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## **Problems of Parliamentary Oversight on Secret Activities of Institutes of National Security Assurance System of Georgia**

*Democratic governance is based on the accountability of the government to the parliament. Oversight of the government activities by the representative body that has absolute legitimation of population ensures democratic environment for decision-making and efficient accountability of the Government. An effective system of accountability of the government to the parliament ensures the accountability of the government to its population. Parliamentary oversight of the government's activities is a constitutional obligation to ensure accountability to the source of power, i.e. citizens.*

*Significant part of activities and decisions of government is related to secret activities and documents. Legislative regulation of state secrets and delegation of authority or authorization to the Government is an exclusive competence of Parliament under the Constitution of Georgia.*

*The Parliament, the members of which do not have access to state secrecy cannot ensure the parliamentary oversight of secret activity of the Government or if decision-making regarding the issue of allowing access of Members of Parliament to the state secrecy is delegated to the government. Unlimited delegation of the right to regulate the access of MPs to the state secrecy comes into conflict with the Constitution, because it means the violation of accountability to the Parliament and separation of power which deprives the Parliament of the possibility to exercise oversight on the Government's work.*

*This work provides an analysis of the regulatory environment for state secrecy of Georgia and the delegation of authority of legal regulation of state secret management.*

*By presenting a comparative analysis of Georgian and foreign practice of parliamentary oversight regarding state secret activities, we are putting forward for discussion the issues related to the regulation of accessibility to state secrecy by members of Parliament and the suggestions regarding the solution of actual issues of parliamentary oversight of government's secret activities.*

**Keywords:** *Democratic Governance, Security, State Secrecy, Parliamentary Oversight, Delegation of Authority, Parliament, Government, Judiciary, Accountability.*

### **1. Introduction**

Democracy is based on the idea of representativeness of people, implying the governance and oversight of governance of various institutions created through elections. Moreover, democratic governance means governance that is limited by human rights.

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Democratic governance is characterized by separation of powers. Legislative, executive and judicial branches of power, with separated competences and oversight ensure the balance of power, governance decision-making within the framework defined by the Constitution or law.

Two out the three branches of the government, legislative and executive, are political institutions, with the judiciary being non-political.

Political institutions are characterized by policy formation and decision-making in accordance with party, ideological values and vision, within the framework established by the Constitution. Non-political branch, the judiciary, ensures protection and enforcement of rules set by political institutions, as well as control of the legality and constitutionality of the activities and decisions of governing institutions.

The significant part of separation and balance of powers, apart from judicial control, is the parliamentary oversight of the activities of the executive power. Parliamentary oversight and judicial control are kind of leverages that hamper the power and prevent the abuse of power.<sup>1</sup>

In the parliamentary republic, the parliamentary oversight of the government is exclusive competence of highest representative institution, which at the same time is the supreme legislator that is fully legitimated by people through elections. It is authorized to form and control the Government, to participate in the formation of judicial power.<sup>2</sup>

Parliamentary oversight is implemented within the authority delegated to the government by law. Setting limitations for the Government can be done only by laws that have public support (legitimation). “Setting certain limitations for the Government has always been considered as one of the key functions of the law”, says Tony Honore<sup>3</sup>.

In a democratic state, the decisions are made as a result of discussions. Without access to information and without spreading the information, it is impossible to lead discussion and to achieve results. Informed political debates taking place in the highest representative body provide for efficient oversight of the government’s work and the democratic governance.

The activity of the legislative body is based on publicity and taking decisions with participation of different opinions. For this reason, the representative body is deprived of the possibility of quick decisions and actions. On the other hand, the executive government has the ability to act and make expedient decisions. A significant part of the government activity is not public or participatory. The activities of government, which are related to the prevention and response to various threats, are carried out secretly.

One of the challenges of the Parliamentary democracy is on the one hand, to ensure national security and on the other hand, to provide publicity and inclusiveness in the governance. It is hard to find consensus and to create sufficient mechanisms that would achieve both goals equally without damaging one another. The conflict between the publicity and state secrecy in public governance is obvious.

The Parliament, as a supreme legislative institution, equips the Government with the competence and scope of action by adopting the laws. Delegation of authority to the government is a

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<sup>2</sup> *Montesquieu Ch.*, the Spirit of Laws, Tbilisi, 1994, 180-181 (in Georgian).

<sup>2</sup> *Kublashvili K.*, First Government – Parliaments and Parliamentarism, Tbilisi, 2022, 24 (in Georgian).

<sup>3</sup> *Honore T.*, About Law: An Introduction, Tbilisi, 2018, 36 (In Georgian).

critical part in ensuring democratic governance and parliamentary oversight. Therefore, the scope of the government's activity and competence is limited by the will and decisions of the representative body that has absolute legitimacy. Unlimited executive power, either de jure or de facto, is a key feature of absolutist and dictatorial systems. Modern constitutionalism is built against such systems and therefore ensures the supremacy of the legislative body.<sup>4</sup>

The Georgian Constitution assigns the legislative authority only to the Parliament which is the highest representative body with people's mandate.<sup>5</sup> The Parliament defines the key areas of state policy with the help of legislation. The Government, within the scope defined by the Parliament, executes the laws adopted in the Parliament and implements domestic and foreign policies".<sup>6</sup>

The Parliament can fully regulate the issue or delegate the regulation authority by defining the scope of essential issues.

