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MECHANISMS OF
PARLIAMENTARY OVERSIGHT
OF THE STATE SECURITY SERVICE
OF GEORGIA AND THEIR SIGNIFICANCE

Contributors to the Report:

Tatia Koniashvili, Giorgi Tsikarishvili
and Tamar Khidasheli

Responsible for the Publication:

Ucha Nanuashvili

Editor:

Teona Gogolashvili



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INTRODUCTION

There are many aspects to security services that create the potential for human rights abuses if these services are not subject to effective oversight and underpinned by effective laws.¹ The risk of abuse of powers by internal security services, and thus, the risk of serious human rights violations, arises when internal security services are organised in a specific fashion, wield certain powers such as preventive and enforcement methods which involve forcible means (for example the power to search private property, run criminal investigations, arrest and detain) and when they are inadequately controlled (by the executive, legislative and the judiciary).²

In 2015, the State Security Service was separated from the Ministry of Internal Affairs of Georgia and formed into a separate agency. It is invested with the powers to conduct analytical and investigative³ as well as preventive measures⁴ and employ operative and investigative methods.⁵

The Constitutional Court of Georgia, in its judgment of 14 April 2016,⁶ declared as unconstitutional granting the Operative and Technical Department of the State Security Service of Georgia the power of conducting covert investigative actions.⁷ The creation of the Operative and Technical Agency – as a legal entity of public law under the State Security

¹ Council of Europe Commissioner for Human Rights, Democratic and effective oversight of national security services, p. 19, available at: <https://rm.coe.int/1680487770>.

² See Parliamentary Assembly of the Council of Europe, Control of Internal Security Services in Council of Europe Member States, Recommendation 1402, 1999, Guideline 5, available at: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16689&lang=en>.

³ See the Law of Georgia on the Security Service of Georgia, Article 11.

⁴ Article 13 of the Law of Georgia on the Security Service of Georgia.

⁵ See Article 12.2.b) of the Law of Georgia on the Security Service of Georgia.

⁶ Judgment no. 1/1/625,640 of the Constitutional Court of Georgia (the first section) of 14 April 2016.

⁷ See the Criminal Procedure Code of Georgia, Article 3.32 as of 22.03.2017.

Service with analogous powers in 2017– failed to ensure its independence from the State Security Service.

Considering the broad mandate of the State Security Service of Georgia, it is necessary to have effective mechanisms of democratic oversight in place. In this regard, oversight by the parliament as a representative body has a particularly high degree of democratic legitimacy.

This report analyses and assesses critically the existing mechanisms of parliamentary oversight of the State Security Service. Specific recommendations are elaborated based on relevant international practice and experience.

The document consists of several chapters. They highlight the significance of oversight of the State Security Service and the following mechanisms of parliamentary oversight: the mandate of the Committee of Defence and Security and the Trust Group, written questions and interpellation by a member of parliament, appointment of the Head of the State Security Service, submission of an annual report of the State Security Service and its significance. Recommendations are given at the end of the report.

METHODOLOGY

The report reviews mechanisms of parliamentary oversight of the State Security Service of Georgia. In particular, it reviews the following aspects: whether the Parliament of Georgia oversees adequately the State Security Service and whether it fully discharges its mandate in this regard; what are the particular gaps in the relevant legislation in force; whether the State Security Service is adequately accountable before the legislature and what procedural violations are identified in this regard. Given the fact that the State Security Service was formed as a result of the reform carried out in August 2015, this period was taken as the initial stage of the research.

This research is based on the information obtained by the DRI through requesting public information, the study of legislative regulations governing the oversight of the State Security Service of Georgia and analysis of data posted on the public agencies' websites. Furthermore, the report has cited documents and viewpoints of authoritative international organisations regarding the oversight of the security system.

Considering the goals and tasks of the project, the following methodology was used in the development of the report:

Processing and analysing data – at the initial stage of the research, we made the list of normative acts and processed the data obtained through requesting public information.

Situation analysis – In terms of oversight of a security service, we studied experience of those countries that, keeping the local context in view, can be considered to be the best examples.

Desk research – we gathered and analysed public data published by respective administrative bodies and used it in the research process.

MECHANISMS OF PARLIAMENTARY OVERSIGHT OF THE STATE SECURITY SERVICE

The Parliament of Georgia, within the scope established by the constitution, oversees activities of the government.⁸ Under the Law of Georgia on the State Security Service of Georgia, the Head of the State Security Service is accountable and responsible to the Parliament of Georgia.⁹

Within a broad meaning, legislative activities of the parliament can be considered to be an important aspect of parliamentary oversight. In particular, the parliament, through its legislative activities, ensures adoption/amendment of the legislation pertaining to the State Security Service and accordingly granting and/or depriving it of certain powers.

