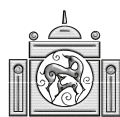




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Levan Alapishvili\*

## Institutional Organization of Georgian National Security Assurance System, Actual Issues of Accountability and Oversight

*Effective and accountable national security assurance system, which corresponds to the democratic standards, has crucial significance for state governance. It ensures protection of society from different threats, peaceful and stable development.*

*The institutions of security assurance system by their origin are in conflict with individual liberties and open society. This system by its essence contradicts to the principles of external control, oversight and accountability. Therefore, the role of parliament as a high political organ serving to the interests of people, is crucial.*

*Effective parliamentary oversight enhances a quality of accountability of security assurance institutions and insures society from willful, improper and repressive governance.*

*In transitional democracies reforms of security assurance system and transformation its institutions to the democratic standards, requires huge efforts of states and public inclusiveness.*

*Reform of security assurance system seems unsuccessful without proper and consecutive legal framework. Security assurance institutions and their activities are legitimate when their power does not exceed a mandate defined by the law. Contradictions and obscurity enhances the risks of illegitimate activities of national security assurance institutions.*

*In the article is provided an analysis of legal basis of national security assurance system of Georgia, actual issues and problems. The legal basis of national security assurance system of Georgia is contradictive. In some cases the competences of leading institutions of national security assurance of Georgia, are not clearly defined by the law and mandate is enhanced by the decision of government, without parliamentary engagement. Solution of identified problems is possible by creation of new legislative framework of competences and accountability of national security assurance institutions.*

*Academic or parliamentary discussion of actual issues of this article will benefit to creation of sustainable and democratic system of national security.*

**Keywords:** *National Security, National Security Management, Accountability, Parliamentary Oversight, President, Government, Prime-Minister, National Security Council, Security and Crisis Management Council, Group of Confidence, Intelligence Agency, State Security Service.*

### 1. Introduction

Creation of democratic sustainable state and national security system is impossible without clear regulations and divided competences.

State does not exist without a human. Depending on the conditions of human rights and reality of human a source of legitimacy of power and governance, the states are divided as democratic and totalitarian. We rely on exact definition of Professor Gia Khubua that in the centre of state governance should consider a human, states supreme and only objective may be only a human.<sup>1</sup>

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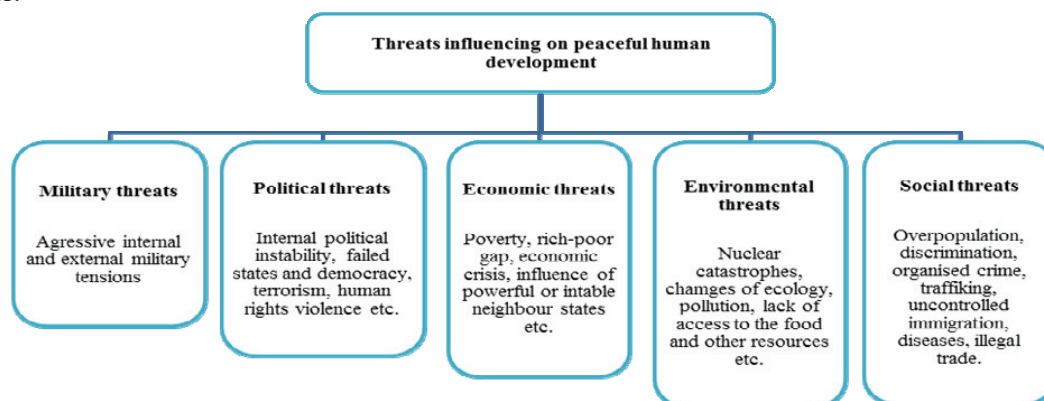
<sup>1</sup> Khubua G., Zomeran K.-P., (eds), Legal base of public administration, Tbilisi, 2016, 65 (in Georgian).

In a contemporary world the number of democratic states is accelerated. Furthermore, we see the process of formation of new international instruments and institutions, having main function of protection people against violence from the states, governments and military. Vivid example is Rome Statute<sup>2</sup> of the International Criminal Court, formation and development of the International Criminal Court.<sup>3</sup> The mandate of the International Criminal Court covers the investigation, judgement and execution of genocide, crimes against humanity and war crimes.

Increasing number of democratic states and development of human rights institutions indicates on the growth of human significance not only in a concrete state or society, but in international relations. The issues of national security should be discussed in this context.

National security is subject of research mainly for political sciences and there is no consensus of definition and terminology. Part of scientists considers the security as state security, in a traditional context of activities of military and secret services and international relations.<sup>4</sup> While, other scientists apply national security as human security<sup>5</sup> and considers in a broad concept: economy, health, food, ecology, defence, international relations and human rights.<sup>6,7</sup> National security is applied in a broad context in the reports<sup>8</sup> of Secretary-General of the United Nations on the security sector reforms. In his report of August 13, 2013 Secretary-General defines the objective of security sector reform to ensure that people are safer through the enhanced effectiveness and accountability of security institutions operating under civilian control within a framework of the rule of law and human rights.<sup>9</sup>

By the nature and intensity the security environment schematically could be figured in following manner:



<sup>2</sup> The Rome Statute of the International Criminal Court, A/CONF. 183/9, 17/07/1998.

<sup>3</sup> About the International Criminal Court see: <<https://www.icc-cpi.int/about>>.

<sup>4</sup> Nodia G., Darchiashvili D. (eds.), *Civil-Military Relations, Theory and Georgian Example*, Tbilisi, 2000, 7, 11, 17 (in Georgian).

<sup>5</sup> Born H., *Parliamentary Oversight of the Security Sector*, OPD-European Parliament, Brussels, 2013, 20.

<sup>6</sup> Laura R. Cleary L.R., McConville T. (eds.), *Managing Defence in a Democracy*, Routledge, Oxford, 2006, 3, 15.

<sup>7</sup> Vashakmadze M., *The Legal Framework of Security Sector Governance in Georgia*, DCAF, Geneva, 2016, 7.

<sup>8</sup> *Securing Peace and Development: the Role of the United Nations in Supporting Security Sector Reform*. Report of the Secretary-General, A/62/659-S/2008/39, 2008, 5-6.

<sup>9</sup> *Securing States and Societies: Strengthening the United Nations Comprehensive Support to Security Sector Reform*. Report of the Secretary-General, A/67/970-S/2013/480, 2013, 4.

Despite of diversity and difference of scientific understanding, there is consensus that final objective of security is ensuring safe environment for state and society.

For a broad understanding of security and research of its legal basis, in addition to the scientific definitions and contents of international documents, should be analysed terms and definitions given in the Georgian legislation. In this line one of the main and interesting document is the law on Defence of Georgia (hereinafter referred as *Defence law*)<sup>10</sup>. In the defence law is given definition of the term defence and is defined not only as activities of military, police and special services, but in a broad content. In the defence law defence is defined as integral part of security and important function. In the defence law is mentioned that defence of Georgia is: “couple of political, economic, military, social, legal and other activities, which ensures defence of state, population, territory and sovereignty against military attacks”.<sup>11</sup> As seen, security and its function also covers economic, social and legal issues. Nevertheless the defence law defines the term defence, there is no legal definition of national security in defence law or other laws.

As mentioned, national security has legal basis, because it covers issues of inner-state or international relations. State organization and governance, also interstate or international relations are based on legal framework. Research of national security in legal science is on initial stage. For this reason there is no scientific arguments of different issues of security. Also, there is no legal definitions of national security.

Therefore, before the analysis of institutions, accountability and oversight of security, we have to legally define main topics of national security: what is security, national security assurance. We suggest, **security** is a state which is achieved in the decision-making (governance) process and ensures human protection and peaceful development of society. Based on this definition, **national security** could be defined as a state of concrete country which is achieved in the decision-making (governance) process and ensures peaceful development of society and protection of people from internal and external, military, economic, social and other threats.

In the democratic country national security is ensured by democratic governance of public institutions and instruments. Part of public institutions, representative institutions (the parliaments) define security policy, legal framework and ensure oversight on national security and institutions. Other parts, executive institutions (government, ministries, and agencies) implement and execute security policy defined by representative institutions. They ensure management and control of security and its institutions. Third part of institutions (judiciary, ombudsman, state audit, independent institutions) ensure the protection of legal framework and human rights by the representative and executive institutions during the process of security assurance.<sup>12</sup>

Representative or executive political institutions may infringe the mandate defined by the law and become as threat to the society and its peaceful development. Part of public institutions has exclusive right to the use of force<sup>13</sup>, arm and secret activities.<sup>14</sup> Their objective is protection of open society using

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<sup>10</sup> Law of Georgia on Defence of Georgia, Herald of the Parliament of Georgia, 45, 31/10/1997.

<sup>11</sup> Ibid, Article 2.

<sup>12</sup> Born H., Leigh I., Making Intelligence Accountable: Legal Standards and Best Practice for Oversight of Intelligence Agencies, Oslo, 2005, 16.

<sup>13</sup> Fuior T., Parliamentary powers in security sector governance, DCAF, Geneva, 2011, 6.

sectet resources.<sup>15,16</sup> Considering contradictory nature of this mandate, existence of effective mechanisms of accountability, oversight<sup>17</sup> and control is substantial.<sup>18</sup> The questions of security sector reform and creation of oversight standatds are underlined by the Secretary General of United Nations in its security sector reform reports<sup>19,20</sup> and by the Venice Comission in its recommendations<sup>21,22</sup>, which are a basis of resolutions of Council of Europe.

International institutions are developing the standards of security and oversight. Thus, by the correspondence to the standards is definition of democracy of the states.<sup>23</sup> Effevtive democratic and civil control over the security sector is a key component of democratization and precondition for transitional coutries for their integration in Euro-Atlantic institutions.<sup>24</sup> In some cases, depending on the existence or quality of standards of oversight and control of security sector, coutries are identified as unfinished or uncomplete democracy. Supreme security sector oversight institution, National Assembly of Serbia is considered as a developing representative institution, which has competence, but not consensus and political will to have executive institutions accountable, implement effective parliamentary oversight on security.<sup>25</sup> Georgian practice and contradictory legal environment reviewed in this article confirms that some security institutions with police or military competence, but without effective control, were violating a legal framework.<sup>26</sup> This is a threat for stable developmet of society, democracy and Euro-Atlantic integration of Georgia.

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<sup>14</sup> Nodia G., Darchiashvili D. (eds.), *Civil-Military Relations, Theory and Georgian Example*, Tbilisi, 2000, 19, 24 (in Georgian).