There are two forms for delegating the regulation authority: delegation of authority to limit the human rights and delegation of legislative authority without restriction of the human right. The latter is the action authorization form. Considering the fact that in exercising the power, the Parliament as well as the Government are limited by human rights, delegation of the authority to limit the rights carries more intensive character and requires more clarity, limitations and mechanism for oversight.<sup>7</sup>

Adoption of a legal act by the body equipped with appropriate powers is one of the major issues of legal positivism and formal legitimacy.<sup>8</sup> The main source for granting different bodies with relevant decision-making authorities is the Constitution. As noted, within the scope established by the Constitution, the Parliament is the only institution that can make decision itself or delegate the decision-making power to another body. That being so, delegation is of great importance for the legitimacy of decisions, for parliamentary oversight of governance, and for judicial control.

However, it is against Constitution to delegate the full legislative regulation of some issue to the Government without setting objectives and scope. The goals, content and scope of legislative authority shall be established at the moment of delegation by the law adopted by the Parliament itself.<sup>9</sup>

Without identifying the clear scope and principles for the government, delegation of authority will make it essentially impossible to validate the compliance of government's activities with law and protection of human rights. Even if the Parliament has not defined the scope of authority and essential issues, legal compliance of the government cannot be subject to validation on the ground that there will be no scope or principle against which the Government's resolution will be compared and it will be impossible to evaluate the extent to which it corresponds to the purpose provided in the law of the

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<sup>4</sup> Rule Of Law Checklist, European Commission For Democracy Through Law (Venice Commission), Venice, 11-12 March 2016, 20, para 49 <[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)007-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)007-e)>[18.02.2023].

<sup>5</sup> Constitution of Georgia, parliament newsletter, 31-33, 24/08/1995, article 36, part 1.

<sup>6</sup> Ibid, article 4, part 4, article 54.

<sup>7</sup> *Gonashvili V., Eretheadze K., Tevdorashvili G., Kakhiani G., Kverenchkhiladze G., Chigladze G.*, Introduction to Constitutional Law, Tbilisi, 2016, 16 (in Georgian).

<sup>8</sup> *Khubua G.*, Theory of Law, Tbilisi, 2015, 42, 55 (in Georgian).

<sup>9</sup> Respect for Democracy, Human Rights and the Rule of Law During States of Emergency – Reflections, European Commission for Democracy Through Law (Venice Commission), Strasbourg, 26 May 2020, para 65. <[https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2020\)005rev-e#>](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2020)005rev-e#>)[18.02.2023].

highest representative institution. And this makes the parliamentary control, the control of the law enforcement and legality of the normative acts of the government a mere fiction. The impossibility of parliamentary oversight leads to a violation of the principle of separation and balance of power and leaves the government without the control of the electorate and highest legislative institution which has direct electoral legitimacy.

As mentioned, the Parliament has control mechanisms for the government's activities. These mechanisms provide institutional balance and mutual restraint between state bodies.<sup>10</sup>

In case of unlimited delegation by law, any individual who wants to validate the compliance of the government's decision with law, essentially remains without the right of protection. Court hearings and ruling about the compliance of the government's regulation with the regulatory law becomes impossible and it makes no sense even to refer to the court.

Georgian Constitutional Court has developed the standards of delegation of regulation authority and parliamentary oversight. Constitutional Court considers the unlimited delegation of authority by the Parliament for performance of constitutional obligation as a rejection to exercise legislative authority.<sup>11</sup> Herewith, the Constitutional Court deemed as the Parliament's obligation to define the legal scope and frame of delegated authority of regulation, in order for the body, to which the authority was delegated, to make decision solely within the scope of law and in accordance with it.<sup>12</sup> The Constitutional Court specifically discussed the issue of formal and unrestricted delegation, and the mere fact that the Parliament delegated the power to limit human rights to the government by law was not considered sufficient to recognize this decision of the Parliament and the decision of the government as constitutional. Delegation of authority only formally, without any framework, was considered by the Constitutional Court of Georgia to be against the Constitution, since it is the obligation of the state and parliament to exclude the risk of unreasonable or disproportionate restriction of human rights.<sup>13</sup>

Parliamentary oversight of secret activities carried out to ensure national security in accordance with the delegation and publicity standards of the Constitution ensures the compliance and effective accountability of the government's secret activities, which requires constant understanding and the search for new solutions. For this purpose, this work reviews the mechanisms of parliamentary oversight of the activities of the Government of Georgia and the experience in regulating state secrecy, which are related to the parliamentary oversight of the secret activities of the government.

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<sup>10</sup> *Pirtskhalaishvili A., Mirianashvili G.*, Fundamentals of State Organization of Georgia, Tbilisi, 2018, 53 (in Georgian).

