to ensure the security of the Georgian State border (Article 12 paragraph 4 lit. a).

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Taking into account a wide range of means at the disposal of the Security Service to gather information, it seems necessary to introduce certain limitations and exercise oversight over the collection, storage and use of personal information. The law shall establish procedural guarantees in order to ensure that fundamental rights are proportionally limited. It shall prohibit an inappropriate use of personal information and the use of information that is not directly related to the protection of State security. The legislation shall equally determine the procedure for the storage and in some cases, also for the destruction of such information.

It is essential to authorize an independent body or the Inspector for the Protection of Personal Data to exercise oversight of a lawful use of personal information by and in the State security structures. In international practice there are various forms of oversight of the use of personal information. In the majority of cases a non-parliamentary independent body exercises such oversight. In some countries, a non-parliamentary body shares its competencies with the Inspector for the Protection of Personal Information (Germany). In some cases, only the Inspector for the Protection of Personal Information is responsible to fulfill this task (Portugal).

In Georgia, the Inspector for the Protection of Personal Information has now the power to exercise control over the use of special (covert and intrusive) investigative techniques. For example, the interception of phone communications is now only permissible on the approval by the Inspector. However, the Law does not explicitly extend the oversight competencies of the Inspector to the use by the State Security Service of the personal information obtained through special investigative means.

In Germany, this function is undertaken by the G10-Commission[24] appointed by the Parliamentary Control Organ for one legislative period. It is an independent, quasi-judicial organ, which by its own initiative or on the basis of individual petitions can decide the issue of

[24] Act Restricting the Privacy of Correspondence, Post and Telecommunications (Article 10 Act), Act of June 26, 2001 (Federal Law Gazette I, p. 1254, revised 2298), last amended by Article 2 of the Act of June 12, 2015 (Federal Law Gazette p. 926), articles 14-16.

admissibility and reasonableness of limitations imposed on individual communications. Its controlling function extends to the collection, processing and use of personal information carried out by the security services. The state agencies are responsible to provide the Commission with all requested information. Besides, the respective state agency / Ministry on monthly basis informs the Commission about the restrictions to be introduced before the planned measures are implemented. In the case of an imminent threat it is permitted to restrict the individual communications without informing the Commission in advance. The respective Ministry or agency has to abolish any restrictions if the Commission considers them unlawful and unreasonable. The Law equally contains provisions on the storage, use and transfer of personal information (not only within the State but also internationally).

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The Law on State Security Service of Georgia does not regulate the cooperation between the Service and other state agencies and foreign security institutions. It does not prescribe the forms of information sharing or the exercise of oversight over such sharing. In practice such cooperation may be based on international agreements on the exchange and bilateral protection of the secret information.

The cooperation between security agencies may pose a threat to fundamental rights. Thus, the parliamentary oversight should extend to international cooperation of security agencies[25] and equally focus on the observance of fundamental rights.[26] According to international recommendations, the legislation should envisage permission procedures for cooperation between security agencies and also mechanisms of oversight; it should equally define the types of information exchanged and the purpose of such exchange. The legislation should define procedural guarantees applicable to cooperation and situations in which the information will not be shared (for example, when there is a serious risk that the sharing of information with the services of other countries would cause serious violation of human rights or facilitate such violations). Procedural guarantees shall enable the respective authorities to take into account the human rights practice/record of those services with which information is shared. The Security Service shall bear an obligation to submit to the oversight body the information on the cooperation agreements concluded with foreign security services (and certain aspects of their implementation).

For example, a copy of the agreement concluded between the Canadian security agencies and other security services has to be sent to a non-parliamentary committee that exercises oversight of the activities of the security agencies. The German legislation envisages an obligation to inform the oversight body. The respective security agency shall inform the

[25] See the Resolution 1838 (2011) of the Parliamentary Assembly of the Council of Europe 'Abuse of State Secrecy and national security: obstacles to parliamentary and judicial scrutiny of human rights violations', paragraph 7, which states that "It is unacceptable that activities affecting several countries should escape scrutiny because the service concerned in each country invoke the need to protect future cooperation with their foreign partners to justify the refusal to inform their respective oversight bodies". See also Global Principles on National Security and the Rights to Information (Tshwane Principles), at 5.

[26] See on this issue H. Born, I. Leigh and A. Wills, Making International Cooperation Accountable, DCAF 2015.

oversight body as well as the G10-Committee about the transfer of information to the foreign services. Article 7 a paragraph 1 of the relevant Law determines the conditions for transfer (sharing) of information. The Law determines that a sufficient level of protection of personal information must be guaranteed in another State and taking into account all relevant circumstances, it shall be possible to assume that the shared information will only be used in accordance with the principles of a rule of law state.

The Georgian Law on the Protection of Personal Information contains provisions on the transfer of personal information to another State and international organization. It also establishes a procedure for determining the existence of sufficient guarantees for the protection of personal information in another State.[27] However, the legislation on State Security Service does not refer to these provisions.

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As mentioned above, the Georgian State Security Service enjoys broad preventive competencies that need to be balanced through sufficiently effective parliamentary oversight. The Chief of the Service is accountable to Parliament and Government. However, the submission of annual reports does not suffice to ensure effective oversight because many aspects of the activities of the Service are not discussed in such reports and remain inaccessible to parliament. Taking into account broad competencies of the State Security Service, the oversight body needs to have a strong mandate enabling to analyze and assess the lawfulness, effectiveness, management and funding of the activities of the Security Service.

Law of Georgia on Counterintelligence Activity

The law on Counterintelligence Activity adopted on November 11th 2005 determines the legal basis for counterintelligence activities. In terms of Article 1 of this Law, counterintelligence activities are a special type of activities aimed at detecting and preventing threats posed by the intelligence and/or terrorist activities of foreign special services, organisations, group of persons or separate individuals and directed against Georgia's state interests. According to legislative amendments adopted on July 8th 2015 the Counterintelligence Department constitutes a structural division of the State Security Service.[28]

The State Security Service is accountable to the Government of Georgia. Moreover, according to Article 24 of the Law, the forms of parliamentary oversight shall be determined in the Georgian legislation. The Law stipulates that a Member of Parliament can receive protected information on intelligence activities only as prescribed by law. Electronic surveillance and postal correspondence control carried out by the Service shall require a court order. At the same time, Article 14 allows for the implementation of electronic surveillance without a court order, if the Head of the Special Service determines that there is a need for immediate provision of such tracking. The Head must notify a judge within 24 hours.

[27] Article 42 of the Law on the Protection of Personal Information, 28 December 2011, N5669-RS.

