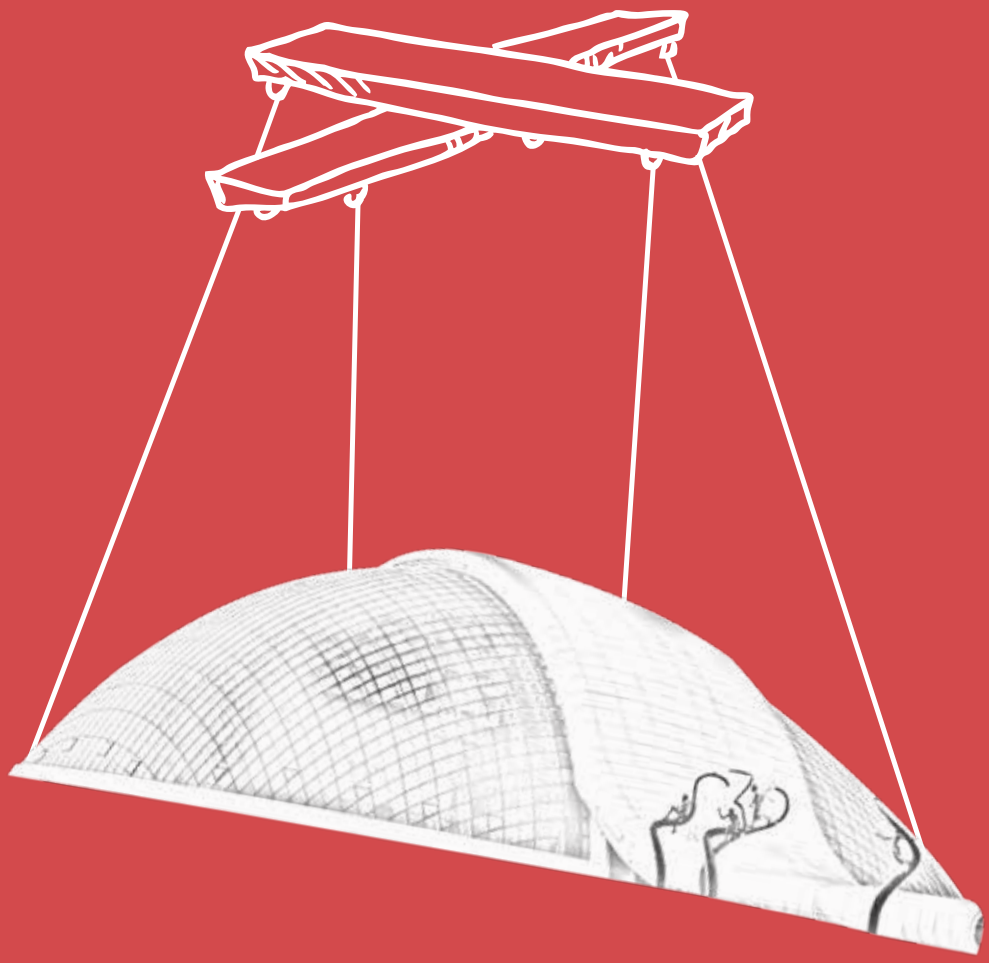

TWENTY YEARS WITHOUT PARLIAMENTARY OVERSIGHT

**Oversight of the Ministry of Internal Affairs,
the State Security Service and the Intelligence Service of Georgia
by the Supreme Representative Body**

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Tbilisi, 2017

Content

1

Introduction

Few years ago, a bakery house named "The Ministry of Eating" was opened in one of the neighborhoods in Tbilisi. Soon, another competitor posted a new sign, which read as "The Parliament of Eating". Counter action of the second bakery is essentially remarkable. Even though the actions of the second owner are substantially right, he missed a detail. If the owner desired to come up with the institution counterweighing "the ministry", such institution would more adequately be "the committee" instead of "the parliament".

The cabinet operates through the ministries, the number of which can reach two dozens and the authority increases consequently. In this case, Parliament, as a unified body, will not be able to control the executive authorities, without inner structural division and specialization. Thus, it delegates its responsibilities and authorities to the committees and assigns each committee to be responsible for the ministries respectively. In the legislative branch, committee is primarily responsible for control and balance of a specific unit of the core of the executive branch. Committee is obliged to check daily activities of the members of the cabinet and it shall act as a watchdog to prevent misuse of powers granted by the Constitution. Committee is a legislative duplicate, another side of the coin and antithesis of the Ministry, which shall withhold constantly growing and hegemonic powers of the executive through the exercise of oversight authorities. The owner of the second bakery disregarded precisely this characteristic. His understanding of Constitutional institutions is schematic, but it is clear that the owner does not have a deep understanding of the fundamentals of separation of powers and struggles to find a way through tortuous roads of the supreme law of the country. As it appears, in this labyrinth, it is hard to notice delicate differences between institutions. However, the owner correctly understands functions of different branches of the government and he is not required to have a doctrinal knowledge, which would prevent him from such a mistake. The owner, as an observant citizen, perfectly understands that the parliament is a competitor of the government in the fight for authority and ministry is a part of the cabinet. His perception corresponds with the obligation of a member of a political society to have understanding of the balance of powers in his country. However, such knowledge is not sufficient for a person who holds a formal position in the government structure and especially, in the parliament. It is not sufficient for the people who were appointed on specific positions in order to understand the most complicated details related to the political order created by the Constitution. Members of parliament shall have the best knowledge of their role and function to justify voters' trust and

perform their obligations. Unfortunately, after the analysis of different oversight mechanisms of parliament, the majority of recommendations urge persons entrusted by the people to actually exercise their authorities.

According to the Constitution of Georgia (also referred to as the "**Constitution**"), the Parliament of Georgia (also referred to as the "**Parliament**" or "**Georgian Parliament**") shall "determine the principle directions of domestic and foreign policy".[1] However, poor usage of Parliament's oversight authorities described in this research demonstrate that representative body views itself as an addition to the cabinet finalizing decisions of the latter compared to the main political body and controller of the Government of Georgia (also referred to as the "**Government**" or the "**Georgian Government**") as it is enshrined in the supreme law.[2]

Facts indicated in this research will easily arrive at the conclusion that Georgian legislative branch only holds remaining of powers and its role in the formation of politics is insignificant. Just like the owner of the second bakery, who did not have much, except the sense of humor, activities of Georgian Parliament are more spectacular than the cabinet of the ministers. However, the former hold more resources for the formation of policy. Thus, ending of the story of two competing bakeries is not accidental: Today, branches of the "Ministry of Eating" are in every neighborhood in Tbilisi, when the "Parliament of Eating" disappeared even from the place where it was originally opened.

This is a good metaphor for the description of crisis of current parliamentary authority, which is not a problem only for Georgian democracy. Such issues are especially relatable to the republics with parliamentary and semi-presidential systems (in the models, where role of the president in the formation of the cabinet is nominal). If core of the executive is fully appointed by the legislative branch, it appears that there is less enthusiasm for parliamentary oversight. It is different in the system, where the prime-minister and in certain circumstances other ministers are appointed by the elected President, where there is a chance for the head of state and majority of the Parliament to be from different parties. In parliamentary and abovementioned semi-presidential systems, the majority of parliament controls legislative branch and executive cabinet. Thus, in this case, natural contradiction, which is logically related to the basis of the system, does not exist. This is the first factor, which precludes parliament from exercising controlling authorities. The second factor is a vertical system of the party, which influences political processes more and more, especially in the countries like Georgia, where party democracy is weak and small group of leaders makes decisions. It is a matter of public knowledge, that leaders of the party prefer cabinet positions over the Parliamentary ones. The influence of such people in the structure of the party is always higher, compared to the people remaining in the

1 Constitution of Georgia, edition dated 10 April 2013, article 48.

2 Ibid.

Parliament. For this reason, actions of the legislature reflect positions of the Members of the Government and especially, the Prime Minister of Georgia (referred to as the "**Prime Minister**"). Thus, we have a situation which was described by a Hungarian constitutionalist Andras Sajo, as follows: instead of dog wagging its tail, "the tail takes its revenge on the dog".[3] In this situation, the only way to protect the principle of separation of powers is to preclude formation of parliamentary majority through various institutional mechanisms and to subordinate oversight mechanisms to opposition. This research demonstrates that this is one of the challenges of Georgian model, where majority holds all instruments.

Responses to the abovementioned challenges will finally determine the role of legislative branch in the formation of the Government and its authorities, which consist of five components as follows: formation of internal and external policy (which was discussed above), legislative power, authority to appoint (appointment of specific people), budgetary and controlling authorities. Unfortunately, Parliament is mostly viewed as the holder of legislative power and least viewed as a controlling authority.

This research aims to study Georgian experience of Parliament's oversight authorities, legislative reality and its implementation in practice. It also aims to determine the ways of improvement in order for Georgian parliamentarism to address current issues before it. It is true, that the group of authors aims to study only one part of the institutions subject to parliamentary control, but completed work gives an idea about the issues generally related to the parliamentary control.

3 Sajo A., Limiting Government: An Introduction to Constitutionalism, Tbilisi, 2003, 201.

2

Research Methodology

2.1. Aim and Subject of Research

On the one hand, activities of the bodies of Internal Affairs, the State Security Service and Intelligence Service aim to prevent threats to the security of democratic state. On the other hand, the abovementioned entities represent a challenge for every democracy. The coarsest part of state powers is concentrated in the abovementioned bodies, which is demonstrated by a wide spectrum of competences and nature of such competences to infringe with high intensity the spheres protected under human rights law. Specifically, work of police, security and intelligence services is "evaluation of risks", not to mention the mechanisms of physical influence. Thus it is "natural tendency" that agents of such services acquire excessive information.[4] This creates challenges with respect to protection of human rights and freedoms.[5] Additionally, executive branch actively uses such services for defense and support of foreign policy. This increases risk that activities of respective institutions will be subjected to party policy.[6] Thus, the issue of effective parliamentary oversight is especially important with regard to such institutions.

The issue of oversight is even more problematic because of its secrecy component. Maintenance of national security is proportional to classification of information. At the same time, reasonable limits of such classification vary from case to case. However, as a rule, information is extremely secret. Taking into consideration the abovementioned, importance of democratic oversight increases. According to the recommendation of the Venice Commission, the main goal of democratic oversight of such institutions shall be elimination of "state in the state" principle.[7] The Parliament is a primary institution guaranteeing the abovementioned process.[8]

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4 Born H., Johnson K.L., Leigh I. Eds., Who's Watching the Spies? Establishing Intelligence Service Accountability, Washington, D.C. 2005, 42, 43.

5 Regarding structural problems of control of intelligence and security sphere, see. Caparini M., Controlling and Overseeing Intelligence Services in Democratic States, Democratic Control of Intelligence Services, Eds. Born H., & Caparini M., 2007, 15, 18.

6 Born H., Leigh I., Democratic Accountability of Intelligence Services, Geneva Centre for the Democratic Control of Armed Forces (DCAF), Policy Paper – №19, 2007, 5.

7 European Commission for Democracy Through Law, Report on the Democratic Oversight of the Security Services, CDL-AD (2015)010, Venice, 2015, 20-21 March, 4.

8 Rahman T., Parliamentary Control and Government Accountability in South Asia, Routledge, 2008, 72, 75.

Parliamentary Assembly of the Council of Europe stresses the importance of democratic parliamentary oversight and determines four spheres, on which oversight activities shall focus: police, intelligence services, defense and border protection.[9]

This research addresses controlling mechanisms of the Ministry of Internal Affairs (also referred to as the "**Internal Affairs Ministry**" or "**Internal Affairs**" or "**MIA**"), State Security Service of Georgia (also referred to as the "**Security Service**"), Georgian Intelligence Service and State Security and Crisis Management Council.[10] The purpose of this research is to evaluate the efficiency of such control, to identify flaws and determine possible ways of eradication of such issues with respect to constitutional principle of balance of powers. This research reviews the level of parliamentary oversight with respect to both, vertical and horizontal spheres.[11]

2.2. Difference Between Internal Affairs, Security and Intelligence Services

Security Services and Internal Affairs are controlled by executive, legislative and judicial branches as well as independent entities and civil society.[12] The purpose of Internal Affairs, Security and Intelligence Services is protection of state and public security based on the ground of national interest. These entities are different from each other based on their purpose. However, instead of such differences, evaluation of the abovementioned institutions by the democratic forum shall be carried out based on the principles of legality and efficiency.[13] This chapter outlines several different approaches with respect to differentiation between the MIA, Security and Intelligence Services; Alongside such analysis, it will be determined in what scope will such institutions be reviewed in this research.

9 Report on Democratic Oversight of the Security Sector in Member States, Doc. 10567, 2005, 2 June, see. http://www.assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17360&lang=en, updated on 08.01.2017.

10 This project does not study parliamentary mechanisms of control over activities of National Security Council, because it represents consultative body and is a part of the executive branch, which is not part of the government. Additionally, this research does not relate to the Defence Ministry and general staff because they are subordinated to the President and cabinet together and such institution requires different research methodology. The Ministry of Defence is excluded because it has a different purpose as the Prosecutor's Office does. This was the reason why authors of this research refrained from studying the abovementioned institutions.

11 Horizontal aspect means that the intelligence system is controlled by one or few structural entities of the Parliament; Vertical aspect includes broad variety of oversight authorities (for instance: legality, action, efficiency, budgetary issues, compliance with the human rights, issues of politics and administration). See Born H., Leigh I., Making Intelligence Accountable: Legal Standards and Best Practice for Oversight of Intelligence Agencies, 2005, 90.

12 Flur P., Johnsson B.A., Parliamentary Oversight of the Security Sector: Principles, Mechanisms, Practices, IPU, Geneva Centre for the Democratic Control of Armed Forces, 20 (2003); See Study on Parliamentary Oversight of Security and Intelligence Agencies in the European Union, European Parliament, Brussels, 2011, 96; Compare: Parliamentary Oversight of Intelligence Services, Geneva Centre for the Democratic Control of Armed Forces, 2006, 2 March.

13 Council of Europe Commissioner for Human Rights, Democratic and Effective Oversight of National Security Services, 2015, 7.

2.2.1. Internal Affairs and Security Services

Internal Affairs Ministry is a law enforcement agency. The Parliamentary Assembly of European Council determines functions of law enforcement agency, such as investigations, arrest and detention.[14] According to the publication drafted for standardization of military and associated terms, the concept of security includes several directions, including activities, which ensure integrity of state acts and influences of the enemy; additionally, with respect to secrecy, security means the situation, where access of a third person is prevented from the information of national interest.[15] With this respect, intelligence and enforcement laws are differentiated from each other (criteria of aim). If the aim of the former is collection of information about the threats and risks against national interests, the latter ensures that responsible person is brought to the justice system.[16]

The best practice is independent existence of security services and internal affairs. The aim of organizational independence of security and internal affairs services is prevention of concentration of authority in one entity and risk of abuse of information acquired through intelligence. This aim is declared in the document "Control of Internal Security Services in Council of Europe Member States" prepared by the Parliamentary Assembly dated 1999, which notes that "internal security services should not be allowed to run criminal investigations, arrest or detain people".[17]

Generally, in the member states of the European Union, law enforcement authorities and security services are organizationally independent from each other.[18] Cooperation is allowed between law enforcement agencies and security services. However, as the Commissioner of Human Rights of the European Council notes, cooperation shall be based on the vivid legislative regulations in order to guarantee protection of the principle of rule of law.[19]

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14 Committee on Legal Affairs and Human Rights, Control of Internal Security Services in Council of Europe Member States, Doc. 8301, 1999, 23 March, See Http://Assembly.Coe.Int/Nw/Xml/Xref/X2H-Xref-Viewhtml.Asp?Fileid=8685&Lang=En, Updated on 08.01.2017.

15 Department of Defence Dictionary of Military and Associated Terms, 2010, 8 November (As Amended through 15 February 2016), 212.

16 Hannah G., O'Brien K.A., Rathmell A., Intelligence and Security Legislation for Security Sector Reform, RAND, 2005, 9.

17 Committee on Legal Affairs and Human Rights, Control of Internal Security Services in Council of Europe Member States, Doc. 8301, 1999, 23 March, see. Http://Assembly.Coe.Int/Nw/Xml/Xref/X2H-Xref-Viewhtml.Asp?Fileid=8685&Lang=En, updated on 08.01.2017.

18 However, different practice is developed in Austria, Denmark, Finland, Ireland and Latvia. Surveillance by Intelligence Services: Fundamental Rights Safeguards and Remedies in the EU, European Union Agency For Fundamental Rights, 2015, 14.

19 Council of Europe Commissioner for Human Rights, Issue Paper on The Rule of Law on the Internet and in the Wider Digital World, 110.

2.2.2. Security and Intelligence Services

Intelligence is "information that meets the (stated or understood) needs of policy makers and has been collected, refined and narrowed to meet these needs".[20] According to Sherman Kent, who is a well acknowledged professor in the study of American intelligence system, intelligence is a knowledge that a state must possess regarding other states.[21] One of the most famous scholars of intelligence and security sphere, Mark Lowenthal notes that intelligence information is different from information based on following three dimensions: (1) collection – procurement of information believed to be pertinent to decision-makers ('raw' intelligence data); (2) analysis – is the process of sorting and judging the credibility of the collected information; (3) dissemination – the act of communicating the intelligence findings in the form most suitable to the decision makers.[22]

Besides abovementioned differences, scholarly articles note that intelligence may be divided into the following groups based on the powers: (a) domestic; (b) external; (c) military; (d) criminal.[23]

(a) The mission of domestic or security intelligence services is to obtain, correlate and evaluate intelligence relevant to internal security. Internal security aims to protect the state, territory, society and people against malicious acts – including terrorism, espionage, sabotage, subversion, extremism, organized crime, and others.[24]

(b) The task of foreign intelligence is to obtain, correlate and evaluate intelligence relevant to external security. These services acquire information about the intentions, capabilities and activities of foreign powers (organizations, groups or persons).[25]

(c) Military intelligence acquires information regarding foreign military capabilities, defense ministries and armed forces. In most cases, such services exist as specialized divisions.[26]

(d) Criminal intelligence aims to obtain information regarding organized crime.[27]

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20 Hannah G., Kevin A. O'Brien, Rathmell A., Intelligence and Security Legislation for Security Sector Reform, RAND, 2005, 1.

21 Ibid.

22 Ibid, 1.

23 Ibid, 6.

24 Ibid.

25 Ibid.

26 Ibid. See chapter 2.2.3

27 Ibid, 6.

Report of the European Union Agency for Fundamental Rights dated 2015 uses technically different model of classification.[28] It determines two different approaches. According to the first approach, intelligence services are entities of state which assess external threats and security services assess internal threats and risks.[29] Based on the second approach military and civil intelligence shall be differentiated. Different from the abovementioned (where security and intelligence entities are differentiated), the second approach does not distinguish security services as a term. However, for the purpose of civil intelligence, services acting for internal and external purposes are separated. Thus, [in order to compare both approaches] internal intelligence is related to the security services and external intelligence is related to the intelligence services. Agency of the European Union prefers the second approach: internal intelligence service is an entity which assesses internal threats and external intelligence service is concentrated on foreign risks.[30]

The guideline of Geneva Centre for the Democratic Control of Armed Forces view intelligence and security services as identical notions. The guideline notes, that "intelligence services (sometimes also called "security services") are a key component of any state, providing independent analysis of information relevant to the security of state and society and to the protection of its vital interests."[31]

Based on the abovementioned approaches, this research is based on the Report of the European Union Agency For Fundamental Rights dated 2015 with respect to differentiation between civil and military intelligence. According to the mentioned reports, "security service" is an entity carrying out internal intelligence and "intelligence service" is an entity responsible for external intelligence.

2.2.3. Civil and Military Intelligence

With respect to military intelligence, following definitions apply: military intelligence services, different from civil intelligence, "collects and refines information inside and outside of the country regarding current and potential activities of foreign armed forces".[32] Based on oth-

28 European Union Agency For Fundamental Rights, Surveillance by Intelligence Services: Fundamental Rights Safeguards and Remedies in the EU, 2015.

29 Ibid, 31.

30 According to the report, for instance, in Germany, Italy, Poland, Romania and France internal and external intelligence (security) services act as different entities. However, in most of the member states of the European Union, such separation is not often. Probably, intelligence and security services are unified in intelligence entities based on well-established practice.

31 Flur P., Johnsson B.A., Parliamentary Oversight of the Security Sector: Principles, Mechanisms, Practices, 64.

32 Urbelis V., Lithuanian Intelligence System, Lithuanian Military Academy of Lithuania, Vilnius, Lithuanian Annual Strategic Review, 2008, 209.

er definition, military intelligence represents a specific type of foreign intelligence, which is aimed at detection of "potential adversaries military capabilities ".[33] Any other type of intelligence is carried out by civil intelligence agencies.

One of the methods of separation of military and civil intelligence is the issue of organizational affiliation: "As a rule, civil intelligence services are subordinated to the Minister of Internal Affair or the Prime Minister when intelligence service is governed by the Ministry of Defence".[34]

The Report of the European Union Agency For Fundamental Rights named "Surveillance by Intelligence Services: Fundamental Rights Safeguards and Remedies in the EU" dated 2015,[35] with respect to intelligence services, differentiates between civil and military intelligences based on the criteria of institutional affiliation and excludes from discussion military intelligence and institutions carrying out such authorities.[36]

This research separates civil and military intelligence services based on the criteria of institutional differentiation. Thus, as the military intelligence is not a subject of this research, when discussing intelligence services, only civil intelligence will be taken into account.

At the same time, activities of intelligence and security services are viewed as actions of civil intelligence (internal and external). In this research, intelligence services means only external intelligence carried out for analytical purposes and it does not mean investigative activities; with respect to security services – only internal intelligence and security is taken into account.

It has to be noted that Georgian reality only partially adapts to the offered notions. Thus, terminology used by authors of this research, presents adapted framework.

2.3. Research Instruments and Resources

Research methodology is based on the following instruments in order to analyze the abovementioned issues:

33 Hannah G., O'Brien K.A., Rathmell A., Intelligence and Security Legislation for Security Sector Reform, RAND, 2005, 6.

34 European Union Agency for Fundamental Rights, Surveillance by Intelligence Services: Fundamental Rights Safeguards and Remedies in the EU, 2015, 14.

35 European Union Agency For Fundamental Rights, mentioned publication, 14

36 Most states in European Union, discern between the institutions exercising these two functions. European Union Agency for Fundamental Rights declares that Sweden is an exemption. European Union Agency For Fundamental Rights, mentioned publication, 13.

- Analysis of Georgian legislation;
- Analysis of practical implementation of Georgian legislation;
- Study of international standard and best practice of European Union countries;
- Study of academic writings;
- Secondary analysis of existing researches regarding respective sphere in Georgia;

Thus, during the process of research, the following sources were utilized:

- Legislative framework existing in Georgia including but not limited to legislative and statutory acts;
- Report of respective entities acquired as a public information, stenographic records of committee and plenary meetings of the Parliament and others;
- Documents prepared by international organizations (guidelines, reports, evaluations and others); Legislative framework of other countries and related analytical materials;
- Academic writings on parliamentary oversight mechanisms of security sector;
- Interviews with experts.

Legislative framework

Research group studied legislative and statutory regulations in Georgia, which define institute of parliamentary oversight over the security sector, as well as mechanisms of accountability and responsibility. With this respect, this research reviews existing and former (from 1995 to April 2016) legislative framework in Georgia. At the same time, strategies, policy documents, reform proposals and statements are also analyzed.

Implementation of legislative mechanisms of Parliamentary oversight

Research group studied practice established in 2004-2016 (including April). Accordingly, this research analysis respective parliamentary reports, texts of the parliamentary speeches, stenographic records of faction, committee and plenary meetings, written questions and respective responses of certain Members of the Parliament (also referred to as the "**Parliamentarians**" or "**MPs**"), decisions made by legislative body with respect to parliamentary oversight and other materials.

Specifically, research group, inter alia, requested following public information from Georgian Parliament:

- Stenographic records of annual address of the President of Georgia to the Parliament with respective speeches of the heads of parliamentary factions and debates;
- Stenographic records of routine and extraordinary reports regarding performance of Governmental program and respective records of parliamentary discussions; Minutes of parliamentary request regarding extraordinary presentation of report;

- Information regarding invitation and attendance of representative of the institutions subject of this research to the meetings of the Parliament, committee, temporary investigative or other temporary commissions; Stenographic records of statements and respective discussions, as well as minutes and presented written reports of invited persons;
- Information regarding conclusions made as a result of hearing, control and oversight of topics related to the competence of defense and security committees;
- Information regarding quantity of meetings carried out by the Trust Group as well as information regarding attendance of the members of the Trust Group and representatives of the Government;
- Information regarding questions and requests presented to the subjects of research by Members of the Parliament, group of the Members or factions as well as information regarding Governmental Hour.

Best international standard and experience

Research group studied opinion of international organizations regarding parliamentary oversight of security sector made during general evaluation and assessment of specific countries. Research group also analyzed models of other countries with this respect.

The first criterion for selecting the state was a membership of the European Union and the second criterion was constitutional and legal system similar to Georgia.

There are three different models of governance of the republic: parliamentary, presidential and semi-presidential. French scholar Maurice Duverger first identified characteristics of the latter. According to the definition of Duverger, this system has following features: 1. Election of president by the people; 2. Significant powers of president; and 3. Existence of prime-minister and government which is entrusted by the parliament.[37] One of the most problematic issues, from those identified by Duverger is the second one - "significant powers of president", because it is exceptionally hard to determine meaning of "significant power". For instance, American experts of the abovementioned field, Shugart and Kelly identified possibility of removal of entrusted cabinet by the president as a demonstration of significant power.[38]

Shugart and Kelly identified two types of semi-presidential system: "premier-presidential" and "presidential-parliamentary".[39] Main difference between the abovementioned subtypes is the power of the president and a subject of governmental responsibility. In premier-presidential

37 Shugart S.M., Semi-Presidential Systems, Dual Executive and Mixed Authority Patterns, 2005, 323, 324, see. http://www.degan.uqam.ca/teaching450E/semipresidential.pdf, [03.01.2016].

38 Ibid, 332.

39 Ibid, 333.

subtype,[40] president is partially involved in the process of entrusting the government, for instance, appoints the prime-minister but only parliament is entitled to remove the governments. In the presidential-parliamentary subtype, president is actively involved in the process of entrusting the government on the one hand and holds the authority to remove the government on the other. Thus, government has double responsibility before the president and parliament.[41]

Georgian model is a premier-presidential subtype of a semi-presidential system. It is characterized with the following: (1) unitary territorial organization; (2) directly elected president; (3) unicameral parliament; (4) formal role of the head of state in the procedure of composition of the government and lack of authority for the removal (in the countries selected for this research, presidents are not entitled to remove the cabinet without the approval of parliament).

Research group selected five unitary states which mostly share abovementioned four criteria with Georgia. Four of selected states (Bulgaria, Croatia, Slovakia and Lithuania) have identical experience of statehood during the post-Soviet era. Only one state (Finland) has a comparably long-standing tradition of democracy. Authors found it interesting to compare experience of selected countries. As a matter of course, this research does not only include analysis of abovementioned countries and when necessary, it addresses experience of other countries. However, the main line of comparative research is based on five selected countries.

Below is a short characterization of governing systems of five countries:

Bulgaria – Head of the state is a directly elected president for a five-year term.[42] Unicameral National Assembly,[43] which is elected for a four-year term[44] exercises legislative authority. Government is represented by the council of ministers, which includes the prime minister, deputy ministers and other ministers.[45] Council elects and removes prime minister and upon request of the prime minister, the council changes members of the government.[46] The party representing the majority in the parliament nominates candidacy of the prime minister and the president grants a nominated prime minister with the authority to form the government.[47]

40 Bulgaria, Czech Republic and others. See complete list: http://www.semipresidentialism.com/?cat=61 updated on 18.12.2016.

41 Ibid, 334-340.

42 Constitution of Bulgaria, edition dated 26 September 2006, article 92, see: http://www.parliament.bg/en/const updated on: 7 January 2017

43 Ibid, article 62, part 1.

44 Ibid, article 64, part 1.

45 Ibid, article 108, part 1.

46 Ibid, article 108, part 2.

47 Ibid, article 99, part 1.

Lithuania – Head of the state is a president who is elected for five-year term.[48] Legislative authority is exercised by unicameral Seimas, which carries out parliamentary oversight and is elected for four years.[49] Government includes a primer-minister and ministers. The prime minister is a head of the government.[50] The president appoints the prime-minister upon approval of Seimas, entrusts him/her to form the government and approves it.[51]

Croatia – A president, who is elected for five-year term is a head of the state.[52] Legislative authority is a unicameral representative body Sabor,[53] which is elected for four-year term.[54] Government includes a prime-minister, two deputy ministers and other ministers.[55] The prime minister is a head of the government. The president, to form the government, entrusts a person, who is supported by the majority of the members of Sabor.[56] Government shall be approved by Sabor.[57]

Slovakia – A president, who is directly elected for five-year term is a head of the state.[58] Legislative authority is exercised by unicameral National Council,[59] which is elected for four-year term.[60] Government includes its head, deputies and other ministers.[61] The president appoints the head of the government[62] and also appoints government upon designation of the head.[63] Such designation shall be approved by the National Council. In case the National Council refuses to approve the abovementioned, president shall remove the government.[64]

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48 Constitution of Lithuania, edition dated 1 May 2009, article 78, see: http://www3.lrs.lt/home/Konstitucija/Constitution.htm updated on: 7 January 2017.