<sup>11</sup> Decision of July 20, 2016 No.3/3/763 of the Constitutional Court of Georgia, the case "Group of members of the Parliament of Georgia – Davit Bakradze, Sergo Ratiani, Roland Akhalaia, Giorgi Baramidze and others, a total of 42 members against the Parliament of Georgia", II-78.

<sup>12</sup> Decision of February 11, 2021 No.1/1/1505,1515,1516,1529 of the Constitutional Court of Georgia, the case "Paata Diasamidze, Giorgi Chitidze, Eduard Marikashvili and Lika Sajaia against the Parliament of Georgia and the Government of Georgia".

<sup>13</sup> Decision of August 2, 2019 No.1/7/1275 of the Constitutional Court of Georgia, the case "Alexandre Mdzinarashvili v. National Communications Commission of Georgia". II-42.

## **2. Experience of Regulation of State Secrecy**

In any state, along with public information, there is a state secrecy which is specially regulated. Access to information with the status of state secret is particularly important for effective parliamentary oversight of government activities.

By reviewing the legal acts that regulate the state secrecy of Georgia, it is possible to evaluate the delegation of authority as well as Parliamentary oversight of the government's activities.

Protection of vital interests of the country is the goal declared in the Law of Georgia on State Secrecy.<sup>14</sup> To provide for this goal, the Law regulates issues related to deeming information to be a state secret and protecting it.

Pursuant to the law on State Secrecy, information in the areas of defence, economy, foreign relations, intelligence, national security, and law enforcement, the disclosure or loss of which can prejudice the sovereignty, constitutional order, political or economic interests of Georgia or any party to international agreements and covenants that, based on the rule provided for by this Law and/or international agreements or covenants, shall be recognised as a state secret, and shall be subject to state protection.

Thus, the Law of Georgia on State Secrecy protects not only the secret information created as a result of the activities of Georgian government and executive institutions, but also the classified information of North Atlantic Treaty Organization (NATO) and other international organizations and states. Taking into account that the Parliament, as a representative institution with absolute legitimacy, is equipped by the Constitution with governance powers in the fields of both national and international relations, it is natural that the protection of all information used in international relations should be sufficiently ensured along with providing parliamentary oversight of the legality of protection of this information.

Law on State Secrecy defines the list of information that cannot be classified as state secret.<sup>15</sup>

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<sup>14</sup> Law of Georgia on State Secrecy, legislative herald of Georgia – 12/03/2015.

<sup>15</sup> Pursuant to the article 7 of the Law of Georgia on State Secrets, the following information cannot be deemed as a state secret:

1. Information that may prejudice or restrict the fundamental rights and freedoms of a person, his/her legal interests, or cause harm to the health and safety of the population may not be deemed to be a state secret.
2. Normative acts, including treaties and international agreements of Georgia, other than normative acts of the relevant agencies, which are related to national interests in the areas of defence, national security and law enforcement and which govern the activities of these agencies in the areas of defence, intelligence, national security, law enforcement and criminal intelligence activity, may not be deemed to be a state secret.
3. Maps, other than military and special maps that contain information or data on national defence and security as defined in the List of Information Deemed to be a State Secret, may not be deemed a state secret.
4. Information on natural disasters, calamities and other extraordinary events that have already occurred or may occur and that pose a threat to the safety of citizens;
5. Information on the condition of the environment and the health of the population, its living standards, including health care and social security, and on social-demographic indicators, and on educational and cultural levels of the population;
6. Information on corruption, illegal acts committed by officials and on crime rates;
7. Information on privileges, compensations, monetary rewards and benefits granted by the State to citizens, officials, enterprises, institutions and organisations;
8. Information on the state monetary fund and national gold reserve;
9. Information on the health status of public and political officials.

To avoid unlawful and/or unreasoned decision classifying certain information to be a state secret, Law on State Secrecy provides the list of different information within which, the specific information may be granted the status of a state secret. By this, on the one hand, the legislative institution establishes the scope of delegation of authority for the Government and delegates the authority for normative regulation and on the other hand, provides publicity and the parliamentary oversight of the government's activities in the area of state secrecy. The list of areas and information is the scope within which the compliance of government's decisions can be controlled.

Pursuant to the concept provided in the Law on State Secrecy, information itself is not a state secret, its status is established by a competent official under the relevant law or government's normative act adopted on basis of law. The list of such officials also includes the members of the Parliament<sup>16</sup>. By such disputable delegation of normative regulation authority, the institute that is subject to oversight (government) defines rules or makes decision to grant authority to the Parliament member which obviously decreases the possibility of parliamentary oversight.

Apart from the issue related to authority of information classification, another critical issue for parliamentary oversight and judicial control of government's activities is the access to classified information. It is impossible to have an authority of granting the status of a secret information (classification) when you have no right to access the classified information.

In consideration of state security interests, Law on State Secrecy restricts the right to access state secrets maintained in public institutions. Law on State Secrecy defines the list of people who may be granted the right to process, learn and work on information containing state secret (classified information).