On the other hand, parliamentary oversight is manifested in various mechanisms of control entrusted with the Parliament of Georgia by the constitution and the Rules of Procedure of the Parliament such as posing a question and interpellation,¹⁰ mandatory attendance of the Head of the State Security Service at a committee session,¹¹ submission of the service's annual report at a parliamentary session,¹² control carried out by the Committee of Defence and Security, the Trust Group and other relevant specialised committees.¹³

⁸ The Constitution of Georgia, Article 36.

⁹ The Law of Georgia on the State Security Service of Georgia, Article 9.

¹⁰ The Constitution of Georgia, Article 43, the Rules of Procedure of the Parliament of Georgia, Articles 148 – 149.

¹¹ The Rules of Procedure of the Parliament of Georgia, Article 40.3.

¹² *Ibid.*, Article 88.2, Article 171, the Law of Georgia on the State Security Service of Georgia, Article 9.2.

¹³ The Rules of Procedure of the Parliament of Georgia, Article 156.

OVERSIGHT BY THE COMMITTEE OF DEFENCE AND SECURITY OF THE STATE SECURITY SERVICE

Under the Rules of Procedure of the Parliament of Georgia, the Committee of Defence and Security is mainly in charge of the oversight of the State Security Service.¹⁴ The same model exists in a number of European countries such as Germany, Poland and Italy.¹⁵ There are presently 15 members in the Committee of Defence and Security of the Parliament of Georgia.¹⁶ The Committee of Defence and Security is formed in accordance with the general procedure established by the Rules of Procedure of the Parliament. Accordingly, the majority of the committee members represent the ruling political power.¹⁷ This casts doubt on the possibility of implementing effective political oversight.

The majority of the European countries follow the principle of proportionality when forming committees in charge of oversight of activities carried out by security services and/or offer additional safeguards to the opposition in this regard.¹⁸ Proportional representation is present in countries such as Austria, Bulgaria, Estonia, France, Lithuania, etc.¹⁹ In Latvia, the National

¹⁴ *Ibid.*,

¹⁵ Democratic and effective oversight of national security services, the Council of Europe Commissioner for Human Rights, p.42.

¹⁶ See the website of the Parliament of Georgia: <http://parliament.ge/ge/saparlamento-saqmianoba/komitetebi/tavdacvisa-da-ushishroebis-komiteti-144/komitetis-wevrebil106>, (accessed 5.06.2020).

¹⁷ See procedure for the formation of the Committee of Defence and Security, the Rules of Procedure of the Parliament of Georgia, Article 28.

¹⁸ Directorate General for Internal Policies, Policy Department C: Citizens' Rights and Constitutional Affairs; Parliamentary Oversight of Security and Intelligence Agencies in the European Union; pp. 92-95.

¹⁹ *Idem.*

Security Committee, which oversees the National Security Defence Agency, is formed by one member from each political group.²⁰

Under the Statute of the Defence and Security Committee of the Parliament of Georgia, the committee:

- Develops, discusses and prepares for plenary sessions of the parliament drafts of laws, parliamentary resolutions and other decisions;
- Participates in deliberations about and elaboration of draft laws submitted to the parliament;
- Regulates legislative framework pertaining to the defence and security of the country, classification of information as a state secret, its protection and oversees the implementation of laws;
- Elaborates legislative initiatives, recommendations and proposals regarding institutional reforms of the security sector;
- Deliberates about the ratification of international instruments pertaining to the security sector, accession to them, their denunciation and abolition;
- Oversees activities of state bodies accountable to the parliament and, if needs be, submitting a corresponding conclusion to the Parliament of Georgia;
- Hears a report of the Head of the State Security Service about implemented activities, elaborates corresponding conclusions regarding the report and drafts a resolution of the Parliament of Georgia that may reflect certain recommendations;
- In cases envisaged by legislation, elaborates conclusions about the pre-term dismissal of the Head of the State Security Service;
- Examines applications and complaints lodged with the committee; and
- Discharges other powers established by law.²¹

The Head of the State Protection Service of Georgia is “obliged to attend a committee session upon a written request of the *majority of the list* of the committee members. The written request should contain detailed information regarding the issue/issues to be discussed with

²⁰ *Idem.*

²¹ The Statute of the Committee of Defence and Security, available at:

<http://parliament.ge/ge/ajax/downloadFile/50984/8>.

the official to be summoned at the committee session.”²² This cannot be deemed to be an effective oversight mechanism as, stemming from the procedure of forming the Defence and Security Committee, representatives of the opposition are not allowed to summon the Head of the State Security Service independently before a committee session.