49 Ibid, article 55.

50 Ibid, article 91.

51 Ibid, article 84, part 4 and part 5.

52 Constitution of Croatia, edition dated 6 July 2010, article 94-95, see: http://www.sabor.hr/fgs.axd?id=17074 updated on 7 January 2017

53 Ibid, article 71.

54 Ibid, article 73.

55 Ibid, article 109.

56 Ibid, article 110.

57 Ibid, article 109.

58 Constitution of Slovakia, edition dated 1 December 2014, article 101. See http://www.slovakia.org/sk-constitution.htm updated on 7 January 2017.

59 Ibid, article 72.

60 Ibid, article 73.

61 Ibid, article 109.

62 Ibid, article 102, part 1, subparagraph G.

63 Ibid, article 111.

64 Ibid, article 115, part 1.

Finland – Head of the state is a president, who is elected for six-year term.[65] Legislative authority is exercised by unicameral representative body – Eduskunta, which is elected for four-year term.[66] Government is represented by State Council, which includes a prime minister and other ministers.[67] Candidacy of the prime minister is presented only after consultations with the parliament.[68] Other ministers are presented to the president by the prime minister for approval.[69]

Academic materials

In order to better understand theories, models and fundamental principles of parliamentary oversight, the research group studied academic materials related to the respective topics.

Working meetings and interviews

In order to better analyze mechanisms of parliamentary oversight, its principles and details, the group of authors conducted meetings with the persons working in the same field. Meetings were carried out in groups as well as individually (12 meetings in total with 14 persons). Group of authors interviewed independent experts, representatives of academic field and international organizations, as well as officials of Constitutional bodies and members of the Parliament (they are referred to in this research as "experts").[70]

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65 Constitution of Finland, edition dated 1 March 2012, article 54, see http://www.finlex.fi/en/laki/kaannokset/1999/en19990731.pdf, updated on 7 January 2017.

66 Ibid, article 24.

67 Ibid, article 60.

68 Ibid, article 61.

69 Ibid.

70 Interviews were conducted with the following persons: Irina Imerlishvili – Justice of Georgian Constitutional Court, former Head of the Security Council (in 2013-2016), Member of 8th Parliament of Georgia, former head of the Committee of the Parliament on Procedures and Rules (in 2012-2013); Vakhtang Khmaladze – former deputy head of the Constitutional Committee of Georgia (in 1993-1995), Member of 3th , 5th and 8th Parliament of Georgia, head of the Legal Committee of the Parliament of Georgia (in 2012-2016); Pavle Kublashvili –Member of 6th, 7th and 8th Parliament of Georgia, head of Legal Committee of the Parliament of Georgia (in 2008-2012); Irakli Sesiasvhili – head of the Committee on Defense and Security of the Parliament of Georgia, Member of 8th and 9th Parliament of Georgia; Khatuna Gogorishvili – Member of 6th, 7th, 8th and 9th Parliament of Georgia, head of the Committee of the Parliament on Procedures and Rules (in 2004-2012); Giorgi Kakhiani – head of the Committee of the Parliament on Procedures and Rules, Member of 8th and 9th Parliament of Georgia; Davit Darchiashvili – Member of 7th and 8th Parliament of Georgia, former member of the Committee on Defense and Security of Parliament of Georgia (in 2012-2016); Levan Bodzashvili – deputy head of the Security Council of Georgia, the representative of the Venice Commission to the State Constitutional Commission (in 2009-2010); Levan Dolidze – director fo the Center on Security and Development of Georgia, former deputy minister of the Ministry of Defense (in 2012-2014); Levan Alapishvili – founder of Atlantic Council; Lika Sajaia – Transparency International – Georgian Parliamentary secretary; Sofo Vardzeuli – Human Rights Education and Monitoring Center (EMC), Director of the Program on Institutional Reform; Guram Imnadze – Human Rights Education and Monitoring Center (EMC), coordinator of the Program on Institutional Reforms; Mariam Mkhatvari - Human Rights Education and Monitoring Center (EMC), lawyer of the Program on Institutional Reform.

2.4. Change of Governmental Model in Georgia and its Influence on Parliamentary Oversight

Responsibility of the members of the Government is an issue under the authority of Parliament from the date of the first design of Constitution until now and addresses of political responsibility were changed by legislature according to the form of Government. According to the presidential model established by Constitution of 1995, Government existed as a consultative body for the President. Thus, even though legislation determined forms of accountability of the Government to the Parliament, it only had political responsibility before the President.

Amendments to the Constitution dated 2004 created a presidential-parliamentary subtype of a semi-presidential system. Establishment of the Government as the collegial body and the institution of Prime Minister added political dimension to the forms of parliamentary oversight. Government became responsible before the President and the Parliament.

Based on the reform dated 2010 which came into force in 2013, Georgia once more changed the system of governance and became the state with premier-presidential subtype of semi-presidential system. After complete removal of Government from the President, accountability of the members of the Government before the President was increased.

Such changes in the governmental model, of course influenced subjects of the research with respect to parliamentary oversight. However, abovementioned amendments are not sufficient. For instance, this research demonstrates that as a result of reform, the role of the President with respect to formation and removal of the Government was diminished in favor of the Parliament and became nominal. However, such changes were not accompanied with the amendments in the existing oversight instruments, which first of all means re-analysis and increase of the role of minority.

2.5. Statement of Appreciation

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3

Research Findings

Legislation

- Legislation does not determine vividly the nature of the President's annual report. Additionally, it vaguely separates between specifications of debates and speeches of the heads of the factions following such report. It is also vague with regard to mandatory attendance of the head of the state on the debates.
- The Regulations of the Parliament does not determine obligation of the Prime Minister to orally present report with regard to performance of Governmental Program and obligation to carry out debates following such presentation;
- Alike annual report of the Prime Minister on performance of Governmental Program, the Regulations of the Parliament also fails to vividly determine procedure with regard to extraordinary report;
- Existing provision puts group of ten Members of the Parliament in unfavorable position compared to the factions;
- Mechanism of interpellation envisaged under the laws of Georgia is vague and defective;
- The Regulation of the Parliament does not determine obligation of accountable body to personally answer the question before the legislative body on Governmental Hour;
- In the situation where the Governmental Hour exists, it is senseless to determine possibility of invitation of the member of the Government to the plenary session;
- Defense and Security Committee has extensive mandate and controls several bodies simultaneously. This complicates activities of the abovementioned Committee. Legislation does not allow creation of specialized and/or subcommittee. Existence of such committees would make representative body more flexible and concentrated;
- Mandatory support of the majority on conduct of the meeting of the Trust Group creates risks of inefficiency of this institution;
- Internal Affairs and Defense Ministries have an obligation to present information to the Trust Group prior to secret procurement in the amount as defined by law. Different from the abovementioned institutions, such obligation is not imposed on State Security Service, Intelligence Service of Georgia and State Council of Security and Crisis Management;
- Quorum and procedural complication related to the creation of investigative commis-

sion endangers efficiency of parliamentary oversight mechanisms. Due to the mentioned, investigative committees were not created at all or were established as a mere formality;
- Investigative and other temporary commissions only have absolute authority to request public information and invite officials; other authorities are subject of permission/approval of certain persons and this created additional barriers for efficiency of the commission.
- The accountability of the accountable person before the parliament to attend the faction session in case of a pertinent demand causes the fragmentation of the parliamentary life.

Implementation

- Governmental Programs regarding activities of institutions, which are subject of this research, lack specifications;
- When discussing the report on performance of Governmental Program, fulfillment of purposes under the program is not systematically evaluated;
- Term for presentation of report on performance of Government Programs is constantly breached;
- The Parliament has never requested extraordinary presentation of the report regarding performance of Governmental program from the Prime Minister;
- In the 8th Term Parliament of Georgia, Governmental Hour was not conducted;
- It is an established practice that the deputy minister attends the Governmental Hour instead of the minister. This practice is against the Constitution and requirements of the Regulation of the Parliament;
- Defense and Security Committee is mostly oriented on evaluation and assessment of draft laws instead of exercise of oversight authority;
- In the majority of reports issued in parallel with approval of the Government by the Committee of Defense and Security, instructions with regard to improvement of Governmental Program are very rare;
- Addressee of the question of the Member of the Parliament in certain cases does not respond to the question personally, which is against Constitution and the Regulation of the Parliament;
- In 2004-2016, the Members of the Parliament asked only 59 questions to the Ministers of Internal Affairs. In 9 cases from the abovementioned 59, Ministers left the questions unanswered and this was not protested by the Parliament. In 2005-2006 and 2008-2012 Members of the Parliament failed to ask any questions to the Ministers of Internal Affairs; The Members of the Parliament do not use their authority to ask the questions with respect to the State Security Service; Parliamentary oversight mechanism was not used towards Georgian Intelligence Service and the Council of Security and Crisis Management.

The Ministry of Internal Affairs

- The procedure of distrust includes many barriers, procedural steps, lengthy proceedings and excessive quorums, which makes the political responsibility of the government impossible to be imposed;
- The Parliament does not have actual tools to make certain minister responsible. This diminishes the role of the Parliament, as of the body of primary oversight;
- Even though there were facts confirming violation of the Constitution, the issue of impeachment has not been put before the Parliament since 2004.

The Intelligence Service

- Appointment and removal of the Head of Georgian Intelligence Service is decided by only the Prime-minister and does not include conditions for stimulation of democratic process and creates the chance of making politically motivated decisions;
- Legislation does not include conditions for removal of the Head of the Intelligence Service and such regulation allows politically motivated decisions.

The Security Service

- Procedure of appointment of the Head of the Security Service creates risks of politically oriented decisions rather than the possibility of consensus;
- Existing model of responsibility of the Head of the Security Service represents mechanism of quasi-distrust and allows political responsibility of the abovementioned person;
- The Parliament ineffectively uses its power to hear report of the Security Service;
- The Security Service report has not been presented in a timely manner and it was postponed twice;
- Report of the work of the Security Service was presented by the deputy head of the service and not by the Head. Such practice is against the law;
- Authority of the Security Service to investigate crime creates additional risks for power abuse and it especially increases the need for effective parliamentary oversight.

The Council of State Security and Crisis Management

- Participation of Parliament and head of the respective Committee is not sufficiently guaranteed by the legislation;
- Product of analytical work of the State Security and Crisis Management Council is only available to the members of the executive body, specifically to the Prime Minister and the members of the council. The Parliament is exempt from such authority.

PART ONE

Oversight Authorities of the Parliament

4

Annual Presidential Report

- Legislation does not vividly determine the nature of annual report of the President. Additionally, it vaguely separates between specifications of debates and speeches of the heads of the factions following such report. It is also vague with regard to mandatory attendance of the head of the state on the debates.

States with a premier-presidential subtype of the semi-presidential model differently regulate the issue of address and reporting of the head of the state. In some countries, president does not address parliament regularly, but rather as desired.[71] By the address, president arises important internal and foreign matters before the parliament. Communication of the head of the state and Sejm is the same in Poland and it is not followed by debates.[72] In Lithuania, president visits legislative body in order to discuss internal affairs and foreign policy.[73] Slovakia has the same reporting mechanism.[74] Communication with the parliament and people as envisaged in Lithuania and Slovakia, represents annual address not only as a political instrument but also as a tool for reporting. Based on the limited authorities of the president, main purpose of such addresses is not only presentation of the work carried out by the first official of the state, but also creation of a mechanism, which ensures communication of the president and the parliament. It also guarantees the influence of president over the matters discussed by parliament and warranties more involvement of president in the political life. However, this does not exclude reporting functions. In the light of the address, president evaluates his/her own activities before legislative body and society. The same applies to Georgia. Thus, for the purpose of this research, it is interesting to review legislative framework and practical implementation.

71 For instance, according to article 64 part 1 of Czech Constitution, president is allowed to request addressing the parliament. See, http://www.constitutionnet.org/files/Czech%20Republic%20Constitution.pdf updated on 18.12.2016.

72 Constitution of Poland, edition dated 21 October 2009, article 140, see http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm, updated on 18.12.2016.

73 Constitution of Lithuania, edition dated 1 May 2009, article 84, part 18, see http://www3.lrs.lt/home/Konstitucija/Constitution.htm updated on 18.12.2016.

74 Constitution of Slovakia, edition dated 1 December 2014, article 102, part 15.

The Constitution of Georgia, from the moment of creation envisages the authority of the President to address people and the Parliament on one hand and obligation to submit a report to the Parliament on the other hand.[75] The first is a pure political instrument and is depended upon wishes of the President but the latter includes tools for influencing political agenda. However, as mentioned above, it also represents a way for evaluation of annual work of the President before legislative body and people. This may be followed by political responsibility of the President. Thus, it is clear that this research address only the latter.

Rule of submitting a report as envisaged by the Constitution, is explained in details in the Regulations of the Parliament. According to the edition dated 1995-2004, such procedure was scheduled for the first meeting of spring plenary session of the Parliament.[76] After submitting a report, a procedure determined a two-hour break. After the break, speeches of the heads of factions were scheduled, which was considered as a debate under the Regulation of the Parliament. After debates, the Parliament was allowed to approve resolution.[77]

In 2004-2012, the rule of annual report remained the same,[78] and the Regulation of the 8th Term Parliament of Georgia amended rules regarding debates following Presidential report. Alternative between speech of the head of the faction and political debate was included in the Regulation.[79] Procedurally, there are two main differences: Firstly, during political debates time is distributed for speeches of majority and minority, heads of factions and the Parliament, deputy heads and members of the Parliament without faction.[80] During speeches of heads of the faction, certain Members of the Parliament are precluded from expressing their positions. The second difference is a prerogative of the head of the Parliament, who is entitled to utilize time, envisaged under the Regulation and put the issue for voting.[81] Difference between two parliamentary formats shall be explained with the abovementioned characteristics. Broad spectrum of speakers and possibility of conclusion of debates with the resolution makes such debate more result-oriented. Compared to this, speeches of the heads of the factions only ensure expression of position and do not aim assumption of opinions of different political powers, which shall be followed by respective legislative involvement and specific steps.

Relation between normative regulation and practical realization of Presidential address causes misunderstanding in daily life of Georgian parliamentarism. Main issue is whether Presiden-

75 Constitution of Georgia, editions dated 24 August 1995 and 4 October 2013, article 73, part 4.

76 Regulation of the Parliament, edition dated 27 February 2003, article 128.

77 Ibid.

78 Regulation of the Parliament, as of 28 June 2012, article 194.

79 Regulation of the Parliament, edition dated 26 June 2016, article 200.

80 Ibid, article 136.

81 Ibid.

tial address represents a tool of accountability of the President to the Parliament as described above. Routine obligation of the President to present his report and following debates give this process a meaning of reporting. This is true in some way but based on the practice and especially, latest reform of the Constitution of Georgia, Presidential report is a platform for expression of the position of the President, as well as sharing of ideas and remarks. For instance, such approach was adopted by the Presidential reports with regard to the issues related to the institutions under research. In 2004-2008, annual Presidential report always covered the issues related to the work of internal affairs and security services. For instance, following issues were addressed: fight of the state with organized crime,[82] challenges and achievements related to the process of state governance,[83] criminal policy,[84] international cooperation,[85] and challenges after August war and threats from Russia.[86] In 2004-2013 Presidential reports the President always mentioned patrol police and successful reforms related to the above.[87]

From 2013 Presidential report is more oriented on reforms, he discusses negative effects of consolidation of internal affairs and security services[88] and urges legislative body (and firstly, majority party) to make specific steps for improvement of the above sector. From this period, Presidential reports with regard to state security has a nature of recommendation, which is directed at fulfillment of Governmental program (regarding refusal to grant security service with investigative authorities; regarding reform of security service and specifically, separation from the structure of the Ministry of Internal Affairs).[89]

As mentioned above, the Regulation of the 8th Parliament of Georgia allowed alternative between address of the head of the faction and political debates. This separation is related to the new edition of the Constitution, which significantly reduces functions of the President. For this reason, existence of reporting format without any alternative is dull because debates are productive when legislative body assesses actions of the head of the state, which might be a basis for impeachment procedure. Different from the above, when only general discussion and assessment of Governmental Program and state policy is expected, it is better to use the platform of faction addresses, which only envisages political competition without any specific assessment of actions.

82 Annual report of the President of Georgia dated 17 February 2005.

83 Ibid.

84 Annual report of the President of Georgia dated 12 February 2006.

85 Annual report of the President of Georgia dated 17 February 2005; Annual report of the President of Georgia dated 28 February 2012.

86 Annual report of the President of Georgia dated 12 February 2009, 26 February 2010, 11 February 2011.

87 Annual report of the President of Georgia dated 10 February 2005; Annual report of the President of Georgia dated 14 February 2016.

88 Annual report of the President of Georgia dated 31 March 2015; Annual report of the President of Georgia dated 3 February 2016.

89 Annual report of the President of Georgia dated 3 February 2016.

Practice demonstrates that Presidential address becomes more program-oriented as his functions reduce. As for the parliamentary procedures after the annual report of the president, to look retrospectively, in 2009 the President of Georgia stated his readiness to attend parliamentary debates after his address.[90] Even thought the President expressed his willingness to get involved in the discussion, the process went on with the addresses of the heads of the factions. Their speeches were more like competition between the members of the opposition and majority party. President was not involved and did not address any discussion regarding problematic issues. After speeches of the heads of the faction, President assessed the hearing but did not concentrate on any specific issue.[91] Unlike 2009, in 2010 the process continued with the speeches of majority and minority parties and members of the Parliament were allowed to express their opinions. However, the process became platform for listening to the claims of the members of the Parliament instead of becoming the platform for discussion on specific issues.[92]

In 2014, on the debates following the Presidential report, members of majority party addressed critical comments of the minority. At the end, President assessed the hearing but refrained from answering specific critical questions.[93] President was not actively involved in the addresses of the heads of the factions in 2015-2016.[94]

Abovementioned facts demonstrate existence of misunderstanding, which is related to the format following Presidential report and which is the matter of heated discussion in Georgian political specter every year. However, conceptually, the solution is easy as follows: choice between debates and addresses of the heads of the factions shall be made based on the activity of the President in a given year. In case the members of the Parliament consider that there is hypothetical possibility of responsibility of the president, debates shall be carried out, if such possibility does not exist – the choice shall be made in favor of the speeches of the factions.

Another problematic issue is obligatory attendance of the President on the debates or speeches of the factions following presidential address. The Regulation of the Parliament is silent whether the President shall participate in the procedure following two-hour break. It has to be

90 It is interesting, that the member of the faction Christian-Democrats responded to his initiative as follows: The tradition has been established and this is a negative tradition that envisages relation between you and us in the regime of the monologue. Based on the above, many questions addressed to you remain unanswered until today." Annual address of the President of Georgia dated 12 February 2009; Annual address of the President of Georgia dated 11 February 2011.

91 Annual report of the President of Georgia dated 12 February 2009; Annual report of the President of Georgia dated 11 February 2011.

92 Annual report of the President of Georgia dated 26 February 2010.

93 Annual report of the President of Georgia dated 21 February 2014.

94 Annual report of the President of Georgia dated 31 March 2015; Annual report of the President of Georgia dated 3 February 2016.

noted, that in case of choice of debate, the Regulation of the Parliaments stipulates that such debates shall be carried out in the format of political debates, which eliminates President from the list of the speakers.[95] Thus, we can conclude that attendance of the President is completely depended upon his "good will" in both circumstances. This misunderstanding is caused by lack of conceptual difference between debates and speeches of the factions. However, if the abovementioned issue is specified, the problem of President's attendance might be easily solved as follows: in case of debates it shall be obligatory and in case of speeches of the factions – it shall be upon discretion of the President.

95 Regulation of the Parliament of Georgia, edition dated 26 June 2016, articles 200 and 136.

5

Governmental Programs and Presentation of the Report by the Prime Minister

- Governmental Programs lack specificity with regard to the activities of institutions under research;
- During the presentation by the Prime Minister regarding the progress of Governmental Program, performance of specific aims is not discussed systematically. Written form of the report makes it a certificate issued just for fulfillment of obligation rather than one of the leading instruments for parliamentary oversight. Thus, Prime Minister can easily avoid undesired questions regarding problematic or unfulfilled targets;
- Another issue is constant breach of the term for presentation of such report, which is first week of the fall plenary session;
- The Regulation of the Parliament does not clearly stipulate obligation of the Prime Minister to present the report orally as well as it fails to envisage obligatory debates;
- Since 2004 Parliament has not requested extraordinary presentation of the report from the Prime Minister. Alike annual report of the Prime Minister on performance of Governmental Program, the Regulation of the Parliament also fails to vividly determine procedure with regard to extraordinary report.

5.1. Governmental Program

Governmental Program is an agenda for parliamentary oversight. Generally, Governmental Program covers the whole term of the Government. However, in certain instances, the Government presents the document for current year.[96] Since performance of the agenda under the Governmental Program is a main indicator for parliamentary oversight, the Parliament is entitled to base its decisions upon details related to the performance of the program.

96 Yamamoto H., Tools for Parliamentary Oversight, A Comparative Study of 88 National Parliaments, Inter-Parliamentary Union, 2007, 45 see. http://www.ipu.org/PDF/publications/oversight08-e.pdf updated on 16.12.2016.

According to the current edition of the Constitution of Georgia, a Prime Minister nominee presents Governmental Program to the Parliament during the process of approval of the Government.[97] Hypothetically, Governmental Program is a future agenda for the Government, which shall be entrusted by the Parliament. After approval, Prime Minister shall address the Parliament annually in order to present report regarding fulfillment of the program.[98]

In order to analyze Governmental Programs since 2004, the coverage of institutions under research in the Governmental Program shall be assessed.

The Governmental Program always addressed structure of security services and their institutional placement: In 2004-2009 Governmental Programs had special chapter regarding aims of the Government with regard to state security. Besides, programs covered the issues related to eradication of the corruption, complete modernization and third sector control over State Security Service and the Ministry of Internal Affairs. Programs also concentrated on planned amendments: In Governmental Program dated 2004, it was noted that law enforcement authority would be taken from the security service and it would develop as a civil entity.[99] Additionally, the program specifically envisaged that the Ministry of Security would only be left with analytical competence and would be free from police and repressive functions.[100]

The issue of institutional reform of the Ministry of Internal Affairs was also problematic in the programs: In 2004, the Prime Minister discussed transformation of the Ministry of Internal Affairs into civil entity. The same aim was stressed in the program dated 2012.[101] In 2015, the head of the Government discussed separation of the functions of the Ministry of Internal Affairs and creation of security service.[102]

As a general remark, during the presentation of Governmental Program, Prime Ministers usually do not, or superficially address spheres of the Ministry of Internal Affairs. For example, different from 2004, 2012 and 2015, in 2007 the candidacy for Prime Minister failed to

97 Regulation of the Parliament of Georgia, edition dated 8 December 2015, article 201, for details see sub-chapter 9.2.3: Appointment of the Ministry of Internal Affairs.

98 Constitution of Georgia, edition dated 4 October 2013, article 79, part 2.

99 Program of the Government of Georgia in 2004-2009: "For unified and strong Georgia, through the way of economical growth, longstanding stability and euro-integration".

100 Ibid.

101 It was noted in the Program that the Ministry of Internal Affairs should have been transformed. Also, based on the Program, the State Security Service would be separated from the structure of the Ministry of Internal Affairs and independent state security service would be established with new powers, structure and form; Head of the service would be nominated by the President and approved by the Parliament; Also, according to the Program, the work of the security service would be limited to the collection, analysis, systematization and realization of secret information; The service would not be vested with the power of prosecution.

102 Governmental program "For Strong, Democratic and Unified Georgia", 22 October 2012, N5034, 5.

mention work of the Ministry of Internal Affairs.[103] In 2008 the nominee only discussed aims related to update of anti-corruption strategy and did not address any other issue related to the Ministry of Internal Affairs.[104] In the address dated 2010, the Prime Minister emphasized low rate of corruption in Georgia but like others, this address also lacked specificity with regard to the ministry.[105] The same approach is demonstrated in the Governmental Program of 2012.[106] The issue of lack of specificity is present with regard to security services, too. Governmental Programs rarely address intelligence services.

The above practical examples prove that Governmental Programs in most cases include general information with regard to work, problems and aims of the institutions under research. In comparison, information regarding institutional reforms is more specified. This creates understanding that presentation of Governmental Program is a formal instrument to give general impression to the Parliament, which is responsible for oversight of performance of the program during next four years. Thus, approach towards Governmental Program shall be changed. Program shall become guiding document for the Government and each aim shall be systematically analyzed.

5.2. Annual report of the Prime Minister on Fulfillment of Governmental Program

Report of the Prime Minister as an instrument for parliamentary oversight has been envisaged in the legislation since 2004 alongside the establishment of collegial Government and change of governing model (such obligation has remained unchanged since 2004).

According to the current edition of the Constitution, Prime Minister presents report regarding fulfillment of the Governmental Program upon request of the Parliament.[107] The same provision is included in the Law of Georgia on Structure, Authorities and Activities of the Government of Georgia.[108] According to the Regulation of the Parliament of Georgia, presentation of such report has obligatory nature and is not depended upon request of the Parliament. According to the Regulation, "the Prime Minister is obliged to present report regarding fulfillment of the Governmental Program annually, in the first week of the fall plenary session of the Parliament."[109]

103 Address of the nominated candidate for the Prime Minister of Georgia dated 22 November 2007.

104 Address of the nominated candidate for the Prime Minister of Georgia dated 11 January 2008.

105 Address of the nominated candidate for the Prime Minister of Georgia dated 7 February 2010.

106 Address of the Prime Minister dated 20 march 2012.

107 Constitution of Georgia, edition dated 4 October 2013, article 79, part 3.

108 The Law of Georgia on Structure, Authorities and Activities of the Government of Georgia, edition dated 27 October 2015, article 8, part 2, "subparagraph "d".

109 Regulation of the Parliament of Georgia, edition dated 29 December 2016, article 205, paragraph 2.

Two problematic issues are related to the annual report of the Prime Minister: 1) presentation of the report; and 2) format of discussion. The first is related to vagueness of the legislation with regard to oral presentation of the report of the Prime Minister to the Parliament.[110] States, which envisage presentation of annual report by prime minister to the parliament (such as Latvia, Croatia, Romania) determine oral presentation of the report followed by question of the members of the parliament and debate.[111] According to the existing system, the Parliament is a main controller of the activities of the Government. In case legislative body considers that Governmental Program is not fulfilled fully or completely, it can commence proceedings related to the liability of the members of the Government. In order for the Government to feel real responsibility, it is important to review activities of the Government not formally-based on the written report of the Government, but orally to grant the members of the Parliament the platform for questions, expression of position and critics. Such procedure might lead to political responsibility of certain officials.

In light of the accountability and responsibility before the Parliament, during the presentation of the Prime Minister, each member shall be entitled to ask harsh questions and express their position with regard to specific issues. It has to be noted that such debates are envisaged under the laws of the states with semi-presidential model (premier-president subtype); For instance, the prime minister of Croatia presents a report to the parliament regarding challenges facing the government. After the report of the prime minister, political groups participate in debate which is finally followed by concluding remarks of the prime minister. Based on the address of the prime minister and debates, the parliament is entitled to adopt legal act which obliges the government to carry out certain actions.[112] This is associated with another problem. The Regulation of the Parliament of Georgia does not specifically envisage the rule of debates after address,[113] but based on the systematic and theological analysis of the Regulation the rule of analogy shall be used and political debates shall be carried out. In order to fully exercise the above mentioned type of accountability, it is important that the address of Prime Minister is attended by each and every member of the Government. Since the report shall cover every direction of the work of the Government, it is possible that the members of the Parliament will ask questions related to any field of the governmental activity. For example, in Lithuania,

110 According to article 200 of the regulation of the Parliament of Georgia, the Parliament hears annual address of the President regarding most important issues related to the country, The regulation of the Parliament of Georgia, ibid, article 201.

111 Standing Orders of the Croatian Parliament, Art. 130, http://www.sabor.hr/standing-orders-of-the-croatian-parliament-sabor, updated on: 08.01.2017. The constitution of Romania, Art. 107, http://www.codices.coe.int/NXT/gateway.dll?f=templates&fn=default.htm, updated on: 08.01.2017. Guideline of the Sejm of the Republic of Lithuania, article 207.1./2 http://www.legislationline.org/download/action/download/id/838/file/1d3069e22bf427292ff15e253dd9.htm/preview, updated on 08.01.2017.

112 Standing Orders of the Croatian Parliament, Art. 130.

113 Article 205, paragraph 2 of the Regulation of the Parliament of Georgia: "The Prime Minister of Georgia is obliged to address the Parliament once in every year regarding fulfillment of the Governmental Program, in the first week of the fall plenary session." The Regulation of the Parliament of Georgia, edition dated 29 December 2016, article 201.

proceedings related to the presentation of the report are similar to the procedures of hour of questions. Every minister attends the hearing and in case of request by the member of Sejm, is obliged to answer questions directed to him/her.[114] The regime of hour of question (governmental hour) makes presentation of the report more result-oriented since it allows the possibility of discussion over problematic issues. Legislative regulation and practice of implementation in Georgia does not fully guarantee sufficient parliamentary oversight.