Law on State Secrecy defines two different categories of officials who have the right to work with state secrets: people who have the guaranteed access to state secrecy and people who are granted access to state secret by authorized officials.<sup>17</sup>

State officials with guaranteed access to state secrecy are heads of constitutional and security institutes who are granted access to state secrets upon their appointment.<sup>18</sup>

The second category are the people who may be granted the right to access to state secret by an authorized official if they: (a) have confirmed requirement for accessing the classified information in order to carry out their official, professional and/or scientific activities and (b) meet trustworthiness and reliability criteria set by the Law on State Secrecy.

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<sup>16</sup> Regulation #507 of GoG of September 24, 2015 „on approving the normative acts related to the operation of Georgian Law on State Secrets”, legislative herald of Georgia, 29/09/2015.

<sup>17</sup> Law of Georgia on State Secrecy, Legislative Herald of Georgia, 12/03/2015, Article 20.

<sup>18</sup> People with guaranteed access to State Secrets:

a) The President of Georgia, b) The Prime Minister of Georgia, c) Member of the Government of Georgia, d) Chairperson of the Parliament of Georgia, e) Public Defender of Georgia, f) Member of the National Security Council, g) General Auditor of the State Audit Office of Georgia, h) Chairperson of the Constitutional Court of Georgia, i) General Prosecurot of Georgia, j) Head of State Security Service of Georgia, k) Head of Intelligence Service of Georgia, l) Head of Special State Protection Service of Georgia, m) Chairperson of the Supreme Court of Georgia, n) President of the National Bank of Georgia, o) Head of the General Staff of the Georgian Armed Forces.

Before granting the right to access to state secrecy, it is mandatory to conduct the security clearance and issue a positive conclusion on trustworthiness and reliability. The procedures of security clearance of the person applying for the access of state secret is conducted by the State Security Service of Georgia.

Members of Parliament belong to the second category of officials who will be granted the right to access classified information only if they can justify the need to know for their work purposes and if they obtain positive conclusion on the trustworthiness and reliability,<sup>19</sup> conducted by the institution that is accountable and controlled by the Parliament.

Furthermore, such security clearance is conducted by using such secret methods that are not subject to parliamentary oversight or judicial control.

The decree,<sup>20</sup> issued by the Government under the authority delegated to it by Law on State Secrecy defines legal grounds for security clearance methods to be conducted by state security service before granting the right to access the state secret. In particular, State Security Service of Georgia shall conduct the security clearance of a person according to the procedures provided for by the Law of Georgia on Counter-Intelligence Activity and the Law of Georgia on Criminal Intelligence Activity. This means that before allowing the Member of Parliament the access to state secret, s/he will be checked against trustworthiness and reliability by open and secret methods, including, covert recording, electronic surveillance and visual control.

In the conditions of such normative regulation of security clearance for accessing state secret, neither the official with the right to access state secret nor the chair of the Parliament or Member of Parliament who may be granted the access to state secret, have the possibility or legal mechanisms to learn and verify the information obtained as a result of security check or the compliance and validation of the conclusion issued by such investigation. Moreover, the legislative act does not consider the possibility, principles and mechanism to regulate the conflict of interests related to parliamentary oversight.

European states and the United States have different approach to the management of state secrecy and parliamentary oversight.

In the Kingdom of Sweden<sup>21</sup>, state secret is subject to regulation by a number of legislative acts. They are: the law on “public access to information and secrecy”<sup>22</sup> and ordinance on “public access to

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<sup>19</sup> Law of Georgia on State Secrecy, Legislative Herald of Georgia, 12/03/2015. article 22, paragraph 4.

<sup>20</sup> Decree of September 24, 2015 #507 of Government of Georgia “on approving the normative acts for enforcement of Georgian Law on State Secrecy”, Legislative Herald of Georgia, 29/09/2015.

<sup>21</sup> EU member state and NATO candidate state. 4<sup>th</sup> position in the Index of government’s openness of World Justice Project among 180 countries of the world and 31 countries of European region <<https://worldjusticeproject.org/rule-of-law-index/country/2022/Sweden/>> [18.02.2023]. Third in the Index of World Press Freedom among 180 countries <<https://rsf.org/en/index>>[18.02.2023]. Sweden has received 5 scores out of maximum six scores by access to information rating<<https://www.rti-rating.org/country-data/>> [18.02.2023].

<sup>22</sup> Public Access to Information and Secrecy Act (2009:400) (in Swedish) <[http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/offentlighets--och-sekretesslag-2009400\\_sfs-2009-400](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/offentlighets--och-sekretesslag-2009400_sfs-2009-400)> [18.02.2023].

information and secrecy.<sup>23</sup> The leading role as a regulator in providing the publicity of information and protecting the state secret belongs to the Swedish Parliament which is the highest representative organ with an electorate mandate.

By law, any information or official document may be classified as a state secret if their protection as secret serves to the following interests:

1) national security, Sweden's foreign relations with foreign states or organizations, 2) financial, monetary or exchange rate policy, 3) inspection, control or other supervisory activities of public authorities, 4) crime prevention and investigation, 5) public economic interest, 6) protection of information about personal or economic conditions of private individuals, 7) Protection of animals or plants.