Under Georgian legislation, out of parliamentarians, only the President of the Parliament of Georgia has the *ex officio* right of access to classified information.²³ Accordingly, the same standard applies to both members of the Defence and Security Committee and other MPs, whereas the committee oversees the State Security Service directly.²⁴ Under the recommendation of the Council of Europe Commissioner for Human Rights, it should be guaranteed that all bodies responsible for overseeing security services have access to all information, regardless of its level of classification, which they deem to be relevant to the fulfilment of their mandates.²⁵

A member of the Defence and Security Committee, entrusted with the duty of direct oversight of the State Security Service, unlike other MPs, should have access to certain categories of classified information. It is noteworthy that, in a number of countries, access of an oversight body to classified information depends on the category of classified information it seeks to access (for instance, Germany, Montenegro, the Netherlands, Poland, Portugal and Romania).²⁶ All members of the Parliament of Montenegro have *ex officio* access to restricted information (which is the lowest category of classified information). However, members of the Security and Defence Committee can have access to a higher level of classified information.²⁷ Classified information can also be accessed by members of the Committee on

²² The Rules of Procedure of the Parliament of Georgia, Article 40.3.

²³ See the Law of Georgia on State Secrets, Article 18.1.

²⁴ *Ibid.*, Chapter V.

²⁵ Council of Europe, Democratic and Effective Oversight of National Security Services, p. 13.

²⁶ Parliamentary Access to Classified Information, Assessment of Legislative Framework and Practice in NATO Member Countries, a joint study by the NATO Parliamentary Assembly (NATO PA) and Geneva Centre for the Democratic Control of Armed Forces (*DCAF*), 2019, pp. 24-25.

²⁷ *Ibid.*, p. 25.

National Security and Defence of Lithuania, the National Security Committee of Latvia and the Security Authorities Surveillance Select Committee of Estonia.²⁸

THE TRUST GROUP

Under the Rules of Procedure of the Parliament of Georgia, the Trust Group is set up within the Defence and Security Committee of the parliament.²⁹ It was set up for carrying out parliamentary oversight³⁰ of agencies within the defence and security sector of Georgia.³¹ Sessions of the Trust Group are held in camera.³²

A person nominated as a member of the Trust Group shall undergo a special security background investigation to be granted access to state secrets.³³ However, a Trust Group member does not have access to all documents; they cannot oversee activities relating to covert forms and methods of activity.³⁴ The State Security Service is also entitled to refuse to provide certain information in the national/social security and state interests.³⁵ In the event of refusal to provide information, the relevant authorities are obliged to submit written

²⁸ Directorate General for Internal Policies, Policy Department C: Citizens' Rights and Constitutional Affairs; Parliamentary Oversight of Security and Intelligence Agencies in the European Union; pp. 92-95.

²⁹ *Ibid.*, para. 1.

³⁰ *Ibid.*

³¹ The following agencies make up the defence and security sector of Georgia: the Ministry of Defence of Georgia, the Ministry of Internal Affairs of Georgia, an under-agency body within the system of the Ministry of Justice of Georgia – the Special Penitentiary Service, the State Security Service of Georgia, the Georgian Intelligence Service, the Special Service of State Protection and LEPL Operative and Technical Agency of Georgia.

³² The Rules of the Parliament, Article 158.1.

³³ *Ibid.*, Article 157.5.

³⁴ *Ibid.*, Article 159.1.

³⁵ *Ibid.*, para. 3.

reasoning to the Trust Group.³⁶ The Rules of Procedure of the Parliament of Georgia is reticent about the actions to be carried out if a member of the Trust Group believes that the refusal of the State Security Service to impart information is not sufficiently justified and substantiated.

Accordingly, apart from information related to covert activities and information, which according to the *service's assessment* can endanger national/public security and state interests, remain beyond the Trust Group's oversight. For comparison, the Parliament of Estonia can be refused access to classified information if it concerns methods of gathering data by the Intelligence Service. However, this refusal must be substantiated by the Prime Minister of Estonia or the head of the relevant service.³⁷

Apart from the above-mentioned, the Trust Group is entitled to carry out visits to the State Security Service. Members of a Trust Group are authorised to interview employees of the service and get acquainted with information regarding issues within the competencies of the Trust Group during the visit."³⁸ However, the effectiveness of the inspection is diminished by the fact that, under the legislation, the decision of the Trust Group about the visit is notified to the relevant agency prior to the visit.³⁹ This enables the service to prepare in advance for the visit.