[28] The Law on State Security Service envisages the competencies of this Service in the counter-intelligence sphere (Article 12 paragraph 3).

Prevention of violations of law is the most challenging subject as it is related to the (secret) nature of special operations. Therefore, in addition to further enhancement of accountability, it is necessary to elevate a culture of legal awareness within special service employees and to improve the level of their education in human rights.

Law of Georgia on Intelligence Activity

Intelligence activities shall be carried out by the intelligence agency in order to protect the national interests of Georgia (Article 1). Such activity in the law of April 27, 2010, is defined as "getting, processing, analysing, and implementing information on external threats against Georgia's national interests, as well as rendering assistance in pursuing the strategic course of national security and defence" (Article 2, Paragraph 1).

Article 4 of the law defines the legal basis for intelligence activities. Intelligence activities should be carried out within the framework of the constitution and the law, as well as in accordance with international obligations. Article 6, Paragraph 1 states that one of the principles of intelligence activities' implementation shall be the legality and observance and respect of human rights and freedoms. Political neutrality and accountability of intelligence activities are deemed to be similarly important.

Chapter II of the law gives the definition of the intelligence system of Georgia uniting the intelligence agencies (Article 7, Paragraph 1). The system consists of Georgian Intelligence Service, authorised subdivisions of Georgian Ministry of Defence, and Intelligence subdivisions of authorised bodies of Georgian Ministry of Internal Affairs (Article 7 Paragraph 2).

According to Article 8 paragraph 3 of the law, it is one of the tasks of the Georgian intelligence system 'to cooperate with the services of foreign countries on issues relating to regional and global threats.' Such cooperation should be carried out within the framework of the law and the international obligations of Georgia. International practice demonstrates that in the context of collaboration of different countries' intelligence services, internationally recognised human rights standards are frequently violated and revealing such violations is a serious challenge. This is due to the specific character of intelligence activity. Such activities and related information are typically classified. Therefore, it is extremely important to put effective oversight mechanisms into action, which shall ensure detecting violations, including prevention and accountability of relevant individuals and services. In this regard, Parliament bears a significant role, to which the Government and its agencies are accountable. Under the Article 15 of the present law, the prime minister of Georgia supervises the functioning of the Georgian intelligence system while the Defence and Security Committee of the Parliament of Georgia oversees the activities of intelligence agencies (Article 16).

In accordance with Paragraph 4 of Article 9 of the law, "The Prime-Minister of Georgia shall take the decision of expediency of interdepartmental negotiations and cooperation between the system of foreign intelligence of Georgia and intelligence and counterintelligence services of foreign states". However, the law does not clearly define the role of the legislative body in the

process of evaluating cooperation between intelligence agencies. Such cooperation should not remain beyond parliamentary control. Parliament and its relevant committees must show regular interest to international collaboration of intelligence agencies. Evidently, this kind of oversight must be carried out with full protection of secret information without seriously damaging the national interests of Georgia and other states. In some countries special parliamentary committees exercise oversight over the intelligence services. For example, in the Norwegian Parliament, the special parliamentary committee conducts monitoring of intelligence activities (Committee for the Monitoring of Intelligence, Surveillance and Security Services).[29]

The 2013 October - November 2013 events related to global surveillance conducted by the U.S. National Security Agency (NSA), once again revealed the need for regulatory compliance of such activities with legal standards. In international practice, special attention is paid to keeping balance between the national security interests and the fundamental rights.[30]

Law of Georgia on the Intelligence Service

As a result of legislative reforms undertaken in 2013, the Intelligence Service passed under governmental control. The Service now represents the special purpose agency of the executive branch of government under the direct supervision of Prime Minister (Article 2 of the law adopted on 27 April 2010). [31] The Service is accountable to the Prime Minister for its activities (Article 6, Paragraph 1). He appoints the Service head, who is the Prime Minister's key advisor on intelligence matters (Article 9, Paragraphs 1, 2). Parliamentary oversight is implemented through the Defence and Security Committee. Under Article 27, Paragraph 2 of the present law, "control over expenditures allocated from state budget for the purposes of intelligence service secret activities and special programs, is exercised in accordance with the law of Georgia on the Group of Confidence". Article 28 of the law provides for prosecutorial supervision over the legality of Intelligence Service activities. However, the data on those individuals who are or were cooperating with Intelligence Service are not subject to the supervision of the prosecution, neither the methods nor tactics of obtaining intelligence data, and its classification (Article 28, Paragraph 2). The State Audit Office of Georgia carries out financial control of intelligence activities (Within its competence, the Budget and Finance Committee of Parliament of Georgia may also exercise such control.)

[29] Instruction for Monitoring of Intelligence, Surveillance and Security Services (EOS), issued to a section 1 of Act No. 7 of 3 February 1995 relating to the Monitoring of Intelligence, Surveillance and Security Services. Generally on this issue H. Born & I. Leigh, Making Intelligence Accountable: Legal Standards and Best Practice, Oslo 2005.

[30] It should be noted here that at the end of October 2013, Germany and Brazil submitted to the UN Security Council the resolution, which called for the states to strengthen the democratic and independent control over the state surveillance of correspondence and other means of communication. The right to privacy and the international transfer of personal data gained special relevance in the context of international counter-terrorist operations. On 18 December 2013, the UN General Assembly issued a resolution on the 'right to privacy in the digital age' and in summer 2015 the UN Human Rights Council appointed a special rapporteur on the right to privacy.

[31] Amendments to the Law on Georgian Intelligence Service, 20 September 2013, N 1239-IS.

Law of Georgia on the Group of Confidence

Pursuant to the law adopted on March 4, 1998, the Group of Confidence was created from the members of the Georgian Parliament Defence and Security Committee conducting budgetary control over special programs and security activities of the executive (Article 1). The Group of Confidence, which consists of five members, has access to the materials on relevant security activities of the authorities. The Group can request materials in order to examine the situation. The executive agencies responsible for specific programs or security activities, no less than once a year shall submit a report on executed activities to the Group (Article 6, Paragraph 1). When Parliament considers an issue, which falls within the competence of the Group of Confidence, an opinion of the Group of Confidence must be obtained (Article 5). If the Group is of the opinion that the activities of the agencies of the executive branch pose a threat to public security, or the head of the respective agency abuses his/her powers, the Group of Confidence may initiate the creation of an inquiry commission (Article 9).

With the aim of strengthening budgetary control over Defence Ministry activities, the law was amended in 2013, under which the state security procurements became subject to control by the Groups of Confidence (Article 6, Paragraph 3).[32] Taking into account a wide array of competencies of the newly created State Security Service, the Group of Confidence should possibly be given additional oversight powers.