All other documents not enlisted above are public and it is inadmissible not to disclose them. Besides, Swedish Government does not hold the authority to define the scope for the secrecy of documents as it is at the discretion of the parliament. Within the scope of this discretion, the list of information that may be classified as secret, is provided in the Public Access to Information and Secrecy Ordinance of Swedish Parliament.

Providing secret information to the Swedish Riksdag (the highest legislative body) and the Parliamentary Ombudsman is mandatory<sup>24</sup> as part of the supervisory function. In Sweden, Parliamentary oversight of Government and administration activities (including secret activities) and the legality of decisions is mainly carried out by 4 independent and politically neutral parliamentary ombudsmen elected by the parliament. Access to information for members of the Riksdag and the Parliamentary Ombudsman is based on their high public legitimacy.

In Estonia<sup>25</sup>, the issues of state secrecy is regulated by law on “State Secrets and Classified Information of Foreign States”.<sup>26</sup> The title of the law emphasizes that not only the state secret of Estonia is protected, but also the classified information of foreign states and foreign organizations that was transferred to the competent institutions of Estonia or became known to the public official or servant.

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<sup>23</sup> Public Access to Information and Secrecy Ordinance (2009:641) (in Swedish). <[http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/offentlighets--och-sekretessforordning-2009641\\_sfs-2009-641](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/offentlighets--och-sekretessforordning-2009641_sfs-2009-641)>[18.02.2023].

<sup>24</sup> Public access to information and secrecy, Stockholm, 2020, 26.

<sup>25</sup> EU and NATO member state. 7<sup>th</sup> position in the Index of government's openness of World Justice Project among 180 countries of the world and 31 countries of Europe <<https://worldjusticeproject.org/rule-of-law-index/country/2022/Estonia/Open%20Government/>>[18.02.2023]. Fourth in the Index of World Press Freedom among 180 countries <<https://rsf.org/en/index>>[18.02.2023]. Estonia has received 4 scores out of maximum six scores by access to information rating <<https://www.rti-rating.org/country-data/>>[18.02.2023].

<sup>25</sup> Public Access to Information and Secrecy Act (2009:400) (in Swedish) <[http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/offentlighets--och-sekretesslag-2009400\\_sfs-2009-400](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/offentlighets--och-sekretesslag-2009400_sfs-2009-400)>[18.02.2023]

<sup>25</sup> Public Access to Information and Secrecy Ordinance (2009:641) (in Swedish). <[http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/offentlighets--och-sekretessforordning-2009641\\_sfs-2009-641](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/offentlighets--och-sekretessforordning-2009641_sfs-2009-641)>[18.02.2023].

<sup>26</sup> State Secrets and Classified Information of Foreign States Act. <<https://www.riigiteataja.ee/en/eli/503072018009/consolide>>[18.02.2023].



The Parliament of Estonia, as the highest representative body with people's mandate holds all extensive powers to oversee secrets and classified activities, which ensures effective parliamentary oversight and government accountability. The Law “On State Secrets and Classified Information of Foreign States” excludes to the maximum possible extent the violation of the principle of accountability of the government to the Parliament in the field of secrecy. For this very reason, the Parliament of Estonia has defined in the law those officials who have official access to the state secrets of all degrees. This list includes:

a) the President of Estonia, b) Member of the Parliament of Estonia, c) a member of the Estonian government, d) judge, e) Commander of the Defence Forces, f) Chancellor of Justice and his/her deputy, g) Auditor General, h) President of the National Bank, Chairman and members of the Executive Board i) Chairman of the Data Protection Inspectorate.

In Estonia, the public servants who need to know state secret for their work have so called guaranteed admission. Upon appointment to such position, if a person refuses to confirm in writing the obligation to protect state secrets, it may become ground for not accepting or dismissing him from the position.

Estonian law does not define a separate competence for the Prime Minister in the area of state secrecy. The competence to establish the procedural regulations within the legal frames is granted solely to the government.

Similar to Georgia, in Estonia the law defines all areas and issues that can be classified as state secret. Moreover, the law sets maximum periods for keeping secrecy of a particular issue and the category of secrecy.

Guaranteed access to state secrecy may be granted not only to the officials who already have such access, but also to any citizen who has a justified need to know the secret information under the approval of the director of the institution holding such secret information or document, provided that the security clearance carried out by security service is positive. The decision-maker defines not only the right to access, types of specific information and the rule for reading the information, but also period for maintaining this right.

The authorities of the Members of US Congress in the area of state secrecy and secret activities of the government are defined in various legal acts. In consideration of specifics of the US state governance model (where not only Congress but also the President, the head of the executive with broad scope of authorities and head of the country, has the public legitimacy), the competences in the area of state secret management are distributed in a way that both branches can efficiently execute the public legitimacy.