<sup>15</sup> Born H., Leigh I., *Making Intelligence Accountable: Legal Standards and Best Practice for Oversight of Intelligence Agencies*, Oslo, 2005, 16.

<sup>16</sup> Fuior T., *Parliamentary Powers in Security Sector Governance*, DCAF, Geneva, 2011, 2, 7.

<sup>17</sup> Fluri P., Johnsson A.B., Born H. (eds.), *Parliamentary Oversight of the Security Sector: Principles, Mechanisms and Practices*, DCAF, Geneva, 2003, 20, 40.

<sup>18</sup> Born H., Leigh I., *Making Intelligence Accountable: Legal Standards and Best Practice for Oversight of Intelligence Agencies*, Oslo, 2005, 23.

<sup>19</sup> *Securing Peace and Development: The Role of the United Nations in Supporting Security Sector Reform. Report of the Secretary-General*, A/62/659-S/2008/39, 2008.

<sup>20</sup> *Securing States and Societies: Strengthening the United Nations Comprehensive Support to Security Sector Reform. Report of the Secretary-General*, A/67/970-S/2013/480, 2013.

<sup>21</sup> Recommendation no: 1402 (1999) "Control of Internal Security Services in Council of Europe Member-States", 1999.

<sup>22</sup> Recommendation no: 1713 "Democratic Oversight of the Security Sector in Member-States", adopted by the Venice Commission at Sixty-Fourth Plenary Session (Venice, 21-22 October 2005).

<sup>23</sup> Government defence anti-corruption index. Transparency International UK. <<http://government-defenceindex.org/>>

<sup>24</sup> Recommendation no: 1713 (2005) "Democratic Oversight of the Security Sector in Member-States", Parliamentary Assembly, Council of Europe. <<http://www.assembly.coe.int/Documents/WorkingDocs/2006/EDOC10972.pdf>>

<sup>25</sup> Rokvic V., Ivanis Z., *Parliamentary Oversight of the Security Sector in Serbia: Perceived Effects, Problems of Post-Communism*, Vol.60, no.1, Routledge, UK, 2013, 60.

<sup>26</sup> Hammarberg T., *Preliminary Advice, Dealing with Illegal Surveillance Material. EU Special Adviser on Legal and Constitutional Reform and Human Rights in Georgia*, 2013, 9. <[https://www.transparency.ge/sites/default/files/post\\_attachments/Dealing%20with%20illegal%20surveillance%20material.pdf](https://www.transparency.ge/sites/default/files/post_attachments/Dealing%20with%20illegal%20surveillance%20material.pdf)>; Hammarberg T., *Georgia in Transition, Report on the Human Rights Dimension: Background, Steps Taken*

Considering all the above mentioned, **security assurance** could be defined as activities and *democratic decision-making process* of states and international institutions, with objective of human protection and peaceful development. **National security assurance** could be defined as activities and democratic decision-making process of state, with objective of human protection and creation of environment for peaceful development.

In constitutional law the policy (including security policy) planning and implementation roles and functions of heads of states, legislative institutions and governments are defined. Therefore, for a scientific research the security governance issues and institutions are important.

By the broad, modern understanding of security, all executive institution, ministry, agency or department has own function and place in the security system. Protection of environment, economy and financial stability, fighting poverty, energy resources, nuclear security, terrorism and crime prevention, immigration and border protection – these are issues having special importance for stable development and security assurance.

In the diversity of sectoral ministries and institutions in the national security system, the leading role has so called traditional institutions – military, police and special security agencies. Therefore, in the new constitutional model of governance<sup>27</sup> the reform of security system and traditional security institutions has vital importance. Accordingly, in this article is given analysis of legal basis of national security assurance system and national security coordination, together with actual questions of main institutions of national security assurance and their oversight. The article and discussed actual issues may benefit to the discussions and decision-making process of reform of national security system.

## **2. Overview of National Security Coordination System**

After the enactment of *new constitutional model of governance* of Georgia the competences of President has decreased and the role of Government has increased. Considering the principle of division of powers and check and balances in the national security assurance process none of the institution has sole competence of making decision.

According to the Constitution of Georgia<sup>28</sup>, action of government or military unit needs agreed decision of government and the President. This decision becomes legally binding just after the approval by the Parliament of Georgia. Holding institutional and authority independence, there is a need of coordination of the process and activities of institutions of national security assurance. For coordination, effective and constitutional security assurance mechanisms in the system of government are important. On the contrary, delayed reactions and decisions on the concrete crises may have hard results.<sup>29</sup>

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and Remaining Challenges, 2013, 24-25. <[http://eeas.europa.eu/archives/delegations/georgia/documents/-human\\_rights\\_2012/20130920\\_report\\_en.pdf](http://eeas.europa.eu/archives/delegations/georgia/documents/-human_rights_2012/20130920_report_en.pdf)>

<sup>27</sup> Perceived the model of state governance which exists after the 2013 presidential elections and the President of Georgia is not the head of executive branch of power.

<sup>28</sup> Constitution of Georgia, Herald of the Parliament of Georgia, 31-33, 24/08/1995. Articles 46, 73, 73<sup>1</sup>, 98, 100.

<sup>29</sup> Unfortunate example was demonstrated in the capital of Georgia, Tbilisi Flood of June 13-14, 2015, when the Government and the Security and Crises Management Council were late in reactions or were making

During the period of 2013-2018 Georgia has 2 mechanisms, format of national security coordination. First, constitutional National Security Council and second - State Security and Crisis Management Council. After an enactment of new constitutional model of governance the Parliament passed appropriated laws and the Government – decrees creating the legal basis for national security coordination.

The National Security Council was the format for preparation and approval of decisions on the supreme political level, while in the executive system such a format remained the government, collective organ which ensures executive power and coordination inside the government. In this conditions creation and existence of the National Security and Crises Management Council based on the governments' decree<sup>30</sup>, initially and on the law<sup>31</sup>, lately, and being as temporary consultative organ<sup>32</sup> to the Prime-Minister, was legally arguable. Nevertheless of argued critics and pointing on contradictions<sup>3334</sup> and ineffectiveness of decisions, the National Security and Crises Coordination Council and its staff existed till 2018.<sup>35</sup> According to the constitutional changes<sup>36</sup> of 2017, in the Constitution which will be enacted after taking oath by the winner of 2018presidential elections, permanent format of national security coordination doesn't exist, only ad-hoc national defence council<sup>37</sup> will be formed during the war, with the mandate defined by the ordinary law.<sup>38</sup>

New constitutional model of governance needs effective and systemic legislative changes to ensure effective coordination, cooperation and communication of national security sector institutions.

Decision of use of military units during the Tbilisi Flood of June 2014, demonstrated legislative and systemic problems. According to the Georgian legislation<sup>3940</sup> the ecological catastrophe is one of the

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mistakes. Nonetheless of existence of constitutional basis, the state of emergency was not declared in Tbilisi. Instead of limitation of movement in the the epicenter of disaster, the representatives of government and the Security and Crises Management Council were just asking people forbear movement on this territory. During this crisis, lack of coordinated dissemination of verified information was attractive – people and even police were seeking wolverines on the whole territory of Georgia. It has to be remembered, unfortunately, that in the epicenter of disaster, where the rescues and military units were concentrated and movement was not limited, the man died with the attack of tiger just after 3-rd day of flood. These issues are subject of investigation, but analysis of mistakes is also important for evaluation of the system of security assurance and crises management.

<sup>30</sup> Decree of the Government of Georgia №38 on Creation of the Council of State Security and Crises Management and Adoption of its Chapter, Legislative Herald of Georgia, <[www.matsne.gov.ge](http://www.matsne.gov.ge)>, 06/01/2014.

<sup>31</sup> Law of Georgia on Security Policy Planning and Coordination, Legislative Herald of Georgia, <[www.matsne.gov.ge](http://www.matsne.gov.ge)>, 04/03/2015.

<sup>32</sup> Law of Georgia on the Structure, Competence and Procedures of the Government of Georgia, Legislative Herald of Georgia, 3, 11/02/2004. Article 29.

<sup>33</sup> Georgia's Security Sector Review Project, Final Report, Atlantic Council of Georgia, Tbilisi, 2014, 45-48, 51-54, (in Georgian).

<sup>34</sup> *Vashakmadze M.*, The Legal Framework of Security Sector Governance in Georgia, DCAF, Geneva, 2016, 13.

<sup>35</sup> Law of Georgia on the Changes to the Law of Georgia on Security Policy Planning and Coordination, Legislative Herald of Georgia, <[www.matsne.gov.ge](http://www.matsne.gov.ge)>, 07/12/2017.

<sup>36</sup> Constitutional Law of Georgia on the Changes to the Constitution of Georgia, Legislative Herald of Georgia, <[www.matsne.gov.ge](http://www.matsne.gov.ge)>, 13/10/2017.

<sup>37</sup> *Ibid*, article 73.

<sup>38</sup> Till the autumn of 2018, when new Constitution will be enacted, the National Security Council is permanent organ of security coordination and its competences are defined by the organic law.

<sup>39</sup> Constitution of Georgia, Herald of the Parliament of Georgia, 31-33, 24/08/1995. Article 73.1.h.

<sup>40</sup> Law of Georgia on the State of Emergency, Herald of the Parliament of Georgia, 44, 17/10/1997. Article 1.



basis for declaration of state of emergency. During the state of emergency, use of military forces is permitted by the decision of the President of Georgia and consent of the Parliament of Georgia.<sup>41</sup> On the territory of natural calamity or the flood, where the life or health of people, plants or animals are threatened, the threat is evaluated as ecological catastrophe<sup>42</sup> and the state of emergency is declared.<sup>43</sup> All mentioned signs existed for qualification as ecological catastrophe of Tbilisi Flood of 13-14 June of 2014 and declaration of state of emergency.

During the Tbilisi Flood the President of Georgia doesn't declared the state of emergency. Though, by the decision of the President and with consent of the Parliament of Georgia, the military units were used for elimination of consequences of natural calamity.

Considering that the decree of the President of Georgia as the Supreme Commander of Military Forces is not public document and in the resolution<sup>44</sup> of the Parliament of Georgia is not mentioned a law or a qualification of situation, which served as basis for use of military units, presumable, the decision about the use of military forces without declaration of state of emergency, was made on the base of Civil Safety Law (hereinafter referred as civil safety law).