The Law of Georgia on Combating Terrorism

In the Law of Georgia on Combating Terrorism, adopted on June 27, 2007, the crime of terrorism is defined quite broadly.[33] From 1 August 2015 on the State Security Service is the main authority within the counterterrorist system of the State (Article 4 paragraph 2 lit a). The Ministry of Defence and the Intelligence Service may also take part in anti-terrorist measures. The Head of the State Security Service, who also directs the activities of the operative headquarters of control over extreme situations, may define special zones for conducting counter-terrorist operation. Article 10 of the law defines the legal regime for the counterterrorist operational zone. The parliament, Government and local government bodies will be informed about the decision, which will also be published in the media.

Chapter 7 of the law regulates international cooperation of Georgia in the sphere of combating terrorism. Information sharing for counterterrorist purposes and extradition of relevant persons are forms of such cooperation. International practice demonstrates that conflicts between the standards of human rights protection and the requirements of international antiterrorist cooperation are not unusual. It may occur when the recipient state uses the shared information unlawfully. Similar contradictions between human rights and antiterrorist measures might take

[32] Amendments to the Law on Trust Group, 12 June 2013, N 722-IIS.

[33] According to the Article 1 of the Law, "Terrorism is violence or menace of its application against natural or legal persons, elimination, injury or menace of elimination, damage of buildings, constructions, vehicles, communications and other tangible objects with application of arms, explosive materials, nuclear, chemical, biological or other dangerous for human life and health substances, or kidnapping through hostage taking for compelling of the authorities or any state authority or an international organisation to realize defined actions or restriction from realization of defined actions for illegal interests of terrorists."

place when a terror suspect is the subject of rendition and there is a threat of torture or unlawful imprisonment or unfair trial. Norms of international law are also violated when the state permits another country to use its own territory for unjustified antiterrorist actions.[34] Therefore, in this respect, while planning and implementing international or national antiterrorist actions it is essential to take into fundamental human rights standards.[35]

It should be mentioned that, in frequent cases, anti-terrorist operations are connected with the use of the armed forces within the country. The law should subordinate such use of military force to parliamentary approval and oversight. It is equally important that Parliament checks potential limitations of human rights that are related to the legal regime of counterterrorism.

The institution of parliamentary inquiry should be strengthened. This is one of the significant forms of parliamentary oversight. There are some cases known from the recent practices of Georgian Armed Forces when anti-terrorist operations were conducted under quite mysterious circumstances, which raised a lot of questions from the point of view of its expedience and compatibility with law.[36] However, legal (or political) responsibility of the institutions and people concerned has not been raised yet, nor it has become the subject of a serious parliamentary discussion.[37]

Besides, it is necessary to separate distinctly the roles of the military, police, the Ministry of Interior Affairs and the State Security Service from each other in this sphere. Armed Forces should maintain the prerogative to assist the police and other civilian structures to overcome terrorist threats in certain cases defined by law.

Organic Law of Georgia on the National Security Council

The National Security Council of Georgia is an advisory body of the president of the country for organizing and decision-making on matters related to the military and national security. According to the Organic Law on National Security Council adopted on November 11, 2004, together with other essential competencies the Council ensures development of the concept of national security that is approved by Parliament by a majority of the members on the current nominal list, upon the submission of the president (Article 2(1)).

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[34] See Council of Europe Assembly Report "Committee on Legal Affairs and Human Rights, Alleged secret detentions and unlawful inter-state transfers involving Council of Europe member states, Draft report" (Explanatory memorandum), June 7, 2006. It is mentioned in this report that, in some cases, there were attempts of Parliamentary investigation of this issue. See also the final report of the official inquiry conducted by the UK, "The Report of the Detainee Inquiry", December 2013. Available at https://www.gov.uk/government/publications/report-of-the-detainee-inquiry. See also the decisions of the European Court of Human Rights: Al Nashiri v. Poland (Application no. 28761/11), 16 February 2015; Hussayn (Abu Zubaydah) v. Poland (Application no. 7511/13).

[35] See, for, example, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson, *Framework Principles for securing the accountability of public officials for gross or systematic human rights violations committed in the context of State counter-terrorism initiatives*, A/HRC/22/52 , 1 March 2013.

[36] See Radio Free Europe / Radio Liberty (Caucasus Report), 'Mastermind behind Georgian-Chechen Shoot-out still not identified', 4.9.2013, http://www.rferl.org/content/caucasus-report-georgia-chechen-shoot-out-anniversary-mastermind/25095633.html; J Kucera, 'Did Saakashvili's Government recruit and train Chechen militants?' Eurasianet, 5.9.2013, http://www.eurasianet.org/node/67468.

[37] See the same material.

The amendments of 1 August 2015 expanded the composition of the Council, which now includes Prime Minister, Speaker of Parliament, Foreign Minister, Defence Minister, Minister of the Internal Affairs, Chairman of the Parliamentary Committee on Defence and Security, Chairman of the Foreign Affairs Committee, Director of the State Security Service, National Security Advisor to the President (Secretary of the National Security Council), and Chief of Staff of the Army. Thus, more parliamentary representatives have been included. This has to be assessed positively as it creates a framework for taking more balanced and legitimate decisions on national security matters.

Law of Georgia on National Security Policy Planning and Coordination

In accordance with the law on National Security Policy Planning and Coordination adopted on 4 March 2015, the State Security and Crisis Management Council has been created. It is a consultative body to the Prime Minister of Georgia and is directly subordinate to him. Permanent Members of the Council are Prime Minister, Minister of Finance, Ministers of Internal Affairs and Defence respectively, Head of the State Security Service, and the Secretary of the State Security and Crisis Management Council, who also is the assistant to the Prime Minister of Georgia on State Security issues. It has been argued that the powers of the newly created Council and the National Security Council may overlap. It is advisable to avoid such overlap and to keep the areas of competencies separate from each other. At the same time, the circumstances may require from both bodies to cooperate closely in crisis situations. The legal framework should equally accommodate such cooperation and coordinated action.

Law of Georgia on State Secrets

The Law of Georgia on State Secrets adopted on 13 March 2015 defines the information that may be classified. The Law stipulates a broad definition of state secrecy and defines the competencies of relevant state agencies. Article 6 determines that the information on Georgia's foreign policy and external economic relations may be classified if the disclosure of such information may threaten Georgia's state interests. Information on scientific-technical cooperation, operative-investigatory activities and secret investigations may also be classified. Article 7 defined the information that may not be classified. Of particular importance is paragraph 1 of this article, according to which the information that may interfere with basic rights and freedoms shall not be classified.