Contrary to the abovementioned, based on the established practice, presentation of annual report does not take oral form. It allows the head of the Government to concentrate on the success of the cabinet and overshadow unfulfilled promises. For instance, based on the Governmental Program dated 2004-2009, the Ministry of Security should not have the function to investigate alongside analytical authority. Based on the program of 2012, Security Service should have been deprived of investigative authorities. However, the Government failed to meet the above goals.

The programs of 2004-2009 and 2012 separately discussed the topic of security services. On 17 February 2004, then Prime Minister Zurab Zhvania discussed the reform of internal affairs and security services and inclusion of intelligence department in the two above entities.[115] However, report on performance of the above Governmental Program failed to discuss fulfillment of the promise. The importance of separation of security service from the Internal Affairs Ministry was only discussed in the report of 2015.[116]

The problem of only discussing success is relatable to the Ministry of Internal Affairs, too: Prime Minister usually generally overviews steps made by the ministry and refrains from addressing problems. For instance, reports of the Prime Minister dated 2014-2015 discussed achievement of aims set by the program of 2012.[117]

During the presentation by the Prime Minister regarding the fulfillment of Governmental Program, performance of specific aims is not discussed systematically. Written form of the report makes it a certificate issued just for fulfillment of obligation rather than one of the leading instruments for parliamentary oversight. Thus, Prime Minister can easily avoid undesired questions regarding problematic or unfulfilled targets.

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114 Regulation of the Sejm of the Republic of Lithuania, article 207.

115 Annual report of the Prime Minister of Georgia dated 17 February 2004, 76.

116 It was noted in the report that "separation of system" was planned; "The Ministry of Internal Affairs will remain as a separate entity and state security service will be created with its own aims and structure. Main function of the police entities will be prevention of crime. State security service will be vested with the power to acquire, process and collect information regarding threats to national security. It will also be authorized to fight with specific crimes." Report of the Prime Minister to the Parliament of Georgia dated 8 May 2015, 23.

117 Reports of the Prime Minister of Georgia dated 26 July 2014 and 8 May 2015.

Based on the abovementioned, the obligation of the Prime Minister to present annual report orally (except following election year) and obligation of the member of the cabinet to attend such presentation shall be envisaged. In case the legislature fails to determine obligation of debates, oral presentation of the report becomes absolutely formal and will become equal to written report, because in both cases Parliament only reviews report and does not have real opportunity to request more specified information with regard to problematic issues. In such case, the only remaining instrument is Governmental Hour, which is not conceptually right platform to discuss comprehensive issues, such as performance of Governmental Program.

Another issue is constant breach of the term for presentation of such report, which is first week of the fall plenary session. The above situation shall be changed and the Prime Minister shall ensure presentation of the report in the terms as stipulated in the Regulation. The Parliament itself shall use each and every instrument to preclude continuation of such practice.

5.3. Extraordinary Report of the Prime Minister

According to the regulation of the Parliament, Parliament is entitled to request presentation of extraordinary report on fulfillment of Governmental Program. Decision regarding such request is made by majority of the attending members, but not less than ¼ of the members, upon request of the committee or the factions. Such decision is approved by minute and is immediately sent to the addressee. In such case, the Prime Minister shall present the report to the Parliament within 15 days from the date of receipt of such request.[118] It has to be noted, that this instrument has not been used since 2004.[119] Alike the procedure related to the annual report, procedure related to extraordinary report is also vague. Thus, the legislature shall clearly determine the procedure of debate following address of the Prime Minister and obligatory attendance of the members of the cabinet.

118 Regulation of the Parliament of Georgia, edition dated 29 December 2016, article 196, paragraph 2.

119 Assumption is based on the information provided by the Parliament.

6

Question by the Member of the Parliament

- In most cases, addressee of the question does not respond to the question personally;
- Members of the Parliament do not actively use their authority to ask questions to the State Security Service, which is an entity accountable before the Parliament;
- Parliamentary oversight mechanism has never been used towards Georgian Intelligence Service and the Council of Security and Crisis Management;
- In 2004-2016, the Members of the Parliament asked only 59 questions to the Ministers of Internal Affairs. In 9 cases from the abovementioned 59, Ministers left the questions unanswered and this was not protested by the Parliament;
- In 2005-2006 and 2008-2012 Members of the Parliament failed to ask any questions to the Ministers of Internal Affairs.

Question of the member of the Parliament is the mostly used mechanism of parliamentary oversight.[120] It envisages receipt of answer from the addressee of the question[121] and is determined towards obtainment of information (with regard to fulfillment of Governmental Program or activity of other entity), creating political debate (conduct of interpellation)[122] or preparation for the proceeding of parliamentary responsibility. Answer to the question of the member of the Parliament or refusal to answer such question, might detect defects of the work of specific entity or it might lead to invitation of the head of such entity.

This instrument of parliamentary oversight is stipulated in the laws of Georgia since 1995. Under the notion of question, the Regulation of the Parliament means written question. In case of Georgia, the answer to the written question shall only be in writing.

120 Parliamentary Function of Oversight, see: http://www.agora-parl.org/resources/aoe/oversight updated on: 13.10.2016

121 Yamamoto H., Tools for Parliamentary Oversight, A Comparative Study of 88 National Parliaments, Inter-Parliamentary Union, 2007, 49.

122 Parliamentary Function of Oversight, see: http://www.agora-parl.org/resources/aoe/oversight updated on: 13.10.2016

According to the edition of the Regulation of the Parliament dated 1995-2004, the member of the Parliament was entitled to ask question to accountable entity, including the members of the Government (the Minister of Internal Affairs and the Minister of Security), mayor of city hall, head of any territorial entity of executive Government or any other state entity. Abovementioned institutions had an obligation to respond to such question.[123] Question could be oral or in writing.[124] Oral question was asked on the plenary session of the Parliament but obligation to reflect such question in writing was introduced to the Regulation of the Parliament in 2004.[125] It was determined in 2004, that every question, whether in writing or presented orally, should be reflected in writing and sent to the addressee.[126] The secretariat of the Parliament was obliged to deliver written question within one day.[127] Officials had an obligation to respond to such question within ten days.[128] State officials had a right not to respond to the question in case the answer included state or military secret.[129]

The content of the question as well as addresses have not changed in 2004-2012 and in the following years. According to the current edition of the Regulation, addressee of the question, inter alia, can be the Minister of Internal Affairs, Security Service, Georgian Intelligence Service and the Council of Security and Crisis Management. Based on the Regulation, the question shall only be asked in writing and the response shall also be written. Each entity or state official, who received a question, is obliged to respond to the question within 15 days (the term was increased).[130] The legislation envisages possibility of extension of the term for response up to 10 days upon approval of the author of the question.[131] It is a right of the Member of the Parliament, to withdraw such question at any time.[132]

It is true, that the members of the Parliament often use mechanism of question but usage of this instrument decreases with regard to the institutions under research. For instance, in 2004, only one question was addressed to the Minister of Security regarding quantity of removed and restored employees of the ministry.[133] From the establishment of State Security Service on 1 August 2015 until November 2016, only two questions were asked to the head of the

123 Regulation of the Parliament of Georgia, edition dated 2004, article 141-143.

124 Ibid, article 141, paragraph 1.

125 Ibid, article 212, paragraph 3.

126 Ibid, article 212, paragraph 4.

127 Ibid, article 141, paragraph 1.

128 Ibid, article 142, paragraph 1.

129 Decree of the Parliament of Georgia on the Regulation of the Parliament of Georgia, editions dated 17 October 1997 and 17 February 2004, articles 140-142.

130 Regulation of the Parliament of Georgia, edition dated 2012, article 221, paragraph 1.

131 Ibid.

132 Ibid, article 221, paragraph 5.

133 Application N07-4/29 dated 16 July 2004.

institution.[134] First question requested information regarding supernumerary employees. Response to this question was delivered to the member of the Parliament in violation of the term and it partially responded to the question.[135] The second question requested biographies and resumes of the head of the service, deputies, head of the counterintelligence service and his deputies.[136] Response to the above question was refused based on the ground that it included personal data. The research group considers that the entities shall not fully refuse responding to the question related to resumes of state officials and other public information. The Members of the Parliament shall more actively use authority to ask questions with regard to State Security Service.

Practice of small number of questions and refused responses is relevant to the Ministry of Internal Affairs, too. Based on the general observation, we can conclude that questions are asked by members of the opposition party and as a rule, the same members are active. Generally, the Ministry of Internal Affairs responds to the question according to the law, but in certain instances (in 2007, 2013, 2015 and 2016) the response did not fully address the question, it was delayed or was not sent to the member of the Parliament.

In 2004-2016, the Members of the Parliament asked only 59 questions to the Ministers of Internal Affairs. In 9 cases from the abovementioned 59, Ministers left the questions unanswered. In 2004, four questions were asked to the Ministry of Internal Affairs.[137] In all cases responses were returned in a timely manner.[138] In 2005-2006[139] and in 2008-2012 questions were not asked to the Ministry of Internal Affairs.[140] Only in 2007 the Members of the Parliament asked five questions to the minister.[141] In one case, the Ministry requested confirmation of the fact for proper answer but the Member of the Parliament failed to provide such explanation.[142]

134 Letter of Levan Tarkhnishvili N07-4/567 dated 11 September 2015.

135 The State Security Service sent the staff list on 5 October, after 24 days (part of the staff list which was not secret). Transfer of the list of supernumerary employees was refused based on the ground of data privacy.

136 Letter of Irma Nadirashvili N07-4/640/8 dated 15 February 2016.

137 Questions were related to the persons arrested for certain case, quantity of employees removed from their positions and decision on use of force in certain operations.

138 Question of Ivliane Khaindrava dated 31 May 2004; Question of Zviad Dzidziguri dated 16 July 2004; Question of Kakha Kukava dated 13 September 2004; Question of Kakha Kukava dated 4 October 2004.

139 Assumption is based on the information provided by the Parliament.

140 Assumption is based on the information provided by the Parliament.

141 Questions were related to arrest of certain persons, phone surveillance, quantity of persons liquidated during the operation, as well as eviction of displaced persons from the buildings; See question of Nana Patarkatsishvili dated 28 March 2007; Question of Kakha Kukava dated 19 July 2007; Question of Bidzina Gujabidze dated 22 October 2007; Question of Kakha Kukava dated 22 October 2007; Question of Kakha Kukava dated 24 October 2007.

142 Question of Kakha Kukava dated 24 October 2007.

In 2013, seven questions were put before the Minister of Internal Affairs.[143] Issues of the question were different in all cases.[144]

From fourteen questions asked in 2014, the Minister did not answer three questions. One question was related to the costs of business trips of the Minister and deputy minister of the Internal Affairs.[145] The second question requested information regarding compensation of ministry officials[146] and third question was related to planned activities.[147] In one case, the Ministry refused three times to disclose information regarding crossing the border by one of the journalists.[148]

In 2015, eleven questions in total were asked to the Ministry of Internal Affairs.[149] Response to one of the questions, regarding persons related to the crime according to one of television programs, was delivered in violation of the term, after five months.[150] In two cases, the Ministry refused to disclose information regarding compensation of certain officials based on the ground of data privacy.[151] The Minister also failed to respond to the question regarding current and future costs of bonuses, additional payments, business trips, communication and fuel.[152] In 2016, seven members of Parliament asked the Ministry of Internal Affairs questions regarding compensation of officials of the ministry. The Minister failed to answer again.[153]

Based on the analysis of database obtained from the Parliament on questions of the members of the Parliament and responses to such question,[154] we can conclude, that different from the

143 Question of Giorgi Gabashvili dated 24 April 2004; Question of Giorgi Gabashvili dated 19 June 2013; Question of Khatuna Gogorishvili dated 21 June 2013; Question of Mikheil Machavariani 07/4-37; Question of Giorgi Baramidze dated 3 September 2013; Question of Temur Maisuradze dated 24 September 2013; Question of Giorgi Baramidze dated 11 October 2013.

144 Obstacles to the crossing of border by state officials during business strips; information regarding theft of regional office of the opposition party; quantity of border-crossing of certain government official; the issue of existence of report of a company DENSUS; the issue of import of chemical weapons by Georgia into Syria; statistic about the cars with right steering-wheel; information regarding renumeration of the officials of the Ministry of Internal Affairs.

145 Question of Giorgi Gabashvili dated 25 November 2014;

146 Question of Khatuna Gogorishvili dated 27 March 2014.

147 Question of Giorgi Gabashvili dated 23 April 2014.

148 Question of Giorgi Gabashvili dated 23 October 2013 and response of the Ministry dated 29 October 2014; Question of Giorgi Baramidze dated 10 November 2014 and response of the Ministry dated 23 December 2014; Question of Giorgi Gabashvili 21 October 2014 and response of the Ministry dated 23 December 2014.

149 Assumption is based on the information provided by the Parliament.

150 Question of Giorgi Baramidze dated 3 February 2015; Question of Giorgi Baramidze dated 3 February 2015 and response of the Ministry dated 3 February 2015.

151 Question of Irma Nadirashvili dated 9 February 2015 and response of the Ministry dated 23 February 2015; Question of Khatuna Gogorishvili dated 11 February 2015 and response of the Ministry dated 23 February 2015;

152 Question of Giorgi Gabashvili dated 22 July 2016.

153 Question of Khatuna Gogorishvili dated 19 February 2016.

154 Database of the Parliament of Georgia on questions of the Parliamentarians and responded answers, see http://info.parliament.ge/#mpqs, updated on: 08.01.2017.

head of the Security Service and the Minister of Internal Affairs, the head of Georgian Intelligence Service and head of the Council of Security and Crisis Management have never been addressees of such questions.

As it appears, the Members of the Parliament do not use mechanism of question towards the institutions under research. This practice is desirable to be changed.

The regulation of the Parliament sets forth responsibility of the officials for incorrect or disfigured information, as well as incase of impediment to exercise rights of MPs. In such case, the Committee on Procedures and Rules discusses the fact of breach of the Regulation and the issue is transferred to the bureau of the Parliament for responsive action. As a result, the Parliament may adopt a decree or resolution regarding responsibility of a specific official under the Constitution. In such circumstances, the Parliament is authorized to discuss individual responsibility of the official[155] or commence impeachment proceedings.

Such forms of responsibility are last resort measures and are used in exceptional situations, when the Minister's failure to fulfill his/her obligation is related to important political costs. Failure to respond to the question might not be considered as such offence. This means that the majority will not have enthusiasm to resort to proceedings under Constitution in case of such problem. The minority always refrains from commencement of proceedings, where loss is inevitable. Besides, the above two instruments with respect to institutions under research, are only relevant for the Ministry of Internal Affairs and do not cover other entities.

Legislative procedures shall include interim measures between neglecting Constitution by the official and harsh political and legal responsibility. In European countries, one of the most frequent responses to the failed questions is disclosure of such information in the official journal or collection of the Parliament.[156] For instance, the parliament of Belgium publishes questions unanswered in twenty days on official web-site of the parliament under a special tab.[157] In Italy, upon request of the author of the question, the head of the parliament puts unanswered question in the agenda of the relevant committee.[158] In Canada, unanswered question is automatically transferred to the committee (according to the sphere of question), which has an obligation to invite committee hearing within five days, where issue of unanswered question will be

155 Regulation of the Parliament of Georgia, edition dated 26 June 2016, article 201.

156 Novak P., Parliamentary questions in selected legislative chambers, Directorate General for Internal Policies, Policy Department C: Citizens' Rights and Constitutional Affairs, Constitutional Affairs, 2014, 8, see. http://www.europarl.europa.eu/RegData/etudes/note/join/2014/493044/IPOL-AFCO_NT(2014)493044_EN.pdf; updated on: 3.11.2016.

157 Ibid.

158 Ibid.

discussed.[159] It is true, that the Parliament of Georgia created special page, where questions of the members of the Parliament and answers of the officials are collected.[160] However, systematization and obligatory publication of unanswered questions will give additional motivation to the addressee to comply with the requirements of the Constitution. It will also promote the issue of responsibility of certain official in case of failure of performance. As it appears, every institution struggles with effective performance with regard to exercise of the above discussed oversight mechanism. It is interesting, that the Parliament has never responded to the facts of unserious approach towards this instrument.

Additionally, according to the Regulation of the Parliament, the addressee shall sign question of the member of the Parliament.[161] Despite this, in practical situations discussed above, addressees do not usually sign the question and head of the administration, deputy or head of relevant department is a usual signatory.[162] Thus, provision of the Regulation of the Parliament, which stipulates obligation of the addressee to sign the question, shall be enforced.

159 Ibid.

160 Web-page of the Parliament of Georgia for Parliamentary questions, see web-page of the Parliament of Georgia: http://www.parliament.ge/ge/media/axali-ambebi/saqartvelos-parlamenti-sadeputato-kitxvebs-aqveynebs.page updated on: 12.11.2016.

161 Regulation of the Parliament of Georgia, edition dated 2012, article 221, paragraph 3.

162 Following experts agree with the obligation of direct response of Minister to the question asked by the Member of the Parliament: Lika Sajaia (minutes of the meeting dated 8 November 2016); Giorgi Kakhiani (minutes of the meeting dated 29 November 2016); Vakhtang Khmaladze (minutes of the meeting dated 21 November 2016).

7

Parliamentary Question and Govermental Hour

- Existing provision puts a group of ten Members of the Parliament in unfavourable position compared to the factions;
- In the 8th Term Parliament of Georgia, Governmental Hour was not conducted;
- It is an established practice that the deputy minister attends the Governmental Hour instead of the minister, which is against the constitution;
- The Regulation of the Parliament does not determine obligation of accountable body to personally answer the question before the legislative body on Governmental Hour;
- Mechanism of interpellation envisaged under the laws of Georgia is vague and defective.

First procedure of the hour of question, which was the predecessor of Governmental Hour, was conducted in Great Britain's House of Commons in 1723.[163] The speaker of the parliament acknowledged such procedure in 1783. Following this, the time for questioning, the so-called hour of questions is used by parliaments of different countries.[164] In Great Britain, every Thursday at 12 o'clock, the prime minister attends the hearing of the House of Commons; Parliamentarians ask main questions, which is distributed to the prime minister in prior, as well as additional questions, which are connected to the main questions.[165] The hour of question is not a traditional mechanism for obtaining information from the members of the Government. It just insures active involvement of people and media in the political process. Thus, the process of Governmental Hour is not just a tool to acquire information from the Government but it also guarantees a political debate over the topics and distribution of such information to the society.[166]

163 Salmond, Cockburn R., Parliamentary Question Times: How legislative accountability mechanisms affect citizens and politics University of California, Los Angeles, ProQuest Dissertations Publishing, 2007, 11.

164 Ibid.

165 Ibid, 12.

166 Ibid, 16.

"Governmental Hour" is a regular and planned part of the parliamentary calendar.[167] Governmental hour is conducted once a week in Finland, Denmark, France, Iceland, Luxembourg and Sweden. Portugal has governmental hours twice a week.[168] In Georgia, Governmental Hour is conducted at the end of monthly plenary sessions, on last Friday of the month from 16:00 until 19:00.[169] According to the Constitution and the Regulation of the Parliament, Governmental Hour is closely related to the questions asked.[170] Thus, in order to conduct Governmental Hour, the questions shall be asked to the persons determined by law. Discussion on the questions is carried out during the procedure of Governmental Hour.[171] Since addresses of the above procedure are officials accountable to the Parliament under the Constitution, head of Georgian Intelligence Service and the Council of Security and Crisis Management cannot be addressees of such questions and procedure (however, the head of the Security Service and the Minister of Internal Affairs are addressees of such procedure). With regard to the Intelligence Service and the Council of Security and Crisis Management, such mechanism can be exercised only through the Prime Minister. The law of Georgia determines that Intelligence Service is accountable towards the Prime Minister,[172] and the Council is recommendatory body for the Prime Minister and is under his direct supervision.[173]

7.1. Legislation for the Period of 1995-2004

The procedure of Governmental Hour was established by the Regulation of the Parliament dated 1997.[174] According to the Regulation, governmental hearing was scheduled for the first Friday of sessions and the second Friday was scheduled for questions.[175] Question hour was carried out based on the questions asked in prior by minimum of ten-person group or a faction of the Parliament. Governmental hearing covered issues determined in prior by the members of the Government and Parliament.[176] Based on the amendments to the Regulation of the Parliament dated 1 September 1998, questioning was rescheduled for the second Thursday.

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167 Ibid, 15.

168 Wiberg M., Parliamentary Questioning: Control by communication? Parliaments and Majority Rule in Western Europe, Edited by: Doring H., 194. See: http://allman.rhon.itam.mx/~emagar/ep3/rules/doring.ed.parliamentsAndMajRule1995.pdf, [30.12.2016].

169 Regulation of the Parliament of Georgia, edition dated 29 December 20116, article 226, paragraph 2.

170 Constitution of Georgia, edition dated 4 October 2013, article 69, paragraph 2.

171 Regulation of the Parliament, ibid.

172 The law of Georgia on Georgian Intelligence Service, edition dated 3 June 2016, article 6, paragraph 1.

173 The law of Georgia on Planning of Security Policy and Rules of Coordination, edition dated 21 December 2016, article 20.

174 Decree of the Parliament of Georgia on Regulation of the Parliament of Georgia, edition dated 17 October 1997.

175 Ibid, article 145.

176 Ibid, article 145, paragraph 1.

The Regulation stipulated the time of commencement of Governmental Hour at 17:00 with regard to issues pre-determined by the members of the Government and Parliament. Members of the Government presented issues for governmental hearing five days prior to the hearing for distribution between the members of the Parliament and the committees.[177] The Regulation also envisaged distribution of questions seven days in advance to the Government, committees and members of the Parliament.[178] During the governmental hearing, minister and representatives had five minutes for presentation.[179]

Issues discussed on the governmental hearing might have been the object of discussion on the next hearing and the Regulation envisaged possibility of creation of special group for decision-making.[180]

Alongside governmental hearing, the procedure of question hour was also established, which was supposed to commence at 17:00 and which was determined to address the questions of ten-person groups and parliamentary factions. Each head of the accountable ministry or entity was authorized to attend such hearings.[181]

7.2. Legislation for the Period of 2004-2013

In the next Regulation of the Parliament, "question hour" and "governmental hearing" was changed with the notion of "Governmental Hour". Time of Governmental Hour and terms for asking the question also changed. According to the Regulation, "Governmental Hour is conducted at the end of each plenary month, on last Friday from 16:00 until 19:00".[182] According to the amendment, 7-day term for sending the questions was increased up to 11 days on written and up to 14 days on oral questions.[183] Additionally, procedure of hour of questions under the previous Regulation was completely included in the Governmental Hour. Ten-person group or faction of the Parliament became authorized to ask a question to the entity accountable before the Parliament as well as to the Government of Georgia and members of the cabinet. The above mentioned officials had an obligation to respond to such questions on last Friday of each plenary month, during the Governmental Hour.[184] Two types of questions were envisaged: written and oral. Written response to the question was presented at the plenary session of the

177 Ibid, article 145.

178 Ibid.

179 Ibid, article 145, paragraph 2.

180 Ibid, articles 144-147.

181 Ibid, article 146.

182 Regulation of the Parliament of Georgia, edition dated 29 December 2016, article 126, paragraph 2.

183 Ibid, edition, article 212, paragraph 1.

184 Regulation of the Parliament of Georgia, edition dated 29 December 2016, article 212, paragraph 2.

Parliament. Addressee of the question was authorized to avoid answering the question only in case when required information included state or military secret.[185]

Legislation envisaged discussion on the questions during the Governmental Hour. Besides, speech of the member of the Government at the plenary session was also discussed in the format of Governmental Hour. Regulation acting for that period, envisaged possibility to create special group in order to make a decision on the matters discussed at the Governmental Hour. As a result, the Parliament was entitled to put the issue of responsibility of certain official before the Prime Minister. This did not prevent the Prime Minister from deciding the issue of responsibility at his discretion.[186]

7.3. Acting Legislation and Practical Implementation

According to the acting legislation, the list of people authorized to ask questions and addressees as well as time and form of questioning remains unchanged. A ten-person group and a faction are authorized to ask questions no later than 14 days in advance of the Governmental Hour. As regards written question, it shall be presented ten days in prior. Question, which is not answered in determined period, is automatically put before the Governmental Hour and the addressee is responsible to answer such question.[187] After hearing, control and oversight of the issues related to their competence, committees of the Parliament, investigative and other temporary commissions adopt recommendations regarding violation of Constitution and law and such recommendation is sent to the Government and other executive entities. Parliament shall be informed of such review and adopted measures in pre-determined period.[188]

Firstly, it has to be noted that the current edition of the Constitution puts members of the Parliament in an unequal position. According to the edition of the Constitution dated 1995, a ten-person group was authorized to ask a question. Such provision was based on the requirement that ten members of the Parliament were necessary to create a faction.[189] According to the current edition of the Constitution, the number of parliamentarians for creation of a faction is reduced to six,[190] but requirement for a ten-person group remains with regard to asking the question. Current edition puts a ten-member group in an unequal position compared to the faction and respective amendment is necessary.

185 Ibid, article 212.

186 Regulation of the Parliament of Georgia, editions dated 25 March 2004 and 28 June 2012, article 128, paragraph 2, article 211, paragraph 2, article 212, paragraph 1, 5 and 6, article 214.

187 Regulation of the Parliament of Georgia, edition dated 24 June 2016, article 221-225.

188 Ibid, article 226.

189 Constitution of Georgia, edition dated 24 August 1995, article 58.

190 Constitution of Georgia, edition dated 4 October 2013, article 58.

Based on the Regulation, "Governmental Hour, as a rule, is conducted on last Friday of each plenary month from 16:00 until 19:00".[191] Words "as a rule" indicate that the Governmental Hour shall be conducted at the specified time period, if there is no other exceptional situation. In certain circumstances, Governmental Hour may be conducted on a different day and time. However, this provision does not include possibility of refusal to conduct Governmental Hour for one, two or several months. Procedure of Governmental Hour is depended upon questions asked by the Members of the Parliament. Thus, if authorized persons fail to ask questions, Governmental Hour shall not be conducted. Thus, existing provision of the Regulation means that it only works when questions exist and in certain cases based on the respective reason, day and time of Governmental Hour may be changed. However, this does not allow the change of regularity and periodicity of such procedure. Additionally, if the Parliament considers that postponement of discussion until last Friday of plenary month is impermissible, it shall be authorized to schedule Governmental Hour on other day of the plenary session. However, in case of existence of questions, this shall not preclude conduct of planned Governmental Hour.

The practice of Georgian Parliament with regard to Governmental Hour demonstrates unserious approach of the Parliament to such procedure. Based on the conducted interviews we concluded, that Parliamentarians did not ask any question in the 8th Parliament of Georgia (thus the procedure of Governmental Hour was not used) because they preferred the mechanism of invitation of the member of the Government at the hearing of the faction.[192] During the process of Governmental Hour when many questions are asked, the Minister can easily avoid detailed answers on unnecessary questions. Failure to attend the hearing of minority upon request or refusal to answer a question gives minority party easier ground to critic the official[193]. As for the majority party, their unwillingness to ask questions is related to political correctness. They prefer to ask questions on the hearing of faction, meeting with the majority, in the format of political council or even informally in order to minimize the risk of attack on the minister by opposition party. These circumstances prevent possibility of Governmental Hour. Despite the abovementioned, it is recommended that Parliamentarians exercise their authority actively and create grounds for Governmental Hour, which ensures increased accountability of executive body.

Based on the obtained information, Governmental Hour was conducted 11 times in 2005-2012,[194] twice in 2005, once in 2006 and twice in 2009. Governmental Hour was not conducted in 8th Parliament of Georgia.[195]

191 Regulation of the Parliament of Georgia, edition dated 29 December 2016, article 126, paragraph 2.

192 Minutes of the meeting with Khatuna Gogorishvili dated 15 November 2016.

193 Minutes of the meeting with Davit Darchiashvili dated 14 November 2016; Minutes of the meeting with Pavle Kublashvili dated 15 November 2016.

194 On 27 October 2005; On 10 November 2005; On 8 February 2006; On 29 June 2007; On 24 September 2009; On 22 October 2008; On 28 October 2011; On 24 November 2011; On 29 March 2012; on 26 April 2012.

195 See: Evaluation of the parliament of Georgia dated 2015, Transparency International – Georgia, Tbilisi, 2016, available at: http://www.transparency.ge/node/6107, updated on: 20.07.2016.

In 2005-2012, during the procedure of Governmental Hour several questions were asked and discussed regarding structure of the Ministry of Internal Affairs, separation of the security service,[196] crime under high interest of society, progress of fight with corruption and investigation of terrorist acts.[197] In most cases, the Minister presented statistical information to prove his information.[198]

It is interesting, that on Governmental Hour dated 29 March 2012 the Minister of Internal Affairs was invited but because of his absence, questions were answered by deputy minister.[199] According to the Regulation of the Parliament, question shall be signed by respective official.[200] It is vague whether another official, such as deputy minister is allowed to answer the question. The research group considers that transfer of question to deputy is a negative practice. Member of the Government and not the deputy is the addressee of the question. Thus, if legislation determines that only direct addressee is entitled to sign the question, response shall also be given by the same person at the Governmental Hour.[201] Because of this, the Regulation is flexible and notes that the Governmental Hour will "as a rule" be "necessarily" conducted at certain day and time.