In the USA, similar to Georgia, two conditions are set for obtaining the right to state secrets: (a) trustworthiness-reliability test (check) and (b) “need to know” principle. Person meeting these conditions will be granted access to state secret only after s/he confirms by signature the non-disclosure and protection of state secret statement.

Members of US congress do not have to take the trustworthiness-reliability check on the ground that they already are elected and legitimized by people under constitutional procedures.<sup>27</sup> In order for

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<sup>27</sup> *Alaverdashvili G.*, Control of security sector in US Congress, Tbilisi, 2023, (in Georgian) <[https://gyla.ge/ge/post/usaftrkheobis-seqtorze-kontroli-amerikis-kongresshi#\\_ftn14](https://gyla.ge/ge/post/usaftrkheobis-seqtorze-kontroli-amerikis-kongresshi#_ftn14)> [18.02.2023].

the Members of US Congress to obtain the right of accessing classified information, they have to justify the need, undertake the check by executive bodies and receive their approval. Interestingly, the executive bodies have restricted competence for “need to know” check and approval granting by mandatory consultations of the President’s administration with Congressional committees. Only after these consultations<sup>28</sup>, the executive institutions, scope of competence and criteria can be defined for the inspection of the Congressmen’s “need to know” of state secret.

In absolute majority of NATO states, the MPs have unlimited access to classified information and realization of this right does not depend on the decision of some institution of the government that is subject to parliamentary oversight. The access rights to classified information depends on their status, high legitimacy and occupied position.<sup>29</sup> In 7 NATO states, only the MPs who are the members of special or sectorial committees or occupy some parliamentary positions have the right to access classified information.

The study showed that in leading democratic states, for the purposes of parliamentary oversight of secret activities of the government, the dependence of the highest representative body and its members on the check or consent, in order to access classified information of executive government bodies is minimized.

### **3. Mechanisms of Parliamentary Oversight of Secret Activities of the Georgian Government**

Parliamentary oversight of the secret activities of the Government of Georgia goes under general, political oversight, as well as special oversight over the government's activities. Therefore, the format, rules and mechanisms of oversight differ accordingly.

Both spheres and mechanisms of parliamentary oversight of the government's secret activities are characterized by the same features – publicity and involvement of the parliament as a representative body. Although special oversight mechanisms provide for a lower level of publicity to ensure the protection of state secrets, a small number of members of parliament have access to secret information.

For the effectiveness of parliamentary oversight of the government's secret activities, it is important to have a public discussion and debate on the issue among the various groups represented in the parliament. Debates in the committee or plenary session of the Parliament normally take place in a public session, which results in the adoption of a resolution, recommendation or resolution of the Parliament.

In case of both forms (general and special) of Parliamentary oversight of government’s secret activities, conducting informed debates is restricted because MPs do not have access to classified information, while the executive government’s representative called to the parliament for discussion has such access and s/he has to discuss with members of the Parliament about issues containing classified information.

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<sup>28</sup> Congressional Oversight Manual, 2021, 67-71.

<sup>29</sup> Schierkolk N.Y., Parliamentary Access to Classified Information, Geneva, 2018, 22-23.

Accordingly, even if the parliamentary committee or plenary session is closed, the attendees, without having the right to access state secret, will not be able to obtain necessary information from the government's representative, which obviously makes it impossible to prepare a parliament's recommendation, adopt a resolution or discuss the issue of responsibility of the official who is accountable to the Parliament. Similarly, discussion of annual or special reports related to secret activities of the Government ends with no results.

Rules of Procedure of the Parliament of Georgia provide for a number of formats of parliamentary oversight of government's activities: bureau session, committee session, committee working group meeting, temporary investigation or other commission sessions, plenary session, group of confidence's session.<sup>30</sup>

In Georgia, parliamentary oversight of the government's activities is implemented via a number of mechanisms: control of enforcement of legislative acts of Parliament, validation of legal acts of government and its institutions, political debates, interpellation, minister's hour and thematic investigation.<sup>31</sup>

As mentioned, for the parliamentary oversight of government's secret activities, the issue of delegation of regulation authority and access to classified information is critical. Herewith, without validating and regulating the normative regulation competence of access rights of MPs to classified information and the compliance of decisions of the government to allowing access to classified information by MPs as part of their delegated authority in the context of Parliament being an institute with absolute public legitimacy, it will be impossible or inefficient to use all other mechanisms and to discuss issues in any format.

For the analysis, we will review the possibility of using the control mechanisms of the enforcement of normative acts, validation of legal acts of executives with legislative acts of Parliament and interpellation to fulfil the function of parliamentary oversight of the secret activities of the government.

Control of enforcement of legislative acts falls<sup>32</sup> within the competence of the Parliamentary committee. The latter controls the progress of enforcement of legislative acts adopted by the Parliament (for this case – legal acts) and identifies issues.

The conclusion elaborated by the committee on enforcement of the legislative acts adopted by the Parliament may become subject to discussion at the plenary session of the parliament followed by adoption of the parliamentary resolution, the addressee of which will be the implementing government institution or government and the relevant committee of the Parliament.