The parliament defines the state policy on state secrecy and exercises oversight over its implementation. According to the amendments of 2015, the newly established State Security Service has the competence to ensure effective protection of the information containing state secrets.[38]

Article 30 of the Law stipulates restriction on the transfer of state secrets to other states, international organisations and residents of foreign states. Paragraph 1 of this article states that state secrets can be shared on the basis of ratified international agreements or Government

[38] See also Article 28 paragraph 3 of the Law on State Secrecy of 19 February 2015.

Orders. Paragraph 2 determines that secret contracts can be concluded with another state or an international organisation on the basis of Government Orders, if state interests of Georgia require doing so. According to paragraph 3, these procedures do not apply to the information shared with other states involved in peace operations. Thus, the Law made it easy to hand over the information containing state secrets to the partner countries participating in peacekeeping missions. Before that, similar information was shared on the basis of ratified international agreements or Presidential Orders. Simplification of procedures should not cause a weakening of oversight over secret information sharing or in handing it over.[39]

Practice proves that the unlawful classification of information can cause a dispute.[40] In this view, the misinterpretation possibilities of the law by the state agencies should be limited. This can be done only by forming relevant criteria clearly in the legislation.

Another issue to be mentioned here is the access to secret information. It has been criticized that the criterion of reliability of the person to be accessed to secret information may be subject to different interpretations. [41]

The Cyber Security Strategy of Georgia

The cyber Security Strategy of Georgia and an action plan for implementing cyber security for 2013/2015 were approved by the order of the president of Georgia on May 17, 2013. For the last decade, the possibility of causing harm to the state through the Internet has increased, which raises the question of what means and methods should be used to minimize potential harm. In this respect, the experience of Estonia might be particularly interesting for Georgia, which (like Georgia) has already experienced an aggressive cyberspace attack. There are special laws in different countries, which should be taken into consideration in the process of working out and improving Georgian legislation.[42] On the basis of the amendments to the Law on Informational Security adopted in December 2013 by parliament of Georgia, a new entity Cyber Security Bureau has been established within the system of the Ministry of Defence.[43] The Bureau has been operating since February 2014.

Cyber security issues have been actively discussed under the auspices of the European Union.[44] The European Parliament adopted a Proposal for a Drective concerning this issue.[45]

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[39] For the issues about obtaining, sharing and using secret information, see Michigan Journal of International Law 27 (2006) which reviews different aspects of this problem.

[40] For example, see the statement of Georgian Young Lawyers' Association 'Agreement made by Georgian Government with lobbying agencies is a secret only in Georgia' http://gyla.ge/geo/news?info=365.

[41] Transparency International Georgia, 'The New Law on State Secrecy – Threat of an Unreasonable Restriction of Access to Information, 3 February 2015, http://www.transparency.ge/node/4979.

[42] See additional information at NATO specialized centre website http://www.ccdcoe.org/328.html.

[43] For further information on the activities of the Cyber Security Bureau see at ist webpage http://csbd.gov.ge/index.php?lang=en.

[44] „The European Commission proposes new cyber security legislation", 31.7.2013, http://www.wragge.com/analysis_10257.asp#.UkLsUHdc2-U

[45] Proposal for a Directive of the European Parliament and of the Council concerning measures to ensure a high common level of network and information security across the Union, Brussels, 7.2.2013 COM(2013) 48 final http://eeas.europa.eu/policies/eu-cyber-security/cybsec_directive_en.pdf, See also Joint Communication to the

Attention should also be directed to the international legal aspects in the process of working out and implementing cyber security strategy.[46] Georgian legislation in this sphere should rely on existing international practices and standards.

IV. Defence and the Armed Forces

National Military Strategy

The general principles of the defence of Georgia are to protect the country from direct aggression and to reach compatibility with NATO. According to the strategy, national military objectives are the following: defence, deterrence and prevention, readiness, and international military cooperation. The document also defines the essential factors for military success. They are: the flexibility of the armed forces to conduct joint operations, interoperability with NATO and participation in joint international operations, to conduct deliberate and crisis action planning, to support civil authorities, and to develop informational capabilities.

The national military strategy determines the role of the military forces and defines its structure. According to the document, "the structure of the armed forces shall enable the rapid deployment of forces, mobility, flexibility and effective engagement". The legal framework shall enhance the process of establishing such a structure. At the same time, effective parliamentary oversight of these processes should be provided.

The strategy grants significant functions to the National Guard, which has the responsibility "to organize and conduct combat training for the Army Reserve", and to plan and execute the mobilisation of reservists. It is also the primary force "for providing military assistance to civilian authorities in the event of emergencies".

According to the strategy, Georgian Armed Forces must be ready to resort to asymmetrical warfare, where there is no front line. Georgian soldiers equally need thorough knowledge of legal limitations applicable during such asymmetrical armed conflicts.[47] Accordingly, programmes of military education and training should be revised in order to ensure their compliance with international standards.

Law on Defence

This law of October 31, 1997, defines state defence as a combination of political, economic, military, social, legal and other measures providing protection of the state, the population of Georgia, its territory and sovereignty from an armed attack (Article 2, Paragraph 1).

European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Cyber Security Strategy of the European Union: An Open, Safe and Secure Cyberspace, Brussels, 7.2.2013 JOIN (2013) 1 final.

[46] See Tallinn Manual on the International Law Applicable to Cyber Warfare (Prepared by the International Group of Experts at the Invitation of the NATO Cooperative Cyber Defence Centre of Excellence), General editor Michael N. Schmitt, Cambridge University Press 2013.

[47] Regarding the difficulties about the use of international law during see the report of the Red Cross Committee: "The Use of Force in Armed Conflicts: Interplay between the Conduct of Hostilities and Law Enforcement Paradigms", ICRC November 2013.

According to this law, the Parliament of Georgia has broad powers in the sphere of defence. According to Article 4 of the law, the parliament defines the main directions of defence policy, passes laws, controls the defence budget, and ratifies international treaties and agreements on defence issues. The law also determines the presidential and governmental powers in the sphere of defence.

Chapter 3 of the law considers the purpose, structure and management of the Georgian Armed Forces. The principal purpose of the armed forces is to protect the sovereignty and territorial integrity of the country as well as to participate in international peacekeeping missions. According to the law, it is not admissible to use military forces during a state of emergency or for performance of international commitments without the consent of the Parliament.