According to the recent edition of the Constitution, answer on the question might become subject of Parliamentary discussion.[202] It is true that such procedure was not implemented in practice, but wording of the provision may be interpreted as allowing transformation of Governmental Hour into interpellation mechanism (even though the legislation does not itself use the word "interpellation") in case the officials fail to satisfy the Parliament with their answers. It must be noted that the interpellation mechanism is used by several other parliamentary institutions.

Unlike Georgia, in European states interpellation exists as an independent procedure. For instance, in Bulgaria interpellation request is submitted by the members to the central office of the parliament. Such request is presented at the plenary session and is sent to the Government without discussion. Government prepares written response and transfers it to the parliament during the plenary session which discusses interpellation. During such discussion, parliament

196 Governmental Hour of the Parliament of Georgia dated 29 March 2012.

197 Governmental Hour of the Parliament of Georgia dated 2005, 27 February 2006 and 2012.

198 Governmental Hour of the Parliament of Georgia dated 10 November 2005, 28 February 2006, 27 December 2006 and 26 April 2012.

199 Governmental Hour of the Parliament of Georgia dated 29 March 2012.

200 Regulation of the Parliament of Georgia, dated 24 June 2016, article 221, paragraph 1.

201 Attendance of the ministers is considered as obligation by the following experts: Lika Sajaia (minute of the meeting dated 8 November 2016); Pavle Kublashvili (minute of the meeting dated 15 November 2016); Giorgi Kakhiani (minute of the meeting dated 29 November 2016); Levan Alapishvili (minute of the meeting dated 4 November 2016).

202 Constitution of Georgia, edition dated 4 October 2013, article 59, paragraph 2.

may determine specific committee, which will initiate the procedure of distrust, which might result in partial or full removal of the cabinet.[203] Interpellation is commenced in Lithuania in order for the ministers to explain their decisions. During discussion of the matter, persons subject to interpellation also address the parliament. Decision is made by majority of Sejm. In case response of the minister is considered insufficient, Sejm will remove such member of the government.[204] In Lithuania, 1/5 of the members of the parliament are entitled to request procedure of interpellation at the hearing,[205] in order for the minister to explain their decisions. Member of the government is obliged to present written response before the speaker of Sejm within two weeks from the date of receipt of interpellation mechanism. Sejm conducts debates over the issue five working days within receipt of the response.[206] Different from Bulgaria and Lithuania, interpellation can continue as a pending procedure in Croatia. Specifically, in Croatia interpellation may be conducted even if the parliament is not satisfied with the response of the government or member of the government.[207]

The given examples represent a good practice of presenting interpellation mechanism in legislation, which ought to be shared in Georgian practice. Thus, legislation must clearly give the interpellation mechanism.

203 Ibid, the Regulation of the Parliament of Bulgaria, Section 22.

204 Constitution of the Republic of Lithuania, edition dated 1 May 2009, article 61.

205 Ibid.

206 Guidiline of the Sejm of the Republic of Lithuania, article 220.

207 Ibid, article 145.

8

Invitation of the Members of the Government on Plenary Session

- In the situation where the Governmental Hour exists, it is senseless to determine possibility of invitation of the member of the Government on the plenary session.

The Constitution of Georgia[208] and the Regulation of the Parliament envisages mechanism of invitation of the member of the Government on the plenary session. Upon request of the committee or faction, based on the decision of the majority of attending members but not less than 1/5 of the Parliamentarians, member of the Government might be invited at the plenary session. Address of the Government official shall be carried out in accordance with the procedure of Governmental Hour.[209] Thus, mechanism of invitation of the member of the Government by its nature represents extraordinary convocation of Governmental Hour. In the situation where the legislation envisages possibility of extraordinary Governmental Hour as described above, it is senseless to determine possibility of invitation of the member of the Government on the plenary session.

When the rule of dependence of the Governmental Hour on the questions of the members of the Parliament will be changed, the Parliament will have a possibility to question minister in the format of Governmental Hour. Thus, there will be no need to have a separate mechanism for invitation at the plenary session.

208 The Constitution of Georgia, edition dated October 4, 2013, article 60, paragraph 4.

209 Regulation of the Parliament of Georgia, edition dated 29 December 2016, article 206, paragraph 1 and 2.

9

Trust Group

- Internal Affairs and Defense Ministries have an obligation to present information to the Trust Group prior to secret procurement in the amount as defined by law. Different from the abovementioned institutions, such obligation is not imposed on State Security Service, Intelligence Service of Georgia and State Council of Security and Crisis Management;
- Mandatory support of the majority on the request of convocation of the hearing by the Trust Group endangers efficiency of work of the Trust Group.

Approval of annual budget and its control represents one of five competences of the Parliament. Based on the nature of subjects of monitoring, financial information about such entities is confidential. Thus, mechanism of financial control of the above entities by citizens and broad circle is restricted. This creates risks of unreasonable usage of finances.[210] Thus, there is a need of financial control of such institutions through access to confidential information, which shall ensure prevention of such risks. Additionally, financial control of the programs of state services gives controllers the idea of works carried out by such services; Furthermore, detection of illegal activities of such entities is also possible trough such financial control (hidden funding of political parties; unreasonable spending on certain events, etc.).[211] Thus, Trust Group ensures confidentiality of the work carried out by state services through granting authority of financial oversight to a limited number of Parliamentarians.

9.1. Establishment of the Trust Group in Georgia

Trust Group as a mechanism of parliamentary oversight exists since 1998, when the law of Georgia on Trust Group was adopted. The law established that the Trust Group was compiled of the members of the Committee of Defense and Security. It was determined that the Trust

210 Lembovska M., Comparative analysis of regional practices for parliamentary financial oversight of intelligence services, 2013, see: http://www.analyticamk.org/images/stories/files/report/Financial_oversight_english.pdf updated on: 25.11.2016.

211 Ibid.

Group would have three members "for the purpose of control of the budget of special programs and secret work of the executive body of Georgia".[212] One member would be head of the Committee of Defense and Security, another would be a representative of the majority and third one would represent opposition.[213]

Entities of executive body carrying out special programs and secret work were obliged to present report on current and past activities at least once a year.[214] Additionally, the Trust Group was authorized to request material necessary for understating of a certain topic at its initiative.[215]

9.2. Rule of Compilation of the Trust Group

After 1998, based on the amendment dated 2002, quantity of the member of the Trust Group was increased to five.[216] In 2014, the rule of compiling Trust Group also changed.[217] According to the amended rule, one of the members of the Trust Group is the head of the Committee of Defense and Security, another member is member of parliamentary majority and one is the member of the parliamentary minority, third member is a member of the Parliament elected as a majoritarian, having gained more votes of other majoritarians.

Another important amendment was made to the rule of compiling the Trust Group in January 2014. The Parliament adopted initiative of the Committee of Defense and Security. Based on this initiative, Parliament shall not approve the Trust Group, but it shall accept the members of the Trust Group after nomination. Thus, according to the amendment dated 2014, the Parliament of Georgia accepts any composition of the Trust Group and such decision is approved with the minute.[218] This amendment simplified the procedure of electing the members of the Trust Group and eliminated instances, when Parliament does not support presented candidate and procrastinates forming of the Trust Group.

212 The law of Georgia on Trust Group, edition dated 1998, article 1.

213 Ibid, article 2.

214 Ibid, article 6.

215 Ibid.

216 The law of Georgia on Trust Group, edition dated 2002, article 2.

217 Ibid, edition dated 2014, Feb 6, article 2.

218 The law of Georgia on Trust Group, edition dated 6 February 2014, article 3, paragraph 4.

9.3. Hearings and Work of the Trust Group

Besides financial control, the Trust Group has other authorities: It has the right to request information; It is also authorized to request disclosure of secret information if the Group considers that the executive body violates the law of Georgia;[219] Additionally, the Trust Group is entitled to request creation of temporary investigative committee, in case the Group considers that the executive body abuses its powers or endangers state security.[220]

Requested information confirms that accountable persons present information to the Trust Group in a timely manner. The Ministry of Defense, the Ministry of Internal Affairs, the Special State Defense Service, Georgian Intelligence Service and State Audit Service submitted information to the Trust Group.[221]

Furthermore, members of the Trust Group are entitled to invite accountable officials to the hearing.[222] Based on this procedure, the Trust Group invited the Minister of Defense twice (Mindia Janelidze and Tinatin Khidasheli), the head of the Special State Defense Service, General Auditor of State Audit Service, the Chief of General Staff of the Ministry of Defense and representatives of other institutions.[223]

Hearings of the Trust Group are conducted twice a year.[224] Information acquired from the Parliament proves that hearings of Trust Group are convened routinely. Two hearings were held in 2014 (with four members attending) and 2015.[225] In 2013 the Trust Group did not assemble because it was not compiled. It is important that every mechanism of parliamentary oversight of the executive body is exercised with active involvement of every member. This is particularly important with respect to the Trust Group, the nature of which is especially important for successful exercise of parliamentary oversight (access to state secret, financial control of security sector). Thus, the hearings of the Trust Group shall be conducted not only regularly but also extraordinarily as necessary. Even though each member of the Trust Group is entitled to request extraordinary hearing, such request needs approval of the majority.[226] Such requirement creates monopoly with regard to convocation of the hearing and possibility

219 Group address the Prime Minister of Georgia with a letter regarding request of disclosure of secret information. See: The law of Georgia on Trust Group, edition dated 23.12.2015, article 8.

220 The law of Georgia on Trust Group, edition dated 23.12.2015, article 9.

221 Public information was requested from the Parliament, N 7502 21/06/2016.

222 The law of Georgia on Trust Group, edition dated 23.12.2015, article 10, paragraph 3 and 4.

223 Public information was requested from the Parliament, N 7502 21/06/2016.

224 The law of Georgia on Trust Group, edition dated 23.12.2015, article 10, paragraph 1.

225 Parliament only provided information regarding hearings conducted in 2014-2015; Meeting of the Trust Group was conducted twice in 2014, on 19 November and 3 December; In 2015 such meeting was conducted twice, on 8 April and 17 July; Public information was requested from the Parliament, N 7502 21/06/2016.

226 The law of Georgia on Trust Group, edition dated 23.12.2015, article 10, paragraph 1.

not to conduct the hearing despite reasonable doubts of minority member. To the contrary, in Slovakia any member is entitled to request convocation of hearing without approval.[227] Such practice ensures active participation of Trust Group. Thus, it is recommended that hearing of the Trust Group in Georgia is convened upon request of the member without any approval from majority.[228] On contrary, it was also noted that such regulation may cause endless sessions and unreasonable overloading of the working process.

9.4. Preliminary Submission of the Information regarding State Procurement to the Trust Group

Internal Affairs and Defense Ministries have an obligation to present information to the Trust Group prior to secret procurement in the amount as defined by law.[229] Purpose of preliminary submission is prior study of questionable factual circumstances and respective response (request of additional information, initiation of creation of investigative committee, etc.). Thus, preliminary submission of the information is a preventive mechanism for elimination of doubtful transaction.

In 2015, after separation of state security service from the Ministry of Internal Affairs, there was a need of compliance of the law on Trust Group. Unlike the Ministry of Internal Affairs, the obligation to submit information in prior is not envisaged for state security and intelligence services, as well as Council of Security and Crisis Management. Since the abovementioned institutions represent a part of executive Government, the Trust Group shall also control its budgetary and secret activities. It shall also be entitled to receive preliminary information about state procurement in order to avoid risks of abuse of budgetary funds. It has to be noted, that the legislation shall adequately assess threshold of the amount with respect to such entities. Thus, alike the Ministry of Internal Affairs and the Ministry of Defense, it is necessary to impose preliminary control on the procurement conducted by the State Security Service, Georgian Intelligence Service and the Council of Security and Crisis Management.

227 The Act on the Slovak Information Service, 1993, January 21, § 6, see: http://www.sis.gov.sk/about-us/zakon-o-sis.html, updated on: 08.01.2017.

228 This position was shared by expert Levan Alapishvili, minute of the meeting dated 4 November 2016.

229 In case value of the good or service exceeds 2 000 000 (two million) GEL, or value of construction works exceeds 4 000 000 (four million) GEL; The law of Georgia on Trust Group, article 6, paragraph 3 and 4.

10

Committee Oversight

- Defense and Security Committee is mostly oriented on legislative activities, evaluation and assessment of draft laws instead of exercising oversight authority;
- Defense and Security Committee has extensive mandate and controls several bodies simultaneously. This complicates activities of the abovementioned Committee. Legislation does not allow creation of specialized committee or subcommittee. Existence of such committees would make representative body more flexible and concentrated;
- In the majority of reports issued in parallel with approval of the Government by the Committee of Defense and Security, instructions with regard to improvement of Governmental program are very rare.

System of parliamentary committees is depended upon traditions and history of the parliament of the state. As a rule, parliaments establish permanent committees, which control one or more state entities. In certain circumstances, several committees may control one state entity.[230] Since, the committee assesses the issue on different grounds, the work carried out by parliamentary committee gives the parliament an opportunity to make "an informed decision".[231]

Committees have a special role in effective parliamentary oversight of the Ministry of Internal Affairs, Intelligence and Security Services. System and work of such institutions means analysis of information, which carries high importance for the state. This determines special nature of the sphere. Since control of intelligence service shall be effective and resources shall be shared in a relevant manner, it is important for the committee to have special knowledge and expertise. For this purpose, committee shall have respective financial resources and qualified personnel, which may be considered a problem in Georgia.

230 Yamamoto H.,Tools for Parliamentary Oversight, A Comparative Study of 88 National Parliaments, Inter-Parliamentary Union, 2007, 16.

231 Ibid.

10.1. Scope of Committee Oversight

According to the Constitution of Georgia, one of the main competences of the committee is oversight of the Government and accountable entities.[232]

Within the scope of oversight competence, the law of Georgia envisages the right of the committee, commission and sub-commission to invite the member of the Government. Rule existing since 1995 until today obliges all members of the Government to attend committee and commission hearing upon request. In 1997-2004, sub-committee also exercised such right.[233]

Furthermore, upon hearing, control and evaluation of the information, committees adopt recommendations regarding violation of the Constitution and laws of Georgia and such recommendations are sent to the Government and other entities of the executive body. Results of assessment of such recommendations or adopted measures shall be reported to the committee no later than one month or in a determined time.[234]

10.2. Work of the Committee of Defense and Security

According to the statute of the Committee of Defense and Security it does not only prepare legislative issues but also carries out parliamentary oversight of accountable entities[235] and reports to the Parliament of Georgia, if necessary.[236]

Report of the committee shall include specific assessments and responsive actions. Committee has an obligation to present the report to the bureau of the Parliament in closest session. The bureau puts the issue in the agenda of the closest plenary session of the Parliament. The Parliament discusses and assesses the report and makes a respective decision.[237] The committee also discusses relevant issues, explanations of the members of the Government and other officials, information on assessment and other results.[238] Members of the Government and officials accountable before the Parliament are obliged to present respective documents, reports and other materials upon request

232 Constitution of Georgia, edition dated 4 October 2013, article 56, paragraph 1.

233 It is noted in the Regulation that based on the competence of the committee, sub-committee may be created with minimum of three members. Sub-committee adopts reports and references, which is presented to the committee. Sub-committee is authorized to put hits issue in the agenda. See: Decree of the Parliament of Georgia on the Regulation of the Parliament of Georgia, edition dated 17 October 1997 and 17 February 2004, article 70 and 27.

234 Regulation of the Parliament of Georgia dated 2016, June 26, article 226.

235 Guideline of the Committee of Defence and Security of the Parliament of Georgia, article 1, paragraph 4, current edition 2012.

236 Ibid, article 2, paragraph 5.

237 Ibid, article 5, paragraph 11.

238 Ibid, article 5, paragraph 1.

of the committee in a determined time.[239] The Committee of Defense and Security is also responsible for responding to the applications and appeals submitted to the committee.

According to the head of the committee, he has a routine contact with the bodies under the mandate of the committee, arranges meetings and gets acquainted with the situation on location, but no one keeps a record of it. However, the research group considers that committee oversight is carried out restrictively. The above menioned shall be assumed due to misuse of oversight authorities by committees and commissions. From 2004 until today, parliamentary committees have not delivered negative report on the composition of the Government or content of the Governmental Program and they have never discussed the issue of impeachment of certain member of the Government.[240] Besides, committees and commissions have not used their authority to invite the Minister of Internal Affairs at the Parliament since 2004.[241]

With respect to the communication between Georgian Intelligence Service and the committee,[242] based on disproportion of data of last three years we can assume that this issue is not interesting in recent period.

The arsenal of competences of the Committee of Defense and Security is increased towards people who are directly elected or approved by the Parliament. The same applies to approval of the Government. Committee is provided with the information regarding the nominee, which gives committee a possibility to assess competences of the candidate (information on work and professional experience).[243] Such information encourages decision which is professional and is based on the state interest. This is an important tool for development and strengthening of civil society. For instance, the Committee of Defense and Security was involved in the process of appointment of the head of the State Security Service. On 22 July 2015, the committee discussed and approved appointment of the head of the State Security Service, by a secret ballot.[244]

As a result of the research, it is clear that in the majority of reports issued in parallel with approval of the Government by certain committee, instructions with regard to improvement of Governmental Program are very rare.[245] It would be better if conclusions of the committees were critical and included recommendations alongside approval of the Government and Governmental Program.

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239 Ibid, article 5, paragraph 6.

240 Assumption is based on the information provided by the Parliament of Georgia.

241 Assumption is based on the information provided by the Parliament of Georgia.

242 13 letters were received in 2014; 5 letters were received in 2015-2016. Information provided by the Parliament of Georgia, letter No. 10553 (05/10/2016), paragraph 2.

243 Guideline of the Committee of Defence and Security of the Parliament of Georgia, article 5, paragraph 8.

244 Conclusion regarding appointment of Vakhtang Gomelauri as the head of the Security Service dated 22 July 2015.

245 Letter of the Committee on Human Rights and Civil Integration No. 14032/4-2 (03/09/2007).

Thus, work of the committee makes it clear that the Defense and Security Committee is mostly oriented on norm creating activities, evaluation and assessment of draft laws instead of exercise of oversight authority.

10.3. Specialized Committees and Sub-Committees

The Regulation of the Parliament existing until 2004 allowed creation of sub-committee under the committee, with three members. Such sub-committee was entitled to adopt conclusions and references, which was later presented to the committee hearing. However, Regulation of the Parliament after 2004 does not envisage such possibility.

In a number of the member states of the Council of Europe, specialized parliamentary committees overseeing security services are established for effective oversight (Italy, Germany, Poland).[246] However, in some states (Bosnia and Herzegovina and Georgia) supervision is carried out by committees of broad mandate, such as the committee of defense and internal affairs.[247]

The Commissioner of Human Rights of the Council of Europe notes in the report dated 2015, that throughout the Council of Europe area there is a trend towards vesting parliamentary oversight of security services in a single committee (in most cases, specialized committee).[248] As an example, the Commissioner emphasizes the example of Romania and Slovakia. In Romania, parliament has separate oversight committees for its internal security service and foreign intelligence service, as well as a defense committee whose mandate includes some aspects of both services' work.[249] Thus, Georgia belongs to a limited number of countries, where activities of security service are subject to oversight of a committee with a general mandate. This model creates a risk of ineffective control because oversight of police, Ministry of Defense, Security Service and Intelligence Service is especially complicated due to the scope and variety of the sphere of control. Because of the above mentioned, part of European countries determine the possibility of creation of sub-committees[250] and special committees. In case intelligence system includes different entities and departments carrying out certain work, the need for sub-committees or special committees is especially increased.[251] It is clear that in Georgia

246 Council of Europe Commissioner for Human Rights, Democratic and effective oversight of national security services, 42; available at: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680487770, updated on: 13.04.2016.

247 Ibid.

248 Ibid.

249 Ibid.

250 Guideline of Sejm of the Republic of Lithuania, article 25, paragraph 3.

251 Born H., Leigh I., mentioned work, 90.

intelligence powers are vested in different entities[252] and the above recommendation becomes even more relevant.

Regulations of the parliament of the member states of the European Union envisage possibility of creation of sub-committees and ad hoc committees. For example, in Lithuania and Croatia sub-committee, different from the committee, is created for review of specific issues. According to the regulation of the parliament of Croatia, sub-committee might be established for the purpose of discussion of individual matters, legislative initiatives and report. Such sub-committee functions within the scope of authorities granted to the committee and represents part of the latter without any independent rights and obligations.[253] In Lithuania, committees may establish sub-committees for effective exercise of their obligations. Sub-committee may have maximum number of five members. The committee creates sub-committee but Sejm approves decision of establishment. Committee approves guideline of sub-committee. Number of heads of sub-committee is determined in accordance with the representation of political groups in Sejm.[254]

In parallel with sub-committee, alike Croatia, special oversight committee of security service is established in Slovakia. Such committee is convened once in every quarter and it supervises compliance of security service with the legislation; it also reviews costs and annual budget of the service. Additionally, it reviews documents, complaints, reports and suggestions.[255]

Wide mandate of the Committee of Defense and Security in Georgia impedes exercising effective control. This undermines effective control of the Security Service. In most cases, members of the committee are not involved in the work of the committee[256] and in the scope of the authorities of the committee, work is mostly shared between the head and deputy heads of the committee.[257] Part of the experts did not support the idea of sub-committees and special committees and desired extensions of the personnel of the Committee of Defense and Security.[258] Also, activities of sub-committees existing before 2004 were also criticized.[259] However, legislative regulation as well as work of sub-committees before 2004 causes such presumptions. Model of specialized sub-committees existing in other countries is completely different from

252 See details in subparagraph 14.1

253 Regulation of the Parliament of Croatia, edition dated 6 July 2010, article 53.

254 Guideline of Sejm of the Republic of Lithuania, article 47.

255 Description of functions of the special committee supervising nationals security entity in Slovakia, see: http://www.nrsr.sk/web/Default.aspx?sid=vybory/vybor&ID=149 updated on: 11.07.2016.

256 Interview with Irakli Sesiashvili dated 8 December 2016; Interview with Irina Imerlishvili dated 8 November 2016.

257 Interview with Irakli Sesiashvili dated 8 December 2016; Interview with Vakhtang Khmaladze dated December 2016.

258 Interview with Irakli Sesiashvili dated 8 December 2016; Interview with Irina Imerlishvili dated 8 November 2016; Interview with Levan Alapishvili dated 4 December 2016.

259 Interview with Irakli Sesiashvili dated 8 December 2016.

Georgian model. Based on the example of Croatia and Lithuania discussed above, existence of thematic and permanent sub-committee or specialized committee, which will directly oversee activities of Security Service, Ministry of Internal Affairs and Intelligence Service, within the scope of the Committee of Defense and Security, will increase effective oversight of such services. Allotment of members of the Parliament in sub-committees and specialized committees will personify Parliamentarians responsible for specific topics. Routine concentration of the group of members of the Parliament on one specific issue will promote specialization and will increase professionalism. Thus, based on the examples of abovementioned countries, existence of specialized committees within the Parliament or establishment of specialized permanent sub-committees will increase effectiveness of oversight of Security Service, Ministry of Internal Affairs and Intelligence Service, the Council of Security and Crisis Management.[260]

260 Creation of specialized committees or sub-committees is considered as a positive change by the following experts: Levan Bodzashvili (interview dated 2 November 2016); representatives of Human Rights Education and Monitoring Centre (interview dated 7 November 2016).

11

Investigative and other Temporary Commissions

- Investigative and other temporary commissions only have absolute authority to request public information and invite officials; other authorities are subject of permission/approval of certain persons and this creates additional barriers for efficiency of the commission.
- Quorum and procedural complication related to the creation of investigative commission endangers efficiency of parliamentary oversight mechanisms. Due to the mentioned, investigative committees were not created at all or were established as a mere formality.

Investigative commission is one of the major mechanisms for effective parliamentary oversight of the activities of the Government.[261] According to the opinion of the Venice Commission, actors in the Parliament shall easily achieve consensus on the necessity of control of executive body but mostly, controversy happens not between executive and legislative branches, but between opposition and majority (parties).[262] Thus, in light of parliamentary oversight, participation of opposition and minority party is essential because their involvement is a guarantee for the principle of separation of powers.[263] In this context, the legislature shall ensure existence of effective pre-conditions for creation of investigative committees.

11.1. Temporary Investigative Commission

According to the first edition of the Constitution of Georgia, investigative committees were created in accordance with the Constitution and the Regulation of the Parliament upon request of ¼ of the members of the Parliament.[264] The head of the Parliament, committee, faction or ¼ of the members of the Parliament were entitled to request creation of investigative com-

261 European Commission for Democracy Through Law, Report on the Role of the Opposition in a Democratic Parliament, CDL-AD(2010)025, Venice, 2010, 15-16 October, 25.

262 Ibid.

263 Ibid, 24.

264 Constitution of Georgia, edition dated 4 October 2013, article 56, part 2.

mittee.[265] Parliament casted a ballot regarding reasonability of the issue and decision regarding creation of the commission was made by the decree upon approval of the majority of the members.[266] After amendments of 1998, the Trust Group was entitled with the authority to request creation of the commission.[267]

The Parliament adopted the Law on Temporary Investigation Commission in 1996. According to the law, commission was created for detection of violation of the laws of Georgia by state officials as well as for effective responsive measures to such violations.[268] Investigative or any other temporary commission of the Parliament was entitled to listen to the information and explanation submitted by members of the Government. Commission adopted decisions, recommendations and reports with regard to the above matters and presented such documents to the bureau of the Parliament or the hearing.[269]

Term of the commission was not restricted by the Regulation of the Parliament until 1998. Commission was created with the term determined by the Parliament.[270] Committee was compiled in accordance with the proportion of the members of the Parliament in and outside of the factions.[271] Commission was entitled to request information and upon approval of the General Prosecutor, any materials related to the criminal case under investigation or preliminary investigation or any other case where investigation was not commenced.[272]

Commission was also entitled to request explanation from any person, request preclusion of illegality before any state entity or state official who was responsible for prevention of such violation. Also, based on the scope of breach of law, commission was also entitled to request commencement of criminal, administrative or disciplinary proceedings before any state entity or state official regarding illegal ownership of state property or compensation of damages to the state.[273] Commission was also entitled to address the Parliament with a sentence to gather signature for the impeachment of state officials in accordance with the Constitution of Georgia.[274]

According to the Regulation of Georgia dated 2004, the list of authorized initiators for creation of investigative commission have not changed. The Parliament casted vote regarding estab-

265 Regulation of the Parliament of Georgia, edition dated 1997, article 33.

266 Ibid, article 2.

267 The Law of Georgia on Temporary Investigative Commission of the Parliament, edition dated 4 March 1998, article 2.

268 Ibid, article 1.

269 Ibid, articles 32-35.

270 Ibid, article 4.

271 Ibid, article 6.

272 Ibid, article 24.

273 Ibid, article 27.

274 Ibid, article 28.

lishment of commission on a plenary session and decision was made by majority but with the minimum number of 1/3 of the members of the Parliament. In case creation of commission was considered to be reasonable, respective draft was prepared.[275] Majority of the Parliament made decision regarding creation of investigative commission.[276]

On 2004, additional grounds for establishment of commission were added to the Regulation of the Parliament. Commission could be created for the following reasons:

- For illegal actions of state officials, which endangered state security, sovereignty, territorial integrity, political, economical or other interests;
- For unreasonable spending of state and local budget, which were essentially important for state and society.

There were periodic restrictions with regard to creation of investigative committee. Specifically, investigative committee could not be created within last three months of the term of the Parliament.[277] Commission could only be created for up to three months, with three possibilities of extension.[278] Legislation also allowed preliminary termination of the term of commission. Majority of the Parliament, which made decision regarding establishment, was also authorized to change composition of commission,[279]

According to the Regulation of the Parliament dated 2004, it was mandatory to attend the hearing or submit materials relevant for the matter. Investigative committee drafted report, decisions, recommendations and offers with regard to the issue and submitted such documents to the bureau of the Parliament or plenary session.[280] Report of investigative committee was reviewed publicly and live broadcasting of hearing was mandatory, "except for issues, publicity of which was restricted under the law".[281]

In case investigative committee failed to draft report before expiration of the term, acquired materials and reports were transferred to the next Parliament of Georgia, which would discuss reasonability of the continuance of investigation on the matter.[282]

Constitutional reform dated 2010 amended minimum number of members of the Parliament who were entitled to initiate establishment of commission and reduced the number to 1/5 of Parliamentarians. Additionally, amendments were made to the ground of creation and the provision

275 Regulation of the Parliament of Georgia, edition dated 2004, article 55, paragraph 1.

276 Ibid, article 55, paragraph 2.

277 Ibid, article 55, paragraph 5.

278 Ibid, article 56, paragraph 2.

279 Ibid, article 55, paragraph 6.

280 Ibid, article 65, paragraph 3.

281 Ibid, article 67, paragraph 1.

282 Ibid, article 55, paragraph 4.

was drafted as follows: "information about illegal or corrupt action of state official, which endangers state security, sovereignty, territorial integrity, political, economic or other interests".[283]

According to the current law, investigative committee has broad spectrum of authorities. Specifically, it is authorized to:

- Request information;
- Invite state official on the hearing;[284]
- Review information including state secret;[285]
- Review materials on sight related the criminal case or refusal to commence investigation upon approval of the General Prosecutor.[286]

Member of commission might also be entitled to enter any penitentiary institution in Georgia without any special permission[287] upon order of the head of the Parliament.[288]

It has to be noted, that investigative commission only has absolute authority to request public information and invite officials. Other authorities are subject of permission/approval of certain persons and this creates additional barriers for efficiency of the commission. Thus, existing reality shall be changed and exercise of above authorities shall not be subject of permission/approval of other officials.