Where the parliament identifies any abuse of the authority defined by law or its incorrect interpretation, it will prepare a relevant recommendation for the Government.<sup>33</sup> Herewith, depending on the scale of violation, the enforcement process of the legislative act may result in the procedure of discussion of the government official's responsibility.

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<sup>30</sup> Rule of Procedure of Georgian Parliament, Legislative Herald of Georgia, 06/12/2018. article 25, article 34, article 46, article 68, article 92, article 157-159.

<sup>31</sup> Ibid, article 38, article 39, article 93, article 149, article 153, article 155.

<sup>32</sup> Rule of Procedure of Georgian Parliament, Legislative Herald of Georgia, 06/12/2018, part 1, article 38.

<sup>33</sup> Ibid, part 3, article 38.

Government of Georgia has the authority to regulate only the issues that was transferred to it under the law adopted by the Parliament.<sup>34</sup>

After studying the state of enforcement of legislative act, under the Parliament's ordinance, the sectoral committee may be tasked to identify, change or specify the delegation and competence scopes in the legislative act to exclude misuse of the this act or its subjective interpretation and to initiate the relevant draft law.

Unlike the mechanism of enforcement of the normative act, the mechanism of studying the legal acts of government and their validity equips the Parliamentary committee with authority and there is no need to discuss the issue at the plenary session. This mechanism is rather flexible and efficient for parliamentary oversight than the control of enforcement of normative acts, the decision is made by the committee (in the form of the task or recommendation).<sup>35</sup>

The mechanisms for controlling the enforcement of the legislative act and studying the legality of legal acts of government and its institutions are similar to the competence of the Constitutional Court of Georgia regarding the constitutionality of the normative act issued within the scope of delegation and delegated authority and the competence of the court regarding the legal compliance. Thorough and regular execution of the authority to control the enforcement of legislative acts and examine the compliance of legal acts of government will have a positive effect not only on the parliamentary oversight of the government's activities, but also on justice and ultimately, will decrease the number of disputes and overloading of the constitutional and common courts.

As we can see, the mechanism for controlling the enforcement of the legislative acts and examination of the compliance of legal acts of government is of particular importance for determining the scope of Law on State Secrecy and of the government's competence to enforce it, in order to exclude the unreasoned restriction of the access of MPs to state secret and the levelling of the use of parliamentary debates, interpellation or other mechanisms on the government's secret activities.

Interpellation is a special mechanism of parliamentary oversight of the government activities. In the course of interpellation, members of the parliament address questions to the government or officials accountable to the parliament, and the latter are obliged to give answers to the question in a written form. Herewith, an integral component of the interpellation mechanism is the discussion of the issue at the plenary session of the Parliament in the format of a debate, normally, via the open session. Consideration of the question raised via the interpellation method may result in the adoption of the Parliament ordinance.<sup>36</sup>

Efficiency of the interpellation mechanism and process of parliamentary oversight of the secret activities of the government depends, on the one hand, on the access of members of the parliament to secret information, and on the other hand, on the provision of secret information during parliamentary debates and the possibility of conducting informed debates. If any of these is not provided, the interpellation process for parliamentary oversight of the government's secret activities cannot be

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<sup>34</sup> Organic Law of Georgia on Normative Acts, Legislative Herald of Georgia, 09/11/2009, part 1, article 12 and Georgian Law on the Structure, Authority and Rule of Operation of the Government of Georgia, Legislative Herald of Georgia, 3, 13/02/2004, part 1, article 6.

<sup>35</sup> Rule of Procedure of Georgian Parliament, legislative herald of Georgia, 06/12/2018, article 39.

<sup>36</sup> Ibid, article 149.

conducted. This means failure to fulfil the constitutional function of the accountability of the government and the parliamentary oversight of the government's activities.

#### **4. Conclusion**

The study of legal environment of parliamentary oversight of the secret activity of the Government of Georgia has emphasized the importance of allowing the members of the parliament of Georgia access to state secrecy for the overall parliamentary democracy and accountability of the government.

The rule of allowing the MPs to access the state secrecy is essentially different from the rules of democratic states. Access of Georgian MPs to state secrecy depends on the decisions of the government and also, the criteria and procedures established by the government which obviously increase the dependence of the parliament on the government and significantly reduces the possibility of parliamentary oversight of the government's secret activities.

Essential issues and procedures regarding the access to state secrecy by Georgian MPs shall be provided in the law adopted by the Parliament and the members of parliament shall not be subject to trustworthiness-reliability tests and approval by the governmental authorities.

The issue related to delegating the authority for verification of the reasonability of the need to know the state secret shall become a matter of discussion by setting clear criteria and establishing mandatory consultations of the government with the Parliament before issuing the normative act.

It is necessary to create additional mechanisms to ensure the efficiency of parliamentary oversight of the government's secret activities.

Parliament and the government are political establishments represented by political entities of various interests and directions. The state secrecy and the secret activity of the government are the matters beyond the political party interests, they are the matters of national security, important for the whole state, requiring solution outside the scope of party politics.