The DRI requested information from the Parliament of Georgia⁴⁰ about the number of visits of members of the Trust Group to the State Security Service from the date when the new version of the Rules of Procedure of the Parliament of Georgia came into force to 1 June 2020. According to the response received from the parliament, *the planned visits have been*

³⁶ *Ibid.*, para. 4.

³⁷ Parliamentary Access to Classified Information, Assessment of Legislative Framework and Practice in NATO Member Countries, a joint study by the NATO Parliamentary Assembly (NATO PA) and Geneva Centre for the Democratic Control of Armed Forces (*DCAF*), 2019, p. 24, See Estonia, Status of Members of the Riigikogu [parliament of Estonia – S.S.], Act § 19.

³⁸ The Rules of Procedure of the Parliament of Georgia, Article 159.11.

³⁹ *Ibid.*

⁴⁰ Statement no. 20200618/76 of the DRI on requesting public information, Letter no. 20200618/76.

postponed due to the epidemiological situation existing in the country and, therefore, have not been carried out.⁴¹

The Trust Group is also authorised to take decisions about inspecting the Operative and Technical Agency.⁴² Considering the fact that the agency is in charge of exclusive covert investigative actions⁴³ involving high risk for the breach of human rights and fundamental freedoms, such oversight mechanisms are particularly important. However, the Rules of Procedure of the Parliament do not contain any details as to the level of clearance needed or the category and volume of information that can be accessed within the “right to inspect”. It is also worth pointing out that once a year the LEPL Operative and Technical Agency submits to the Trust Group, within the parliamentary oversight system, only a *statistical and generalised report* about its activities.⁴⁴ The Parliament of Georgia failed to submit to us any information about the number of inspections of the Operative and Technical Agency conducted by the Trust Group.⁴⁵ According to the response received from the parliament, the Operative and Technical Agency submitted a statistical and generalised report on one occasion each in 2019 and 2020.

The Trust Group is also authorised to request the Head of the State Security Service and the Head of the Operative and Technical Agency or representatives of these bodies to attend its sessions, pose questions to them and request the submission of respective materials and a report about their previous activities.⁴⁶ Unfortunately, a letter received from the parliament says nothing about the number of instances the Trust Group employed this oversight mechanism.⁴⁷

⁴¹ Letter no. 2-6870/20 of the Parliament of Georgia.

⁴² The Rules of Procedure of the Parliament of Georgia, Article 159.12.

⁴³ The Criminal Procedure Code, Article 3.32.

⁴⁴ The Rules of Procedure of the Parliament of Georgia, Article 159.9.

⁴⁵ Letter no. 2-6870/20 of the Parliament of Georgia.

⁴⁶ The Rules of Procedure of the Parliament of Georgia, Article 159.10.

⁴⁷ Letter no. 2-6870/20 of the Parliament of Georgia.

Agencies accountable before the Trust Group,⁴⁸ once a year, no later than 15 April, are obliged to submit a report to the Trust Group about the covert activities and special programmes carried out during the previous year. In a response received from the parliament to a question posed by the DRI, nothing is said whether the State Security Service had complied with this obligation.⁴⁹

According to the Parliament of Georgia,⁵⁰ in 2020, the Trust Group did not hold a single session, allegedly, due to novel coronavirus. Only three sessions were held in 2019.⁵¹ The reasons for not conducting the sessions could be due to the following circumstances: MP Eka Beselia, who had been nominated to the Trust Group by the ruling coalition in the parliament, left both the coalition and the Trust group on 25 February 2019.⁵² Furthermore, on 11 March 2019, due to the dissolution of the parliamentary minority, a member of the party, the European Georgia – the Freedom Movement, Irakli Abesadze also left the Trust Group. Thus, only two members were left in the Trust Group, viz., Irakli Sesiashvili and Archil Talakvadze.⁵³ Due to the failure to fill the vacancies in time, the activities of the Trust Group were delayed for a certain period. The Trust Group resumed its work on 26 September 2019 with a new composition.⁵⁴

Stemming from all the above-mentioned, it can be concluded that the Trust Group does not discharge its statutory mandate and, thus, does not carry out the appropriate oversight of the security sector.

⁴⁸ Except for Operative and Technical Agency, which presents its report on statistical and generalised report to the Trust Group.

⁴⁹ Letter no. 2-6870/20 of the Parliament of Georgia.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² See <https://imedinews.ge/ge/politika/97860/eka-beselia-akhali-statusamde-ndobis-jgups-da-iuridiul-komitets-tovebs>.

