

To the Chairman of the Parliament of Georgia  
Mr. Shalva Papuashvili

## **Legislative Proposal on Strengthening Parliamentary Oversight Over the Security Sector**

In accordance with Article 105 of the Rules of Procedure of the Parliament of Georgia Transparency International Georgia submits the legislative proposal on the strengthening parliamentary oversight of the security sector.

The 9 November 2023 report issued by the European Commission about granting the status of candidate country to Georgia underscored the importance of parliamentary oversight on the security sector. According to the European Commission report, **“Georgia should ensure effective parliamentary oversight, notably of security services.”**<sup>1</sup>

Although the 2018 Rules of Procedure of the Parliament markedly enhanced parliamentary control, the amendments had a limited impact on reinforcing oversight over the security service. Despite some expansion in the mandate of the Trust Group through recent amendments to the Rules of Procedure, the legislation and practice do not respond to the current challenges and cannot improve the existing situation.

In a parliamentary republic, ensuring parliamentary oversight is paramount for the effective functioning of institutions and democratization. The effectiveness of parliamentary control of the security sector determines both the proper functioning of the system and the protection of human rights.

The current mechanisms of parliamentary control (a parliamentary question, summoning the head of the State Security Service to the committee and plenary sessions, hearing the report) are indeed utilized for overseeing the security service, however, due to the specifics of the sector, these mechanisms prove to be insufficient. The parliamentary body tasked with overseeing the security service must have the respective mandate, competence, qualifications, and appropriate level of clearance.

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<sup>1</sup> European Neighbourhood Policy and Enlargement Negotiations (DG NEAR), Georgia Report 2023, 08.11.23,<  
[https://neighbourhood-enlargement.ec.europa.eu/georgia-report-2023\\_en](https://neighbourhood-enlargement.ec.europa.eu/georgia-report-2023_en)>.

According to Article 105 of the Rules of Procedure of the Parliament of Georgia, Transparency International Georgia submits a legislative proposal including the main principles for drafting a bill and the relevant justification, which addresses the strengthening of parliamentary oversight of the security sector.

**The following amendments shall be made to the Rules of Procedure of the Parliament of Georgia to enhance the parliamentary oversight of the security sector:**

### **1. Establishment of a Specialized Parliamentary Body for Overseeing the Security Sector**

For a comprehensive parliamentary control of the State Security Service there has to be a specialized parliamentary body (committee, sub-committee, or trust group with an expanded mandate) exclusively dedicated to overseeing the security sector;

#### ***Justification***

Parliamentary control holds particular significance in a domain where an extensive volume of information is covertly gathered, posing elevated risks of abuse of power and infringement upon the right to privacy. The Venice Commission states that security services “have a natural tendency to over-collect information”.<sup>2</sup>

The Defense and Security Committee and the Trust Group are mandated to oversee the Ministry of Defense of Georgia, the Ministry of Internal Affairs of Georgia, the Special Penitentiary Service of the Ministry of Justice of Georgia, the State Security Service of Georgia, the Georgian Intelligence Service, Special State Protection Service of Georgia and LEPL Operative Technical Agency of Georgia.<sup>3</sup>

Effectively overseeing such a broad spectrum of areas by a single committee is unfeasible. According to international best practices, there should be a specialized parliamentary body (committee, sub-committee, or trust group with an expanded mandate) exclusively dedicated to overseeing the security sector;<sup>4</sup>

### **2. Composition of the Specialized Body**

The members of the specialized body shall be elected by the Parliament and the chairman shall be a representative of the opposition.

#### ***Justification***

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<sup>2</sup> Council of Europe, European Commission for Democracy Through Law (Venice Commission), Report On The Democratic Oversight Of The Security Services, CDL-AD(2007)016, 2007, Paragraph 4, <https://shorturl.at/bgS04>

<sup>3</sup> Rules of Procedure of the Parliament of Georgia, Article 156.

<sup>4</sup> Council of Europe, Democratic and Effective Oversight of National Security Services, (2015), 42

The composition of the specialized body/committee shall be determined proportionally to the representation of the factions and the number of MPs without factions in the parliamentary majority as well as in the parliamentary opposition. Members nominated by political groups should be elected by the Parliament, which will increase the legitimacy and trust of the specialized body.

Ensuring effective legislative guarantees for the participation of the opposition in exercising parliamentary control is crucial, as there is always a potential risk of political groups exploiting security services for political ends.

The representative of the opposition shall be the chairperson of the specialized oversight body.