In order to provide for a better parliamentary oversight of state secrecy and government secret activities, we do believe that the institute of a special speaker shall be created and elected by broad consensus of the parliament, whose competence will be government's oversight over the state secrecy management issues, oversight of the current legal environment, and preparation of annual alternative reports on government secret activities, which will be considered together with the government report. In order to preserve the political neutrality and independence of the special speaker, it is important that his term of office exceeds the term of office of the Parliament, thereby excluding his dependence on the political associations represented in the Parliament in a specific period of time.

#### **Bibliography:**

1. Constitution of Georgia, Newsletter of the Parliament of Georgia, 31-33, 24/08/1995.
2. Organic Law of Georgia "On Normative Acts", Lgisltative Herald of Georgia, 33, 09/11/2009.
3. Law of Georgia "On State Secrecy", Legislative Herald of Georgia, 12/03/2015.
4. The Law of Georgia "On the Structure, Powers and Procedures of the Government of Georgia", Legislative Herald of Georgia, 3, 13/02/2004.
5. Rule of Procedure of the Parliament of Georgia, Legislative Herald of Georgia website, 06/12/2018.

6. Decree of September 24, 2015 No 507 of the Government of Georgia “on approval of normative acts related to the implementation of the Law of Georgia “On State Secrets”, Legislative Herald of Georgia, 29/09/2015.
7. Montesquieu Ch., *The Spirit of Laws*, Tbilisi, 1994, 180-181 (in Georgian).
8. *Alaverdashvili G.*, Security Sector Oversight in the American Congress, Tbilisi, 2023, <[https://gyla.ge/ge/post/usaftrtkhoebis-seqtorze-kontroli-amerikis-kongresshi#\\_ftn14](https://gyla.ge/ge/post/usaftrtkhoebis-seqtorze-kontroli-amerikis-kongresshi#_ftn14)> [12.05.2023].
9. *Gonashvili V., Eremadze K., Tevdorashvili G., Kakhiani G., Kverenchkhiladze G., Chigladze N.*, Introduction to Constitutional Law, Tbilisi, 2016, 16 (in Georgian).
10. *Honore T.*, About Law: An Introduction, Tbilisi, 2018, 36 (In Georgian).
11. *Kublashvili K.*, First Government – Parliaments and Parliamentarism, Tbilisi, 2022, 24 (in Georgian).
12. *Khubua G.*, Theory of Law, Tbilisi, 2015, 42, 55 (in Georgian).
13. *Pirtskhalaishvili A., Mirianashvili G.*, Fundamentals of State Organization of Georgia, Tbilisi, 2018, 53 (in Georgian).
14. *Schierkolk N.Y.*, Parliamentary Access to Classified Information, Geneva, 2018, 22-23.
15. Decision of February 11, 2021 No.1/1/1505,1515,1516,1529 of the Constitutional Court of Georgia in the case “Paata Diasamidze, Giorgi Chitidze, Eduard Marikashvili and Lika Sajaia against the Parliament of Georgia and the Government of Georgia”.
16. Decision of August 2, 2019 No.1/7/1275 of the Constitutional Court of Georgia in the case “Alexandre Mdzinarashvili v. National Communications Commission of Georgia”.
17. Decision of July 20, 2016 No.3/3/763 of the Constitutional Court of Georgia in the case “Group of members of the Parliament of Georgia – Davit Bakradze, Sergo Ratiani, Roland Akhalaia, Giorgi Baramidze and others, a total of 42 members of parliament – against the Parliament of Georgia”.
18. Congressional Oversight Manual, 2021.
19. Public access to information and secrecy, Stockholm, 2020.
20. State Secrets and Classified Information of Foreign States Act. <<https://www.riigiteataja.ee/en/eli/503072018009/consolide>> [12.05.2023].
21. Public Access to Information and Secrecy Act (2009:400) (in Swedish) <[http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/offentlighets--och-sekretesslag-2009400\\_sfs-2009-400](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/offentlighets--och-sekretesslag-2009400_sfs-2009-400)> [12.05.2023].
22. Public Access to Information and Secrecy Ordinance (2009:641) (in Swedish). <[http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/offentlighets--och-sekretessforordning-2009641\\_sfs-2009-641](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/offentlighets--och-sekretessforordning-2009641_sfs-2009-641)> [12.05.2023].
23. Rule Of Law Checklist, European Commission For Democracy Through Law (Venice Commission), Venice, 11-12 March 2016, <[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)007-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)007-e)> [12.05.2023].
24. Respect for Democracy, Human Rights and the Rule of Law During States of Emergency – Reflections, European Commission for Democracy Through Law (Venice Commission), Strasbourg, 26 May 2020, <[https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2020\)005rev-e#](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2020)005rev-e#)> [12.05.2023].
25. Government’s Openness Rating, World Justice Project <<https://worldjusticeproject.org/rule-of-law-index/country/2022/>> [12.05.2023].
26. Freedom of World Press Index <<https://rsf.org/en/index>> [12.05.2023].
27. Rating of Information Accessibility <<https://www.rti-rating.org/country-data/>> [12.05.2023].