In the civil safety law<sup>45</sup> the term "Ecological catastrophe" is not defined, it is indication of the terms "Natural calamity" and "Catastrophe".<sup>46</sup> Definition of the term "Catastrophe" is not defined in the civil safety law or in other laws. According to the civil safety law on the territory of catastrophe or natural calamity where the life or health of people is threatened, is defined as an emergency situation.<sup>47</sup> It is important to remember that the qualification of concrete situation as an emergency situation doesn't require making decision by the Government of Georgia or by the President of Georgia. This is a threat of subjective and nontransparent decisions and mistakes. Moreover, during the emergency situation use of military units is permitted by the civil safety law.<sup>48</sup> According to the civil safety law, one of the sign for emergency situation is "natural calamity".<sup>49</sup>

Flood which is threatening to the life or health of people is defined as "natural calamity" by the Law of Water.<sup>50</sup> According to the Law on the State of Emergency,<sup>51</sup> natural calamity is one of the basis for declaration of the state of emergency. While, this situation is named as emergency situation in the civil safety law,<sup>52</sup> which doesn't require making decision.

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<sup>41</sup> Law of Georgia on the State of Emergency, Herald of the Parliament of Georgia, 44, 17/10/1997. article 9.

<sup>42</sup> Law of Georgia on Water, Herald of the Parliament of Georgia, 44, 16/10/1997. Articles 25.2.a, 26.2.d, 29.

<sup>43</sup> Law of Georgia on Protection of Environment, Herald of the Parliament of Georgia, 44, 10/12/1996. Article 42.

<sup>44</sup> Resolution of the Parliament of Georgia on the Approval of Orders of the President – Supreme Military Commander of Georgia on Use of Armed Forces for Reaction on Emergency Situation of June 14, 2015, №2, of June 14, 2015, №3 and June 16, 2015 №4, Legislative Herald of Georgia, <www.matsne.gov.ge>, 16/06/2015.

<sup>45</sup> Law of Georgia on Civil Safety, Legislative Herald of Georgia, <www.matsne.gov.ge>, 29/05/2014.

<sup>46</sup> Ibid, article 5.2.

<sup>47</sup> Ibid.

<sup>48</sup> Ibid, article 15.3.

<sup>49</sup> Ibid, article 5.2.

<sup>50</sup> Law of Georgia on Water, Herald of the Parliament of Georgia, 44, 16/10/1997. Article 26.3.d.

<sup>51</sup> Law of Georgia on the State of Emergency, Herald of the Parliament of Georgia, 44, 17/10/1997. Article 1.

<sup>52</sup> Law of Georgia on Civil Safety, Legislative Herald of Georgia, <www.matsne.gov.ge>, 29/05/2014. Article 5.2.

Nevertheless mentioned contradictions the Tbilisi Flood had marks of ecological catastrophe and also natural calamity. This means that the basis for declaration of the state of emergency existed. For security assurance and legitimacy of oversight, limitation of use of military units by the existence of concrete facts, their evaluation and argued decisions is very important. Accordingly, use of the military forces internally is permitted only during the state of war or the state of emergency.

Development of legal basis of national security assurance coordination system and other gaps will be demonstrated on the important examples, described in the next chapters.

## **2.1. State Security and Crises Management Council**

In the conditions of new constitutional model of governance, rethinking of national security system is critically important. By the decree №38 of January 6 of 2014 of the Government of Georgia (hereinafter referred as 38<sup>th</sup> decree) in the system of executive power were created the new structures of security coordination and crises management: (a) the State Security and Crises Management Council, (b) the staff of the State Security and Crises Management Council, (c) the Operative Center of Management of Crises Situations. It was ineffective and lawless action of reflection of new security competence (function) in the system of Government of Georgia.<sup>53</sup>

In the new constitutional model of governance as a result of decrease of competences of the President of Georgia, big part of competences delivered to the Government of Georgia, collective institution (an not to the Prime-Minister). Therefore, the Government of Georgia acquired new function in the new security architecture. Execution of new function required new, effective and correctly operated system and mechanism. Realization of the State Security and Crises Management Council by the 38<sup>th</sup> decree as a consultative advisory to the Prime-Minister was mistake.<sup>54</sup> “Elaborates recommendations and the Prime-Minister decides” – is mentioned in the chapter of the State Security and Crises Management Council.<sup>55</sup>

Considering the constitutional competences, the Prime-Minister’s decisions on the security issues has to be defined by the appropriate normative act. According to the Law on Normative Acts (hereinafter referred as the normative acts law) the Prime-Minister has no right to issue of normative act. The Prime-Minister is not named in the hierarchy of the institutions with the competence to issue normative acts.<sup>56</sup> According to the Constitution of Georgia the Prime-Minister’s competence is limited to issue only

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<sup>53</sup> Ineffectiveness of this, security and crises management system was confirmed by the Prime-Minister of Georgia in December of 2017 and by the initiative the Government, the Parliament adopted the changes to the “Law of Georgia on the structure, competence and procedures of the Government of Georgia” and “Law on security policy planning and coordination”, this resulted the abolition of the Security and Crises Management Council.

<sup>54</sup> Law of Georgia on the Structure, Competence and Procedures of the Government of Georgia, Legislative Herald of Georgia, 3, 11/02/2004. Article 29.

<sup>55</sup> Decree of the Government of Georgia №38 on Creation of the Council of State Security and Crises Management and Adoption of its Chapter, Legislative Herald of Georgia, <www.matsne.gov.ge>, 06/01/2014. Articles 2.h and 4.5.

<sup>56</sup> Law of Georgia on Normative Acts, Legislative Herald of Georgia, 33, 22/10/2009. Articles 8-14.

administrative acts.<sup>57</sup> The Constitution of Georgia doesn't define exclusive competence to the Prime-Minister in the security sphere, such an institution is the Government of Georgia. Limitation of Prime-Minister's competence significantly narrows and reduces his/her legal competence not only in security sphere but generally in the governance. Nevertheless high political legitimacy<sup>58</sup>, legal competence of governance is limited by the competence of collective institution, the Government of Georgia. Accordingly, in the national security assurance system the central institution is the government.

By the chapter<sup>59</sup> of the State Security and Crises Management Council (approved by the 38<sup>th</sup> decree) the council was composed by the members of the government. The Government of Georgia is accountable to the Parliament of Georgia<sup>60,61</sup>, contrary, by the chapter<sup>62</sup> of the Council (members of government, ministers) the Council is accountable to the Prime-Minister. By this definition of the decree, the Government's accountability to the high legislative institution in the security issues was ignored. Therefore, there was no effective parliamentary oversight on the security assurance coordination.

Based on the decree of the Government, the State Security and Crises Management Council existed bit more of one year. In March 4 of 2015 the Parliament of Georgia passed the law on National Security Policy Planning and Coordination (hereinafter referred as security coordination law). This fact is important because the system of security and crises acquired high legitimacy, based on the law. Furthermore, adoption of the law gave the Parliament the mechanism of control of security system's effectiveness. By the Constitution of Georgia and Regulation of the Parliament<sup>63</sup> the competence of the Parliament is a control of execution of the laws, also making changes to the laws.<sup>64</sup> Therefore, by the adoption of the law the Parliament acquired the mechanism of control over the Government of Georgia in the sphere of national security assurance coordination.

According to the security coordination law, the State Security and Crises Management Council<sup>65</sup> is formed with the mandate of preparation of the Prime-Minister's political decisions related to the national

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<sup>57</sup> Constitution of Georgia, Herald of the Parliament of Georgia, 31-33, 24/08/1995. Article 79.4.

<sup>58</sup> Demonstration is the leading role of the Prime-Minister in the process of formation of government. Formation of the Cabinet and governmental program, is exclusive competence of Prime-Minister. The parliament approves confidence to the Prime-Minister, his/her program and team.

<sup>59</sup> Decree of the Government of Georgia №38 on Creation of the Council of State Security and Crises Management and Adoption of its Chapter, Legislative Herald of Georgia, <[www.matsne.gov.ge](http://www.matsne.gov.ge)>, 06/01/2014. Article 1.

<sup>60</sup> Constitution of Georgia, Herald of the Parliament of Georgia, 31-33, 24/08/1995. Articles 78.1.

<sup>61</sup> Law of Georgia on the Structure, Competence and Procedures of the Government of Georgia, Legislative Herald of Georgia, 3, 11/02/2004. Article 1.

<sup>62</sup> Decree of the Government of Georgia №38 on Creation of the Council of State Security and Crises Management and Adoption of its Chapter, Legislative Herald of Georgia, <[www.matsne.gov.ge](http://www.matsne.gov.ge)>, 06/01/2014. Article 3.5.

<sup>63</sup> Regulation of the Parliament of Georgia, Legislative Herald of Georgia, <[www.matsne.gov.ge](http://www.matsne.gov.ge)>, 03/07/2012. Articles 16, 43, 235.

<sup>64</sup> Constitution of Georgia, Herald of the Parliament of Georgia, 31-33, 24/08/1995. Article 48.

<sup>65</sup> Permanent Members of State Security and Crises Management Council are: The Prime-Minister, Minister of Finances, Minister of Internal Affairs, Minister of Defence, Minister of Foreign Affairs, Chief of State Security Service, Chairman of State Security and Crises Management Council – security issues assistant to the Prime-Minister.

security, strategic issues of internal and external policy, defence, stability and order, also all types of crises situation management. Vague mandate of the State Security and Crises Management Council influenced the sustainability, effectiveness and decisiveness of the security and crises management system.<sup>66</sup>

The only competence of making decisions on the issues of the mandate of the Government is under the Government of Georgia and delegation of this competence to other institution is prohibited. Furthermore, the content of political decisions of the Prime-Minister was unclear. While constitutionally the Prime-Minister is a leader among the equals of the collective institution and not sole decision maker.

According to the security coordination law the State Security and Crises Management Council was responsible for coordination of security assurance and crises management inside the executive power, for evaluation of internal and external threats and its prevention, also for a management of the crises situations on the political level.<sup>67</sup>

Nonetheless of the progress reached by the adoption of security coordination law and subordination of security issues of executive to the legislative regulation, potential of weakening of parliamentary control and expanding a mandate of the council was stipulated in the following sentence of security coordination law: exercise other authorities assigned by the Georgian legislation.<sup>68</sup> By the normative acts law<sup>69</sup>, the term “Georgian legislation” has concrete content as it covers the laws and bylaws. Therefore, mentioned sentence of the security coordination law gives possibility to expand a competence of the State Security and Crises Management Council by the governmental decree or other bylaw. This meant a decrease of controlling competence of the Parliament of Georgia over the Government of Georgia.