The appointment of opposition representatives as committee chairpersons represents the best international practice not only in the European Union but also in other democratic countries.<sup>5</sup>

As a standard practice, the proportional distribution typically applies to the chairmanship of committees responsible for supervision and scrutiny of government activities, based on the idea that parliamentary oversight of the executive is first and foremost a function that the opposition parties can be relied on to exercise.<sup>6</sup>

### **3. Access of Members of the Specialized Body to Classified Information and their Vetting by the State Security Services for Security Clearance**

Members of the specialized body shall have the highest level of access to confidential information except for ongoing operations.

The state security services should vet the members of the specialized body for security clearance. In the case of MPs, the assessment of the State Security Service should be recommendatory.

#### ***Justification***

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<sup>5</sup> In Germany, the chairpersonship of the Parliamentary Control Panel overseeing security and intelligence services rotates every year between a member from the governing party and an opposition party. In Croatia, the Parliamentary Committee for Interior Policy and National Security is always chaired by a member of the largest opposition party. See “*Reform of the Security Service in Georgia*”, Transparency International Georgia, the Human Rights Education and Monitoring Center (EMC), 2018, 64-67. <https://www.transparency.ge/sites/default/files/sus-eng-web.pdf>

<sup>6</sup> European Commission for Democracy through Law (Venice Commission), Report on the Role of the Opposition in a Democratic Parliament, adopted by the Venice Commission, at its 84th Plenary Session (Venice 15-16 October 2010) Para. 86, <https://bit.ly/3j1twU0>.

According to the Rules of Procedure of the Parliament of Georgia, the principal mechanism for overseeing the State Security Service by the Georgian legislature is the Defense and Security Committee and the Trust Group.

It is noteworthy that, under Georgian legislation, members of the Defense and Security Committee are subject to the same standards of security clearance as any other member of the Parliament (except a member of the Trust Group). Security clearance, granted through background investigation conducted by the State Security Service, is exclusive to members of the Trust Group. The recent practices show that vetting can be used as an artificial barrier to intentionally delay the participation of the opposition in the Trust Group.

All bodies overseeing security services must have access to all information pertinent to the exercise of their mandate, regardless of levels of classification. Exercising oversight of the security sector without access to relevant classified materials is virtually infeasible, given that the security services collect a significant volume of classified information, including data closely linked to human rights.

It should be noted that background checks for MPs to access classified information do not represent a universally recommended practice. In most cases, security services carry out background checks on those MPs who are mandated to oversee the security sector.<sup>7</sup> In certain circumstances, depending on the country's context, there might be a necessity for such background investigation. However, the security service's assessment should be recommendatory. The Parliament should retain the authority to make the final decision on appointments and elect members of the specialized body through voting in the plenary session.

#### **4. Mandate of the Specialized Body**

The oversight mandate of the specialized body should encompass all facets of policy and operations within the security service, including:

- Covert action and special programs in the security sector that involve secret forms and methods;
- Comprehensive supervision of personal data protection in the security sector;
- Control of financial resources including authorization of classified procurement contacts beyond a certain amount;
- To have unrestricted and unlimited access to visit the State Security Service and its subordinate structural entities.

#### ***Justification***

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<sup>7</sup> See "Reform of the Security Service in Georgia", Transparency International Georgia, the Human Rights Education and Monitoring Center (EMC), 2018, 50. <https://www.transparency.ge/sites/default/files/sus-eng-web.pdf>

The mandate and powers of oversight bodies should be precisely defined to ensure effective supervision and comprehensive scrutiny without any aspect of security service activities falling outside their purview.

It is particularly crucial not to leave out of oversight those areas where risks of abuse of power are higher and robust supervision is most necessary. According to the Rules of Procedure of the Parliament of Georgia, the Trust Group does not oversee covert action and special programs in the security sector that involve secret forms and methods. As a result, there is no external supervision mechanism in this area, heightening the risks of abuse of power.

Protecting personal data holds particular significance in the security field, as security services covertly gather large amounts of information. The Law on Personal Data Protection does not extend to the processing of data for the purposes of state security, including economic security, defense, intelligence, and counter-intelligence activities. Accordingly, the mandate of the Personal Data Protection Service does not apply to the supervision of personal data protection in the security sector. The Parliament should oversee personal data protection in the security sector.

The oversight of financial resources in the security sector is also crucial. Considering security services frequently make classified procurements and their expenses are not transparent, ensuring effective parliamentary control of finances is extremely important. Proactive scrutiny of expenditures is essential for effective oversight. The specialized body shall be mandated to authorize classified procurement contacts beyond a certain amount.

## **5. Standing Expert Council of the Specialized Body**

The standing expert oversight council should be created within the specialized body that oversees the State Security Service. The standing expert oversight council will diligently scrutinize the State Security Service and will be accountable to the Parliament. The oversight council members should be elected by the Parliament, and their tenure should not coincide with the terms of office of MPs.