While implementing defence sector reform, special attention should be paid not only to strengthening the effectiveness of the military structure but also to its compliance with internationally recognised standards in the aspects of democratic accountability.[48]

Law of Georgia on Defence Planning

The Law on Defence Planning was adopted on April 28, 2006. In Article 1 it emphasizes that defence planning supports "the proper implementation of the process of integration of Georgia into the North Atlantic Treaty Organisation". In Paragraph 3 of this Article it indicates that defence planning and, accordingly, documents on defence planning, may be reviewed if Georgia joins NATO, the national security environment changes, or signs of the change in the national security environment appear. Article 6 of the law lists strategic-level documents of defence planning as follows: the National Security Concept of Georgia, Threat Assessment Document of Georgia and the National Military Strategy of Georgia.

The Ministry of Defence of Georgia plays a leading role in the process of defence planning, although the details of its authorities in this sphere are not specified in the law. According to Article 11, the Defence and Security Committee of the Parliament of Georgia provides strategic oversight of defence planning.

Concept of the Defence Reserve System of Georgia

In March 2012, the Concept of the Defence Reserve System of Georgia was elaborated, which takes into consideration lessons learned during the August 2008 war and drawbacks exposed in the reserve system. The document underlines that particular importance should be attached to increasing the effectiveness of the reserve system. According to the Concept, the priority for Georgia is to develop a reserve system that will be capable of carrying out tasks to defend the territory of the country and its population in the case of war and, at the same time, to provide aid to the civilian authorities in case of natural disasters.

[48] See, for example, the document on the Defence Sector Reform prepared by United Nations Department of Peacekeeping Operations. Annex One of this document contains the list of international norms and standards to be respected steadily during the process of defence and security sector reforms as a whole; United Nations Department of Peacekeeping Operations, ‚Policy: Defence Sector Reform', June 27, 2011.

The document lays out the principles of the Defence Reserve, its structure, system management and plans the perspectives of future development. The Concept states that active involvement of the population is necessary to implement an effective reserve system. It also stresses the need for close cooperation with the civil sector for their involvement in the ongoing processes and raising awareness of the reserve. However, the Concept does not specify the forms of engagement of the population and the civil sector.

It should be noted that in some countries the reservists are obliged to fulfil a number of tasks related to the security and stability within the country together with other objectives. For example, according to the relevant German concept of 2012, the reservists are tasked with such functions. Simultaneously, the reserve represents a kind of intermediate link between the armed forces and the civilian community.[49]

Law of Georgia on the Military Reserve Service

The Military Reserve is created to support the active military forces. According to the law, the military reserve forces are divided into three categories: the active reserve, the purpose of which is to maintain a high personnel readiness; the National Guard reserve, which aims to participate in rear operations; and the individual reserve, whose aim is rotation and supplementation of military subunits (Article 2, paragraph 3). This law also regulates the recruitment of the military reserve force, the call up for the military reserve service, the age of the military reserve service, responsibility for those evading military reserve duty, and other issues.

Since August 2008, developing an effective reserve system for wartime has been of particular importance. Currently, the military reserve system is based on the principle of Total Defence, according to which the proper training of the local population for combat or emergency situations should be provided. It is particularly necessary to increase the training level of reservists as well as to improve the management, coordination and control of the reserve.

Law of Georgia on Military Mobilisation

The Law on Mobilisation of June 23, 1999, defines the procedures and principles of mobilisation. It delegates competencies among state authorities. The Parliament of Georgia has significant powers in the sphere of mobilisation. It defines the state policy of mobilisation, exercises its legislative regulation, approves costs, and ratifies international treaties in this sphere (Article 5). In case of war or a state of emergency, the president submits the decision about mobilisation for approval to the Parliament. The law also defines the powers of government and local self-government authorities in the sphere of mobilisation. It also lays out the rights and obligations of physical and legal entities. The law states that in case of mobilisation, the citizens of Georgia who are enlisted in the military reserve will be called up for military service, and it defines the relevant procedures.

[49] 'Die neue Konzeption der Reserve', 1.2.2013, At the following website you can also see the Concept of German Reserve http://www.bundeswehr.de.

Law of Georgia on Military Duty and Military Service

The Law of Georgia on Military Duty and Military Service defines types of military service (Article 2), restrictions for citizens who have not performed military duty (Article 4), obligations of public authorities and officials of municipalities in connection with the performance of military duty by citizens (Article 6), procedure for the performance of military duty (Chapter II), including procedures for doing compulsory military service in the Ministry of Internal Affairs and the Ministry of Corrections and Legal Assistance of Georgia (covering also contracted service in this Ministry). The Law equally regulates military registration (Chapter III), conscription into compulsory military service (Chapter V), release from and deferment of conscription (Chapter VI), military service (Chapter VII), responsibility for violation of the legislation on military duty and military service (Chapter X). The Law has been amended several times since its adoption on 17 September 1997. These amendments to a significant extent reflect the reform and development of the Georgian Armed Forces.

According to the Law, the military service is divided into compulsory, contracted (professional), regular military service and the reserve. The Law determines that "citizens who have not performed military duty may be subject to restrictions in appointment to a public office" (Article 4). However, this Law does not set out a clearer criterion as to under what conditions such restrictions may not be imposed.

Law of Georgia on the Fee for Deferment from Compulsory Military Service

Article 2 of this law of June 21, 2002, defines the fee for a deferment from compulsory military service as an obligatory payment to the state budget of Georgia. The fee for an 18-month deferment is 2000 laris (Article 5, Paragraph 1). It is possible to speak about the reasonableness of maintaining or reducing the amount of the fee. It makes postponement of compulsory military service dependent on the financial status of families, which could cause further instability to socially and financially vulnerable strata within population. If citizens meet the formal requirements defined by the legislation for postponement of military service, it should not be dependent on their financial resources.

Law of Georgia on the Status of Military Servicemen

This law, dated June 25, 1998, defines the military serviceman's status. The military serviceman is a citizen of Georgia, a person without Georgian citizenship or citizen of a foreign state who performs military service in the Armed Forces of Georgia, in the Ministry of Defence legal entities of public law, in the military departments, or the person called up for the first rank of the military reserve system.

Paragraph 5 of Article 2 is worth mentioning. According to this clause, "compensation for the partial restriction of civil rights and freedoms of military servicemen, which is connected with the special conditions of military service, shall be made according to this Law and others normative acts". Article 3 of the law determines in detail the status of the military serviceman. Paragraph 3 of this article states that, "The status of military servicemen shall be preserved, if

military servicemen are captured and interned in a neutral state, if this capture is not voluntary and if a captured person has not committed acts directed against Georgia".