11.2. Other Temporary Commissions

Based on the Regulation of the Parliament of Georgia, establishment of other commission was also possible for review of issues, which required detailed investigation and preparation of report. Other commission could be drawn up for up to one year term.

Regulation of the Parliament dated 2004-2012 envisages following grounds for establishment of commission:

- Issue of territorial integrity;
- Review of petition or claim, if the matter is related to important state problem;
- Examination of the work of the State Audit Service.[289]

283 Regulation of the Parliament of Georgia, edition dated 29 December 2016, article 55, paragraph 5.

284 Ibid, article 64, paragraph 3.

285 Ibid, article 64 paragraph 5.

286 Ibid, article 64, paragraph 3.

287 Ibid.

288 Ibid, article 18, paragraph 5.

289 Regulation of the Parliament of Georgia, edition dated 2004, article 72, paragraph 1.

Periodic restriction existed with regard to other temporary commission, too. Specifically, it was impossible to establish temporary commission within last six months of the term of the Parliament. [290] Such commission could only be created for up to three months, except commission created with regard to the matter related to territorial integrity. It was possible to extend term of commission. Based on the Regulation, respective state entities and officials had an obligation to submit requested material and reports.[291]

Other issues were regulated by the rules of investigative commission.

11.3. Challenges of Investigative and Other Temporary Commissions

According to the provision existing from the adoption of Constitution until constitutional reform of 2010, investigative or other temporary commission was created in the Parliament based on the Constitution or Regulation of the Parliament or upon request of ¼ of the members of the Parliament.[292] According to the Constitutional provision, this requirement did not need approval of the majority. However, Regulation of the Parliament existing at that time envisaged additional barrier. Specifically, majority of the Parliament made decision regarding establishment of commission. Such provision was against the Constitution.

After Constitutional reform dated 2010, new provision was added to the supreme law of Georgia. According to the provision, decision regarding establishment of commission shall be made in accordance with the Regulation of the Parliament.[293] According to one interpretation, we can assume that Constitutional provision lists grounds for establishment of investigative or other temporary commissions and one of such grounds is the request of 1/5 of the members of the Parliament. Provision, which establishes that the decision is made in accordance with the Regulation, relates to other grounds. According to another interpretation, existing negative practice was reflected in the supreme law. This provision made parliamentary authority, which was incorrectly interpreted before, even vaguer.

Constitutional reform dated 2010 reduced the number of parliamentarians, which are authorized to request establishment of commission and such decision is now made not by ¼ but 1/5 of the members.[294]

290 Ibid, article 74, paragraph 1.

291 Ibid, article 72, paragraph 2.

292 Constitution of Georgia, edition dated 4 October 2013, article 56, paragraph 2.

293 Ibid.

294 Ibid.

In accordance with the Regulation, majority of the Parliament makes decision. This means that from the date of adoption of Constitution, commission is only tool available to the majority of the Parliament. Thus, the issue is still problematic and opposition does not have enough leverage with respect to ruling party on the one hand and with respect to Government entities on the other hand.[295] This is aggravated by possibility of the Parliament to suspend investigative or temporary commission before expiration of the term upon decision of the majority.[296] Thus, legislative regulation of the issue does not create sufficient possibility of parliamentary oversight since the establishment, suspension and composition of commission is depended upon majority. It is vivid, that usage of the mechanism of commissions as of the tool for parliamentary oversight in the hands of majority party is unrealistic in Georgia due to the following reasons: a) oversight of security system is "consuming and unattractive" to the politicians;[297] and b) in case of majority, lack of desire to exercise parliamentary investigative authorities towards their own party, is most likely added to the above issue.

Practice of establishment of temporary investigative commission proves the abovementioned. Specifically, request for creation of commission was put before the Parliament 25 times in 2004-2016. Finally, only following four commissions were created: Commission regarding violations in the sphere of energy;[298] commission regarding custom terminal "Opiza";[299] commission regarding activities of Russian Federation;[300] commission reviewing work of National Communication Commission.[301] It has to be noted that the Parliament did not approve establishment of commissions of high society interest, such as the following: commission regarding events related to Sakdrisi-Kachaghiani mining;[302] commission regarding systematic corruption in the country;[303] commission regarding specific facts related to the pressure on the court.[304]

Thus, in the reality where establishment of commission is completely depended upon good will of the majority party and especially in the context of Georgia, it is hard to achieve the main purpose of establishing the Parliament as of the effective oversight body. Thus, with respect to creation of investigative and other temporary commission, legislation shall be amended and

295 European Commission for Democracy Through Law, Final Opinion on the Draft Constitutional Law on Amendments and Changes to the Constitution of Georgia, CDL-AD(2010)028, Venice, 2010, 15-16 October, 5.

296 Regulation of the Parliament of Georgia, edition dated 29 December 2016, article 57, paragraph 7.

297 Born H., Leigh I., mentioned work, 83.

298 Decree of the Parliament of Georgia, 24 June, 2004, No. 205-rs: Even though commission itself is not directly related to the subject of this research, based on a general perspective, it is related to the concept of country's energy security. This issue is closely related to the intelligence in political and economic sector.

299 Decree of the Parliament of Georgia, 16 September, 2005.

300 Decree of the Parliament of Georgia, 24 November, 2006.

301 Decree of the Parliament of Georgia, 01 May, 2013.

302 Decree of the Parliament of Georgia, 25 December, 2014.

303 Decree of the Parliament of Georgia, 18 December, 2015.

304 Letter of the Parliament of Georgia dated 23 December 2013 No. 24475.

it shall be in compliance with democratic principles. During the meetings with the research group, certain experts agreed with the initiative regarding termination of the requirement of majority approval.[305]

The Venice Commission shares the same logic. In its report, the Venice Commission notes that the reduction of number of MPs (to one fifth instead of one fourth) required for establishing a parliamentary commission might help to strengthen the role of smaller opposition parties. The requirement of "resolution" cannot be interpreted as giving an arbitrary power to the majority in the process, which would undermine the right of the opposition. Otherwise, the change of the text would be counter-productive to the aim of improving the status of the opposition in Parliament.[306]

Besides report of the Venice Commission, which was prepared specifically for Georgia, the above mentioned is shared by international practice. Specifically, different from Georgia, establishment of investigative commission is allowed without approval of the majority in some states.[307] In Lithuania, temporary investigative commission is created upon request of one fourth of MPs.[308] In Bulgaria, one fifth of MPs are authorized to request establishment of investigative or ad hoc commissions/committees.[309] Additionally, according to the provision of the Constitution of Albania, parliament is obliged to create investigative commission in case of request of one fifth of the members.[310] The same quorum is established for the commissions to be formed in Czech Republic and Portugal[311]. In Germany, commission is created based on the request of one fifth of MPs.[312]

Thus, legislation of Georgia shall not envisage additional barriers for fulfillment of the request of one fifth of MPs regarding establishment of investigative or other temporary commission. In other words, request of initiators as determined by the laws of Georgia shall be enough and additional majority approval shall not be required for the creation of investigative commission.

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305 Interview with Levan Alapishvili (04 November, 2016); Interview with Lika Sajaia (08 November, 2016); Interview with Irina Imerlishvili (08 November, 2016); Interview with the representatives of Human Rights Education and Monitoring Centre (21 November, 2016).

306 European Commission for Democracy Through Law, Final Opinion on the Draft Constitutional Law on Amendments and Changes to the Constitution of Georgia, CDL-AD(2010)028, Venice, 2010, 15-16 October, 5, 6.

307 Yamamoto H,. Tools for Parliamentary Oversight a Comparative Study of 88 National Parliaments, Inter-Parliamentary Union, PCL Presses Centrales SA, 42; see: http://www.ipu.org/PDF/publications/oversight08-e.pdf; updated on: 5.11.2016.

308 Ibid, 13.

309 Regulation of the Parliament of Bulgaria, article 35.

310 Constitution of Albania, edition dated 31 December 2012, article 77, paragraph 2.

311 Lehmann V., Parliamentary committees of inquiry in national systems: A comparative survey of EU member states, Directorate General for Internal Policies, Policy Department C: Citizens' Rights and Constitutional Affairs, Constitutional Affairs, 8 see: http://www.europarl.europa.eu/RegData/etudes/note/join/2011/462427/IPOL-AFCO_NT(2011)462427_EN.pdf; updated on: 4.11.2016

312 Constitution of Germany, edition dated 11 July 2012, article 43, see: https://www.btg-bestellservice.de/pdf/80201000.pdf updated on: 5.11.2016.

12

Invitation of Accountable Officials to the Hearing of the Faction

- The accountability of the accountable person before the parliament to attend the faction session in case of a pertinent demand causes the fragmentation of the parliamentary life.

The Constitution of Georgia does not include obligation of accountable officials to attend faction hearing. However, such provision is present in the Regulation of the Parliament since 2005.

Current edition of the Regulation notes, that officials elected or approved by the Parliament are entitled and in case of request are obliged to attend hearing of the faction, to answer questions and to present report on their activities.[313]

It is interesting, that legislation of the countries studied for this research (Croatia, Bulgaria, Finland, Slovakia and Lithuania) does not even include possibility of voluntary attendance to the hearings of the faction.[314] Other mechanisms of parliamentary oversight, such as, governmental hour and parliamentary question /inquiry create sufficient tools of control of accountable officials. The same applies to Georgia.

Mandatory attendance to the hearings of the faction precludes discussion of the issue on plenary session or on the committee. It causes parties to act in a narrow party framework and eliminates them from parliamentary life. Thus, such provision shall be deleted and attendance on such hearings shall be in a total discretion of an accountable person.

313 Regulation of the Parliament of Georgia, edition dated 29 December 2016, article 96. Paragraph 2.

314 See: Constitution of the Republic of Finland, Standing Orders of the Croatian Parliament, The Statute of the Seimas of the Republic of Lithuania, Rules of Organisation and Procedures of the National Assembly of Bulgaria, Rules of Procedures of the National Council of the Slovak Republic.

PART TWO

Parliamentary Oversight of Specific Institutions

13

The Ministry of Internal Affairs

- The Parliament does not hold realistic powers towards specific Ministers and this reduces its oversight role.
- The motion of no-confedence includes many barriers, procedural steps, lengthy proceedings and excessive quorums, which makes the political responsibility of the government impossible to be imposed;
- Even though there were facts confirming violation of the Constitution, the issue of impeachment has not been put before the Parliament since 2004.

The Ministry of Internal Affairs as a part of the Government was subject to many changes since 1995. It has to be noted, that functions of the Ministry were significantly changed twice. Specifically, functions of security and intelligence were firstly vested into the Ministry and were later taken away from it. Structure of the Ministry was changing alongside the functions.

13.1. Institutional Place of the Ministry of Internal Affairs

13.1.1. Legislation of 1995-2004

The Constitution of Georgia dated 1995, established presidential system of governance where the President was the head of the state and executive body at the same time. He carried out his functions through executive branch. At this time, Government was a recommendatory entity to the president.[315] The Ministry of Internal Affairs was part of the Government, which was established to protect public order and fight crime.[316] From the date of creation, the Ministry had preventive and repressive authorities. It was also set up

315 Constitution of Georgia, edition dated 24 August 1995 and 1 July 2004, article 77-80.

316 Decree of the President of Georgia, regarding Guideline of the Ministry of Internal Affairs No. 672, edition dated 17 November 1997, article 1, paragraph 1.

to provide certain services.[317] The abovementioned functions still remain under the control of the Ministry,[318] however the scope of such functions changes.

The abovementioned authorities were carried out through structural entities of the Ministry. Alongside others, the Ministry included expert-criminalists office, central bureau of Interpol and special division of police. At that time, internal military was under control of the Ministry of Internal Affairs. Main aim of internal military was protection of important objects and penitentiary entities, guarding of prisoners, as well as participation in military action against sabotage-intelligence and landing forces.[319]

The Minister of Internal Affairs exercised his authorities through first deputy and other deputy ministers, who were appointed by the President.[320]

The Constitution of Georgia acting since 1995 until now, grants the Minister with the authority to make independent decisions.[321] He coordinates the work of the Ministry. The managing powers of the Minister inter alia include issuance of mandatory orders, appointment and removal of the heads of subordinated entities, determination of the structure of the Ministry.[322]

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317 Preventive authorities: protection of public order, property, rights and freedoms of citizens, road and fire security as well as protection of public security; repressive authorities: fight with crime, which means prevention, recording and investigation of crime and offences. Additionally, services of enforcement of punishment, defence police, registration of vehicles, registration of citizens and foreigners.

318 Decree of the President of Georgia regarding approval of Guideline of the Ministry of Internal Affairs, edition dated 27 December 2004, article 1, paragraph 1; Decree of the Government of Georgia regarding approval of Guideline of the Ministry of Internal Affairs, edition dated 13 December 2013, 24 September 2015 and 29 November 2016, article 4. According to the model of 2004, the functions of the Ministry include the following: preventive authorities – protection of constitutional order, state security, state sovereignty, territorial integrity, human rights, public order, road and fire security; Protection of state border and prediction of expected threats; prevention of crime and other offences; repressive authorities, such as: investigation and operative authorities, expert-criminalists activities, counter intelligence work, protection of state entities for the purpose of security, permit and registration activities. Ibid, article 2, paragraph 9. Scope of work of the Ministry has not changed in 2013; ibid, edition dated 24 September 2015, article 4. As of today, scope of work of the Ministry includes the following: preventive powers - protection of human rights and freedoms, protection of property from illegal intrusion, preventive measures for precluding crime; protection of public order and road safety; protection of participant of criminal proceedings; protection of state border; control of weapons and respective legal order; repressive authorities – fight against crime, which includes detection, investigation, detention, operative measures and services; insurance of fire safety; permit and registration activities. Decree of the Government of Georgia regarding approval of the Guideline of the Ministry of Internal Affairs, edition dated 13 December, 2013, 07 March, 2016, article 4.

319 Decree of the President of Georgia regarding approval of Guideline of the Ministry of Internal Affairs, edition dated 17 November 1997, 19 May 1999, 25 May 2001, 10 July 2002 and 5 July 2005, article 171-41.

320 Ibid, article 11.

321 Constitution of Georgia, edition dated 24 August 1995, article 81, paragraph 2.

322 Decree of the President of Georgia, regarding approval of Guideline of the Ministry of Internal Affairs, editions dated 17 November 1997, 19 May 1999, 25 May 2002, 10 July 2002 and 5 July 2005, article 14.

In 1995-2004, the Ministry was supervised by the President, which meant evaluation of legality and reasonability.[323] Scope of supervision included power of respective body to issue orders for eradication of deficiencies, suspension of act or enforcement, declaration of issued acts as void.[324] In the following years, supervising powers changed. Prime Minister and the Government were granted with the same authority.[325] Since 2013, the abovementioned competence was taken away from the President.[326]

13.1.2. Legislation of 2004-2013

In 2004-2013, structural composition and authorities of the Ministry changed alongside the Constitutional amendments. In 2004, separate Ministry of Security was liquidated and the MIA absorbed functions of the above.[327] Guideline of the Ministry of Internal Affairs acting at that time determined that the Ministry was a system of specialized, military entities carrying out executive powers.[328] A new department of Constitutional Security and Counter Intelligence was created under the Ministry. In 2004-2013, two sub-entities, Department of Border Defense and Department of State Material Reserves, were created under the Ministry. The latter aimed to save state reserves and provide respective services.[329]

Guidelines of the Ministry of Internal Affairs dated 2004-2013, did not change authorities of the Minister. Different from guidelines acting in 1995-2004, new guideline specified number of deputy ministers. The abovementioned increased powers were exercised by the Minister with the help of five deputy ministers, which were not appointed by the Minister. The Prime Minister upon respective approval of the President appointed and removed deputy ministers.[330]

13.1.3. Legislation in 2013-2015

In 2013, authorities of MIA were regulated not by decree of the President, but by new guideline approved by the Government. At this time, important changes were not applied to the author-

323 Law of Georgia regarding Structure and Activities of Executive Body, editions dated 15 April 1997 and 11 February 2004, article 5, paragraph 2.

324 Ibid, articles 43-44, article 48, article 49.

325 Law of Georgia on Structure, Authorities and Activities of the Government, edition dated 17 February 2006, article 30, 31 and 33.

326 Ibid, edition dated 2 May 2013, articles 30, 31 and 33.

327 Ibid, edition dated 24 December 2004, article 1.

328 Decree of the President of Georgia, regarding approval of Guideline of the Ministry of Internal Affairs, edition dated 27 December 2004, paragraph 1.

329 Ibid, paragraphs 17-22.

330 Ibid, paragraph 13-14.

ities of the Ministry, besides the fact that certain departments (such as Migration Department and Department of Operative Security) were added.[331] Thus, entry into fore of new provisions of the Constitution did not influence structural and functional characteristic of the Ministry.

13.1.4. Legislation since 2015 Until Today

In August 2015, the word "militarized" was deleted from definition of the Ministry. Additionally, authorities of the Minister with respect to security and intelligence sphere were also deleted because National Security Service and Intelligence Service were established separately.[332] Separation of abovementioned sphere was accompanied with suspension of respective departments, such as Operative and Technical department, Counter Intelligence Department, Anti-Corruption Agency, Agency of State Security and Counter Terrorist Center.[333]

As of today, authorities of MIA are similar to the scope of functions existing in 1995-2004.[334]

Similarly, managing powers of the Minister have not changed since 2013.[335] Managing authority is exercise through the help of deputy ministers (first deputy minister and five other deputy ministers), who are appointed and removed by the Prime Minister.[336]

13.2. Appointment of the Minister of Internal Affairs

13.2.1. Legislation of 1995-2004

The Minister of Internal Affairs is a member of the Government, thus rules regarding appointment of other Government officials shall apply. According to the legislation dated 1995-2004, the President of Georgia was responsible to present the cabinet to the Parliament within two weeks from the date of swearing-in ceremony. Before approval of Government by the Parlia-

331 Ibid, edition dated 25 May 2005, article 10.

332 With respect to this issue, please see chapter 15.

333 Decree of the Government of Georgia regarding amendments to the Decree of the Government of Georgia No. 337 regarding approval of the Guideline of the Ministry of Internal Affairs dated 13 December 2013, edition dated 30 July 2015, article 1, paragraph 1.

334 Preventive powers - protection of human rights, protection of property from illegal intrusion, preventive measures for prevention of crime; protection of public order; insurance of road safety; insurance of safety of the participants of criminal proceedings; protection of state border; control of weapons and respective legal order; repressive authorities- fight against crime, which includes detection, investigations, detention and operative authorities; services, such as fire safety, permit, licensing and registration authorities. Decree of the Government of Georgia regarding approval of the Guideline of the Ministry of Internal Affairs, editions dated 13 December 2013 and 7 March 2016, article 4.

335 Ibid, article 5.

336 Ibid, article 6.

ment, committees discussed the matter. Based on the conclusion of the committee, bureau drafted motivated decision, which was sent to the Parliament and President. Majority of full list of MPs approved each member of the Parliament individually. In case of failure of one candidacy, President was entitled to present the same or a new candidate. President finally appointed approved members of the Government.[337]

13.2.2. Legislation of 2004-2013

According to the legislation of 2004-2013, the Minister of Internal Affairs was appointed alongside other members of the Government. The President presented composition of the cabinet to the Parliament for approval. Parliamentary committees and factions discussed specific members of the Government based on their profile and competence and presented respective conclusions to the parliamentary bureau. The later reviewed presented assumptions and drafted its own position, which was later submitted to the President and the Parliament. Government was considered to be approved if majority of full list of MPs voted in favor. In case the Parliament recused any nominee, it was not possible to appoint such person in place of resigned or dismissed member of the cabinet.[338]

After approval by the Parliament, the President appointed Prime Minister, which later appointed other members of the Government, including the Minister of Internal Affairs.[339]

13.2.3. Legislation Since 2013 Until Today

After constitutional reform of 2010 (which was enacted at the end of 2013) and after separation of the President from the Government, Prime Minister became sole leader of the Government. Thus, different from 2004-2013, appointment of the Ministry of Internal Affairs became prerogative of the Prime Minister. However, it is clear that appointment of minister is subject to approval by the Parliament.

In 2013 new procedure of approval of the Government came into force. Specifically, as of today, creation of a new cabinet is connected to the parliamentary elections instead of Presidential. The President of Georgia shall nominate a candidate for Prime Minister proposed by the electoral subject having the best results in parliamentary elections. Such candidate shall select nominations for

337 Decree of the Government regarding Regulation of the Parliament of Georgia, editions dated 17 October 1997 and 17 February 2004, articles 110 and 111.

338 Regulation of the Parliament of Georgia, editions dated 25 March 2004 and 28 June 2012, article 183, paragraph 3.

339 Constitution of Georgia, edition dated 23 February 2005, article 80.

the Ministers and finally, composition of the Government and Governmental Program shall be presented to the Parliament for approval. Parliamentary committees and factions discuss composition of the Government and Governmental Program in accordance with their specialization and present their final assumption to the Bureau of the Parliament. The latter prepares its own opinion, which is presented to the President, the candidate for Prime minister and the Parliament. Parliament shall approve the Government by the majority of the full list of MPs.[340]

President appoints Prime Minister within two weeks from the date of approval by the Parliament. The approved Prime Minister appoints other members of the Government within two days.[341]

13.3. Political Responsibility of the Minister of Internal Affairs

13.3.1. Legislation of 1995-2004

In 1995-2004, the Parliament did not have any actual powers towards members of the Government. Hearing of the Government only aimed distribution of information, since the President decided matter of responsibility of the Government.[342] Guideline of the Ministry of Internal Affairs envisaged that the Minister of Internal Affairs was responsible before the President for establishment of correct policy with regard to fight against crime and offences as well as for completion of other functions under the competence of the Ministry. This means, that the Minister was politically responsible before the President.[343]

13.3.2. Legislation of 2004-2013

In 2004-2013, every member of the Government and in this case, the Minister of Internal Affairs was politically responsible before the President and the Prime Minister.[344] Parliament held two major tools with this respect: 1) political responsibility of certain ministers; and 2) motion of non-confidence.

340 Regulation of the Parliament of Georgia, edition dated 24 June 2016, article 201.

341 Constitution of Georgia, edition dated 4 October 2013, article 80.

342 According to the Constitution, President upon his/her own initiative, in accordance with the rules of Constitution, is entitled to remove the Minister of Internal Affairs, edition dated 23 February 2005, article 73, paragraph 1, subparagraph "c".

343 Decree of the President of Georgia regarding Guideline of the Ministry of Internal Affairs, editions dated 17 November 1997, 19 May 1999, 25 May 2002, 10 July 2002 and 5 July 2004, article 10.

344 Law of Georgia regarding Structure, Authorities and Activities of the Government, editions dated 11 February 2004 and 25 March 2013, articles 20 and 22.

Political responsibility of certain ministers

Parliament was authorized to put the issue of responsibility before the prime Minister with regard to any government official. The Prime Minister was not obliged to take into account the abovementioned suggestion and was entitled to refuse it based on motivated decision.[345] Thus, the Parliament hold specific measures against the Government but certain ministers, including the Minister of Internal Affairs are untouchable without approval of the President and the Prime Minister.

Motion of no-confidence

In 2004-2013, the Parliament had authority to commence the motion of no-confidence. However, the Constitution determined following complicated procedure: In case initiated motion of no-confidence is approved by majority of full list of MPs, the President has two alternatives: remove the Government or refuse decision of the Parliament. In case president refuses to share Parliament's decision and Parliament repeatedly votes for no-confidence, President is again left with two alternatives: to remove the Government or appoint extraordinary elections.

Legislation determined unconditional no-confidence of the Government, too. Specifically, in case the Parliament votes in favor of no-confidence with 3/5 of full list of MPs, President was left without any alternative and he/she was obliged to remove the Government.[346]

13.3.3. Legislation Since 2013 Until Today

The mechanism of responsibility of the Government and certain ministers before the President does not exist since 2010. However, the powers of political responsibility and motion of no-confidence remained with the Parliament at some level.

Political responsibility of certain ministers

The Minister of Internal Affairs is politically responsible before the Prime Minister, who is authorized to remove the minister from the position.[347] In case the work of the Minister of Internal Affairs is dissatisfactory, the Parliament has authority to put before the Prime Minister the issue of political responsibility of the Minister. However, the Prime Minister does not have

345 Regulation of the Parliament of Georgia, editions dated 25 March 2004 and 28 June 2012, article 215.

346 Constitution of Georgia, edition dated 23 February 2005, article 81.

347 Decree of the Government of Georgia regarding approval of Guideline of the Ministry of Internal Affairs, editions dated 13 December 2013 and 7 March 2016, article 5, paragraph 1.

an obligation to share Parliament's position. Different from legislation of 2004-2013, current edition does not oblige the Prime Minister to present motivated decision in case of refusal of the position of the Parliament.[348]

The law of European States differently regulates political responsibility of ministers. For instance, in Croatia, parliament's disapproval of the minister obliges the prime minister to present a new candidacy for the position.[349] In Estonia, decision on no-confidence of certain minister is not depended upon decision of president or prime minister.[350] Only parliament is authorized to decide political responsibility of the member of the government in Slovakia, Lithuania and Finland.[351]

In Georgia, in case activities of the Minister are dissatisfactory, political responsibility of the minister becomes fully depended upon decision of the Prime Minister. Thus, the Parliament does not have actual leverage with respect to certain members of the Government. This diminishes the role of the Parliament, as of oversight authority. Thus, it is important for Georgia to share experience of other countries and establish actual procedure for political responsibility of individual ministers.

Motion of no-confidence

Constitutional Reform dated 2010 amended procedure related to motion of no-confidence. Parliament is not only authorized to disapprove Government but it also approves its members. However, in case the Parliament commences the motion of no-confidence, Prime Minister chooses a new candidate, the President refuses nomination of a new candidate, the Parliament overcomes President's refusal with higher majority but fails to approve new composition of the Government, and the President is authorized to dismiss the Parliament.[352]

Current mechanism of no-confidence as enshrined in the Constitution of Georgia is complicated due to its high quorums, hard and lengthy procedures. Motion of no-confidence shall not be easy, because frequent change of Government might create unstable political situation. However, at the same time, establishment of over complicated procedure is unreasonable, because the Parliament as a main oversight authority needs actual leverage to carry out such function.

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348 Regulation of the Parliament of Georgia, edition dated 8 December 2015, article 208.

349 Standing Orders of the Croatian Parliament, 2013.

350 Constitution of the Republic of Estonia, Art 79, http://codices.coe.int/NXT/gateway.dll?f=templates&fn=default.htm, updated on: 08.01.2017.

351 The Constitution of Finland, Section 44, The Constitution of the Republic of Lithuania, Art.75, The Constitution of the Slovak Republic, Art.88.

352 Ibid, article 203.

According to the current rule, as a total four votes are necessary for the procedure of no-confidence. Proceedings shall be requested by 2/5 of MPs, which is inadequately high requirement. Quorums established under legislation of other countries are completely different from Georgian regulation. Constitutions of Hungary, Austria, Bulgaria, Slovakia and Estonia set out that such request shall be made by 1/5 of members. Comparably high quorum is established under the constitution of Romania, which envisages approval of ¼ of MPs. Higher quorums are not envisaged under the abovementioned constitutions.[353] Additionally, in Georgia, request of the motion of no-confidence does not mean commencement of such proceeding as it is followed by "interim ballot", which shall be approved by majority of total list of MPs (in case full list is the same as the existing list, approval of 76 MPs is necessary). In case proceeding is commenced, after certain amount of time as determined by the Constitution, the Parliament shall vote for new nomination of the Prime Minister as presented to the President. In this case, the Parliament makes decision with the same quorum which means that approval of majority of total number of MPs is required. It is interesting that commencement of no-confidence proceeding and nomination of a new candidate requires identical quorum as approval or disapproval of the Government.[354] Such experience is not shared by other European states. For instance, in Slovakia no-confidence proceedings are commenced by approval of 1/5 of MPs and final decision is made by majority of the Parliament.[355] Same rules apply in Bulgaria.[356] Ten MPs commence proceedings and majority makes decision in Slovenia.[357] Number of ballots and high quorums diminish oversight authorities of the Parliament. "Interim ballot" does not have any significance and it only establishes additional barriers. High quorums ensure over protection of the Prime Minister, which is not in compliance with existing governance system and mechanism of no-confidence.

Other than the abovementioned, motion of no-confidence includes possibility of presidential veto, which shall be overcome by the vote of 3/5 of MPs.[358]. Such high quorum puts Parliament in an uncomfortable position. Constitutions of European countries do not include possibility of involvement of the presidential veto in no-confidence proceedings. It has to be noted that such high quorum established by the Constitution of Georgia was criticized by Venice Commission in light of the report prepared for Constitutional Reform dated 2010. According to the Report, such high quorum gives too much power to the President and diminishes not only the power of the Parliament, but also the political responsibility of the Prime Minister that should

353 Kobakhidze I., Critical analysis of remarks on Constitutional amendments, 2010, 7, see: http://www.osgf.ge/files/publications/2010/Const_Final_GEO_11_pdf.pdf, updated on: 15.12.2016.