⁵³ Letter no. 2562/4-8/20 of the Parliament of Georgia.

⁵⁴ *Ibid.*, also see the official website of the Parliament of Georgia:

<http://parliament.ge/ge/saparlamento-saqmianoba/komitetebi/tavdacvisa-da-ushishroebis-komiteti-144/ndobis-djgufi/axali-ambebi>

THE MECHANISM OF POSING A WRITTEN QUESTION BY AN MP

Under the Constitution of Georgia, “a Member of Parliament shall be entitled to address the government, a body accountable to the parliament, a member of the government, state bodies of the territorial units at all levels and state institutions with a question. Providing a timely and full response to a question posed by a Member of Parliament is mandatory.”⁵⁵ The same wording is provided in the Rules of Procedure of the Parliament of Georgia.⁵⁶ Posing a question by an MP to a public agency accountable to the parliament, including the State Security Service, is one of the most significant mechanisms of parliamentary oversight. Under the Rules of Procedure of the Parliament of Georgia, “a body or official to which/whom a question is addressed is obliged to give a comprehensive written answer within 15 days. This term may be prolonged for 10 days with the consent of the author of the question.”⁵⁷

In order to see how frequently this important mechanism of parliamentary oversight is used by MPs, the DRI requested information from the parliament⁵⁸ as to how many times, from 1 August 2015 to 25 February 2020, MPs posed questions to the State Security Service and how many questions were answered. According to the response received from the parliament,⁵⁹ within the said period, the State Security Service was sent 9 written questions, namely: in 2015 – 2; in 2016 – 1; in 2017 – 2; in 2018 – 2 and in 2019 – 2.

According to the supplied information, the State Security Service did not answer two questions posed in 2018 and 2019. Under the Rules of Procedure of the Parliament of Georgia, the State Security Service is entitled not to provide information containing a state secret in its response.⁶⁰ However, the service is not altogether exempted from the obligation to respond.

⁵⁵ The Constitution of Georgia, Article 43.1.

⁵⁶ The Rules of Procedure of the Parliament of Georgia, Article 148.

⁵⁷ *Ibid.*, Article 148.4.

⁵⁸ DRI Statement no. 20200225/54.

⁵⁹ Letter no. 2-3629/20 of the Parliament of Georgia.

⁶⁰ The Rules of Procedure of the Parliament of Georgia, Article 148.5.

Under the Rules of Procedure of the Parliament of Georgia, the Office of the Parliament immediately publishes the contents of the question on the parliament's website.⁶¹ Information about all those written questions requested by the DRI from the Parliament of Georgia is given on the official website of the legislative body in accordance with the procedure established by law, except for the written question posed in 2018 that was left unanswered. There are 8 questions and answers published on the website instead of 9.⁶²

The practice has demonstrated that Georgian MPs rarely resort to the mechanism of posing a question in terms of discharging parliamentary oversight of the State Security Service. As regards the response of the State Security Service, it refused to answer two out of nine written questions and limited its answers to general comments in the other seven cases.⁶³ It is noteworthy that all the written questions have been sent by only four members of the parliamentary opposition.⁶⁴

In 2020,⁶⁵ MPs did not use the parliamentary oversight mechanism of posing a written question at all.

⁶¹ *Ibid.*, Article 148.3.

⁶² See the official website of the Parliament of Georgia: <https://info.parliament.ge/#mpqs>.

⁶³ *Idem.*

⁶⁴ *Idem.*

⁶⁵ As of 17 May.

INTERPELLATION

A new oversight mechanism in the form of interpellation was introduced in the 2018 version of the Rules of Procedure of the Parliament of Georgia.⁶⁶ Interpellation is similar to the mechanism of posing questions although it implies procedures that are far more complex.

Under the Rules of Procedure of the Parliament of Georgia, “consisting of no fewer than 7 MPs, a party is authorised to pose a question, according to the rule of interpellation, to the government, a body accountable to the parliament and any member of the government.”⁶⁷ It is not sufficient to submit a written response; an addressee must answer questions personally.⁶⁸ Under the Rules of Procedure of the Parliament of Georgia, an addressee of a question asked through the interpellation rule, as a rule, must be present before the parliament twice during each next session.⁶⁹

The Rules of Procedure determine the length of time allotted to the author of the question, the addressee of the question and the persons/groups participating in the debate during the interpellation procedure.⁷⁰ In order to go through all the procedures provided by the legislation, the regulation also provides for the possibility of proportionally reducing the time specified for the author of the question, the addressee and the persons/groups participating in the debate.⁷¹ While, in order to exhaust the issue, the Rules of Procedure provide for the possibility of extending the next plenary session of the parliament for more than 21 hours;⁷² this, however, does not preclude the possibility of reducing the interpellation time by the Bureau of the Parliament in such a way that the procedure cannot be carried out fully.