A military serviceman has the right to take part in elections of the bodies of government and local self-government but guarantees and rules for participation in elections should be specified. In this respect, considering the experience of foreign countries would be useful.[50]

Chapter II of the law specifies comprehensively the rights of military servicemen and the guarantees upholding these rights. It also creates conditions for the limitation of these rights. Sometimes these conditions require more specifications. For example, Article 7 states that a military serviceman has the right to profess any religion, to perform religious ceremonies, providing they do not prevent the performance of official duties or create conditions for additional privileges. This provision might be interpreted in various ways.

The necessity of strengthening the Public Defender's Institution of Georgia should be emphasized, particularly in terms of effective monitoring of the security sector. Judging by the experience of other countries, the public defender can play an important role in the effective protection of soldiers' rights and in exercising oversight over the security sector more generally.[51]

Law of Georgia on Non-Military, Alternative Labour Service

Article 1 of this law of October 28, 1997, refers to the Universal Declaration of Human Rights, and determines non-military, alternative labour service as "the reasonable and humane compromise between the free expression of ideas, freedom of conscience, religion, beliefs and military duty". Subordinate units of the Georgian Ministry of Labour, Health and Social Protection shall regulate and organise the alternative labour service. Disputes arising from a refusal to perform alternative labour service shall be resolved by the court. The law also establishes the rules and procedures for serving in the alternative labour service.

The number of persons employed in the military alternative service is rather small. The State needs to take measures to popularize non-military alternative labour service and to also introduce certain incentives for citizens performing such service.

Law of Georgia on Participation of the Armed Forces in Peacekeeping Operations

Participation of Georgian Armed Forces in international peacekeeping operations is regulated by the law adopted on July 22, 1999. Article 2 of this law stipulates that the use of Georgian Armed Forces in peace-making activities shall not be allowed without the consent of the Parliament of Georgia. It should be noted that this provision provides for the participation in those peacekeeping operations, which may be related to coercive measures. The law does not

[50] See, for example, Mindia Vashakmadze, The Role of the Military in Elections, DCAF Working Paper N 159.

[51] Improving democratic oversight of the security sector, Recommendations to Ombudsman Institutions, available at http://www.dcaf.ch/Chapter-Section/Improving-Democratic-Oversight-of-the-Security-Sector-Recommendations-to-Ombudsman-Institutions.

define additional, more specific criteria for possible instances when such coercive measures may be taken by the armed forces, and, therefore, the consent of Parliament is required.[52]

According to Article 3 of this law, the Government of Georgia upon a proposal by the Ministry of Foreign Affairs and the Defence Ministry shall make a decision on the assignment of separate military personnel for executing peacekeeping activities that are not connected with implementation of coercive measures.

As a rule, the Ministry of Foreign Affairs of Georgia negotiates a relevant international agreement or treaty, which shall subject to ratification by the Parliament (Article 6, Paragraph 1). The respective agreement may determine the number and types of troops, places of dislocation, level of readiness and other criteria.[53] As defined in Article 7 of the law, international treaties and agreements of Georgia that provide for participation of armed forces and civilian personnel in peace operations shall be subject to ratification by the Parliament of Georgia. All important operational decisions are made by the executive authorities (Ministry of Defence or the Ministry of Foreign Affairs). The Ministries of Defence and Foreign Affairs, not less often than once a year, shall submit to the Parliament of Georgia a report on the participation of the Armed Forces of Georgia in operations on the restoration and maintenance of international peace and security (Article 10).

Considering the intensive participation of Georgia in international military missions, parliamentary oversight needs to be increased.[54] Proceeding from the functional separation of powers, Parliament should be involved in fundamental decisions concerning the use of the armed forces. In some countries, the parliament has the power to withdraw its consent to the deployment.[55] In this case, the respective government will have to withdraw the military forces from the respective foreign territory.

From 2014 onwards the process of withdrawal of Georgian troops from Afghanistan began. However, the military unites remained involved in non-combat mission in Afghanistan.[56] The Parliament's role in such situations is not clearly defined. Other countries' experiences show that Parliament should be provided with some form of participation in the implementation process for non-combat missions. In some countries, the parliaments are provided with relevant information or there is a simplified procedure for obtaining parliamentary assent. The law does not define the cases of special urgency in which it may be necessary to send the armed forces abroad without prior parliamentary approval. The role of parliament in such cases has not been defined.

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[52] For comparison see Parliamentary Participation Act, 18 March 2005, Article 2 paragraph 1. Article 4 defines a simplified procedure for parliamentary approval of military operations that are of minor importance.

[53] Amendments to the Georgian Law of 27 September 2013.

[54] Parliament can also bring political pressure on government in order to make the latter re-examine the separate parameters of current military operations.

[55] See Article 5 of the German Parliamentary Participation Act.

[56] 2014 Non-combat mission of Georgia in Afghanistan", Liberali, 11.1.2013, http://www.liberali.ge/ge/liberali/articles/113594/.

It's advisable to pay more attention to legal and political analysis of the participation of Georgian troops in international peace operations. Such evaluation, as a rule, should be provided before the final decision on participation is made. However, in some cases a post-factum assessment of participation should be possible, especially when political rationality of a military operation as well as its compatibility with international law becomes doubtful. It has been argued that the participation of Georgian troops in the Afghan mission should have been analysed more deeply before mission commencement as well as in the course of the mission.[57] Besides, the issue of the Georgian military units' participation in the Iraq War has not been the subject of extensive parliamentary discussions. Parliament should consider the foreign policy dimension of a military operation but also its compliance with international law.

Law of Georgia on the State of Emergency

According to the law on the State of Emergency adopted on October 17, 1997, the president of Georgia declares a state of emergency. Based on the September 6, 2013 amendments, the declaration of a state of emergency by the president needs to be countersigned by the prime minister. Such countersigning is also mandatory for presidential decrees having a legal force of laws issued in the period of a state of emergency, which should be submitted to Parliament within 48 hours for its approval. The prime minister's countersigning and the Parliament's approval are also required for the president's decision on prolonging or cancelling a state of emergency. If Parliament considers that there are no grounds for maintaining the emergency, it can pass a law to cancel it.

The law also specifies that the use of the armed forces during a state of emergency or with the aim of eliminating its results shall require the consent of the Parliament.

Law of Georgia on the State of War

According to the Martial Law of October 31, 1997, the president of Georgia is entitled to declare a state of war. Within 48 hours of the declaration of a state of war, the president shall submit his decision to the Parliament of Georgia for approval. If Parliament refuses to approve the decision of the president, the state of war will be considered cancelled **(**Article 2). Parliamentary consent is also required to prolong or cancel the term of validity during the state of war (Article 3, Paragraph 2). Article 4 of the law provides for the possibilities for restriction of the constitutional rights under some of the wartime conditions. These limitations are determined in the president's decree, which shall be submitted to Parliament for approval.