The members of the standing expert council shall have the highest security clearance, except for information about current operations. The state security services should conduct background investigations for the members of the Expert Council.

### ***Justification***

As international practice demonstrates<sup>8</sup>, the majority of democratic countries have opted to oversee the security sector through independent expert councils. In most of the EU countries, an independent council of experts exists alongside the specialized parliamentary body to oversee the security sector.

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<sup>8</sup> Nazli Yildirim Schierkolk, International Standards and Good Practices in the Governance and Oversight of Security Services. The report was prepared under the project “Advocating for the Establishment of Modern Security Sector”

A notable advantage of expert bodies is that they have the necessary expertise and dedicated time for overseeing the security service. Expert oversight bodies should be composed of non-political and highly respected specialists with extensive experience in the respective fields. The specialists should be selected for fixed tenures based on their expertise and qualifications.

The expert council is able to provide continuous oversight of the security sector as opposed to other oversight bodies consisting of MPs, which typically suspend functioning when the Parliament is in recess or dissolved for election. The tenure of the expert council should not be linked to the term of office of MPs and should remain independent of a specific political cycle. In such a scenario, the groups are marked by a high level of independence and impartiality and maintain institutional memory.<sup>9</sup>

The oversight of the security sector solely by MPs is ineffective for the following reasons: MPs typically lack the time and expertise required to adequately supervise the sector. Political motivations and party agendas pose additional obstacles to effective oversight.

## **6. Functions of the Standing Expert Council**

- Conduct both scheduled and unscheduled visits to the State Security Service and its subordinate structural units, inspect documents and materials stored in the institutions, and conduct an audit of the technical equipment owned by the State Security Service and its subordinate structural units.
- Review the Annual Report of the State Security Service and request the Service to submit an extraordinary special report, including on covert measures and completed operations;
- Invite public officials, experts and interested persons to sessions;
- Receive and examine applications and complaints, including those concerning covert action;
- Oversee personal data protection within the State Security Service;
- Develop and submit specific recommendations and proposals to the specialized committee on violations and challenges in the State Security Service, including the suspension of the head of the State Security Service, as well as the establishment of a special parliamentary investigative commission;
- The expert council is exclusively accountable to the specialized body and the Parliament. However, the council also has a mandate to act independently to some degree. The expert council should have the authority to independently summon the head of the Security Service and initiate an examination of a particular issue; For performing a separate oversight function such as requesting documents, summoning officials, or conducting inspections at the security service, the approval of the specialized body should not be required. The expert council should be entitled to publicly release its own report submitted to the Parliament.

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[https://www.transparency.ge/sites/default/files/usaprtxoebis\\_samsaxuris\\_martvis\\_da\\_zedamxedvelobis\\_standartebi\\_da\\_sauketeso\\_praktikebi.pdf](https://www.transparency.ge/sites/default/files/usaprtxoebis_samsaxuris_martvis_da_zedamxedvelobis_standartebi_da_sauketeso_praktikebi.pdf)

<sup>9</sup>. See “Reform of the Security Service in Georgia”, Transparency International Georgia, the Human Rights Education and Monitoring Center (EMC), 2018, 59. <https://www.transparency.ge/sites/default/files/sus-eng-web.pdf>

## ***Justification***

The expert oversight council shall examine the legality of the activities and policies of the security services, including their compliance with human rights standards.

Based on the practices of European countries, oversight councils, while being accountable to the special committee of the Parliament, enjoy significant guarantees of independence within their competence. For instance, the oversight councils have the authority to summon the head of the Security Service and initiate an examination of a particular issue; For performing a separate oversight function such as requesting documents, summoning officials, or conducting inspections at the security service, they do not need prior approval from the specialized body (e.g. Germany and Belgium). They are also entitled to publicly release their reports submitted to the special committee.<sup>10</sup>

In most countries, the expert oversight body is mandated to review complaints brought against security services. In accordance with the United Nations Compilation of Good Practices for Intelligence Agencies and their Oversight, the receipt and review of complaints by the oversight body is a crucial function and constitutes an international best practice.<sup>11</sup>

For effectively exercising supervisory function, expert oversight bodies shall have the highest security clearance and extensive access to classified information.

The mandate of the expert oversight bodies shall extend to inspecting the administrative buildings of security services, investigating complaints and monitoring the enforcement of covert action.

Sincerely,

Eka Gigauri  
Executive Director

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<sup>10</sup> *Laura Jacques*, Legal update report: Belgium, National intelligence authorities and surveillance in the EU: Fundamental rights safeguards and remedies (EU FRA, 2016),20

<sup>11</sup> UN Compilation of Good Practices, Practice 9