According to the security coordination law<sup>70</sup> the State Security and Crises Coordination Council was a consultative institution and accountable<sup>71</sup> to the Prime-Minister of Georgia. Anticonstitutional concept of 38<sup>th</sup> decree which doesn't consider an accountability of the Government of Georgia to the Parliament of Georgia in the security assurance coordination, was shared by the legislative institution and remained till the 2018.

According to the security coordination law<sup>72</sup> the State Security and Crises Coordination Council elaborates recommendations for the Prime-Minister. As mentioned, the Prime-Minister has no a right to issue normative acts and has no any personal competences in the sphere of security assurance coordination. Besides the contradiction to the Constitution and the law, this mechanism was wrongful by the practical means. After the discussions of security related issues by the State Security and Crises Coordination

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<sup>66</sup> Law of Georgia on Security Policy Planning and Coordination, Legislative Herald of Georgia, <[www.matsne.gov.ge](http://www.matsne.gov.ge)>, 04/03/2015. Article 20.1.

<sup>67</sup> Ibid, article 21.

<sup>68</sup> Ibid, article 21.m.

<sup>69</sup> Law of Georgia on Normative Acts, Legislative Herald of Georgia, 33, 22/10/2009. Article 7.1.

<sup>70</sup> Law of Georgia on Security Policy Planning and Coordination, Legislative Herald of Georgia, <[www.matsne.gov.ge](http://www.matsne.gov.ge)>, 04/03/2015. Article 20.2.

<sup>71</sup> Ibid, article 22.

<sup>72</sup> Law of Georgia on Security Policy Planning and Coordination, Legislative Herald of Georgia, <[www.matsne.gov.ge](http://www.matsne.gov.ge)>, 04/03/2015. article 23.5.

Council, not the Prime-Minister nor the Council itself has a competence to make decision. Therefore, the Prime-Minister was obliged to initiate a session of the Government of Georgia and discuss again the same, security related issues and make decision. It is not effective and operative mechanism of governance.

The need of formats of national security coordination should be considered systematically. The collective institution, Government of Georgia doesn't need advisory structure consisting its own members – the members of Government interact on the meeting of the Government or by other formats (thematic councils and commissions). The President needs advisory format, because in the new constitutional model of governance the Government of Georgia is out of his control. The President institutionally is not collective organ, therefore for decision-making he needs consultative format for interaction with the Government.

Therefore, there was no a need to have the State Security and Crises Management Council inside the executive system. But the need of staff, equipped with special functions and enough capacity, was clear.<sup>73,74</sup>

As a conclusion, analysis of experience and examples after the period of an enactment of new constitutional model of governance, demonstrates the problems of national security assurance coordination, accountability and parliamentary oversight.

## **2.2. National Security Council of Georgia**

The National Security Council of Georgia is advisory, constitutional institution<sup>75</sup> of the President of Georgia. The mandate of the Council is defined by the Constitution of Georgia and the Organic Law on National Security Council (hereinafter referred as Security Council law).<sup>76</sup>

In the new constitutional model of governance the sphere of competences of the President of Georgia has significantly decreased, but as the Head of State and the Supreme Commander still preserves authority in spheres of the security planning and assurance. The President as a sole decision-maker which is separated from the executive, needs advisory format for interaction with the Parliament and the Government. Exact and only format is the National Security Council of Georgia, for discussion of issues of preparation of decisions on the supreme level.

Appearing from the competences of the President of Georgia, the National Security Council discusses the issues of military building and defence organization, declaration and management of state of war and state of emergency, appointment and dismissal of the management of military forces.<sup>77</sup>

The competence of the National Security Council is limited by the constitutional competences of the President of Georgia and by the organic law.

Same as in the case of the State Security and Crises Management Council, definition of the mandate of the National Security Council by the law is a tool to keep the Council accountable and ensure parliamentary oversight. Adoption of law, making changes in the laws and the control of execution of the laws is broadly spread classic mechanism of parliamentary control and accountability of public institutions.

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<sup>73</sup> Georgia's Security Sector Review Project, Final Report, Atlantic Council of Georgia, Tbilisi, 2014, 54 (in Georgian).

<sup>74</sup> *Vashakmadze M.*, The Legal Framework of Security Sector Governance in Georgia, DCAF, Geneva, 2016, 13.

<sup>75</sup> Constitution of Georgia, Herald of the Parliament of Georgia, 31-33, 24/08/1995. Article 99.

<sup>76</sup> Organic Law of Georgia on National Security Council, Legislative Herald of Georgia, 33, 11/11/2004.

<sup>77</sup> *Ibid*, article 2.

Changes of 2015 to the Security Council Law increased a parliamentary participation<sup>78</sup> in the National Security Council. The members of the National Security Council are: Prime-Minister of Georgia, Chairman of the Parliament of Georgia, Minister of Foreign Affairs of Georgia, Minister of Defence, Minister of Internal Affairs, Chairman of the Parliamentary Committee on Defence and Security, Chairman of the Parliamentary Committee on Foreign Affairs, Chief of State Security Service, Chairman of the National Security Council, Chief of Staff of the Military Forces. The President, as the head of state and supreme commander is not a member of the Council, but the President leads the Council.<sup>79</sup> Interested analysts indicate on the positive decision of rise of number of the members of parliament. It is indication of rise of accountability and parliamentary oversight over the national security policy.<sup>80</sup>

Holding two formats<sup>81</sup> responsible for national security coordination, without clear separation of competence<sup>82</sup>, had a potential of parallelism and management conflicts.<sup>83</sup> As mentioned, practical indication was the case of management of crisis situation during the Tbilisi Flood of 13-14 June of 2015. In this case the meetings of responsible councils were not held, while the necessity of operative decisions and coordination of activities of different institutions existed. Considerable, that by the decision of the President and by the consent of the Parliament the military units were used<sup>84</sup>. While the question of declaration of state of emergency on the territory of Tbilisi Flood was not discussed by the National Security Council nor by the State Security and Crises Management Council.

In the new constitutional model of governance, the communication in decision-making process among the President and the Government is problematic. The Constitution<sup>85</sup> gives concrete list of decisions of the President of Georgia, which does not need a consent, contrassignation by the Prime-Minister of Georgia. All other decisions of the President of Georgia needs a contrassignation. Security-related important issue of declaration of state of emergency needs a contrassignation of the Prime-Minister. Accordingly, the responsibility<sup>86</sup> on this joint decision of the President of Georgia and the Prime-Minister relays on the Government of Georgia, while this collective organ never discussed this decision and gave consent.

We conclude that limited mandate of the National Security Council and contradictory mechanism of contrassignation significantly decreases a potential of operative decisions on the high political level, the consensus and division of responsibilities among the President of Georgia and the Government of Georgia. Solution of the problems may be adoption of the law defining effective mechanisms of

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<sup>78</sup> Ibid, article 3.

<sup>79</sup> Constitution of Georgia, Herald of the Parliament of Georgia, 31-33, 24/08/1995. Article 99.2.

<sup>80</sup> *Vashakmadze M.*, The Legal Framework of Security Sector Governance in Georgia, DCAF, Geneva, 2016, 13.

<sup>81</sup> The National Security Council and the Security and Crises Management Council

<sup>82</sup> Georgia's Security Sector Review Project, Final Report, Atlantic Council of Georgia, Tbilisi, 2014, 49, 51 (in Georgian).

<sup>83</sup> *Vashakmadze M.*, The Legal Framework of Security Sector Governance in Georgia, DCAF, Geneva, 2016, 13.

<sup>84</sup> Resolution of the Parliament of Georgia on the Approval of Orders of the President – Supreme Military Commander of Georgia on Use of Armed Forces for Reaction on Emergency Situation of June 14, 2015, №2, of June 14, 2015, №3 and June 16, 2015 №4, Legislative Herald of Georgia, <www.matsne.gov.ge>, 16/06/2015.

<sup>85</sup> Constitution of Georgia, Herald of the Parliament of Georgia, 31-33, 24/08/1995. Article 73<sup>1</sup>.

<sup>86</sup> Ibid, article 73<sup>1</sup>.6.

communication between the President of Georgia and the Government of Georgia in the decision-making process in the format of the national Security Council.

### **3. Institutions of National Security System and their Accountability**

One of the main objective of modern states is establishment of democratically functioning effective institutions of national security assurance and their accountability. Development of democratically functioning institutions of national security assurance and system of accountability is dependent on the history, constitutional and legal system, experience of statehood, democracy traditions and political culture.<sup>87</sup>

Reform of national security agencies and creation of democratically functioning security assurance institutions is facing difficulties in the countries of transitional democracy. In these countries before the reforms the objective of special services was protection of authoritarian leaders from the people.<sup>88</sup> Transformation of national security assurance institutions from repressive to modern democratic mechanisms requires huge effort of states and public inclusiveness.<sup>89</sup>

Reform of national security assurance system would not be successful without a right and consecutive legislative base. Security assurance institutions and their activities are legitimate when their power doesn't exceed the mandate defined by the law.<sup>90</sup> Contradictions or obscurity of legislative basis enhances the risks of going beyond the legal framework and illegal activities of national security assurance institutions.

A role of parliament as a legislator and as a supreme constitutional organ overseeing of activities of national security assurance institutions is vital. Consequently the quality of responsibility of the parliament is important.

Last 20 year a reform of national security assurance system and institutions is important for Georgia. On the different stages of reform, impressive success and mistakes occurred in the development of different institutions. Analysis of actual issues of legal framework of Georgia's national security organization and accountability will benefit to improvement of the system and legislation.