The 2013 legislative amendments limits some of the presidential powers concerning declaring and managing the state of war. These changes are aimed at conforming Georgian legislation with a new edition of the Constitution, which was enacted in 2013 after the newly elected president's oath of office. Under the new edition of the Constitution, the president is the commander-in-chief of the Georgian Armed Forces, although the president's scope of action in emergency management is significantly limited. For example, while a state of war is

[57]'Afghan mission - the price on the way to NATO', Liberali, 7.3.2012 http://www.liberali.ge/ge/liberali/articles/110002/.

declared, if certain authorities are not able to function properly, the president of Georgia may issue a decree with the prime minister's countersignature. By this decree, the provisional legal regime is established and the government sets up the temporary bodies or appoints an official by the respective order. Thus, the president shall not be able to make independent decisions on such issues.

In consequence of the new legislative amendments, the version of Article 9 of this law is altered. Based on this normative act, the armed forces may be employed to eliminate the results of the state of war, protect public order, and safeguard citizens.[58] The armed forces shall be employed by presidential decree and parliamentary approval.

Conventional Weapons and Military Procurement

Georgia supported the Conventional Weapons Treaty, which entered into force on 24 December 2014. It is mandatory to consider its provisions during military procurement activities. Article 6 of the Treaty is extremely important, which states that a state party shall not authorise any transfer of conventional arms, if it has knowledge at the time of authorisation that the arms would be used in the commission of genocide, crimes against humanity and war crimes.

Article 7 of the Treaty is of similar importance. If there is an overriding risk of any of the negative consequences given in the Treaty, the exporting state party shall not authorise the export. The decision on the existence of such serious risk is taken through an internal assessment of the transfer of military equipment.

Law of Georgia on the Occupied Territories

Since August 2008, foreign troops have been deployed on Georgian territory. The law on Occupied Territories was adopted on October 23, 2008. The purpose of this law is to define the status of the occupied territories and to establish a special legal regime for those territories (Article 1).

The law limits free movement of citizens of foreign countries and persons without citizenship into the occupied territories and also within the occupied territories (Article 4).[59] It prohibits economic and commercial activities in these regions (Article 6). The law deems void any transactions related to real estate property concluded in the above territories (Article 5). It must be noted that the Venice Commission called into question the compliance of this provision with international standards. As the Commission points out, the main objective of the measures taken over the occupied territories should be the assurance of the welfare of the citizens residing on the territories.[60]

[58] For an overview see A. Schnabel and M. Kupanski, Mapping evolving internal roles of the armed forces, DCAF SSR Paper 7, Geneva 2012.

[59] See on this Venice Commission, Opinion on the 2013 Draft Amendments to the Law of the Occupied Territories of Georgia, CDL-AD(2013)036, 9 December 2013.

[60] Venice Commission, Opinion on the Law of the Occupied Territories of Georgia, CDL-AD(2009)15, 17.3.2009.

The law protects human rights and cultural heritage. It specifies that the Russian Federation shall be responsible for human rights violations and harm caused to the cultural heritage in the occupied territories. With regard to this provision, the Venice Commission noted that the international responsibilities of states are regulated by international law and not by domestic legislation.[61]

There is a practical implementation problem of some provisions of the present law. For example, Paragraph 2 of Article 7 specifies that Georgian executive officials shall periodically inform relevant international organisations about human rights violations in the occupied territories. As Georgian authorities cannot exercise effective control over South Ossetia and Abkhazia, full compliance with this requirement is rather difficult.

Article 8 provides for the status of illegal bodies and officials. This provision identifies that any acts issued by *de facto* authorities of the occupied territories shall be deemed illegal. The Venice Commission stressed the point that, for example, if a birth or death certificate is not recognised by the government, it might be in contradiction with Article 8 of the European Convention on Human Rights.[62]

V. Ministry of Internal Affairs, The Police

The 2015 Reform of the Ministry of Internal Affairs

According to the Regulation of the Ministry of Internal Affairs, the Ministry presents a system of militarized law enforcement agencies, which within the limits of its competencies defined by the legislation exercises preventive and other law enforcement measures in order to guarantee public security and law and order. [63] The Ministry of Internal Affairs has been subject to several reforms during last two decades. The major goal of the 2015 reform was to depoliticize the police and the national security system, to draw a clear demarcating line between their functions and structures and consequently reduce the concentration of power in the Ministry. As a result of this reform the security and intelligence function has been transferred to the newly created State Security Service. A number of departments of the Ministry of Internal Affairs have become the structural units of the State Security Service.

According to the 2013 development strategy of the Ministry of Internal Affairs, the most important task for the new leadership of the Ministry is the institution's depolitization. The strategy document states that the establishment of society-oriented policing is the major priority of the reform, as well as the assurance of accountability and transparency, along with the provision of civil society involvement. The document covers a number of other important issues including, for example, the enhanced participation of ethnic minorities, gender equality within the Ministry, and human rights protection in general.[64]

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[61] ibid.
[62] Ibid.
[63] Regulation of the Ministry of Internal Affairs, endorsed by the Order of the Government of Georgia N337 of 13 December 2013.
[64] '2013 Strategies for development of the Ministry of internal Affairs' available at the Ministry website: www.police.ge.

Police Code of Ethics

The Ministry of Internal Affairs developed the Police Code of Ethics in 2013. The Code regulates a wide range of issues, including a police officer's relationships with colleagues and society. It provides for disciplinary sanctions for violations of the Code's norms. Chapter 3 of the Code deals with the issues of police relationships with society, while Chapter 5 of the Code regulates the use of force by the police. The Code also regulates the conduct of a police officer in the course of investigation or treatment of detainees. Aimed at the effective control implementation, the Ministry of Internal Affairs established a special monitoring group consisting of 50 members. The adoption of the Ethics Code and putting it into practice should support the police in creation and development of common professional ethics, which shall bring police closer to the society and promote the further depoliticization of the police.

According to the Code, the police are a state body that serves faithfully the society and is accountable to it. The Ethics Code also points out that police actions largely depend on the effectiveness of aid and support on the part of society. Strengthening public trust in the police had been a serious problem in Georgia after the collapse of the Soviet Union. Police reforms have improved the situation, but strengthening public confidence in the police still remains a serious problem, especially in light of the recently identified human rights violations.

It is necessary to establish effective monitoring over the implementation of the Police Code. In addition to this, there is a need to implement special educational measures in order to enhance the role of police as an institution serving the society.