⁶⁶ See the Rules of Procedure of the Parliament of Georgia, Article 149.

⁶⁷ *Ibid.*, Article 149.1.

⁶⁸ *Ibid.*, para. 4.

⁶⁹ *Ibid.*, para. 5.

⁷⁰ *Ibid.*, paras. 8-10.

⁷¹ *Ibid.*, para. 7.

⁷² *Ibid.*, Article 88.2.

For instance, during the interpellation on 22 March 2019 in the Parliament of Georgia, the times were allotted in the following manner: “the author of the question was given 3.5 minutes instead of 10 minutes; the Prime Minister talked for 10 minutes instead of 30 minutes; 1 minute was given to the author of the question for a clarifying question instead of 3 minutes and independent MPs were given 2 minutes instead of 5 minutes; the parties not belonging to either majority or minority were given 5 minutes instead of 15 minutes and the majority party was given 15 minutes instead of 45 minutes. The concluding remarks lasted for 7 minutes instead of 20 minutes. During the second interpellation, the author of the question was given 2.5 minutes and the addressee – 7.5 minutes; 1 minute was given to the author of the question for a clarifying question and 2.5 minutes were given to the addressee of the question; an independent MP was given 1.5 minutes; parties not belonging to the majority were given 4 minutes each and the majority was given 11.5 minutes; the concluding remarks only lasted for 5 minutes.”⁷³ For comparison, the times determined by the Lithuanian legislation are far longer than those under the Georgian legislation are.⁷⁴

Under the Rules of Procedure, after deliberations and the concluding remarks of the addressee, the parliament may adopt a resolution.⁷⁵ It is, however, unclear, as to what implications the adoption of a possible resolution may have for the addressee of the procedure. Despite the fact that, in 2019, the Parliament of Georgia used the procedure of interpellation on four occasions,⁷⁶ the parliament never adopted a resolution, which significantly diminishes the significance of the procedure.

⁷³ The Georgian Young Lawyers’ Association, Guest Expert – Tornike Gerliani, Interpellation in the Georgian Context: Expectations and Disillusions, 2019-10-17, see

<https://www.gyla.ge/index.php/ge/post/interpelacia-qartul-konteqstshi-molodinebi-da-imedgacrubebi#sthash.noJNfhjk.kdgFlqGw.dpbs>, (accessed 05.17.2020).

⁷⁴ See <https://e-seimas.lrs.lt/portal/legalAct/lit/TAD/3b50631064bd11e7a53b83ca0142260e?jfwid=96t6tdoyo>, Article 221, (accessed 17.05.2020).

⁷⁵ The Rules of Procedure of the Parliament of Georgia, Article 149.11.

⁷⁶ Annual Report on the Activities of the Parliament of Georgia and the Action Plan for the Upcoming Year, 2020, p. 41, <https://info.parliament.ge/file/1/BillReviewContent/243899>.

As regards employing this mechanism of parliamentary oversight directly with regard to the State Security Service of Georgia, according to the information supplied by the Parliament of Georgia, since the enforcement of the new version of the Rules of Procedure of the Parliament of Georgia to 25 February 2020, the legislative body did not use the mechanism of interpellation with regard to the State Security Service at all.⁷⁷

While the introduction of the mechanism of interpellation in the new version of the Rules of Procedure can be assessed as a significant step towards strengthening parliamentary oversight, it is important to improve the procedure under the Rules of Procedure, make detailed stipulations and clarify its actual outcomes. As of today, the legislative body does not employ the mechanism of posing questions through interpellation for carrying out effective oversight of the State Security Service.

APPOINTING THE HEAD OF THE STATE SECURITY SERVICE

The procedure of the appointment of the Head of the State Security Service can be deemed as a mechanism of oversight of the service. Under the Georgian legislation, the Prime Minister of Georgia, the Government of Georgia and the Parliament of Georgia take part in this process.⁷⁸ The final decision is adopted by the parliament with the majority of its entire composition. At a glance, this mechanism is effective since more than one body are involved in the selection procedure. However, against the background where all the above agencies mostly represent the same political power, the possibilities of adopting an objective and non-political decision are doubtful. The ruling political power can independently adopt an important decision such as the election of the Head of the State Security Service.