#### **3.1. Ministry of Internal Affairs of Georgia**

Ministry of Internal Affairs of Georgia is powerful institution of security system equipped with a wide range of authority. Starting from the 2000<sup>th</sup> the process of reformation of the Ministry of Internal Affairs on its initial stage was limited on insignificant changes.<sup>91</sup> Systemic and wide-scale reforms

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<sup>87</sup> *Born H., Leigh I., Making Intelligence Accountable: Legal Standards and Best Practice for Oversight of Intelligence Agencies, Oslo, 2005, 3, 17.*

<sup>88</sup> *Ibid, 16.*

<sup>89</sup> *Vashakmadze M., The Legal Framework of Security Sector Governance in Georgia, DCAF, Geneva, 2016, 3.*

<sup>90</sup> *Born H., Leigh I., Making Intelligence Accountable: Legal Standards and Best Practice for Oversight of Intelligence Agencies, Oslo, 2005, 3, 18.*

<sup>91</sup> *Marat E., Reforming the Police in post-Soviet States: Georgia and Kyrgyzstan, U.S. Army War College (USAWC) Press, Carlisle, Pennsylvania, 2013, 12.*

started after the Rose Revolution. The process of reform was conducted without public debates and with nominal inclusion of the Parliament. The reform of the Ministry of Internal Affairs was directed by the decisions of the President and Minister of Internal Affairs. This has negatively influenced on the accountability and parliamentary oversight of the Ministry of Internal Affairs.<sup>92</sup>

Successful result of the reform of Ministry of Internal Affairs was creation of patrol police, open institution oriented on public interests which has wide public confidence. Together with success, the reform has negative developments – based on the constitutional amendments<sup>93</sup> of 2004<sup>th</sup>, the Ministry of Internal Affairs and Ministry of Security were united. Unification of police and special secret functions in one institute, with ineffective parliamentary oversight, resulted human rights violations, that was demonstration of systemic mismanagement.<sup>94</sup>

Starting from the 2013, objective of first stage of reform of the Ministry of Internal Affairs was depolitization of system<sup>95</sup>, following division of the State Security Service from the Ministry of Internal Affairs in 2015.<sup>96, 97</sup>

In the wide variety of functions inside of the Ministry of Internal Affairs, different and controversial mechanisms of accountability and oversight exist.

By the Law of Police<sup>98</sup>, the Law of Intelligence Activities (hereinafter referred as intelligence law)<sup>99</sup>, the Law on State Border<sup>100</sup> and by the chapter<sup>101</sup> of the Ministry of Internal Affairs in the competence of the Ministry of Internal Affairs is assigned issues of operative, intelligence, investigative and police activities, border protection, migration, fighting trafficking, state material reserves, fire and rescue services. The Ministry of Internal Affairs is main and directive institution in the coordination of such an important direction as crime prevention and investigation, fighting trafficking, border protection.

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<sup>92</sup> Marat E., *Reforming the Police in post-Soviet States: Georgia and Kyrgyzstan*, U.S. Army War College (USAWC) Press, Carlisle, Pennsylvania, 2013, 11.

<sup>93</sup> Constitutional Law of Georgia on the Changes to the Constitution of Georgia, *Legislative Herald of Georgia*, 2, 06/02/2004.

<sup>94</sup> Hammarberg T., *Preliminary Advice, Dealing with Illegal Surveillance Material*. EU Special Adviser on Legal and Constitutional Reform and Human Rights in Georgia, 2013, 9. <[https://www.transparency.ge/sites/default/files/post\\_attachments/Dealing%20with%20illegal%20surveillance%20material.pdf](https://www.transparency.ge/sites/default/files/post_attachments/Dealing%20with%20illegal%20surveillance%20material.pdf)>; Hammarberg T., *Georgia in Transition, Report on the Human Rights Dimension: Background, Steps Taken and Remaining Challenges*, 2013, 24-25. <[http://eeas.europa.eu/archives/delegations/georgia/documents/human\\_rights\\_2012/20130920\\_report\\_en.pdf](http://eeas.europa.eu/archives/delegations/georgia/documents/human_rights_2012/20130920_report_en.pdf)>

<sup>95</sup> Marat E., *Reforming the Police in post-Soviet States: Georgia and Kyrgyzstan*, U.S. Army War College (USAWC) Press, Carlisle, Pennsylvania, 2013, 12.

<sup>96</sup> Vashakmadze M., *The Legal Framework of Security Sector Governance in Georgia*, DCAF, Geneva, 2016, 23.

<sup>97</sup> Law of Georgia on the State Security Service of Georgia, *Legislative Herald of Georgia*, <[www.matsne.gov.ge](http://www.matsne.gov.ge)>, 08/07/2015.

<sup>98</sup> Law of Georgia on Police, *Legislative Herald of Georgia*, <[www.matsne.gov.ge](http://www.matsne.gov.ge)>, 04/10/2013. Articles 16 and 17.

<sup>99</sup> Law of Georgia on Intelligence Activities, *Legislative Herald of Georgia*, 24, 27/04/2010. Articles 2, 7 and 8.

<sup>100</sup> Law of Georgia on the State Border, Republic of Georgia, 198, 17/07/1998. Articles 13, 15, 25 and 32.

<sup>101</sup> Decree of the Government of Georgia №337 on Adoption of Chapter of the Ministry of Internal Affairs of Georgia, *Legislative Herald of Georgia*, <[www.matsne.gov.ge](http://www.matsne.gov.ge)>, 13/12/2013. Articles 3 and 4.



The competence of the Ministry of Internal Affairs covers the intelligence activities and in this field it is subordinated to the main institution of intelligence system – the regulations<sup>102</sup> of the Intelligence Service. Such a systemic controversy results an ineffective management and low quality of accountability.

According to the Law on Intelligence Service<sup>103</sup> the Intelligence Service is independent and subordinated to the Prime-Minister, whereas the units of the Ministry of Internal Affairs with intelligence functions (such as border police, security police department, department of special assignments) is subordinated to the Minister of Internal Affairs and to the Intelligence Service, simultaneously. Without clear division of competences, accountability of units having intelligence functions at the Ministry of Internal Affairs is ineffective and opaque, which results the risks of human rights violations.

In the intelligence law is mentioned that on the institutions of intelligence system (including the Ministry of Internal Affairs) parliamentary oversight is conducted by the Parliamentary Committee on Defence and Security.<sup>104</sup> But there is no clear regulation of concrete mechanisms of parliamentary control over the intelligence activities. Such a mechanisms should incorporate the specific of intelligence activities and information and which will be different from the traditional oversight mechanisms. The problem of parliamentary control could not be solved by the term of the intelligence law defining that the forms of parliamentary control is defined by **“the legislation of Georgia”**. As mentioned, the term legislation of Georgia is problematic for definition of mandate of the institutions of security sector and their accountability. The term “the legislation of Georgia” covers the laws and bylaws, or governmental decrees. Therefore it is possible to establish different, diminishing standards of accountability and control. The parliamentary control is main constitutional function which should be regulated by the concrete law.

Intelligence law does not consider the possibilities of prosecutors or judiciary control<sup>105</sup> over the Ministry of Internal Affairs as an institution with intelligence competence. Considering the secret nature of intelligence activities, which results human rights limitation, nominal accountability and nonexistence of effective mechanisms of parliamentary control and prosecutors or judiciary oversight, enhances the possibility of exaggeration of mandate and unsanctioned invasion in the protected sphere of human rights.

Based on the analysis of regulations of system of the Ministry of Internal Affairs, we conclude the weakness of accountability and parliamentary control over the intelligence activities of the Ministry of Internal Affairs. Only and weak mechanism of parliamentary control remains the control by the Group of Confidence of the Parliament of Georgia.

### **3.2. State Security Service of Georgia**

In the Constitution of Georgia existed the provision prohibiting unification of military, police and state security service institutions and functions. “The armed forces, state security forces, and the police shall not be united” was mentioned in the Article 78 and this regulation was in force till the February of

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<sup>102</sup> Law of Georgia on Intelligence Activities, Legislative Herald of Georgia, 24, 27/04/2010. Article 9.

<sup>103</sup> Law of Georgia on the Intelligence Service of Georgia, Legislative Herald of Georgia, 24, 27/04/2010. Article 2.

<sup>104</sup> Law of Georgia on Intelligence Activities, Legislative Herald of Georgia, 24, 27/04/2010. Article 16.

<sup>105</sup> Law of Georgia on Intelligence Activities, Legislative Herald of Georgia, 24, 27/04/2010. articles 15 and 16.

2004.<sup>106</sup> After the Constitutional changes, extraction of this provision gave possibility unify police and state security functions in one institution, the Ministry of Internal Affairs. This decision was criticized by the international and local organisations. The Government and the Parliament were forced for rational compromise and in 2015 the Ministry of Internal Affairs was divided institutionally: the Ministry of Internal Affairs remained as police and investigative institution with limited intelligence and operative functions, and the State Security Service was formed as an independent special counterintelligence and investigative agency in the system of the Government of Georgia.<sup>107</sup>

The law on state security service of Georgia (hereinafter referred as security service law)<sup>108</sup>, was adopted in the July 8 of 2015. Security assurance, fighting terrorism, transnational crime and corruption, protection of state secrecy were defined as main directions of the State Security Service by the security service law.

According to the Law on the counterintelligence activities (hereinafter referred as counterintelligence law) in the competence of the Department of Counterintelligence of the State Security Service, was assigned the organization of counterintelligence activities and coordination of special services (including Department of Intelligence, also the units of the Ministry of Internal Affairs and the Ministry of Defence)<sup>109</sup>. The special units of the Ministry of Internal Affairs and the Ministry of Defence are accountable to the State Security Service.

Different provisions of several laws creates the possibility the legitimacy of activities of the State Security Service to get beyond the legislative framework. Counterintelligence activities: secret audio-video-photo taping, use of secret tv cameras or other electronic devices don't need the court order. By the counterintelligence law in the judiciary control is defined only electronic surveillance and control of the postal correspondence. It should be underlined that this provision of the counterintelligence law covers activities not only of the State Security Service, but on all structures with the counterintelligence competence, including the Ministry of Internal Affairs and the Ministry of Defence. Under the counterintelligence law activities of the counterintelligence services (including the State Security Service) are not a subject of prosecution oversight. In the conditions, when the investigative and special competences are not separated and remain in one institution, the State Security Service, without effective mechanisms of accountability, governmental control, parliamentary, judicial and prosecution oversight, it is possible the concrete activities of the State Security Service or its personnel to get beyond the competence defined by the law and this may become systemic problem.

Attempt of creation the State Security Service as independent institution accountable to the high representative organ is given in the security service law. The law defined new procedure of appointment of the chief of the State Security Service, which ensures morfe inclusiveness of the Parliament.

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<sup>106</sup> Constitutional Law of Georgia on the Changes to the Constitution of Georgia, Legislative Herald of Georgia, 2, 06/02/2004.

<sup>107</sup> *Vashakmadze M.*, The Legal Framework of Security Sector Governance in Georgia, DCAF, Geneva, 2016, 10.

<sup>108</sup> Law of Georgia on the State Security Service of Georgia, Legislative Herald of Georgia, <[www.matsne.gov.ge](http://www.matsne.gov.ge)>, 08/07/2015. Articles 5 and 12.

<sup>109</sup> Law of Georgia on Counterintelligence Activities, Legislative Herald of Georgia, 49, 11/11/2005. Article 7.

According to the security service law<sup>110</sup>, the chief of the State Security Service is nominated by the Prime-Minister for a consent of the Government. After the governmental support the candidate is presented to the parliament for approval. The parliamentary decision on the approval of the candidate of the State Security Service is made by the majority of MP's. At the final stage, having a parliamentary approval the candidate of the chairman of the State Security Service is assigned on the position.