Police Law of Georgia

On October 4, 2013, Parliament adopted the Law on Police.[65] This Law defines the basic principles of Georgian police activities, rights and duties, as well as other issues related to police activities. The legislation strengthens the status of the police as a civilian agency functioning within the system of the Ministry of Internal Affairs, the primary duty of which is to protect citizens' rights and interests from any kind of unlawful actions.[66] Article 10 of this law determines that "police measures that limit human rights and freedoms recognised by the Constitution of Georgia may only be carried out under law".

The legislation on the police should be considered in light of the real problems detected not only at the legislative level, but also in terms of implementation of the existing legislative framework. Particular attention should be paid to human rights violations (e.g., excessive use of force, covert surveillance, audio interception) discovered within the police system and the need to strengthen police accountability.[67]

[65] Police Law of Georgia, October 4, 2013 №1444-IS.

[66] In consequence of the reform, today Internal Troops are under command of the Ministry of Defence and Border Police of Georgia, while the State Border Defence Department is subordinated to the Ministry of Interior.

[67] See Lili Di Puppo, ‚Police Reform in Georgia: Cracks in an anti-corruption success story', U4Practice Insight 2010:2, 1-5. See also, Kornely Kakachia & Liam O'Shea, ‚Why does police reform appear to have been more

Strengthening preventive functions of police has also been subjected to criticism as it overly broadens the spectrum of police activities.[68]

Article 58 of Police Law states that state control of the activities of a police officer shall be exercised on the basis of parliamentary, presidential, governmental, financial, and prosecutorial supervision. In addition, according to Article 56 of this law, police actions may be appealed by citizens to a superior official, the Prosecutor's Office, or to the courts. Internal control of a police officer's activities shall be exercised by the General Inspectorate of the Ministry. (Article 57, Paragraph 1). The EU special expert's report on the human rights situation in Georgia stresses that appeals against the police (and the prosecutor's office) should be considered by professional, independent and trustworthy mechanisms. Such mechanisms should be independent of the above structures and act as an impartial representative of society.[69]

One of the goals of the legislative amendments made by the Georgian Parliament in 2013 was to reduce the possibility of political pressure on the police. Article 14 of the new Police Law strengthens the principle of political non-partisanship of police. According to this article, when exercising his/her powers, a police officer shall uphold the principle of non-partisanship. A police officer may not use his/her official status in favour of the party interests of any political subject.

Law of Georgia on Special Operative Activities

In 2013, significant amendments were made in the present law of April 27, 2010. The bodies engaged in the operative activity shall be forbidden to secretly participate in the work of the state agencies, as well as in the activity of the political parties, the public and the religious associations, unless law stipulates some exceptional circumstances. In such cases approval of the Georgia's chief prosecutor is required.

The EU special advisor on human rights in his report points out that illegal surveillance had been a common practice in Georgia[70] and also emphasizes that democratic and legal control need to be developed and further strengthened.

Law of Georgia on the Border Police of Georgia

Border police reforms have been implemented since 2006 when this largely militarized structure was transformed into a law-enforcement agency. Legislative amendments made in September 2013, empowered the Georgian government and prime minister to strengthen control over the Border Police. The Border Police is directly responsible to the Minister of

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successful in Georgia than in Kyrgyzstan or Russia?', *The Journal of Power Institutions in Post-Soviet Societies* 13/2012, http://pipss.revues.org/3964.

[68] J. Rekhviashvili, „Police are changing" Radio Liberty 25.9.2013, http://www.radiotavisupleba.ge/content/politsiis-shesakheb-akhali-kanoni/25117530.html.

[69] Georgia in Transition - Report on the human rights dimension: background, steps taken and remaining challenges, 2013, 6 September, p. 8.

[70] Ibid, p. 21.

Internal Affairs. The chief of the Border Police, who carries out the overall guidance of this structure, shall be appointed by the prime minister of Georgia upon submission of the Minister of Internal Affairs, and shall be dismissed by the prime minister at his/her own initiative, or upon submission of the Minister of Internal Affairs (Article 9, Paragraph 1).[71] As a consequence of the 2015 reform, the State Security Service in close cooperation with other agencies shall take measures to ensure the security of the state border.[72] Georgia currently does not control significant segments of its own borders. Consequently, in those segments the Border Police cannot carry out the functions assigned by law.

The present law defines the structure and functions of the Border Police. Importantly, the Border Police may cooperate with the border agencies of other countries and conclude interagency international agreements within the sphere agreed jointly with the Minister of Internal Affairs and through the consent of the Ministry of Foreign Affairs (Article 6, Paragraph 2). This law also determines Border Police objectives and measures. Where required, the Border Police may obtain information about a person through surveillance, or through the use of technical means (Articles 39 and 40). Procedural guidance of the Border Police investigative activities and supervision over its operative and investigative activities shall be implemented by the Chief Prosecutor's Office of Georgia (Article 43).[73]

VI. Conclusion

The improvement of the legal framework in recent years played an important role with relation to security sector consolidation. As a result of constitutional changes in 2013, the president's role has been reduced in overall oversight over the security sector and crisis management. The powers of the prime minister and the government have been increased. Strengthening parliamentary oversight of the security sector in general remains a challenge.

In “The Minister's Vision”, which is the guiding document for the Ministry of Defence for 2015 and 2016, the Minister of Defence sets transparency and civilian control enhancement among the major priorities of the Ministry. In order to increase accountability, the document emphasises the need for cooperation with the Parliament; it also highlights the question of preparing the Minister's annual report on ongoing changes and the future plans in the defence sector and submitting it to the Parliament as well as the need for cooperation with the Defence and Security Committee.[74] The document also focuses on the “White Book” elaboration, aiming at increasing citizens’ awareness about developments in the defence sphere.

On the assumption of Georgia's greater involvement in international structures and more active participation in peacekeeping operations, the likelihood of a relaxation of parliamentary oversight will be increased. Thus, the parliament should pay particular attention to the growing international military cooperation of Georgia. It is essential for Parliament to effectively use its levers for exercising oversight.

[71] Amendments made in the Law of Georgia on “The Border Police”, 1 November 2013.
[72] The Law on State Security Service, article 12, paragraph 4, lit. a.
[73] Amendments made in The Law of Georgia on “The Border Police”, 20 September 2008.
[74] The Ministry of Defence, Tbilisi (2015), p. 11.

It is essential to continue adopting legislative and administrative measures for depoliticization of the Ministry of Internal Affairs. A clear separation of competencies between the Ministry of Internal Affairs and the State Security Service is equally important. This would facilitate effective democratic oversight over these institutions. Forms and mechanisms of parliamentary oversight over the newly established State Security Service need to be revised and improved.

DCAF

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development and
the rule of law

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