354 Constitution of Georgia, edition dated 4 October 2013, article 81.

355 The Constitution of the Slovak Republic, Art 88.

356 Constitution of the Republic of Bulgaria, Art. 89.

357 The Constitution of the Republic of Slovenia, Art 116.

358 The Constitution of Georgia, edition dated 4 Oct. 2013, article 81, paragraph 4.

be a cornerstone in the new system.[359] The existence of such quorum gives raise to the possibility to fail dissolution of the Government in case of failure of the parties in the Parliament to reach consensus with regard to presidential veto.

Number of votes, long periods between votes and involvement of Presidential veto creates possibility to prolong the motion of no-confidence up to three months. European states have an approach completely different from Georgia. Constitutions of Hungary and Romania only envisage three days from the moment of initiation until completion of the procedure. Constitutions of Germany, Estonia and Greece only set out two days.[360] The matter of time is very problematic with respect to the fact that in parliamentarian system, main goal of motion of no-confidence shall be prevention of political crisis. Differently, lengthy proceedings under current legislation may create unstable political situation.[361]

None of the Parliaments of Georgia used mechanism of no-confidence towards Government due to existing political setting.[362] Motion of no-confidence is the only political tool in Parliament's hands because it cannot decide the issue of responsibility of certain ministers. Thus, it is significant to establish sophisticated procedure for motion of non-confidence. In a situation, when abovementioned sole mechanism of oversight has so many problems, the Parliament is precluded from carrying out effective oversight. This causes inability of the Parliament to carry out its functions. New mechanisms under the Regulation of the Parliament cannot ensure reasonable oversight of the Government and specific ministers as long as existing procedure of no-confidence is not amended. Thus, legislation shall set out rules for responsibility of the Government so as to ensure exercise of actual measures against the Government. Otherwise, oversight tools discussed in this research will always be incomplete.

13.4. Legal Responsibility of the Minister of Internal Affairs

Legislation of Georgia dated 1995-2013 included possibility for the impeachment of the members of the Government. Specifically, in case the Minister of Internal Affairs violated constitution, committed treason or other crime, Parliament upon approval of the majority of members was entitled to remove such official.[363] Constitutional reform dated 2010 unified the above-

359 European Commission for Democracy through Law (Venice Commission), Final Opinion on the Draft Constitutional Law on Amendments and Changes to the Constitution of Georgia, CDL-AD(2010)028, Strasbourg, 2012, 15 October, 79.

360 Ibid, 7.

361 See. Remarks and Suggestions of Georgian Young Lawyers' Association regarding draft of Constitutional Law, Tbilisi, 2010, 18.

362 Assumption is based on the information provided by the Parliament.

363 Constitution of Georgia, editions dated 24 August 1995 and 1 July 2005, article 64.

mentioned grounds of treason and other crimes in one wording: "committed crime". Quorum for impeachment has remained unchanged.[364]

Even though there were facts confirming violation of the Constitution, the issue of impeachment has not been put before the Parliament since 2004. It is clear that parliamentary majority commences impeachment procedure for violation of Constitution in exceptional circumstances. For minority, quorum of 1/3 of MPs required to launch impeachment proceedings is a significant obstacle. After commencement of proceedings, the Constitutional Court of Georgia shall confirm violation. However, final decision needs approval of majority of MPs, which might preclude removal of the official. Decision of the Constitutional Court of Georgia on unconstitutional actions of the official is a serious tool for opposition, which shall be used against the majority. The Parliament and especially minority shall act as watchdogs not to allow failure of constitutional mechanisms of responsibility in case of breach of supreme law of the state.

364 Constitution of Georgia, edition dated 4 October 2013, article 64.

14

Intelligence Service

- Appointment of the Head of Intelligence Service is decided by the prime minister and does not include conditions for stimulation of democratic process, thus it increases the chances of making politically motivated decisions;
- Removal of the Head of Georgian Intelligence Service is decided solely by the prime minister;
- General part of legislation does not include conditions for removal of the Director of Intelligence Service.

Foreign intelligence entity[365] existed as a separate independent body in different periods[366]. It was also formed as a sub-entity or structural sub-department. With this respect, certain periods shall be separated: in 1997-2004 as well as since 2005 until today it exists as an independent body; in 1995-1997 and 2004 it acted as a structural sub-department subordinated to the Ministry of State Security.

In the period of existence as an independent body, Georgian Intelligence Service represents a part of the system of Georgian Intelligence, which is the body coordinating intelligence information. Foreign intelligence entity is responsible before the Prime Minister of Georgia since 2013. Before, it was responsible before the President. From 2005 until 2013 Georgian Intelligence Service was also responsible before the National Security Council.

365 Entities carrying out intelligence activities are divided into the following categories: military and civil intelligence services. At the same time, civil intelligence may be carried out by different entities of foreign and internal intelligence (internal intelligence services are mostly referred to as security services). In Georgia, foreign and internal intelligence services are structurally separated. Georgian Intelligence Service is a state entity exercising foreign intelligence. For details regarding types of intelligence entities, see introduction of this research.

366 Name of intelligence entities was changing alongside.

14.1. Institutional Place of Intelligence Service

14.1.1. Main Department of Foreign Intelligence in 1995-1997

In 1995-1997 Main Department of Foreign Intelligence carried out the functions of foreign intelligence. At this time, it did not exist as an independent entity. It represented structural body of the Ministry of State Security of Georgia.

14.1.2. State Department of Intelligence in 1997-2004

In 1999 the Parliament of Georgia adopted a Law of Georgia regarding Intelligence Services. In 1997-2004 independent entity, State Department of Georgian Intelligence was established. According to the Decree of the President dated 1998, State Department of Georgian Intelligence became legal successor of the Ministry of State Security of Georgia with respect to bilateral and multilateral treaties concluded in intelligence sphere.[367] In this period, intelligence activities were carried out by different state entities: 1) State Department of Georgian Intelligence; 2) Intelligence Subdivisions of the Ministry of Defense of Georgia; 3) Intelligence Subdivisions of the State Department of Border Security of Georgia.[368] Functionally, the first had authorities with respect to political, economic, scientific-technical, military-strategic and environmental spheres; the second carried out its authorities in military, military-political, military-economic and environmental spheres; the third controlled Georgian state border, territorial waters, continental shelf and exclusive economic zone. Based on different competences, State Department of Georgian Intelligence coordinated obtainment of information by different intelligence subdivisions.[369]

According to existing state model, State Department of Georgian Intelligence carried out its functions based on the program approved by the President of Georgia.[370] The President also approved guideline of the department.[371] Department acquired and analyzed information[372] as well as provided such information to supreme bodies of the Government.

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367 Order of the President of Georgia regarding Acknowledgment of State Department of Georgian Intelligence as of the Successor of the Ministry of Security with respect to International Treaties Concluded in Intelligence Sphere, edition dated 13 April 1998, article 1.

368 Law of Georgia regarding Intelligence Activities, edition dated 19 March 1999, article 1, paragraph 2.

369 Law of Georgia regarding Intelligence Activities, edition dated 19 March 1999, article 7, paragraph 2.

370 Law of Georgia regarding Intelligence Activities, edition dated 19 March 1999, article 3, paragraph 1.

371 Order of the President of Georgia regarding Approval of Guideline of State Department of Georgian Intelligence, edition dated 23 August 1999; Guideline of State Department of Georgian Intelligence, article 31.

372 Law of Georgia regarding Intelligence Activities, edition dated 19 March 1999, article 1, ,paragraph 1.

14.1.3. Foreign Intelligence Department in 2004-2005

Transformation of Georgian intelligence service into structural subdivision was part of the reform carried out in Georgian legislation in 2004. Specifically, intelligence service commenced functioning as a foreign intelligence department under the Ministry of State Security of Georgia.[373] Its function was to carry out analytical work. The Minister of State Security appointed the head of the department.[374] Department, as a structural subdivision of the Ministry of State Security still coordinated Georgian intelligence system.[375] Acquired information was compiled before the Minister of State Security,[376] who distributed such information to respective officials of upper state bodies.[377]

In spite of structural changes, functions of foreign intelligence department remained unchanged without any modifications. Thus, functions of Foreign Intelligence Department, as of subdivision of the Ministry of State Security, are identical to the authorities exercised by State Department of Georgian Intelligence.

As regards to other participants of intelligence system, new legislation like the previous one, determined authorities of Intelligence Subdivision under the Ministry of Defense of Georgia and Intelligence Subdivision of the Department of Border Security under the Ministry of Internal Affairs.[378]

14.1.4. Special Agency of Foreign Intelligence in 2005-2010

Foreign intelligence entity was established as a separate entity in 2004, under the name Special Agency of Foreign Intelligence in Georgia. Alongside Special Agency of Foreign Intelligence, Georgian intelligence system also included intelligence subdivisions of the Ministry of Defense and the Department of Border Security under the Ministry of Internal Affairs.[379]

Based on existing state model, Special Agency of Foreign Intelligence was subordinated to the President of Georgia.[380]

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373 Law of Georgia regarding Intelligence Activities, edition dated 21 May, article 2, paragraph 1; Order of the President regarding Amendment to the Order of the President of Georgia No. 74 regarding Approval of Guideline of State Department of Georgian Intelligence dated 1 March 2004, edition dated 4 June 2004, article 2.

374 Order of the President of Georgia regarding Approval of Guideline of State Department of Georgian Intelligence, edition dated 1 March 2004

375 Law of Georgia regarding Intelligence Activities, edition dated 21 May 2004, article 12, article 7, paragraph 2.

376 Ibid, article 7, paragraph 4.

377 Ibid, article 7, paragraph 5.

378 Ibid, article 1, paragraph 2.

379 Law of Georgia regarding Intelligence Activities, edition dated 24 December 2004, article 1, paragraph 2.

380 Order of the President of Georgia regarding Approval of Guideline of State Department of Georgian Intelligence, edition dated 24 January 2005, article 1, paragraph 1.

Functionally, Special Agency exercised authorities identical to its predecessor. However, different from previous regulation, which envisaged distribution of analytical information to the officials of upper state bodies, new regulation determined such obligation only with respect to the President.[381] The Agency remained as an entity coordinating intelligence sphere.[382]

14.1.5. Intelligence Service Since 2010 until Today

Name of the Special Agency of Foreign Intelligence was changed to Georgian Intelligence Service in 2010. The Paliament of Georgia adopted the Law of Georgia on Georgian Intelligence Service in 2010.

Period from 2010 until today may be divided in two parts with respect to institutional framework: The basis of such differentiation is Constitutional reform of 2010. With respect to intelligence system, such changes included replacement of the President with the Prime Minister. In 2010-2013, Georgian Intelligence Service represented body subordinated to the President of Georgia. However, Intelligence Service has been subject to control of the Prime Minister since 2013.[383] Status of the head of Georgian Intelligence Service is also interesting for the analysis of institutional framework. According to current regulation, head of the Service is a main advisor to the Prime Minister with respect to intelligence sphere. Before 2013, Prime Minister's current duties were absorbed by the President.[384]

As regards the functions of Georgian Intelligence Service, they are identical to the functions of independent or subordinated subdivisions of foreign intelligence. However, authority to fight with international terrorism is added to the functions of the Service (within its competence).[385] Georgian Intelligence Service exercises its authorities inside and outside the territory of Georgia.[386] Functions of the Service include planning of analytical and special measures.[387]

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381 Order of the President of Georgia regarding Approval of Guideline of State Department of Georgian Intelligence, edition dated 24 January 2005, article 1, paragraph "a".

382 Ibid, article 1, paragraph 2.

383 Law of Georgia regarding Intelligence Activities, edition dated 27 April 2010, article 2.

384 Ibid, article 9, paragraph 2.

385 Ibid, article 3.

386 Ibid, article 6, paragraph 4.

387 Scope, main functions and aims of the service include the following: a) Collection, processing and analysis of intelligence information in order to support supreme executive bodies of Georgia with respect to drafting and implementation of security policy, as well as drafting and distribution of recommendations; b) determination and detection of existing and potential foreign threats and threats against national interest; c) processing of national, regional and global threats within its competence, as well as forecasting of possible events and distribution of respective amendment and suggestion in case of existence or potential situation of crisis; d) conduct of secret operations upon approval of the executive body, for insurance of protection and implementation of Georgian national interest in security and foreign policy sphere; e) conduct of foreign counterintelligence for insurance of security of Georgian diplomatic representations and consulates abroad, as well as protection of forces, means and operations abroad. See, Decree of the Government of Georgia on Approval of the Guideline of Georgian Intelligence Service, edition dated 19 February 2014, article 9.

14.2. Appointment of the Head of the Intelligence Service

The President of Georgia appointed head of the State Department of Georgian Intelligence in 1997-2004.[388]

For the period of 2004-2005, foreign department represented structural subdivision of the Ministry of State Security.[389] Before Order of the President dated 1 March 2004,[390] department of foreign intelligence was a subdivision of the Ministry. Even though the procedure was undemocratic, broad spectrum of state institutions were involved in the appointment of the head as follows: The President, the Prime Minister and the Ministers. Head of Foreign Intelligence Department was appointed upon nomination of the Prime Minister and approval of the President. However, such participation was not guaranteed in any case with respect to removal of the head of the department.[391] Department became structural subdivision of the Ministry of Security in 2004. In this situation, head of the department was appointed by the Minister of State Security.[392]

From 2005, The President of Georgia appointed the head of the Special Agency of Foreign Intelligence of Georgia.[393]

From 2010, the head of the Service manages the Georgian Intelligence Service. Until 2013, the President appointed the head of the Service. According to current legislation, Prime Minister exercises the above powers.[394]

Thus, according to current legislation, only one institution, the Prime Minister, makes decision with respect to appointment of the head. Georgian practice with respect to appointment of head of intelligence entities contains a similar trend (with respect to number of institutions participating in the process). The only exception was a period when intelligence service did not represent an independent entity. During the interviews with research group, most of ex-

388 Order of the President of Georgia regarding Approval of Guideline of State Department of Georgian Intelligence, edition dated 23 August 1999, article 13.

389 Order of the President of Georgia regarding Approval of Guideline of State Department of Georgian Intelligence, edition dated 26 March 2004, article 10.

390 Order of the President of Georgia regarding Approval of Guideline of State Department of Georgian Intelligence, edition dated 1 March 2004.

391 President was entitled to remove the director of department from the office upon his own discretion or suggestion of the Prime Minister.

392 Order of the President of Georgia regarding Approval of Guideline of the Ministry of State Security, edition dated 26 June 2004, article 12.

393 Order of the President of Georgia regarding Approval of Guideline of Specialized Foreign Intelligence Service of Georgia, edition dated 24 January 2005, article 15.

394 Law of Georgia on Georgian Intelligence Service, edition dated 24 April 2010, article 9, paragraph 1.

perts noted that it is better when two separate institutions are involved in the process. Some experts share opinion with regard to possible involvement of other state entities during appointment of the head;[395] some experts note that characteristics of intelligence service shall be taken into account with respect to appointment or removal of the head.[396]

Based on the function and importance of Intelligence Service, also narrow experience of Georgian democracy, it is not recommended to entrust one institution with regard to above powers. Involvement of the Parliament in this proceeding will turn appointment scheme into the most suitable for Georgian scheme. Some experts see risks related to decisive vote of the Parliament in this process, but consider it acceptable for the Parliament to participate as a recommendatory body. For improvement of existed system, joint appointment by the President and Prime Minister was also suggested.[397]

With respect to appointment of the director of intelligence and security services, Hans Born and Ian Leigh note that it is desirable that members of the executive take the initiative in making such appointments, on advice, to ensure political consensus.[398] According to the authors, the Government shall have initiative on nomination of a candidate but Parliament shall have a "checking role".[399]

States, which have constitutional system similar to Georgia, mostly use the following schemes for appointment of the director: 1) president – government/prime minister; or 2) president – parliament; or additional scheme which envisages appointment by 3) president – parliamentary committee and prime minister.

Bulgaria is an example of president – government/prime minister scheme. In Bulgaria, president of the republic upon nomination by the council of ministers appoints head of the intelligence agency.[400] Bulgarian experience is important, because council of ministers is involved in the process of appointment of the director. Specifically, director is appointed upon nomination of the council of ministers. In Georgia, solely the Prime Minister makes decision regarding appointment of the director (as well as removal).[401]

395 Interview with Levan Dolidze, 15 November, 2016.

396 Interview with Vakhtang Khmaladze, 21 November, 2016.

397 Interview with Davit Darchiashvili, 14 November, 2016.

398 Born H., Leigh I., mentioned work 2005, 37.

399 Ibid.

400 The same practice exists with respect to appointment of the head of State Agency for National Security and Military Information Service. See, Act on the Management and Functioning of the System of National Security Protection, SG No. 61/11.08.2015, Art. 7.5. https://www.dar.bg/en/files/113-act-on-the-management-and-functioning-of-the-system-of-national-security-protection.pdf, updated on: 08 January, 2017.

401 Decree of the Government of Georgia regarding Approval of Guideline of Georgian Intelligence Service, edition dated 19 February 2014, article 15.

Thus, in Bulgaria, different from Georgia, one institution does not make decision regarding appointment of the director and two actors – president of the republic and council of ministers – are participating.[402] Slovakia has the system similar to Bulgaria.[403] In Croatia,[404] director is appointed upon agreement between president and prime minister.[405]

Mechanism of president - parliament appointment is relevant to Lithuania, Romania and Latvia. Director of state security department is appointed and removed by president upon Sejm's approval.[406] As regards Romania, it is a country where internal and foreign intelligence services are separated. Thus, experience of Romania is the most relevant to Georgia. In Romania, parliament appoints the director of foreign intelligence service upon nomination of president.[407]

Scheme ensuring participation of president, parliamentary committees and prime minister applies to Poland. Specifically, in case of Poland, prime minister appoints director of foreign intelligence. However, legislation includes obligation of prime minister to have consultation meetings with the president of republic, as well as respective parliamentary committee and commission of Sejm.[408]

Thus, analysis of experience of other countries makes it clear, that there is a tendency of involvement of more than one institution (only one institution, prime minister, makes decision according to legislation of Georgia). Participation of only one body creates a risk for political manipulation of intelligence service.

Thus, in order to improve quality of democratic process, specifically with respect to appointment of the director of Georgian Intelligence Service, it is important to involve other institutions. Authors of this research favor the system, which guarantees the compulsory participation of the Parliament and the President in the process.

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402 The State Intelligence Agency Act (SG No. 79/13.10.2015), 12, 13. It has to be noted that the same approach is reflect with respect to the agency. Specifically, as mentioned above, under the State Intelligence Agency Act, president of the republic is entitled to oblige agency to perform certain tasks. However, before such decision, president shall consult with the prime minister. Additionally, the president is entitled to receive recommendation from the head of the agency with respect to issues related to state defence and security; additionally, competence of the president includes possibility to read and express opinion with regard to report before presentation of such report by the council of ministers to national assembly.

403 Official web page: http://www.sis.gov.sk/index_en.html, updated on: 08.01.2017

404 Official web page: https://www.soa.hr/, updated on: 08.01.2017.

405 Act on the Security Intelligence System of the Republic of Croatia, Art. 10 (1).

406 Republic of Lithuania Law Amending the Law on Intelligence (17 October 2012, No XI-2289) Art. 31.

407 Constitution of Romania, edition dated 29 October 2003, article 54, paragraph 2.

408 Status of the Head of the Foreign Intelligence Agency, http://www.aw.gov.pl/eng/szef-agencji/status-szefa-agencji.html, updated on: 08.01.2017.

14.3. Accountability of Intelligence Service

Accountability of Georgian Intelligence Service before the President and the Government of Georgia, in a broad sense, might be considered as an indirect tool of parliamentary control.

14.3.1. Accountability Before the President

In 1999-2004, the State Department of Georgian Intelligence was subordinated to the President of Georgia, who was also managing activities of the department.[409] President of Georgia carried out supervision over intelligence system as a whole and over respective department, too.[410] Additionally, powers of the President of Georgia included hearing reports of the directors of entities under Georgian intelligence system.[411]

In 2005-2010, Special Agency of Foreign Intelligence was subject to President's supervision. Besides the President, director of the Agency was also responsible before the National Security Council.[412]

Since 2010, Georgian Intelligence Service carried out foreign intelligence authorities and it was accountable before the President and National Security Council.[413] Head of the state exercised administrative supervision over the Intelligence Service.[414]

Thus, the president had this competence until 2013. Change of governing system influenced legislation regulating Georgian Intelligence Service. Thus, presentation of reports by the President to the Parliament represented indirect mean of parliamentary control of Georgian Intelligence Service. Alongside other controlling tools, such as committee control, Trust Group and others, Presidential report created possibility for the Parliament for interim oversight over Georgian Intelligence Service.[415]

409 Order of the President of Georgia regarding Approval of Guideline of Georgian Intelligence Service, edition dated 23 August 1999, article 6.

410 Law of Georgia regarding Intelligence Activities, edition dated 19 March 1999, article 17.

411 Ibid.

412 Order of the President of Georgia regarding Approval of Guideline of Specialized Foreign Intelligence Service of Georgia No. 45, edition dated 24 January 2005, Guideline of Specialized Foreign Intelligence Service of Georgia, article 6; Order of the President of Georgia regarding Specialized Foreign Intelligence Service of Georgia, edition dated 14 March 2008, article 7

413 Law of Georgia regarding Georgian Intelligence Service, edition dated 21 June 2012, article 6, paragraph 1.

414 Law of Georgia regarding Georgian Intelligence Service, edition dated 21 June 2012, article 26.

415 See, annual address of the President, chapter 2.

14.3.2. Accountability Before the Government / Prime Minister

From 2004, Foreign Intelligence Department, which was subdivision of the Ministry of Security, carried out foreign intelligence. At this time, article 17 of the Law of Georgia regarding Intelligence Services was amended and established governmental oversight instead of presidential control. Taking into account the fact, that the Minister of State Security managed performance of obligations by subdivisions of the ministry as well as their rights and obligations, it is clear that he/she was an official before whom the department was responsible.[416] Thus, the Government of Georgia carried out institutional supervision of Foreign Intelligence Department.[417]

Since 2013, Georgian Intelligence Service has been responsible before the Prime Minister.[418] Legislation acting before 2013 envisaged accountability not only before the President but also the Council of National Security.[419] If we follow the logic of this research, it would be appropriate for the Head of the Intelligence Service to report annually to the legislative body (with non-classified information).

14.4. Responsibility of the Director of Intelligence Service

In 1997-2004, removal of the director of State Department of Georgian Intelligence, as well as appointment, was under sole authority of the President of Georgia.[420]

In 2004, State Department of Georgian Intelligence represented subdivision of the Ministry of State Security. The President upon his initiative or request of the Prime Minister removed director of the department. From June 2004, department is a structural subdivision of the Ministry of Security and the director is removed by the Minister of Security.[421] Additionally, the minister is entitled to make decision with regard to disciplinary proceedings against the director.[422]

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416 Order of the President of Georgia regarding Approval of Guideline of the Ministry of Security of Georgia, edition dated 1 March 2004, article 12, paragraphs "d" and "f".

417 Law of Georgia regarding Intelligence Activities, edition dated 21 May 2004, article 17.

418 Law of Georgia regarding Georgian Intelligence Service, edition dated 27 April 2010, article 26.

419 Law of Georgia regarding Georgian Intelligence Service, edition dated 19 September 2013, article 6, paragraph 1.

420 Order of the President of Georgia regarding Approval of Guideline of Georgian Intelligence Service, edition dated 23 August 1999, article 13.

421 Order of the President of Georgia regarding Approval of Guideline of the Ministry of Security of Georgia, edition dated 4 June 2004, article 12, paragraph "e".

422 Order of the President of Georgia regarding Approval of Guideline of the Ministry of Security of Georgia, edition dated 1 March 2004, article 12, paragraph "g".

From 2005, the President removes the director of Special Agency of Foreign Intelligence of Georgia.[423] In 2010-2013, the President removed director of Georgian Intelligence Service.[424] According to current legislation, the Prime Minister carries out the above authority.

It has to be noted that the Law of Georgia on Georgian Intelligence Service does not list grounds for termination of authority of the director. Such information is not included in the public legislation of Georgia. It is a good practice for the law to determine conditions of removal.[425] Thus, it is recommended to include such provisions with regard to removal of the director of Georgian Intelligence Service. For instance, legislation of Bulgaria lists grounds for termination of authority of director of agency.[426]

According to current legislation, risks identical to appointment of the director are identified with regard to his/her removal.[427] With this respect, it is reasonable and recommended to involve more than one institution in the process. However, the main struggle is to keep activates of the director professional. Thus, it is important for the mechanism of removal and appointment not to create an understanding that activities of intelligence service are activities of political team or are related to the aims of such team. The most effective mechanism for balancing the above risks is participation of the Parliament in removal of the director alongside the President. International experience stands far away from Georgian practice. In Romania, president and joint session of two chambers of parliament appoint director of intelligence service.[428] Thus, in Romania, participation of president is considered as a significant component, which is evidenced by unification of two chambers during the proceedings. In Lithuania, president upon approval of Sejm removes director of intelligence service.[429] Thus, solely one institution does not make decision regarding appointment and removal of director. As a rule, participation of at least two institutions is guaranteed. The same tendency applies to the country where parliament does not par-

423 Order of the President of Georgia regarding Approval of Guideline of the Specialized Foreign Intelligence Service of Georgia, edition dated 24 January 2005, article 14.

424 Law of Georgia regarding Georgian Intelligence Service, edition dated 10 May 2010, article 9, paragraph 1.

425 Born H., Leigh I., mentioned work, 39.

426 The State Intelligence Agency Act, SG No. 79/13.10.2015, article 16, paragraph 1. Authorities of the head is terminated in the following circumstances: 1) personal resignation letter; 2) failure to carry out his/her duties for more than six months, which is approved; 3) failure to meet with ten requirements for appointment as the head; 4) systematic failure to comply with obligations or severe breaches, as well as conduct of activities which precludes regular function of the agency; 5) decision approving conflict of interest based on the law regarding "prevention and detection of conflict of interest"; 6) death of the head.

427 See, pages 71-74.

428 Vote on Mihai Razvan Ungureanu's appointment as head of SIE on last Parliament working day, see: http://www.nineoclock.ro/vote-on-mihai-razvan-ungureanu%E2%80%99s-appointment-as-head-of-sie-onlast-parliament-working-day/, updated on: 08.01.2017.

429 Republic of Lithuania Law Amending the Law on Intelligence No XI-2289, 2012, 17 October, Art. 31.2.

ticipate in the proceedings.[430] The abovementioned is important to ensure democratic process in the state.

With respect to removal of the director of Georgian Intelligence service, offers for improvement of existing system might be suggested. Process will be democratic and adequate to existing constitutional reality, when role of the Parliament increases with respect to removal of the director. Specifically, it is recommended, that the director shall be removed by the Parliament upon request of the President. It refers to the political responsibility. As for legal responsibility, the impeachment procedure should be defined according to the institutional nature of Intelligence Service.

430 For instance, president upon request of government removes director of Slovakian Information Service. See, The Act of the National Council of the Slovak Republic on the Slovak Information Service (January 21, 1993), Art. 3.2.; Additionally, head of security and intelligence agency of Croatia is also removed upon joint decision of the president and prime minister. See, Act on the Security Intelligence System of the Republic of Croatia, Art. 10 (1).

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State Security Service

- Investigative functions given to the State Security Service, creates a threat that the authority will be abused, which relatively increases the necessity of effective parliamentary oversight;
- Procedure of appointment of the Director of the Security Service (also referred to as the "Security Director") creates risks of politically oriented decisions rather than the possibility of consensus;
- Report of the work of the Security Service was presented by the deputy head of the service and not by the head, which is against legislation;
- The Parliament ineffectively uses its power to hear report of the Security Service; such report has not been presented in a timely manner and it was postponed twice;
- Existing model of responsibility of the Director of the Security Service represents mechanism of quasi-motion of no-confidence and allows political responsibility of the abovementioned person.

Protection of state security has been a competence of different institutions since 1995 until today. At first, in 1995-2004, the Ministry of Security carried out analytical and investigative authorities for the protection of state security. Based on existing presidential model, the Ministry of Security, as a governmental entity, was under supervision of the President of Georgia. Thus, the President carried out supervision over legality and reasonability of the acts of the Minister and tools of parliamentary oversight were restricted.

In 2004, after liquidation of the Ministry of Security, functions of the ministry were absorbed by different departments of the Ministry of Internal Affairs (names and functions of which were changing throughout the years). The system of public security service was established, which unified different departments and subdivisions of the Ministry of Internal Affairs. System of "Specialized Military Entities" was created under the executive body of Georgia, [431] functions of which were identical to the functions of the Ministry of Security. Additionally,

431 Law of Georgia regarding Public Security Service, edition dated 24 December 2004, article 1, paragraph 1.

based on Constitutional amendments dated 6 February 2004, parliamentary oversight was exercised over the Ministry of Internal Affairs and the Government.

After 2013, following the enactment of Constitutional changes dated October 2010, guideline of the Ministry of Internal Affairs approved by the President was suspended[432] and it was later approved by the Prime Minister.