In terms of enhancement of accountability of the State Security Service, it is important to remember the declaration of the security service law that the Chairman of the State Security Service is accountable and responsible to the Parliament.<sup>111</sup> Herewith, once a year the chairman reports to the parliament and it may be continued by the motion of no confidence initiated by the one-third MPs. Regardless of improved mechanism of personal accountability and responsibility of the chairman, institutional accountability remains problematic. According to the security service law the State Security Service is accountable to the Government of Georgia.<sup>112</sup> In comparison of clear and concrete mechanism of personal accountability of the chairman, institutional accountability remains ambiguous and mostly points on the accountability to the government.

Concrete and clear legislative regulation of the security assurance system has particular importance for parliamentary oversight on this system. Competences of the State Security Service besides the law are defined by the bylaw, decree of the government. By the decrees<sup>113114</sup> of the Government of Georgia all public institutions, special services together with other institutions are obliged to deliver instantly to the Counterintelligence Department of the State Security Service all and full information defined by "the informational assurance directory of integrated counterintelligence activities". Herewith, in case of the request of the Counterintelligence Department, institutions are obliged instantly deliver additional and full information.

Due to the fact this competence of the Counterintelligence Department of the State Security Service is out of effective control of the prosecution and judiciary, this provision contradicts to the principles of freedom of information, personal, commercial and professional privacy, together with fundamental principles of non interference in private life, declared by the international acts and the Constitution of Georgia. According to the articles of 25 and 27 of the counterintelligence law, the subject of judiciary or prosecution control is only operative-technical activities. The activities defined in the Decrees of the Government are not operative-technic, therefore they are out of the control.

Limitation of the constitutional rights is permitted only by the law and participation of judiciary. In discussed case the Decree of the Government is not a law, parliamentary act. Therefore it is possible

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<sup>110</sup> Law of Georgia on the State Security Service of Georgia, Legislative Herald of Georgia, <www.matsne.gov.ge>, 08/07/2015. Articles 7 and 9.

<sup>111</sup> Ibid, article 9.

<sup>112</sup> Ibid, article 46.

<sup>113</sup> Decree of the Government of Georgia №343 on the procedures of share of information among institutions conducting counterintelligence activities and other state institutions as consequence of objective of state security assurance and management of information database, Legislative Herald of Georgia, <www.matsne.gov.ge>, 17/12/2013.

<sup>114</sup> Decree of the Government of Georgia №344 on organization of unified counterintelligence activities and coordination of special services activities, Legislative Herald of Georgia, <www.matsne.gov.ge>, 17/12/2013.

anticonstitutional interference in the private, professional or commercial activities without a control of the judiciary.

In the “informational assurance directory of integrated counterintelligence activities”, approved by the №343 decree of the Government of Georgia, are formulated some contradictory or dubious provisions. “Information of the marks of espionage, information of entry in foreign military service of citizens of Georgia, data about cooperation with separatists” – could not be understood similarly by the servants of the regional branches of the Ministry of Environment and Natural Resources, the Civil Registry and municipalities and the Counterintelligence Department. Herewith, we have to remember that the dual citizenship is guaranteed by the Constitution of Georgia. Accordingly, carrying military duty in his initial country of citizenship may serve as a base for limitations of his rights as the citizen of Georgia. In the Georgian legislation there is no definition of the term “separatist”, therefore there is a possibility of wide interpretation (i.e. not only administrative institutions of occupied territories, but also the community or youth unions of citizens living there). It may result a limitation of the rights of the citizens of Georgia and foreigners living on the territory of Georgia.

As conclusion, it has to be identified as progress related to: a) the division of the State Security Service from the Ministry of Internal Affairs, b) rise a role of the Parliament of Georgia in the process of assignment and dismissal of the chief of the State Security Service. Together with progress, creation of due and legitimate system of special services with parliamentary or judicial oversight has to be put in the agenda of parliamentary discussions. Institutionally, remains actual, the problem of division of investigative and special services. Considering modern state of development, will be advisable separation of investigative function from the State Security Service.

### **3.3. Intelligence Service of Georgia**

The Intelligence Service of Georgia conducts Intelligence and counterintelligence activities internally and outside of the territory of Georgia.<sup>115</sup> Also, The Intelligence Service is the main institution responsible for intelligence system coordination. The Intelligence Service is important part of the antiterrorism system.<sup>116</sup>

Based on the National Security Concept, the Intelligence Service elaborates national intelligence program. The national intelligence program defines the objectives, directions and priorities of intelligence activities and it is approved by the Prime-Minister.

According to the intelligence law oversight over the intelligence system is competence of the Prime-Minister. It means that oversight on all institutions (including the Ministry of Internal Affairs and the Ministry of Defence) is exclusive competence of Prime-Minister, but not the Government. In the new constitutional model of governance by the decrease of the competences of the President, the Government become stronger. Therefore, elaborating the mechanisms of oversight the institutional role of the Government should be strengthened. Actual situation has to be considered also, in terms of existence of

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<sup>115</sup> Law of Georgia on the Intelligence Service of Georgia, Legislative Herald of Georgia, 24, 27/04/2010. Article 3.

<sup>116</sup> Law of Georgia on Fighting Terrorism, Legislative Herald of Georgia, 26, 27/06/2007. Articles 4 and 5.

resources and capacity. The Chancellery of the Government is only structure supporting the Prime-Ministers activities. The Chancellery legally, administratively and practically is unable to take important function of effective control over the institutions of intelligence system.

Discussed in the previous chapters, the weakness of parliamentary, prosecutors and judicial control is characteristic for intelligence system and the Intelligence Service also. Additionally, according to the intelligence law the methods, tactics and organization of acquiring intelligence data is not a subject of prosecutors oversight. It may have a meaning that use of force or other violences in the process of acquiring information may stay out of the effective control, also information acquired illegally will be used by the special services or investigative organs. This is not a democratic standard. Similar provisions of this law, intelligence law and counterintelligence law has important threats. Change of contradictory provisions and approximation to the democratic standards should be a subject of special discussions.

In the conditions of lack of clear and consistent legal base of competences, control and accountability of institutions of intelligence system the risk of violation of the framework defined by the law or vague competence. It turns intelligence services and activities illegitimate.<sup>117</sup>

For the control of the national security system of Georgia special importance has the case<sup>118</sup> and its results, which is under the discussion of the Constitutional Court of Georgia. Authors of the constitutional appeal, human rights activists complying that under the counterintelligence law in the framework of counterintelligence activities without judge's permit may be executed:

a) Secret video-audio and photo taping, use of tv cameras and other electronic devices of surveillance,

b) Electronic surveillance (including phone and other communications surveillance) with consent of only one party of communication.

According to the plaintiffs, execution of these activities without judiciary control, contradicts to the Article 16 (Freedom of personal development), Article 20 (Privacy of Personal life) and Article 42 (Fair trial). The plaintiffs are requiring revision of constitutionality of articles 11.2. and 15 of counterintelligence law corresponding to the mentioned articles of the Constitution of Georgia. Appeal to the Constitutional Court of Georgia is demonstration of inclusiveness of civil society in the democratic-civilian control over the security sector of Georgia. Before the constitutional appeal, this issues were analysed by the Atlantic Council of Georgia, in its Report of the Georgian Security Sector Review of 2014. In the Report, special attention is paid on the problem of nonexistence of effective judiciary, prosecution and parliamentary control of counterintelligence, secret activities.<sup>119</sup>

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<sup>117</sup> *Born H., Wills A. (eds.), Overseeing Intelligence Services, Geneva, 2012, 25.*

<sup>118</sup> Constitutional Appeal №690 (Plaintiffs – Sophiko Verdzeuli, Guram Imnadze, Human Rights Education and Training Centre – EMC, Defendant – The Parliament of Georgia. Subject of litigation: Paragraph 2 of Article 11, “a”, “b”, “c” and “d” subparagraphs of paragraph 2 of Article 9 and First paragraph of Article 15 of the Law on Counterintelligence Activities”).

<sup>119</sup> Georgia's Security Sector Review Project, Final Report, Atlantic Council of Georgia, Tbilisi, 2014, 56, 59, 63 (in Georgian).

### **3.4. Ministry of Defence of Georgia**

Ministry of Defence is an important institution of national security system of Georgia and institution of management of Military Forces of Georgia. The Ministry of Defence of Georgia is responsible for readiness, training and development of military forces.

Furthermore, competences of the Ministry of Defence is expanded by the different laws. The competence of the Ministry of Defence of Georgia is operative, intelligence<sup>120</sup>, counterintelligence<sup>121</sup>, investigative activities, border protection<sup>122</sup>, military and armament export control, fighting terrorism<sup>123</sup>, participation in the regulation of airspace.

In terms of defence management, the Ministry of Defence is responsible for elaboration of such an important documents as Defence Planning Decree, Defence Planning Manual, Programs of Military Development.<sup>124</sup>

The Ministry of Defence, as an institution of executive power is subordinated to the control of the Government of Georgia. Though, considering its military specifics, the Ministry of Defence of Georgia is also accountable to the President of Georgia, the Supreme Commander of Military Forces and to his advisory organ – the National Security Council of Georgia.

The lack of effective mechanisms of judiciary, prosecution and parliamentary control over the intelligence, counterintelligence and operative activities of the Ministry of Defence of Georgia is analogically problematic as in the cases of the Ministry of Internal Affairs, the State Security Service or the Intelligence Service. This has to be a subject of reform of national security system and improvement of its legal basis.

### **3.5. General Staff of Military Forces of Georgia**

Legal basis of military management of the Military Forces of Georgia is given in the defence law.<sup>125</sup> Even though, a possibility to expand a mandate of General Staff<sup>126</sup> in the bylaws still remains. In the defence law is not defined effective mechanisms of accountability and parliamentary control.

The competence of the General Staff of Military Forces of Georgia is management of military forces, assurance of battle readiness, management of reserve of military forces, intelligence activities and other

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<sup>120</sup> Law of Georgia on Intelligence Activities, Legislative Herald of Georgia, 24, 27/04/2010. Article 7.

<sup>121</sup> Law of Georgia on Counterintelligence Activities, Legislative Herald of Georgia, 49, 11/11/2005. Article 7.

<sup>122</sup> Law of Georgia on the State Border, Republic of Georgia, 198, 17/07/1998. Article 32.

<sup>123</sup> Law of Georgia on Fighting Terrorism, Legislative Herald of Georgia, 26, 27/06/2007. Article 4.