The Head (Director General) of the Security Department of the Republic of Lithuania is appointed and dismissed by the President of the Republic with the *Seimas'* consent.⁷⁹ A

⁷⁷ Letter no. 2-3629/20 of the Parliament of Georgia.

⁷⁸ The Law of Georgia on the State Security Service of Georgia, Article 7.

⁷⁹ See Republic of Lithuania Law On the State Security Department, Article 10.

different rule applies in Ukraine where the Head of the State Security Service is appointed by the country's president.⁸⁰ As regards Canada, the Head of the State Security/Intelligence Service is appointed by the government for a five-year term, with the possibility of being elected for another term (limited to two terms). Though the supervising ministry nominates a candidate, the selection process is open for every citizen and the decision is merit-based.⁸¹

Inclusion of an independent link in the process of selection of the Head of the State Security Service that does not represent the ruling political power and participates both in the process of appointment of the Head of the State Security Service and its oversight is recommended in terms of independence and political neutrality of the service's activities.

PRESENTING A REPORT BY THE HEAD OF THE STATE SECURITY SERVICE

Once a year, no later than 1 April, the Head *or the Deputy Head* of the Service shall submit to the Parliament of Georgia a report on the activities carried out during the previous year.⁸² The submitted report is deliberated at the sessions of the lead committee, bureau and plenary session.⁸³ It is an important mechanism at the disposal of the parliament in terms of overseeing the activities of the State Security Service within a certain period. After the deliberations about a report on the implemented activities of the State Security Service, the legislative body evaluates the service's performance by a resolution. The parliament's resolution may include recommendations and proposals on addressing specific shortcomings and/or improving the performance of the State Security Service.⁸⁴

⁸⁰ See Law of Ukraine on the Security Service of Ukraine, Article 13.

⁸¹ Managing the Security Service and International Standards and Best Practices of Oversight, Transparency International Georgia, DCAF, EMC, p. 32.

⁸² The Law of Georgia on the State Security Service of Georgia, Article 9.2.

⁸³ The Rules of Procedure of the Parliament of Georgia, Article 176.

⁸⁴ *Ibid.*, Article 171.2.

For the research purposes, it is important to assess this process from 2015 to the present and to discuss whether the parliament employs its statutory mandate fully in this regard.

From the outset, it should be mentioned that all reports presented by the State Security Service to this day are abstract and do not allow making concrete conclusions or assessing the activities of the State Security Service.

The 2015 report was presented by the then Deputy Head of the State Security Service, Levan Izoria, at the joint session of the Committee of Human Rights and Civic Integration, the Committee of Legal Affairs and the Committee of Defence and Security.⁸⁵ Unlike the Rules of Procedure of the Parliament currently in force, stemming from the then legislative regulation, the Head of the State Security Service had the duty to present the report at the material time.⁸⁶ However, the parliament did not respond to this violation in any manner. The practice of presenting the service's report by the Deputy Head of the State Security Service continued in the next years.⁸⁷ Later, the Deputy Head of the State Security Service became authorised to submit an annual report.⁸⁸ We believe that this legislative amendment is not a right step since an important decision such as the dismissal of the Head of the State Security Service by the Parliament of Georgia can be based on the submission of a report by the Head of the State Security Service.⁸⁹ It is clear from a glance that the Parliament of Georgia tailored the provision of the Rules of Procedure to the interests of the Head of the State Security Service.

The fact that the deliberations about an annual report of the State Security Service are not a priority for the oversight body is confirmed by other circumstances as well. During the

⁸⁵ See the official website of the Parliament of Georgia: <http://www.parliament.ge/ge/media/axali-ambebi/saqartvelos-saxelmwifo-usafrtxoebis-samsaxuris-2015-wlis-saqmianobis-angarishi-sakomiteto-formatshi-moismines.page>, (accessed 19.05.2020).

⁸⁶ See the Rules of the Parliament, Article 229⁶.1, [as of 21.04.2017].

⁸⁷ See the official website of the Parliament of Georgia: <https://ssg.gov.ge/news/229/sus-is-ufrosis-moadgilem-parlamentis-komitetebis-gaertianebul-sxdomaze-utsyebis-2016-tlis-angarishi-tsaradgina>, (accessed 5.19.2020).

⁸⁸ See the Rules of Procedure of the Parliament of Georgia, Article 229⁶, 1, [as of 21.04.2017].