In parallel, discussion regarding separation of security service from the structure of Ministry of Internal Affairs commenced in 2013. At first, State Security Agency was established in 2013, which represented a legal successor of Constitutional Security Department. The competence of newly established agency included analytical (obtainment and processing of information) and investigative activities. However, different from Constitutional Security Department, the Agency was not authorized to fight against corruption and crime committed by state officials. Separate entity, Anticorruption Agency carried out the above functions.[433]

On 1 August 2015, state security agency was separated from the structure of the Ministry of Internal Affairs and was established as an independent entity under the name State Security Service. Thus, as of today, director of State Security Service is responsible for state security instead of the Minister of Internal Affairs. Parliamentary oversight with respect to the director and State Security Service is evidenced by the following tools: informative control by the Members of the Parliament (questions, invitation to the hearing, etc.) and Committee of Defense and Security; Obligation of the director of State Security Service to present a report; control carried out by Trust Group and temporary investigative commissions. Additionally, grounds for legal and political responsibility of the director were established.

15.1. Institutional Place of Security Entities

15.1.1. The Ministry of Security in 1995-2004

The Parliament of Georgia adopted the Law regarding State Security Service in 1998.[434] According to the law, security service represented a system of special and militarized law enforcement entities under the executive body.[435] Because the President was the head of executive

432 Order of the President of Georgia No. 966 dated 24 December 2013 regarding declaration of the Order of the President of Georgia No. 614 regarding Approval of Guideline of the Ministry of Internal Affairs dated 27 December 2014 as void.

433 See, Decree of the Government No. 337 regarding Approval of Guideline of the Ministry of Internal Affairs dated 13 December 2013.

434 Law of Georgia regarding State Security Service, edition dated 18 February 1998.

435 Ibid, article 1.

body, the Ministry of Security became subject of control of the President. Thus, the Order of the President of Georgia approved guideline of the Ministry of Security.[436] According to the guideline, the Ministry of Security represented a special state entity, which ensured protection of state from domestic and foreign threats within its competences.[437]

Constitutional law dated 20 July 1999 amended constitution and specifically, part 2 of article 78, which abolished "amalgamation or unification in any other way of military, state security and police entities". Thus, separation of security service and the Ministry of Internal Affairs, as well avoidance of power concentration became the issue of constitutional significance. At this time, state security service envisaged not only presidential but also parliamentary control through the Committee of Defense and Security[438] and other mechanisms of parliamentary oversight. However, the Minister of Security was politically accountable only before the President. The Parliament was authorized to commence impeachment proceedings for removal of the Minister of Security in case of violation of Constitution, treason or other crime.[439]

15.1.2. Entities under the Ministry of Internal Affairs Protecting State Security in 2004-2015

In 2004, before liquidation of the Ministry of Security, the rule of subordination and accountability for the ministry was changed by the Decree of the President.[440] Based on the Constitutional amendments, the Minister of Security was accountable before the Government and performed actions entrusted to it by the Government and Prime Minister.[441] At the end of 2004,[442] the Ministry of Security was liquidated and structural entities of the above were added to the Ministry of Internal Affairs. After this, functions of the Ministry of Security were absorbed by different departments of MIA.

Later, the Parliament changed the name of the Law regarding Security Services to the Law on Public Security.[443] According to the law, the system of public security included departments and structural subdivisions of the Ministry of Internal Affairs.[444] A "system of special and mil-

436 Order of the President of Georgia No. 14 regarding Approval of Guideline of the Ministry of State Security dated 12 January 2002.

437 Ibid.

438 Law of Georgia regarding State Security Service, edition dated 18 February 1998, article 18.

439 Constitution of Georgia, edition dated 1999, article 64, paragraph 1.

440 Order of the President of Georgia No. 74 dated 1 March 2004.

441 Ibid.

442 Based on the Law of Georgia regarding amendment to the Law of Georgia on Structure, Authorities and Activities of the Government of Georgia dated 24 December 2004, the Ministry of Security is not a ministry anymore.

443 The Law of Georgia regarding Public Security Service, edition dated 12 December 2014.

444 Ibid, article 1, paragraph 2.

itarized law enforcement entities" was established under the executive body,[445] the functions of which were identical to the Ministry of Security. The Minister of Internal Affairs, who was a person accountable for security issues, was the head of the system, since it was a structural part of the Ministry of Internal Affairs.

In 2013, after enactment of Constitutional amendments dated 2010, guideline of the Ministry of Internal Affairs was suspended[446] and it was re-approved by the Prime Minister.

15.1.3. State Security Service

The State Security Service of Georgia was established in 2015.[447] Different from its predecessor, which was structural division of the Ministry of Internal Affairs, it represents an independent entity. However, State Security Service remains in the system of executive due to its accountability towards the Government and involvement of the Prime Minister.[448] The Government of Georgia carries out its executive functions not only through the ministries and structural subdivisions of such ministries, but also through other special state entities.[449] The State Security Service different from specialized state entities is not subordinated to the Prime Minister. It is a system of specialized entities under direct supervision of the Government body.[450] Decree of the Government of Georgia regulates wide range of issues related to activities of the State Security Service.[451] However, director of State Security Service, as a member of the Council of Security and Crisis Management, is directly accountable to the Prime Minister.[452]

Additionally, compared to other specialized state entities, scope of parliamentary oversight of State Security Service is also different. Director of State Security Service is accountable and responsible before the Parliament of Georgia.[453]

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445 Ibid, article 1, paragraph 1.

446 Order of the President of Georgia No. 966 dated 24 December 2013 regarding declaration of the Order of the President of Georgia No. 614 regarding Approval of Guideline of the Ministry of Internal Affairs dated 27 December 2014 as void.

447 The Law of Georgia regarding State Security Service, edition dated 16 December 2015, article 51.

448 Prime Minister participates in the process of appointment of the director of State Security Service; Decree of the Government No. 385 dated 30 July 2015 approved Guideline of the State Security Service.

449 The Law of Georgia regarding Structure, Authorities and Activities of the Government of Georgia, edition dated 21 December 2016, article 4, paragraph 2.

450 The law of Georgia regarding State Security Service, edition dated 16 December 2015, article 51, paragraph 4.

451 Approves guideline of the entity, rule of salary and additions to the salary, rule of social protection and material insurance, rule of transfer of information within the entity, list of persons with high risk against state security; The Law of Georgia regarding State Security, edition dated 16 December 2015, article 2, paragraph 1.

452 The Law of Georgia regarding Planning and Coordination of National Security Policy, edition dated 21 December 2016, article 22, paragraph 5.

453 The Law of Georgia regarding State Security Service of Georgia, edition dated 16 December 2015, article 10.

15.2. Functions of Security Entities

15.2.1. Functions of the Ministry of Security in 1998-2004

The Ministry of Security had following three functions from the moment of establishment:

- Protection of constitutional order, state sovereignty, territorial integrity, scientific-economic and military potential from illegal activities of special services of other countries or specific persons;
- Detection and prevention of crimes threatening state security, as well as detection and prevention of organized crimes envisaged in international treaties; Additionally, detection, prevention and preliminary investigation of crimes under the competence of the Ministry;
- Enforcement of measures for protection of state security in state and non-state structures as well as coordination of above activities.[454]

Accordingly, in order to perform the abovementioned authorities, the Ministry of Security was not only entitled to carry out analytical activities but also to investigate crimes. The Ministry was also competent to undertake[455] counter intelligence[456] and operative-investigative actions.[457] It was also entitled to collaborate and implement measures to fight organized crime, corruption and drug-related crimes.[458] Additionally, the Ministry was entrusted to ensure security of infrastructural and state officials,[459] as well as to provide information regarding threats to state security to highest executive bodies[460] and to ensure protection of state secret.[461]

454 Order of the President of Georgia No. 14 regarding Approval of Guideline of the State Security Service dated 12 January 2002, article 9.

455 Ibid, article 10, paragraph "a".

456 Ibid, article 10, paragraph "b".

457 Ibid, article 10, paragraph "c".

458 Ibid, article 10, paragraph "d".

459 Ibid, article 10, paragraph "k", "n" and "l".

460 Ibid, article 10, paragraph "l".

461 Ibid, article 10, paragraph "h" and "i".

15.2.2. Departments of the Ministry of Internal Affairs Responsible for State Security in 2004-2015

Under the Decree of the President dated 27 December 2004, after integration of public security system into the Ministry of Internal Affairs, several structural entities were created in the Ministry, which absorbed the functions of the Ministry of Security.[462] Competences of certain structural entities were often overlapping each other. Investigative, analytical and state security authorities of the Ministry of Security were distributed to the following structural divisions:

- Department of counterintelligence;
- Department of constitutional security (department not only carried analytical activities, but it also was responsible for detection and prevention of crimes against state, as well as crimes of state officials, corruption and crimes of extremist nature[463]);
- Specialized operative department, which detected, prevented and suppressed crimes against state security, public security and order.

After approval of the Guideline of the Ministry of Internal Affairs, functions and names of different structural entities and departments were frequently changing. In 2005, anti-terrorism center was created at first,[464] which was later transformed into counterterrorist center.[465]

In 2013, the Agency of State Security was established, which also represented a successor of the Department of Constitutional Security. It was entitled to carry out analytical (obtainment and processing of information) and investigative powers. Different from the Department of Constitutional Security, the agency was not responsible for fight against corruption and crime of state officials. A separate entity, anticorruption agency was created for abovementioned functions.[466]

462 Order of the President of Georgia No. 614 regarding Approval of Guideline of the Ministry of Internal Affairs dated 27 December 2004.

463 Ibid.

464 Order of the President of Georgia No. 392 dated 27 May 2005 regarding amendment to the Order of the President No. 614 regarding Approval of Guideline of the Ministry of Internal Affairs dated 27 December 2004, amendment to article 21, paragraph "s".

465 Order of the President of Georgia No. 392 dated 27 May 2005 regarding amendment to the Order of the President No. 614 regarding Approval of Guideline of the Ministry of Internal Affairs dated 27 December 2004.

466 Order of the Government of Georgia No. 337 regarding Approval of Guideline of the Ministry of Internal Affairs.

15.2.3. Functions of State Security Service

Nowadays, based on priority and types of threats, mandates of security services vary from country to country.[467] Authority includes only practical mandate (counter actions to security threats) or mandate to acquire and analyze information. Georgian Security Service holds both authorities. After separation from the Ministry of Internal Affairs, prior functions of the Ministry of Security were returned to the State Security Service. Thus, it includes investigative and analytical functions for the protection of state security from foreign and local threats.

15.2.3.1. Investigative functions

The Law of Georgia on State Security does not list the crimes which shall be detected or prevented by the Security Service. The law notes, that the State Security Service is responsible to prevent, detect, suppress and investigate crimes, which are related to "state security". Directions are listed in article 5 and include the following:[468]

- Protection of constitutional order, state sovereignty, territorial integrity, scientific-economic and military potential from illegal activities of special services of other countries or specific persons;
- Detection and insurance of protection of change of constitutional order or the Government through unconstitutional or violent means;
- Insurance of state's economic security;
- Fight with terrorism;
- Fight against crime threatening state security, transnational organized crime and international crime;
- Prevention, detection and suppression of corruption;
- Protection of state secret, exercise of measures for protection of state secret and control of performance as envisaged under the law;
- Protection of state from foreign threats.

The above list is very broad and general and it includes dozen of crimes envisaged under the Criminal Code. Order of the Minister of Justice determines exhaustive list of crimes under jurisdiction of the State Security Service.[469] Order regulates exclusive investigative powers of

467 Study no. 388/2006, CDL-AD(2007)016 Or. Engl., EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION) REPORT ON THE DEMOCRATIC OVERSIGHT OF THE SECURITY SERVICES Adopted by the Venice Commission At its 71st Plenary Session (Venice, 1-2 June 2007), see. http://www.europarl.europa.eu/meetdocs/2009_2014/documents/libe/dv/3_cdl-ad(2007)016_/3_cdl-ad(2007)016_en.pdf, updated on: 08.01.2017.

468 Law of Georgia regarding State Security Service, edition dated 16 December 2015, article 5.

469 Order of the Minister of Justice No. 34 regarding Determination of Investigative and Territorial Jurisdictional Subordination of Criminal Cases dated 7 July 2013.

the Security Service with respect to certain crimes.[470] However, Security Service is only entitled to investigate certain crimes, if the Service detected them at first.[471]

Investigative jurisdiction of the State Security Service is extensive. Besides counterintelligence and antiterrorist activities, it includes fight with corruption, terrorism, crimes against human rights and freedoms (including violation of equality, racial discrimination, etc.) and other crimes. When security services have such extensive powers alongside preventive and enforce-

470 Article 142 (violation of human equality); article 1421 (racial discrimination); article 223 (creation or management of illegal formations, or joining and participation in such formations, and/or implementation of other activities in favour of illegal formations); article 230 (illegal handling of nuclear material or equipment, radioactive waste and radioactive substances); article 231 (seizure of nuclear material, radioactive substances or other sources of ionizing radiation); article 2311 (unlawful demand of nuclear materials); article 2312 (threat to illegal seize or use of nuclear substances); article 232 (manufacturing of nuclear weapons or other nuclear explosive equipment); article 233 (concealment or distortion of information concerning an accident or breakdown on nuclear or radioactive facilities); article 234 (transit or import of radioactive, toxic, industrial or household waste in the territory of Georgia); article 235 (Illegal export of the technologies, scientific-technical information or services related to the manufacturing of weapons of mass destruction, armament or military hardware); article 252 (setting up or management of illegal associations or participation in such associations); article 308 (violation of the territorial integrity of Georgia); article 309 (entering into anti-constitutional agreements or conducting anti-constitutional negotiations); article 310 (encroachment upon Georgia's foreign security); article 311 (joining a foreign intelligence service); article 312 (compromising Georgia's defence potential); article 313 (divulging of state secrets); article 314 (espionage); article 315 (conspiracy or rebellion intended to change the constitutional order of Georgia through violence); article 316 (Unlawful seizure of military command or disobedience to the legitimate authorities); article 317 (incitement to change the constitutional order of Georgia through violence, or to the overthrow of the state government); article 318 (sabotage); article 319 (assistance to a foreign country, foreign organisation or an organisation controlled by a foreign state in hostile activities); article 320 (disclosure of state secrets); article 321 (breach of the procedure for keeping state secrets); article 3211 (financing of activities directed against the constitutional order and national security principles of Georgia or provision of other material support to such activities); article 3221 (breach of the procedure for entry into the occupied territories); article 3222 (conduct of prohibited economic activities in the occupied territories); crimes under chapter XXXVIII of the Criminal Code of Georgia (terrorism): article 343 (desecration of the State Coat of Arms or of the national flag); article 345 (illegal change of the state border of Georgia); article 346 (illegal flying of the national flag of Georgia); article 351 (disclosure of the data of the provisional investigative commission of the Parliament of Georgia); article 404 (planning, preparation, commencement or execution of an act of aggression); article 405 (calling for planning, preparation, commencement or execution of an act of aggression); article 406 (manufacturing, purchasing or selling weapons of mass destruction); article 407 (genocide); article 408 (crime against humanity); article 409 (ecocide); article 410 (Participation of mercenaries in armed conflicts or military actions).

471 article 222 (seizure or blockage of a broadcasting or communications organisation or of a facility of strategic or special importance); article 236 (Illegal purchase, storage, carrying, manufacturing, transportation, forwarding or sale of firearms (other than hunting smooth-bore firearms (shotguns)), ammunition, explosives or explosive devices); article 331 (false notification on terrorism); article 344 (illegal crossing of the state border of Georgia); article 3441 (illegal transfer of a migrant across the state border of Georgia and/or creation of the relevant conditions for a migrant's illegal stay in Georgia); article 353 (resistance, threat or violence against a protector of public order or other representative of the authorities); article 3531 (assault on police officers or other representatives of the authorities or on a public institution); article 362 (making, sale or use of a forged document, seal, stamp or blank forms); article 364 (Interference with legal proceedings, investigation, or conduct of defence); article 370 (false information, false testimony, false conclusion, failure to protect the object of the expert examination or incorrect translation); article 373 (false denunciation); article 374 (disclosure of investigative information); article 375 (concealment of crime); article 376 (failure to report crime); article 1641 (vote-buying); article 332 (abuse of official powers); article 333 (exceeding of official powers); article 334 (unlawful discharge of the accused from criminal liability); article 335 (providing explanation, evidence or opinion under duress); article 337 (illegal participation in entrepreneurial activities); article 338 (bribe-taking); article 339 (bribe-giving); article 340 (accepting gifts prohibited by law); article 341 (forgery by an official); article 342 (neglect of official duty).

ment authorities (such as search and seizure, investigation of crime and detention),[472] it creates risk of abuse of power and violation of human rights. Additionally, court and democratic control over security services is minimized and reduced.

Another threat, which accompanies exercise of abovementioned authorities by security services, is complication of control due to duplicated authorities. When powers of police and security service overlap, their control is even more problematic.[473] When competences are duplicated and a crime is under authority of two entities, differentiation becomes harder and accountability is at stake. It becomes vague, which authority is responsible for prevention of specific crime and which authority shall be controlled.

Nowadays, European states have different approach with regard to organizational and functional aims of security services.[474] States also have diverse approach with respect to authority to investigate. For instance, in Bulgaria, agency of national security is established.[475] Agency is entrusted to protect national security from activities threatening independence, sovereignty, territorial integrity, democratic functioning and constitutional order of Bulgaria. The above authorities are carried out through collection, analysis and dissemination of information as well as counterintelligence activities.[476] In Croatia, intelligence agency (SOA) collects, analyzes and process other states' political, technological and economic information as well as information regarding persons, groups and organizations creating risk to Croatian security.[477] However, agency is not entitled to investigate. However, in exceptional circumstances, information acquired by the agency can be used as evidence against the accused person. Category of such crimes is listed in the criminal procedure code and includes murder of high state officials, terrorism and severe crimes against Croatian security.[478]

Different from abovementioned states, Polish internal security service is not only entitled to process information but also to investigate and carry out operative actions with regard to

472 Parliamentary assembly of the council of Europe, Control of internal security services in council of Europe member states, Recommendation 1402, 1999, 5, see. http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16689&lang=en, updated on: 08.01.2017.

473 Ibid.

474 REPORT ON THE DEMOCRATIC OVERSIGHT OF THE SECURITY SERVICES, 90, 19 see. http://www.europarl.europa.eu/meetdocs/2009_2014/documents/libe/dv/3_cdl-ad(2007)016_/3_cdl-ad(2007)016_en.pdf, Updated on: 08.01.2017.

475 THE STATE AGENCY FOR NATIONAL SECURITY ACT, see. http://www.dans.bg/images/stories/EN-acts/zdans-20100823-en.pdf, updated on: 13.04.2016.

476 Ibid, article 4.

477 Law regarding Security and Intelligence System of Croatia, article 23, paragraph 2. See, https://www.soa.hr/UserFiles/File/Zakon_o_sigurnosno-obavjestajnom_sustavu_RH_eng.pdf, updated on: 19.04.2016.

478 Criminal Procedure Code of Croatia, article 187, paragraph 5.

crimes against Polish security.[479] Additionally, security service performs counterintelligence work.[480] However, anticorruption entity is a separate entity in Poland and different from Georgia, security service is not competent to fight with corruption.[481] Similarly, Slovenia, Czech Republic and Germany have a separate security services, which are responsible with respect to threat-related crimes and which also possess enforcement authorities.[482]

Thus, functions of State Security Service are broader compared to security services of other European countries. Besides analytical and counterintelligence activities, it also includes investigative powers with respect to extensive number of crimes (besides crime against state, security service is entitled to fight with terrorism, crimes against rights and freedoms and other crimes). More extensive authorities of such service are, there is a higher risk of disproportional restriction of human rights in case of abuse of power. Thus, in a reality where State Security Service holds such wide-ranging powers, amplified and effective parliamentary oversight mechanism shall exist in order to avoid any risks and prevent, detect and suppress unreasonable violation of human rights.

15.2.3.2. Analytical activities

Alongside investigative authorities, the State Security Service conducts analytical activities: acquires, analyzes and processes acquired information. Informational-analytical department of State Security Service carries out general analytical activities. It acquires information from open and closed sources, later processes, records such information, and generalizes it.[483] State Security Department also exercises analytical functions. It acquires and process information not only regarding specific threats, but also information of strategic importance, which is necessary for forecasting "political and economic threats to the state".[484]

479 See, web page of the agency: https://www.abw.gov.pl/en/our-powers/316,Our-powers.html, updated on: 20.04.2016.

480 Polish Security Service, see. https://www.europol.europa.eu/content/memberpage/poland-793, updated on: 20.04.2016.

481 POLAND to the EU Anti-Corruption Report, Brussels, 3.2.2014 COM (2014) 38 fnal, 5, see. http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014_acr_poland_chapter_en.pdf, updated on: 08.01.2017.

482 REPORT ON THE DEMOCRATIC OVERSIGHT OF THE SECURITY SERVICES, 94, 20; see. http://www.europarl.europa.eu/meetdocs/2009_2014/documents/libe/dv/3_cdl-ad(2007)016_/3_cdl-ad(2007)016_en.pdf, updated on: 13.04.2016

483 Decree of the Government regarding Approval of Guideline of State Security Service dated 30 July 2015, article 7, paragraph "e".

484 Decree of the Government regarding Approval of Guideline of State Security Service dated 30 July 2015, article 7, paragraph "e".

15.3. Appointment of Heads of Security Entities

15.3.1. Appointment of the Minister of State Security

In 1995-2004, the Minister of Security led the Ministry of Security, who was appointed by the President upon approval of the Parliament.[485]

15.3.2. Appointment of the Heads of Departments of the Ministry of Internal Affairs Responsible for State Security

After the Minister of Security was liquidated, the system of public security was established within the Ministry of Internal Affairs, which included different departments of subdivision of the Ministry.[486] The Ministry of Internal Affairs was transformed into a dualistic body. Firstly, it protected, prevented and suppressed crimes and protected public security. Secondly, it represented a specialized entity of the Government, which protected state security. Thus, part of the department of the ministry carried out police functions, when another part was responsible for state security. However, same regime and accountability standards were applied to the heads of both types of departments. The Minister of Internal Affairs appointed and removed heads of departments within his/her competence.[487]

15.3.3. Appointment of the Director of State Security Service

Nowadays, director of State Security Service is appointed for six-year term.[488] Prime Minister, Government and Parliament participate in the procedure of appointment which is divided into following stages: 1) the Prime Minister selects candidacy for the director and presents the nominee to the Government for approval; 2) the Government approves candidate with a decree; 3) the Parliament appoints candidate presented by the Prime Minister.

15.3.3.1. Selection of candidate by the Prime Minister

Current legislation does not determine procedure for the selection of a candidate by the Prime Minister, which leaves Prime Minister with wide range of discretion in the scope of requirements established for a candidate under the law.

485 Order of the President of Georgia no. 14 regarding Approval of Guideline of the Ministry of Security dated 12 January 2002.

486 Law of Georgia regarding Public Security Service, edition dated 12 December 2004.

487 Guideline of the Ministry of Internal Affairs, edition dated 29 November 2016, article 5, paragraph 2.

488 Law of Georgia regarding State Security Service, edition dated 16 December 2015, article 7, paragraph 1.

Article 7 of the Law on State Security Service determines competence, education, age, citizenship and other requirements for the director of State Security Service. Candidate shall meet the following requirements:[489]

Age: at least 35 years old;
Competence: higher education; experience of working at law-enforcement body for at least two years;
Citizenship: citizen of Georgia (shall not be citizen of other country, dual citizenship is excluded);
Other requirements: shall not be incapacitated; shall speak native language;
Restrictions: membership of political party; political activities; paid job (except teaching, academic and creative work); holding private or public office; additionally, person who has already been appointed as the director shall not be appointed again.

Based on the above-mentioned requirements, the Prime Minister elects respective nominee, who is presented to the Government. It has to be noted, that the head of the cabinet is responsible to present a candidate no earlier than two months and no later than eight weeks before expiration of a term of acting director.[490] This indicates that the Prime Minister shall commence selection of a candidate before such term to avoid review of qualifications of candidates in a speedy manner.

Standards established under the law, are more like titles than qualification requirements. The head of the Government holds discretion to determine rule for selection of such candidate. Besides minimum control, his/her decision is not subject to legal control and thus, it is a political decision. This is a main difference between appointment of the director and ordinary procedure of appointment of other public officers, who are appointed based on the competition. In the latter case, person responsible for appointment is bound by competition rules and is obliged to choose the best candidate.

15.3.3.2. Approval of the director of State Security Service by the Government

After selection of a candidate, the Government reviews selected candidacy and adopts decree regarding presentation of a nominee to the Parliament within one week.[491] In case the Government fails to approve such candidate, the Prime Minister is obliged to present a new or the same candidate within three days. The same procedure applies to the repeated voting. However, the Government is entitled to refuse presented candidate in both cases. In such case,

489 Ibid, article 7 and 8.

490 Ibid, article 7, paragraph 1.

491 Ibid, article 7, paragraph 1.

the Prime Minister is responsible to select a new nominee, since the same person may only be presented to the Government twice.[492]

15.3.3.3. Approval of the director of State Security Service by the Parliament

After approval of a candidate by the Government and presentation before the Parliament, candidacy is discussed by the Parliament within two weeks. Director shall be appointed upon "approval of majority of full list of MPs based on secret ballot".[493] In case candidate fails to receive required votes, the process returns back to the stage of governmental approval. Firstly, the Prime Minister presents the same or other candidate to the Government, after approval of which Parliament shall cast a vote.[494] In case candidate fails to receive required votes again, the Prime Minister is obliged to select a new candidacy for governmental approval.[495]

Parliament's important role in appointment of the director is complimentary. However, according to current constitutional model, Prime Minister and Government is generally part of parliamentary majority. In such case, procedure of appointment of the director of the Security Service creates risks of politically oriented decisions rather than the possibility of consensus. Such appointment procedure, due to belonging of majority and cabinet to the same political party, includes a high risk of politically motivated decision. This does not correlate with professional, politically unmotivated institutional role of the director of the Security Service.

Process of appointment of the director is differently regulated by countries of constitutional model similar to Georgia. In order to insure such risks, European states try to involve state institutions, which have isolated procedures of compilation. This increases possibility to eliminate belonging of different involved institutions to same political party. Such model insures appointment of the director based on professionalism rather than based on political interests. For instance, in Bulgaria, president appoints head of the agency for five year term upon presentation of the head of the council of ministers.[496] In Slovakia, president, upon recommendation (nomination) of the government appoints director of state security service.[497] In Croatia, president and prime minister jointly decide appointment of the director for four-year term.[498]

492 Ibid, article 7, paragraph 5.

493 Ibid, article 7, paragraph 7.

494 Ibid.

495 Ibid, article 7, paragraph 9.

496 Law of Bulgaria regarding State Security Service, article 8, paragraph 1.

497 Act of National Council of Slovakia regarding the agency of information of Slovakia, article 3, paragraph 2.

498 Law of Croatia regarding system of security and intelligence, article 66, paragraph 1, see. https://www.soa.hr/UserFiles/File/Zakon_o_sigurnosno-obavjestajnom_sustavu_RH_eng.pdf updated on: 19.04.2016.

Based on the abovementioned, it is recommended to replace Prime Minister with the President in a current procedure of appointment. Appointment of the director for six-year term underlines significant aim of political neutrality and professionalism. Preservation of political neutrality is difficult for a candidate appointed by one party (government approved by the Parliament and the Parliament itself). Thus, involvement of the President in the process of appointment of the Director of State Security Service will increase the change of politically neutral decision-making; Interviewed experts shared the above position.[499]

15.4. Accountability of State Security Entities

In 1998-2015, rules and mechanisms of accountability of state security entities before the Government and president changed alongside organizational structure of such entities. Such changes were caused by modification of powers of constitutional bodies.

15.4.1. Accountability of the Minister of Security before the President

In 1998-2004, the Ministry of Security was accountable before the President.[500] Accountability was expressed through delivery of report,[501] coordination of the ministry and structural supervision.[502] Highest official of state controlled activities of the Ministry with respect to legality and reasonability.[503]

15.4.2. Accountability of the heads of the Department of the Ministry of Internal Affairs

After integration of security system into the Ministry of Internal Affairs, the Minister of Internal Affairs became direct head of the system and heads of department responsible for enforcement of specific directions.

499 Lika Sajaia, in her interview dated 8.11.2016; Mariam Mkhatvari, Guram Imnadze and Sofo Vardzeli, interview dated 7 November, 2016.

500 Order of the President of Georgia No. 14 regarding Approval of Guideline of the Ministry of Security dated 12 January 2002.

501 Law of Georgia regarding Structure and Activates of the Executive Body, edition dated 15 April 1997, article 16, paragraph 1, subparagraph "k".

502 Ibid, article 6.

503 Ibid, article 44.

Guidelines of structural entities of MIA included in the system of public security were classified for years. Only guideline of anticorruption agency was disclosed in 2015.[504] Analysis of guideline suggests that heads of the agency were not subject to regime different from other heads of departments. Head of the agency annually or at the request of the head of department presented report on its activities.[505] The Minister of Internal Affairs supervised heads of departments with regard to legality and reasonability.[506]

15.4.3. Accountability of the Director of State Security Service Before the Government and the Prime Minister

Different from specialized state entities, which are subject to direct supervision of the Prime Minister,[507] the Director of State Security Service, according to article 2 of the Law on State Security, is subordinated to the Government as well.[508] Such supervision is envisaged for specialized state entities under direct supervision of the Government.