<sup>124</sup> Law of Georgia on Defence Planning, Legislative Herald of Georgia, 16, 28/04/2006. Article 7.

<sup>125</sup> Law of Georgia on Defence of Georgia, Herald of the Parliament of Georgia, 45, 31/10/1997. Article 9.

<sup>126</sup> According to the Law on Defence of Georgia, this institution is named as Joint Staff of the Military Forces and its statute is adopted by the President of Georgia. Nonetheless of definition of defence law, the Government adopted the Decree of the Government of Georgia #298 in November 2013 on adoption of chapter of the General Staff of Military Forces of Georgia. It should be stated that in the Constitution of Georgia is not given regulations on organization of military forces, but in the paragraph 3, of Article 73, is used the term “the Chief of General Staff of Military Forces”. This provision gives direction for development of legislation and terminology compliance.

functions defined by the statute of General Staff.<sup>127</sup> According to the defence law, the statute of General Staff of Military Forces is approved by the President of Georgia.<sup>128</sup>

The statute of General Staff of Military Forces of Georgia is approved by the №462 Decree<sup>129</sup> of August 8, 2007 of the President of Georgia, lately in 2013 the statute of General Staff was approved by the Government of Georgia<sup>130</sup> and in this statute is formulated different competences as defined in the defence law.

Expansion of competences which are defined in the defence law by the statute of general staff is systemic mistake of accountability and parliamentary oversight. As mentioned, expansion of the framework defined by the law without participation of supreme legislative institution consists important risks for democratic development<sup>131</sup> and the system becomes illegitimate.<sup>132</sup> Considering that the Military Forces are greatest armed institution of the state, with the power of use of force, nondefinition of competences or expansion demonstrates a range of problem and threat for democracy.

As mentioned, special attention in the definition of legal basis of security system reform should be paid to the question of clear definition of competences of security institutions (including the General Staff of Military Forces) only by the law. Participation of supreme representative institution in the process of definition of mandate of security assurance institutions, has critical importance.<sup>133</sup> It ensures democratic and peaceful development of society.

We conclude, that the legislative framework of activities, accountability and parliamentary oversight of the General Staff of Military Forces requires revision. As in the cases of the Ministry of Internal Affairs, the Intelligence Service of Georgia or the State Security Service, intelligence activities and structures of the General Staff are out of the effective judiciary, prosecution or parliamentary oversight.

#### **4. Parliamentary Oversight of National Security System by the Group of Confidence of the Parliament of Georgia**

Parliamentary oversight on the national security assurance system and institutions has special importance in the democratic state. Parliamentary oversight is a tool for protection against authoritarian activities and exceed of power of the governments. Considering periodicity and interval of elections, special importance has the effective mechanisms of parliamentary oversight over the government, as an

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<sup>127</sup> Ibid, article 9.8.y.

<sup>128</sup> Ibid, article 9.5.

<sup>129</sup> Decree practically is annulled, because the Government adopted Decree of the Government of Georgia №298 in November 2013 on Adoption of Chapter of the General Staff of Military Forces of Georgia.

<sup>130</sup> Decree of the Government of Georgia №298 on Adoption of Chapter of the General Staff of Military Forces of Georgia, Legislative Herald of Georgia, <www.matsne.gov.ge>, 22/11/2013.

<sup>131</sup> *Born H., Wills A. (eds.), Overseeing Intelligence Services, Geneva, 2012, 25.*

<sup>132</sup> *Born H., Leigh I., Making Intelligence Accountable: Legal Standards and Best Practice for Oversight of Intelligence Agencies, Oslo, 2005, 3, 18.*

<sup>133</sup> *Born H., Wills A. (eds.), Overseeing Intelligence Services, Geneva, 2012, 25.*

institution without direct electoral legitimacy.<sup>134</sup> Effective parliamentary oversight enhances a quality of accountability of national security assurance institutions and insures society from the arbitrariness, improper and repressive governance.<sup>135</sup>

For evaluation of accountability and parliamentary oversight of institutions of national security system, parliamentary dependency quality on the government and security institutions is important. The parliament, as the organ representing peoples will, should have effective and legitimate mechanisms to influence on the activities of government and security institutions. The problem of parliamentary oversight over the security assurance system is asymmetric dependence of the parliament on the government and the security institutions. The parliament and parliamentary oversight depends on the information generated and provided by the government and security assurance institutions. Therefore, if the parliament has no effective mechanisms for producing and check of information, it becomes dependent on the institutions, oversight of which is main parliamentary obligation.<sup>136</sup>

In addition to the adoption of laws and oversight on the government, the competence of parliament is approval of state budget. The government could not spend money which is not authorized by the state budget, approved by the parliament. Inclusiveness in the process of budget adoption and its execution, is one of the strong mechanism for influence on the activities of the government and effective parliamentary oversight.

In Georgia exists two form of budgetary control over the government:

a) Control on spending of budgetary assignments authorized by the state budget (so called post-factum control), conducted by the State Audit Office,<sup>137</sup>

b) Inclusiveness in the process of budget planning and monitoring (so called preliminary control), which is implemented during the discussions of draft of state budget. This process is directed by the government, the Ministry of Finances and the parliament.

The monitoring of secret or special programs of government will not effective without existence of both form of control.<sup>138</sup> When budgetary spendings and activities of public institutions are transparent, gaining an information and oversight by the institutions of society, media and NGOs is possible. In case of special programs and secret activities the information is not public and may not be accessible.

This, most important function is in the mandate of the Group of Confidence of the Parliament of Georgia, small but representative group of parliamentarians. For a mobility of the Group of

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<sup>134</sup> Fluri P., Johnsson A.B., Born H. (eds.), *Parliamentary Oversight of the Security Sector: Principles, Mechanisms and Practices*, DCAF, Geneva, 2003, 71.

<sup>135</sup> Fuior T., *Parliamentary Powers in Security Sector Governance*, DCAF, Geneva, 2011, 1, 2.

<sup>136</sup> Pataraiia T. (ed.), *Evaluation of Parliamentary Powers Related to Oversight of the Defence Sector in Georgia*, DCAF, Geneva, 2014, 33.

<sup>137</sup> State Audit Office is independent, constitutional institution. It ensures parliamentary control over the activities, spendings and use of resources by the Government of Georgia. Reports of State Audit Office is presented for parliamentary discussions and this is demonstration of effective parliamentary oversight and accountability of the Government of Georgia.

<sup>138</sup> Pataraiia T. (ed.), *Democratic Control over the Georgian Armed Forces since the August 2008 war*, DCAF Regional Programmes Series №4, Geneva, 2010, 31.



Confidence<sup>139</sup>, it consists small number, 5 member. For access to the information and political participation, inclusiveness of parliamentary minority in the Group of Confidence is ensured.<sup>140</sup>

Unlike of formation of parliamentary committees, there are preconditions for a membership of the Group of Confidence. These preconditions are:

a) A member should be selected and nominated only from the members of the Committee on Defence and Security,

b) Candidate should give consent for a membership in the Group of Confidence and take responsibilities of protection of state secrecy,

c) A candidate should pass special verification, security clearance and have a positive conclusion.<sup>141</sup>

According to the Law on the Group of Confidence, during the budget discussions the information about the special programs, actions and expenditures should be disclosed to the Group of Confidence, whereas this information is not available to all other parliamentary committees. Having all necessary information the Group of Confidence issues positive conclusion to the Parliamentary Committee on Budget and Finances about the special expenditures and programs. This is important mechanism for influence and oversight over the government and security assurance institutions. Representatives of parliament are equipped with full information and have possibility for discussion of concrete issues, also organize debates about the special programs planned by the government and even issue a negative conclusion.

The issues covered by the competence of the Group of Confidence needs conclusion of the group and this is mandatory provision. Therefore, all special programs and their financial part, as the parts of state budget needs support of the Group of Confidence.

After the approval of state budget, the members of government are obliged report to the Group once a year and in case of the request of the Group governmental institutions may provide information frequently.

In case the Group detects dubious action or circumstances, it has a possibility of putting question of administrative, political and criminal responsibility.<sup>142</sup> If this mechanism becomes ineffective, the Group of Confidence may initiate creation of parliamentary investigative commission for investigation activities of concrete high-rank public servants. Continuatuion of creation of parliamentary investigative commission may result the criminal, administrative and political responsibility of high-rank servants.

In the framework of reform of national security system, strengthening the competence of the Group of Confidence is important for strengthening of quality of accountability and parliamentary oversight on the national security assurance institutions. In parliamentary model of governance expansion of competence and equipment with complex oversight mechanism of the Group of Confidence will benefit effective governance and democracy development.

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<sup>139</sup> Law of Georgia on the Group of Confidence, Herald of the Parliament of Georgia, 13-14, 04/03/1998.

<sup>140</sup> Ibid, article 2.

<sup>141</sup> Ibid, articles 1 and 2.

<sup>142</sup> Law of Georgia on the Group of Confidence, Herald of the Parliament of Georgia, 13-14, 04/03/1998. Articles 8 and 9.

## **5. Conclusion**

Determined by the nature of secret and non-public activities of national security assurance system, national security institutions are in conflict with liberties of individuals and open society. This system contradicts to the principles of transparency, oversight and accountability. Therefore, clear definition of competences by the laws and assurance effective oversight on the decisions is predominantly and more actual while in other spheres of governance.

Positive side of current national security reform of Georgia is its consideration in a wide context, separation of institution, implementation of principles of good governance and functional transformation. Together with progress in the process of approximation of national security assurance system to the democratic standards, unclear definition or nondefinition by laws of competences, also contradictory and ineffective legal framework of control and oversight on activities (particularly activities of secret nature and limiting human rights) remains as challenge.