⁸⁹ The Law of Georgia on the State Security Service of Georgia, Article 10.5.

presentation of the 2015 parliamentary report, for lack of a quorum, the deliberations scheduled at a plenary session were adjourned. Instead of presenting the report before 1 April,⁹⁰ the session was scheduled for 12 May. However, for the entire day, deliberations were dedicated to the amendment to the Organic Law on the Constitutional Court and, thus, the hearing of the report was postponed once again.⁹¹

The study of the process of presenting reports of the State Security Service identified another noteworthy detail. It concerns holding sessions in camera. For instance, when presenting the 2016 report, Alexander Tabatadze, Deputy Head of the State Security Service, presented only the general part of the report at a public session of the joint session of the Committee of Human Rights and Civic Integration, the Committee of Legal Affairs and the Committee of Defence and Security. Afterwards, the session was closed due to the reason that MPs had questions containing state secrets.⁹² Despite the opposition's objection, the same was repeated during presenting the 2018 report.⁹³ Considering the fact that not all MPs have access to secret information, the reason for the frequent practice of closing sessions under the pretext of discussing state secrets is unclear.

For carrying out effective parliamentary oversight, it is important to ensure that deliberations about an annual report of the State Security Service are public and sessions are held in camera only in special circumstances determined exhaustively by the Rules of Procedure of the Parliament.

⁹⁰ See the Rules of the Parliament, Article 229⁶, para. 1, [as of 21.04.2017].

⁹¹ See <https://netgazeti.ge/news/114301/>, Netgazeti, (accessed 19.05.2020).

⁹² See <https://imedinews.ge/ge/politika/10020/susis-angarishis-tsardgena-parlamentshi-dakhurul-pormatschi-mimdinareobs>, (accessed 19.05.2020).

⁹³ See <http://www.parliament.ge/ge/saparlamento-saqmianoba/komitetebi/tavdacvisa-da-ushishroebis-komiteti-144/axali-ambebi-tavdacva/parlamentshi-saqartvelos-saxelmwifo-usafrtxoebis-samsaxuris-2018-wlis-saqmianobis-angarishi-moismines.page>.

DISMISSAL OF THE HEAD OF THE STATE SECURITY SERVICE AFTER HEARING THE REPORT

The Law of Georgia on the State Security Service of Georgia determines the grounds for pre-term dismissal of the Head of the State Security Service.⁹⁴ Dismissal by the Parliament of Georgia in accordance with the procedure determined by the Rules of Procedure of the Parliament is one of them. In particular, after hearing a report on the implemented activities of the State Security Service, at least one-third of the full composition of the Parliament may raise the issue of pre-term dismissal of the Head of the State Security Service, if the adoption of such a decision is deemed inevitable after deliberations about the report.⁹⁵ In this case, the authors of the initiative shall specify the grounds/reasons for raising the aforementioned issue.⁹⁶

Leaving the exclusive power of dismissal of the Head of the State Security Service with the parliamentary majority might give the ruling political power advantage to control both the Head of the State Security Service and the entire activities of the service, endangering the neutrality, independence and freedom of the Head of the State Security Service. Besides, the said provision of the Rules of Procedure is general; it does not determine concrete grounds for the dismissal of the Head of the State Security Service and allows the parliamentary majority to adopt biased and unsubstantiated decisions.

⁹⁴ The Law of Georgia on the State Security Service of Georgia, Article 10.

⁹⁵ The Rules of Procedure of the Parliament of Georgia, Article 183.

⁹⁶ The Law of Georgia on the State Security Service of Georgia, Article 10.

RECOMMENDATIONS

- With the view of ensuring effective parliamentary oversight of the State Security Service, the Parliament of Georgia should use oversight mechanisms determined by the rules in force;
- Members of the Committee of Defence and Security, after the appropriate clearance, considering the levels of confidentiality, should obtain access to confidential information which is necessary for the effective parliamentary oversight of the State Security Service;
- The State Security Service should have the right to decline to impart information to the Trust Group only in those cases where it concerns the use of covert forms and methods of activities;
- Relevant amendments should be made to the Rules of Procedure of the Parliament to allow to continue the procedure of interpellation in following days if needs be, in order to enable going through all the procedures determined by the Rules of Procedure;
- To consider the possibility of including an independent link in the process of appointing the Head of the State Security Service;
- Only the Head of the State Security Service should have the obligation to present an annual report of the State Security Service of Georgia;
- Annual reports of the State Security Service should contain more concrete facts to allow an assessment of the activities of the service; and
- To determine concrete grounds in the relevant legislation in force to allow dismissal of the Head of the State Security Service only in case of existence of those grounds after hearing the annual report. In order to increase the participation of the parliamentary minority in this process, the statutory number of votes necessary for adopting these decisions should be increased.