15.5. Parliamentary Oversight of State Security Entities

State Security Service has dualist function in Georgia. It carries out investigation and analytical activities. In such situation, existing wide-ranging scope of Security Service requires effective parliamentary oversight. To achieve the above, existence of respective controlling mechanism is not sufficient. Members of the Parliament shall actively be involved and participate in parliamentary proceedings.

Head of State Security Service is obliged "to present report on conducted activities to the Parliament annually, no later than 1st of April".[509] According to the Regulation, presented report is discussed on the hearing of leading committee, bureau and plenary session.[510]

504 Order of the Minister of Internal Affairs No. 91 regarding Approval of Guideline of Anticorruption Agency dated 31 January 2015.

505 Ibid, article 5, paragraph 2, subparagraph "k".

506 Law of Georgia regarding Structure, Authorities and Activities of the Government, edition dated 21 December 2016, article 4, paragraph 2.

507 Ibid, article 26^1, paragraph 1.

508 Law of Georgia regarding State Security Service of Georgia, edition dated 16 December 2015, article 2.

509 Law of Georgia regarding State Security Service, edition date d16 December 2015, article 9, paragraph 1.

510 Regulation of the Parliament of Georgia, edition dated 29 December 2016, article 229^6, paragraph 1; article 239, paragraph 5-9.

Deputy Head of the State Security Service, Levan Izoria, presented the report of the State Security activities in 2015 before the joint hearing of the Committee of Human Rights, Committee of Legal Issues and Committee of Defense and Security on 29 March 2016.[511] However, it has to be noted, that according to the Regulation of the Parliament,[512] as well as the Law of Georgia on State Security,[513] the director shall present report regarding activities of the Security Service. Such obligation is important for responsibility of the director, because circumstances detected during presentation and discussion of the report might lead to political responsibility of the director. Thus, report should have been presented by the director and not by the deputy head.

There might exist circumstances allowing postponement of presentation of the report. However, to eliminate any future problems with this respect, the Regulation of the Parliament shall be amended as follows: in case of existence of excusable circumstances, when presentation of report is impossible, Parliament shall be immediately notified and report shall be presented immediately after elimination of such circumstances.

Annual report of the Security Service covered its activities from the date of establishment, which is 1 August 2015, until 31 December. Covered topics included the following: situation on occupied territories of Georgia, counterintelligence activities, fight with terrorism, cyber security, analytical activities and fight against corruption.[514]

Despite the fact that the report was presented by the deputy head and it was discussed on the joint hearing of the committee, report of 2015 still has not been discussed on the plenary hearing as it was postponed several times.[515] First hearing was scheduled under agenda of 30 March 2016. However, due to failure to reach quorum, hearing was not conducted.[516] Second hearing was set for 12 May 2016. However, the Parliament was discussing amendments to the Law on Constitutional Court of Georgia during the whole session and hearing of the report was postponed again.[517]

511 Report of State Security Service of 2015 presented by Levan Izoria, see. http://www.parliament.ge/ge/media/axali-ambebi/saqartvelos-saxelmwifo-usafrtxoebis-samsaxuris-2015-wlis-saqmianobis-angarishi-sakomiteto-formatshi-moismines.page updated on: 18.05.2016.

512 Regulation of the Parliament of Georgia, edition dated 29 December 2016, article 229^6, paragraph 4.

513 Law of Georgia regarding State Security Service, edition dated 16 December 2015, article 9. Paragraph 2.

514 Minute of the committee Meeting No. 17 (245) dated 29 March 2016.

515 Edition dated 26 May 2016.

516 "Ruling Party Is not Able to Confirm the Date of Hearing of the Report of Vakhtang Gomelauri", 01.04.2016, see. http://www.interpressnews.ge/ge/politika/373366-mmarthveli-gundi-ver-akonkretebs-rodis-moismenen-parlamentshi-vakhtang-gomelauris-angarishs.html?ar=A updat4ed on: 20.07.2016

517 Statement of Vahktang Gomelauri regarding Postponement of Presentation of the Report, Netgazeti, 12.05.2016, see. http://netgazeti.ge/news/114316/ updated on: 20.07.2016.

Based on the above mentioned, it can be concluded, that Parliament did not exercise its oversight authorities effectively due to failure to discuss hearing at the plenary session and due to several postponements. Presentation of annual report shall be a priority in the agenda to avoid postponement of a hearing and to discuss report in a timely manner. Thus, when exceptional circumstances do not exist, the Bureau of the Parliament shall put hearing of the report as a first issue in the agenda. Additionally, failure to reach a quorum on the date of presentation of the report underlines weak and passive involvement of the members of the Parliament, which shall be eliminated. The Parliamentarians shall feel more responsibility and shall not preclude hearing with a problem of quorum.

After hearing of the report, Parliament may carry out following actions: 1) adoption of decree, which evaluates activities of Security Service, underlines deficiencies and suggests recommendations;[518] 2) responsibility of the director of Security Service.

15.6. Responsibility of the Heads of Security Entities

15.6.1. Responsibility of the Minister of Security

Different from the procedure of appointment of the Minister of Security, where Parliament and President participated together, the Minister of Security was only responsible before head of the state. Such regulation might be explained by existing presidential model established by constitution.

15.6.2. Responsibility of the Heads of the Departments of the Ministry of Internal Affairs

Heads of the department of the Ministry of Internal Affairs did not represent officials politically responsible before the Parliament. Like other officers of the Ministry of Internal Affairs, they were subject to disciplinary proceedings. Types of responsibility included the following: notice, strict notice, seizure of MIA badge, demotion, demotion of special rank with one level and dismissal from MIA entity.[519]

518 Regulation of the Parliament of Georgia, edition dated 29 December 2016, article 229^6, paragraph 1; article 238, paragraph 5-9.

519 Order of the Minister of Internal Affairs No. 217 dated 24 June 2003 regarding Approval of Guideline of Disciplinary Committee of MIA dated 24 June 2003.

15.6.3. Responsibility of the Director of the Security Service Before the Parliament

Grounds of termination of authority of the director of the Security Service before due include grounds which do and do not require substantial evaluation/control of activities of the Security Service. At the same time, in case of failure to perform his/her obligations effectively, the director of State Security Service may be subject to political responsibility.

15.6.3.1. Grounds of Termination, which Require Formal Approval

Article 10 of the Law of Georgia on State Security, envisages following grounds of termination[520] (which do not require substantial evaluation of carried out activities):

- Termination of Georgian citizenship;
- Guilty verdict of the court legally in force;
- Acknowledgment as a missing person; announcement as a dead person or acknowledgment as support receiver;
- Voluntary resignation from office;
- Death.
- In case of existence of abovementioned grounds, only veracity of fact shall be checked and activities of the director shall not be assessed.[521] When such fact is detected or respective information is received, Procedural Committee of the Parliament checks veracity within one week and presents conclusion to the Parliament on the following plenary session.[522] Director's authorities are terminated from the moment of verification of such fact by respective note in the minute of plenary session of the Parliament.[523]

15.6.3.2. Grounds for Termination, which Require Factual Assessment

Conditions, which are grounds for termination of authority and require factual assessment, include the following:[524]

- Failure to carry out official duties consecutively during two months;
- Holding non-compliant office or carry out non-compliant activities.

520 Law of Georgia regarding State Security Service, edition dated 16 December 2015, article 10, paragraph 1, subparagraphs "a", "c", "d", "e", "f" and "h".

521 Ibid, article 10, paragraph 2.

522 Regulation of the Parliament of Georgia, edition dated 29 December 2016, article 229^6, paragraph 7.

523 Ibid, article 229^6, paragraph 7.

524 Law of Georgia regarding State Security Service, edition dated 16 December 2015, article 1, paragraph "b" and "f".

In the above circumstances, termination procedure might commence upon decree of the Government, after which the Committee of Defense and Security drafts conclusion within two weeks. Additionally, procedure might also commence directly based on the assumption of the Committee of Defense and Security, without governmental decree. After committee's report, the Parliament casts secret ballot with regard to termination of authority (majority of total number of MPs shall approve such decision).[525]

15.6.3.3. Political Responsibility of the Director of Security Service

According to the Regulation of the Parliament, one third of full list of MPs are entitled to request removal of the Director from the office after hearing report of the Security Service. Majority of total number of MPs makes final decision with regard to removal[526]. Raising a point regarding termination of authority is related to the detection/existence of circumstances, which "require such decision to be made".[527]

After reform of 2015, there was an impression that director of Security Service would not be politically responsible like the Minister of Internal Affairs. According to the amendments, director shall be a professional person, the independence of which shall be insured by six-year term. It has to be noted that the term of the director does not match term of legislative body. This means that director shall hold his/her office despite results of parliamentary election. However, existing responsibility model allows newly formed Parliament (in case of change of political team) to remove appointed director upon initiative of one third of total number of MPs and approval of the majority following presentation of report by the director (in case of request, the director shall present extraordinary report, too[528]).

At the same time, the issue of responsibility of the director may also arise based on the initiative of the Government and approval by majority of MPs within two weeks.[529] Existing model of responsibility of the Director represents mechanism of quasi-distrust. The Constitution of Georgia does not allow procedure of distrust of certain members of the Government,[530] but allows such possibility with respect to the director of the Security Service.[531]

525 Regulation of the Parliament of Georgia, edition dated 29 December 2016, article 229[6], paragraph 6.

526 Law of Georgia regarding State Security Service, edition dated 16 December 2015, article 10, paragraph 5.

527 Ibid.

528 Regulation of the Parliament of Georgia, edition dated 29 December 2016, article 229[6], paragraph 2.

529 Regulation of the Parliament of Georgia, edition dated 29 December 2016, article 229[6], paragraph 5.

530 Constitution of Georgia, edition dated 4 October 2013, article 81, paragraph 1.

531 Regarding complications of procedure of distrust, see, page 67.

Issue of distrust is initiated by two fifth of MPs and commencement of proceeding is approved by majority of members (procedure of announcement of distrust proceedings may last up to three months).[532] At the same time, the issue of responsibility of the director of the Security Service shall be initiated by one third of total number of MPs and shall be approved by majority.[533] This does not mean that the procedure of removal of the director shall be complicated as to the level of procedure of distrust. This means that it shall be changed with legal responsibility and in exceptional circumstances; political motives shall be reduced to the minimum.

Simplified procedure of removal of the director of the Security Service, forfeits the idea of six-year term. Political group, newly elected at the Parliamentary election, will be determined to remove the director of the Security, since such procedure is simplified and quorum of absolute majority is established. Especially, taking into account the fact, that appointment of new director is carried out by sole political party, on the one hand by Prime Minister and the Government and by the Parliament on the other.

Different from Georgia, approval of two independent institutions is necessary for the removal of director in European states. For instance, in Croatia, directors of security services may be removed in case of failure to implement decisions of president or prime minister or failure to reach certain goals.[534] In Lithuania, removal procedure is similar to appointment, which means that director is appointed by president subject to approval of the parliament.[535] Different from Croatia, ground of termination of authority of the director of Security Service in Georgia includes more guarantee of independence. It is not related to one-time failure of the official and envisages failure to carry out his/her duties during two consecutive months. However, due to insecure procedure, director might become responsible based on political motives only. This forfeits comparably high substantial guarantee of independence and makes director vulnerable to political motives.

Thus, in order to eliminate risk of political pressure and political responsibility, the rule of appointment (nomination of a candidacy by the President instead of Prime Minister) and removal of the director shall be completely amended. Responsibility of the director of the Security Service shall become a legal procedure in the form of an impeachment. It has to be noted, that interviewed experts shared the same position.[536] However, some interviewees sup-

532 Constitution of Georgia, edition dated 4 October 2013, article 81, paragraph 1.

533 Law of Georgia regarding State Security Service, edition dated 16 December 2015, article 10, paragraph 5.

534 Law of Croatia regarding security and intelligence service system, article 66, paragraph 4, see. https://www.soa.hr/UserFiles/File/Zakon_o_sigurnosno-obavjestajnom_sustavu_RH_eng.pdf updated on: 19.04.2016.

535 See. REPUBLIC OF LITHUANIA LAW ON THE STATE SECURITY DEPARTMENT, article 10, see. https://www.unodc.org/tldb/pdf/Lithuania/LIT_State_Security_1994.pdf updated on: 20.04.2016.

536 Experts of Human Rights Education and Monitoring Center (EMC), Sofo Vardzeuli, Guram Imnadze and Mariam Mkhatvari in interview dated 7 November 2016; The same position was shared by Levan Bodzashvili in interview dated 2.11.2016 and Levan Alapishvili in interview dated 4.11.2016.

port political responsibility and consider it to be more effective.[537] In this case the director of the Security Service shall be removed by qualified majority upon suggestion of the President. This will increase guarantees of political independence.

15.6.3.4. Other Forms of Responsibility

The Director of the Security Service, as a person appointed by the Parliament, is also responsible for violation of the Regulation of the Parliament.[538] Such violation might be the following: failure to attend the hearing; violation of the procedure of responding parliamentary question; failure to attend hearing for presentation of annual report; submission of disfigured information to the Parliament; failure to comply with the recommendations and decree of the Parliament; impediment to the parliamentary activities.[539] Based on the Regulation, in such situation Parliament shall act as follows: adopt a decree; or commence response proceedings as envisaged under Constitution for violation of resolution by specific Government official; or address head of entity regarding responsibility of the official under his/her subordination.[540]

537 Representative of Transparency International Georgia, Lika Sajaia, supports assessment of efficiency in the interview dated 8.11.2016.

538 Regulation of the Parliament of Georgia, edition dated 29 December 2016, article 289, paragraph 1.

539 Ibid, article 289, paragraph 2.

540 Ibid, article 290.

16

The Council of State Security and Crisis Management

- Participation of Parliament and head of the respective committee is not sufficiently guaranteed by the legislation.
- Product of analytical work of the State Security and Crisis Management Council is only available to the members of the executive body, specifically to the Prime Minister and the members of the council. Parliament is exempt from such authority.

The Council of State Security and Crisis Management was established in 2014 and represents consultative body to the Prime Minister. Functionally, the Council works on the matters, such as internal and external state security policy, stability and order of state, management of crisis situations including possible threats to the state.

The Prime Minister leads the Council. Assistant of the Prime Minister in state security issues, who is appointed and removed by the Prime Minister, is a secretary of the Council. Secretary is only responsible before the Prime Minister.

16.1. Institutional Place of the Council of State Security and Crisis Management

In security sector bodies carrying out services and coordination shall be separated. For instance, coordination entities exist in France (National Intelligence Coordinator), Italy (Department for Security Information) and others.[541] It is noted in the paper of Geneva Centre for the Democratic Control of Armed Forces, that the existence of body coordinating intelligence and security services is necessary. Such body shall include officials of such services and shall

541 Surveillance by Intelligence Services: Fundamental Rights Safeguards and Remedies in the EU, European Union Agency for Fundamental Rights, 2015, 13.

be directly subordinated to the president, prime minister or respective ministers.[542] It is essential to have a platform, which ensures direct communication of such services with high state officials.[543]

According to the law of Georgia, the Council of State Security and Crisis Management is an entity coordinating formation of security policy.[544] The entity is subordinated to the Prime Minister.[545]

16.2. Role of the Council of State Security and Crisis Management

16.2.1. Retrospective Analysis

According to the Decree of Georgia,[546] the Council of State Security and Crisis Management was established in 2014. The aim of the council was to ensure security, stability and order of the state. Decree approved guideline of the Council, which indicated that the main function of the Council was to support highest political decisions. The competence area was established with the following directions: internal and external policy related to state security; stability and order of the state; management of crisis situation threatening state security and national interests.[547] Council was subordinated to the Prime Minister and represented recommendatory body.

16.2.2. Model Existing Since 2015 until Today

On 4 March 2015, the Parliament of Georgia adopted a Law of Georgia on Planning and Coordination of National Security Policy. The law defined sphere of national security policy, its planning, coordination process and authorities of coordinating entities. Thus, the Council was subject to jurisdiction of the above law. Decree of the Government was announced as void

542 Intelligence Practice and Democratic Oversight – a Practitioner's View, DCAF Intelligence Working Group, Geneva, 2003, July, 41.

543 Ibid, 42.

544 Law of Georgia regarding Planning and Coordination Rules of State Security Policy, edition dated 4 March 2015, article 19, paragraph 3. National Security Council is a state entity coordinating state security policy alongside the Council of Security and Crisis Management. Law of Georgia regarding Planning and Coordination Rules of State Security Policy, edition dated 4 March 2015, article 19, paragraph 3.

545 Law of Georgia regarding Planning and Coordination Rules of State Security Policy, edition dated 4 March 2015, article 20, paragraph 2.

546 Decree of the Government of Georgia regarding Establishment of the Council of State Security and Crisis Management and Approval of Guideline, edition dated 6 January 2014.

547 Decree of the Government of Georgia regarding Establishment of the Council of State Security and Crisis Management and Approval of Guideline, edition dated 6 January 2014, article 1.

and new law regulated main issues related to the Council. Chapter 4 only includes provisions regarding the Council of State Security and Crisis Management. Provision defining the Council repeats decree of the Government. However, it directly indicates that the Council is established to assist with respect to the decisions made by Government. It is also specified that main aim of the Council is to help Prime Minister. The Prime Minister leads meetings of the Council. Meetings are conducted at least once in two months. Additionally, the Government is entitled to convene extraordinary meeting of the Council.[548]

16.3. Compilation of the Council of State Security and Crisis Management

The Council of State Security and Crisis Management has permanent and invited members. Permanent members include the following: the Prime Minister; the Minister of Finances; the Minister of Internal Affairs; the Minister of Defense; the Minister of Foreign Affairs; the Director of the State Security Service of Georgia; Assistant of the Prime Minister in state security issues, who is a secretary of the Council of State Security and Crisis Management.[549]

Permanent compilation of the Council evidences lack of involvement of the Parliament in the issues of coordination of security and intelligence sector. This problem is characterized with two main aspects:

(1) Strengthening the role of the Head of the Parliament: The law of Georgia envisages possibility for the Head of the Parliament to participate in the meeting of the Council and to vote at such meeting. The law notes that the Prime Minister makes decision with regard to invitation of the Head of the Government.[550] At the same time, such regulation is based on the legislation, which determines that the Council is a recommendatory body for the Prime Minister. However, based on the fact that the sphere is very sensitive and the Parliament is responsible for oversight of executive body, the role of the Parliament shall be more adequate. For instance, head of national assembly of Bulgaria is entitled to independently make decision regarding participation in the hearing.[551] Based on the abovementioned, it is recommended and more in compliance with the Constitution, to grant head of the Parliament with the authority to attend hearings of the Council upon his/her own discretion.

548 Law of Georgia regarding Planning and Coordination Rules of State Security Policy, edition dated 21 December 2016, article 23.

549 Ibid, article 22.

550 Ibid, article 22, paragraph 3.

551 Act on the Management and Functioning of the System of National Security Protection (SG No. 61, 11/08/2015), Art. 8.5. https://www.dar.bg/en/files/113-act-on-the-management-and-functioning-of-the-system-of-national-security-protection.pdf, updated on: 08.01.2017.

(2) Possibility of involvement of head of respective committee of the Parliament in the compilation of the Council: Participation of the head of respective committee of the Parliament in the composition of the Council is conditioned by role of the Parliament. Comparative analysis suggests that, in Bulgaria, prime minister is entitled to involve in activities heads of committees of supreme representative body, as well members of the parliament, ministers and heads of other state entities, in certain situations.[552] Thus, legislature will be more oriented on improvement of parliamentary oversight, if head of the committee becomes a member of the Council.

16.4. Accessibility to Analytical Information by the Council of State Security and Crisis Management

Authorities of the Council of State Security and Crisis Management include analytical, supervisory and coordinating powers.[553]

In Georgia, product of analytical work of the State Security and Crisis Management Council is only available to the members of the executive body, specifically to the Prime Minister and the members of the council. Based on the fact that security system in Georgia is established by the Parliament and the President alongside agencies and other institutions, it is important for the Parliament(as it determines the main directions of policies) to hold information available to the executive body. Thus, it is recommended to include provision in the law, which obliges the Council to distribute information to the Parliament in the same volume and quantity as accessible to the executive body. When discussing the above issue, some experts noted that the Prime Minister shall be entitled to have more information than the Head of the Parliament but same as the President. However, they noted that the above issue is problematic since functions of the President and Prime Minister are not clearly separated in the Constitution.[554] Some ex-

552 Ibid.

553 The Council reviews information regarding security and legal order. It also identifies threats, assess them and drafts plan for prevention measures; Council also analysis issues of internal and foreign policy, which are related to insurance of national security; Council organizes strategies with respect to internal and external policy, state defence and legal order; Based on national interest, the Council studies and analyzes situation in international conflict zones and prepares predictions for possible scenarios; Council also drafts suggestions with respect to cooperation in state security sphere; Based on international treaties concluded by Georgia, it drafts recommendations with respect to participation in security activities abroad; Council processes and reviews drafts of legislation regarding issues related to state defence, security and order; It also drafts laws; Council supervises Ministries of Georgia, governmental entities under the Autonomous Republic of Abkhazia and Adjaria and other territorial entities with respect to state defence, security and legal order; It also issues respective recommendations; It acquires information regarding protection of state defence, security and legal order from the persons supervising territorial entities of Georgia and issues respective recommendations; Coordinates necessary measures and events for detection, prevention, suppression and prediction of threats and risks of national and foreign scale; Draft suggestions for prevention and suppression of political, military, social, economic, ecological and other risks; manages management of crisis situations consisting threat component on non-political level.

554 Interview with Davit Darchiashvili, 11.14.2016.

perts consider that level of awareness of the President shall be improved with respect to every threat, which might lead a country to the war.[555] For instance, in Bulgaria, strategy of security service and its member institutions include obligation to provide same information to the president and head of national assembly.[556] Thus, product of analytical activities of the Council shall be available to the head of the Parliament, too.

16.5. Accountability and Responsibility

The Prime Minister leads the Council. The Council also has a secretary,[557] who is an assistant of the Prime Minister with respect to state security issues. The Prime Minister appoints and removes secretary,[558] who is responsible before the Prime Minister only.[559] Based on the legislation of Georgia, the Parliament is entitled to ask question to the Council.[560] Additionally, since the Council is subordinated to the Prime Minister, the Parliament is also authorized to carry out other oversight authorities and use other respective instruments indirectly.[561]

Based on the fact that the Council is not accountable before the Parliament, legislative body can exercise oversight authority through intermediary means. Significance of the sphere determines need for effective work of the Council. With this respect, the government of Bulgaria is responsible to present annual report to national assembly regarding national security.[562] The role of Security Council is significant, since it presents draft of annual report regarding

555 Interview with Levan Dolidze, 11.15.2016.

556 National Security Strategy of the Republic of Bulgaria, 173, see. https://www.bbn.gov.pl/ftp/dok/07/BGR_National_Security_Strategy_Republic_Bulgaria_2011.pdf, updated on: 08.01.2016.

557 Secretary of the Council may be appointed from the members of the Council. In such case, such job is not paid and authorities of secretary are carried out alongside official duties. Functions of the secretary include the following: organization of activities of the Council; management of registry of the council; presentation of guideline of the council to the Prime Minister for the approval of the Government; presentation of structure and manning list of the council to the Prime Minister for the approval of the Government; preparation of Council meetings; control of state with respect to defence, security and legal issues; implementation of decisions of the Government; suggestion of offers to the Prime Minister regarding establishment of permanent and temporary commissions and working groups; coordination of work of permanent and temporary commissions and working groups; signing of official documents and legal acts within the competence; classification, declassification and change of classified information prepared by secretariat of the Council according to the law; performance of specific tasks; conduct of other activities under the laws of Georgia.

558 Decree of the Government of Georgia regarding Approval of Guideline of the Council of State Security and Crisis Management, approval of Manning List and Salaries, edition dated 17 January 20014, article 3, paragraph 1.

559 Decree of the Government of Georgia regarding Approval of Guideline of the Council of State Security and Crisis Management, approval of Manning List and Salaries, edition dated 17 January 20014, article 3, paragraph 2.

560 The Council of State Security and Crisis Management does not represent addressee of the Parliamentary question, since it is not entity accountable before the Parliament.

561 Official web page of the Council of the Council of State Security and Crisis Management, see. http://sscmc.gov.ge/ge/page/internal-audit, updated on: 08.01.2017.

562 Bulgaria, National Security Strategy of the Republic of Bulgaria, 157.

national security to the council of ministers.[563] It is recommended to share the above experience in Georgia. In other words, it is necessary to establish a mechanism which will increase accountability of the Government before the Parliament in the context of security and will also underline role of the Council. With this respect, the Government may be obliged to present report to the Parliament regarding security issues (non-classified information), which shall be prepared by the Council of State Security and Crisis Management.

563 Act on the Management and Functioning of the System of National Security Protection (SG No. 61, 11/08/2015), Art. 9.7. see: https://www.dar.bg/en/files/113-act-on-the-management-and-functioning-of-the-system-of-national-security-protection.pdf, updated on: 08.01.2017.

17

Recommendations

Towards the Parliament of Georgia:

For effective exercise of parliamentary oversight, legislative reform is necessary to clearly determine the following issues:

- Mandatory attendance and participation of the President in case of political debates and mandatory attendance in case of speeches of the heads of the factions;
- Mandatory presentation of oral report regarding performance of Governmental Program and mandatory participation of all members of the Government; Mandatory political debates following presentation and mandatory presentation of all members of the Government; These obligations must extend to the extra-ordinary discussion of the prime minister's report.
- Number of MPs for parliamentary question, which shall be reduced to six Parliamentarians;
- Interpellation mechanism;
- Obligation of addressee of the question to personally respond to the question during Governmental Hour;
- Possibility for the Parliament to appoint Governmental Hour early and additionally in case of emergency; However, this shall not preclude convocation of the scheduled Governmental Hour in the same month (in this situation, there will be no need for invitation of the member of the Government to the plenary session of the Parliament);
- Possibility of establishment of specialized parliamentary committee or/and permanent subcommittee under the Committee of Defense and Security to carry out effective parliamentary oversight of the Security Service, MIA, Intelligence Service and State Security and Crisis Management Council. Such committee / subcommittee shall be fully oriented on control of the above authorities;
- In case of an initiative of the member of the Trust Group, possibility of automatic convocation of the meeting, without approval of majority;
- Preliminary control by the Trust Group with respect to classified procurement by the State

Security Service, Georgian Intelligence Service and the Council of Security and Crisis Management;
- Possibility for one fifth of MPs to create commission without approval of majority;
- Instrumental powers of the commission which shall not be subject to approval / permission of other depended persons (state entities);
- Voluntary attendance of the head of accountable entity at the meeting of the faction in case of invitation before the Parliament;
- Obligation of respective person to explain reasons to the Parliament for failure to respond to the question;
- Procedure, which shall ensure mandatory publishing of responded questions in a certain period of time.

For improved implementation of parliamentary oversight and change of existing bad practice, the following is necessary:

- Approach towards Governmental Program shall be changed. Program shall be guiding document for the Government and it shall reflect every aim of the Government;
- Prime Minister shall ensure presentation of the report in a period determined by the Regulation and the Parliament shall use any and all instruments to change existing bad practice;
- Respective committee of the Parliament shall be more critical toward Governmental Program and in parallel with approval of the Government and Governmental Program, recommendations shall also be issued;
- The Members of the Parliament shall use constitutional procedure of impeachment based on existing legal and political situation;
- Provision of the Regulation of the Parliament of Georgia, which obliges addressee of the question to personally sign the paper, shall be enforced;
- MPs shall more actively use authority to ask questions; Respective entities shall not refuse dissemination of resumes and other public information;
- Annual presentation of the report on activities of security service shall be determined as a priority. Thus, the bureau of the Parliament shall put such issue as first in the agenda in case other exceptional circumstances do not exist.

Towards the Minister of Internal Affairs

- Legislation shall envisage authority of representative body to carry out distrust proceedings through effective and simplified mechanisms in certain political situations;
- Legislation shall envisage procedure for personal political responsibility of the Minister.

Towards the Intelligence Service

- Only one institution shall not be entitled to appoint director of Intelligence Service; the Director shall be appointed by the Parliament upon nomination of the President;
- Legislation shall clearly determine grounds for removal of the director of Intelligence Service;
- The parliament should remove the Director of Intelligence Service upon the President's nomination. It refers to the political responsibility, as for the legal responsibility, impeachment must be determined.
- The Head of Intelligence Service shall become obligated to present report (non-classified information).

Towards the State Security Service

- The President shall present candidacy of the director of Security Service to the Parliament.
- Legislation should take into consideration the mechanism of impeachment of the Director of State Security Service; As for the political responsibility, for this reason, the director must be removed by the qualified majority of MPs upon the president's nomination;
- Report on activities of the Security Service shall be presented by the director and not by the deputy head. Legislation shall envisage excusable grounds for postponement of presentation of the report.

Towards the Council of Security and Crisis Management

- Legislation shall envisage possibility for the Head of the Parliament to attend meetings of the Council at his/her discretion;
- Legislation shall include head of respective committee as member of the Council of Security and Crisis Management;
- Analytical product of activities of the Council of Security and Crisis Management, shall be accessible to the Head of the Parliament;
- The Government of Georgia shall become obligated to present report on security issues (non-classified information), which shall be drafted by the Council of Security and Crisis Management.

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