## **Bibliography**

1. Constitution of Georgia, Herald of the Parliament of Georgia, 31-33, 24/08/1995.
2. Constitutional Law of Georgia on the Changes to the Constitution of Georgia, Legislative Herald of Georgia, 2, 06/02/2004.
3. Constitutional Law of Georgia on the Changes to the Constitution of Georgia, Legislative Herald of Georgia, published on the website <[www.matsne.gov.ge](http://www.matsne.gov.ge)>, 13/10/2017.
4. Organic Law of Georgia on National Security Council, Legislative Herald of Georgia, 33, 11/11/2004.
5. Law of Georgia on the Structure, Competence and Procedures of the Government of Georgia, Legislative Herald of Georgia, 3, 11/02/2004.
6. Law of Georgia on the Group of Confidence, Herald of the Parliament of Georgia, 13-14, 04/03/1998.
7. Law of Georgia on Security Policy Planning and Coordination, Legislative Herald of Georgia, published on the website <[www.matsne.gov.ge](http://www.matsne.gov.ge)>, 04/03/2015.
8. Law of Georgia on the Changes to the Law of Georgia on Security Policy Planning and Coordination, Legislative Herald of Georgia, published on the website <[www.matsne.gov.ge](http://www.matsne.gov.ge)>, 07/12/2017.
9. Law of Georgia on Civil Safety, Legislative Herald of Georgia, published on the website <[www.matsne.gov.ge](http://www.matsne.gov.ge)>, 29/05/2014.
10. Law of Georgia on the State of Emergency, Herald of the Parliament of Georgia, 44, 17/10/1997.
11. Law of Georgia on Water, Herald of the Parliament of Georgia, 44, 16/10/1997.
12. Law of Georgia on Protection of Environment, Herald of the Parliament of Georgia, 44, 10/12/1996.
13. Law of Georgia on Counter Intelligence Activities, Legislative Herald of Georgia, 49, 11/11/2005.
14. Law of Georgia on Intelligence Activities, Legislative Herald of Georgia, 24, 27/04/2010.
15. Law of Georgia on the State Border, Republic of Georgia, 198, 17/07/1998.
16. Law of Georgia on Defence of Georgia, Herald of the Parliament of Georgia, 45, 31/10/1997.
17. Law of Georgia on Defence Planning, Legislative Herald of Georgia, 16, 28/04/2006.
18. Law of Georgia on the Intelligence Service of Georgia, Legislative Herald of Georgia, 24, 27/04/2010.
19. Law of Georgia on the State Security Service of Georgia, Legislative Herald of Georgia, published on the website <[www.matsne.gov.ge](http://www.matsne.gov.ge)>, 08/07/2015.

20. Law of Georgia on Police, Legislative Herald of Georgia, published on the website <[www.matsne.gov.ge](http://www.matsne.gov.ge)>, 04/10/2013.
21. Law of Georgia on Fighting Terrorism, Legislative Herald of Georgia, 26, 27/06/2007.
22. Law of Georgia on Normative Acts, Legislative Herald of Georgia, 33, 22/10/2009.
23. Resolution of the Parliament of Georgia on the Approval of Orders of the President – Supreme Military Commander of Georgia on Use of Armed Forces for Reaction on Emergency Situation of June 14, 2015, №2, of June 14, 2015, №3 and June 16, 2015 №4, Legislative Herald of Georgia, published on the website <[www.matsne.gov.ge](http://www.matsne.gov.ge)>, 16/06/2015.
24. Regulation of the Parliament of Georgia, Legislative Herald of Georgia, published on the website <[www.matsne.gov.ge](http://www.matsne.gov.ge)>, 03/07/2012.
25. Decree of the Government of Georgia №38 on Creation of the Council of State Security and Crises Management and Adoption of its Chapter, Legislative Herald of Georgia, published on the website <[www.matsne.gov.ge](http://www.matsne.gov.ge)>, 06/01/2014.
26. Decree of the Government of Georgia №337 on Adoption of Chapter of the Ministry of Internal Affairs of Georgia, Legislative Herald of Georgia, published on the website <[www.matsne.gov.ge](http://www.matsne.gov.ge)>, 13/12/2013.
27. Decree of the Government of Georgia №298 on Adoption of Chapter of the General Staff of Military Forces of Georgia, Legislative Herald of Georgia, published on the website <[www.matsne.gov.ge](http://www.matsne.gov.ge)>, 22/11/2013.
28. Decree of the Government of Georgia №343 on the procedures of share of information among institutions conducting counterintelligence activities and other state institutions as consequence of objective of state security assurance and management of information database, Legislative Herald of Georgia, published on the website <[www.matsne.gov.ge](http://www.matsne.gov.ge)>, 17/12/2013.
29. Decree of the Government of Georgia №344 on organization of unified counterintelligence activities and coordination of special services activities, Legislative Herald of Georgia, published on the website <[www.matsne.gov.ge](http://www.matsne.gov.ge)>, 17/12/2013.
30. *Khubua G., Zerman K.-P. (eds)*, Legal Base of Public Administration, Tbilisi, 2016, 65 (in Georgian).
31. *Nodia G., Darchiashvili D. (eds)*, Civil-Military Relations, Theory and Georgian Example, Tbilisi, 2000, 7,11,17,19, 24 (in Georgian).
32. Georgia's Security Sector Review Project, Final Report, Atlantic Council of Georgia, Tbilisi, 2014. <<http://acge.ge/2014/11/საქართველოს-უსაფრთხოება/>>, [19.03.2018], 45-48, 51-54, 56, 59, 61 (in Georgian).
33. Constitutional Appeal №690 (Plaintiffs – Sophiko Verdzeuli, Guram Imnadze, Human Rights Education and Training Centre – EMC, Defendant – The Parliament of Georgia. Subject of litigation: Paragraph 2 of Article 11, “a”, “b”, “c” and “d” subparagraphs of paragraph 2 of Article 9 and First paragraph of Article 15 of the Law on Counterintelligence Activities”). Constitutional appeal <<http://constcourt.ge/ge/news/aw-21-dekembers-1100-saatze-saqartvelos-sakonstitucio-sasamartloshi-gaimarteba-n690-konstituciuri-sarchelis-arsebiti-ganxilva.page>>, [19.03.2018] (in Georgian).
34. *Fuio T.*, Parliamentary Powers in Security Sector Governance, DCAF, Geneva, 2011, 1, 2, 6, 7.
35. *Vashakmadze M.*, The Legal Framework of Security Sector Governance in Georgia, DCAF, Geneva-Tbilisi, 2016, 3, 7, 10, 13, 23.
36. *Pataraiia T. (ed.)*, Democratic Control over the Georgian Armed Forces since the August 2008 war, DCAF Regional Programmes Series №4, Geneva, 2010, 31.
37. *Pataraiia T. (ed.)*, Evaluation of Parliamentary Powers Related to Oversight of the Defence Sector in Georgia, DCAF, Geneva, 2014, 33.
38. *Born H., Leigh I.*, Making Intelligence Accountable: Legal Standards and Best Practice for Oversight of Intelligence Agencies, Oslo, 2005, 3, 16, 17, 18, 23.

39. *Fluri P., Johnsson A.B., Born H. (eds.)*, Parliamentary Oversight of the Security Sector: Principles, Mechanisms and Practices, DCAF, Geneva, 2003, 20, 40, 71.
40. *Cleary L.R., McConville T. (eds.)*, Managing Defence in a Democracy, Routledge, Oxford, 2006, 3, 15.
41. *Rokvic V., Ivanis Z.*, Parliamentary Oversight of the Security Sector in Serbia: Perceived Effects, Problems of Post-Communism, Vol.60, no.1, Routledge, UK, 2013, 60.
42. *Born H.*, Parliamentary Oversight of the Security Sector, OPPD-European Parliament, Brussels, 2013, 20.
43. *Born H., Wills A. (eds.)*, Overseeing Intelligence Services, Geneva, 2012, 25.
44. *Marat E.*, Reforming the Police in post-Soviet States: Georgia and Kyrgyzstan, U.S. Army War College (USAWC) Press, Carlisle, Pennsylvania, 2013, 12.
45. *Hammarberg T.*, Preliminary Advice, Dealing With Illegal Surveillance Material. EU Special Adviser on Legal and Constitutional Reform and Human Rights in Georgia, 2013, 9. <[https://www.transparency.ge/sites/default/files/post\\_attachments/Dealing%20with%20illegal%20surveillance%20material.pdf](https://www.transparency.ge/sites/default/files/post_attachments/Dealing%20with%20illegal%20surveillance%20material.pdf)>, [19.03.2018].
46. *Hammarberg T.*, Georgia in Transition, Report on the Human Rights Dimension: Background, Steps Taken and Remaining Challenges, 2013, 24-25. <[http://eeas.europa.eu/archives/delegations/georgia/documents/human\\_rights\\_2012/20130920\\_report\\_en.pdf](http://eeas.europa.eu/archives/delegations/georgia/documents/human_rights_2012/20130920_report_en.pdf)>, [19.03.2018].
47. Securing Peace and Development: the Role of the United Nations in Supporting Security Sector Reform. Report of the Secretary-General, A/62/659-S/2008/39, 2008, 5,6. <[http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/62/659](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/62/659)>, [19.03.2018].
48. The Romes Statute of the International Criminal Court, A/CONF. 183/9, 17/07/1998.
49. Securing States and Societies: Strengthening the United Nations Comprehensive Support to Security Sector Reform. Report of the Secretary-General, A/67/970-S/2013/480, 2013, 4. <[http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s\\_2013\\_480.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2013_480.pdf)>, [19.03.2018].
50. Recommendation 1402 (1999) "Control of Internal Security Services in Council of Europe Member states", PACE. <<http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16689&lang=en>>, [19.03.2018].
51. Opinion on Pace Recommendation 1713 (2005) on Democratic Oversight of the Security Sector in Member States adopted by the Venice Commission at its 64th Plenary Session, (Venice, 21-22 October 2005). <[http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2005\)033-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2005)033-e)>, [19.03.2018].
52. Comments on Democratic Oversight of Special Services in Eastern Europe, European Commission for Democracy Through Law (Venice Commission), 2007. <[http://www.venice.coe.int/webforms/documents/?pdf=CDL\(2007\)051-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL(2007)051-e)>, [19.03.2018].
53. Draft Report on the Democratic Oversight of the Security Services, European Commission for Democracy through Law (Venice Commission), 2007. <[http://www.venice.coe.int/webforms/documents/?pdf=CDL-DEM\(2007\)001-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-DEM(2007)001-e)>, [19.03.2018].
54. Report on the Democratic Oversight of the Security Services Adopted by the Venice Commission at its 71st Plenary Session (Venice, 1-2 June 2007). <[http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2007\)016-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2007)016-e)>, [19.03.2018].
55. Report on the Democratic Oversight of the Security Services Adopted by the Venice Commission at its 71st Plenary Session (Venice, 1-2 June 2007) and Updated by the Venice Commission at its 102<sup>nd</sup> Plenary Session (Venice, 20-21 March 2015). <[http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2015\)010-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2015)010-e)>, [19.03.2018].
56. Government Defence Anti-Corruption Index. Transparency International UK. <<http://government.defenceindex.org/>>, [19.03.2018].
57. <<https://www.icc-cpi.int/about>> , [19.03.2018].