

Georgian Center for Security and Development

Report on Monitoring of the Defence and Security Committee of the Parliament of Georgia



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Introduction

Considering the specifics of contemporary threats faced by democratic states, the creation of an efficient security system for a country requires the interaction of a variety of mechanisms and a complex approach. To achieve this goal, it is especially important to create a working instrument of accountability in the field of security - their adequate functioning strengthens democratic principles, creates solid guarantees for human rights protection, and represents one of the main preconditions of a secure environment.

It is therefore of great importance to analyse those principles, directions (policies) and best practices that provide for accountability of a country's military, police, security and intelligence forces (institutes) and make them available to the parliament.

In countries with consolidated democracies, special Committees created within representative organs hold important leverage for supervising the security sector. They control policy-making, the administration and budgetary expenditures of security services, and they are able to verify the compatibility of these services' activities with legislative acts; in certain cases, they can even consider individual complaints. A case of particular interest is that of Germany, where a special legislative act includes parliamentary supervision on issues related to security and intelligence organs.

In Georgia's highest representative body, the Parliament, Defence and Security Committee (henceforth "the Committee") is the main working body for providing such accountability. For this particular reason, the main topic of the present research will be the activity of the Committee. By observing the activity of the given Committee we can clearly identify problems and challenges of parliamentary supervision in the field of security and find ways to overcome them.

The mandate and field of activity of the Committee of the Parliament of Georgia is defined in the Constitution of Georgia and in other legislation, such as the standing order of the Parliament on intelligence activity, defence and defence planning, state procurements and other legal acts that define general and specific authorities of the Committee.

Based on these normative acts, the Committee has at its disposal several important tools to participate in law-making and to effectively carry out parliamentary supervision. These tools include: initiating a bill and reviewing and deciding upon bills (initiated by parliamentary or non-parliamentary entities); controlling the budget of an activity carried out in the field of security (including the possibility to participate in the adoption of the state budget and to monitor its completion); participating in the appointment or dismissal of officials of the executive; inviting bodies and officials to be held accountable in front of the Parliament, hear the reports from such state or non-state institutions, request information through questions and therefore act accordingly.

The analysis and the recommendations given in this paper for the Committee's activities have been based on the monitoring of the implementation of the powers granted to it, and on the use of the aforementioned instruments. It is also noteworthy that certain functions of the Committee are strongly interdependent and inter-determinant.

The monitoring of the Committee's activities was carried out in the period between 1st June 2015 and 1st February 2016 (hereinafter, "the reporting period"). Nevertheless, to be able to produce a more accurate assessment and to formulate recommendations, we retrieved and studied decisions

and bills created at the initiative of Committee members from the Parliament of Georgia, as well as copies sent and received through official correspondences of the Committee in the period from 1st June 2014 to 1st February 2016. In the framework of the research, the monitoring group has cooperated with the Committee apparatus. For that purpose, interviews were conducted with members of the Committee and confidence group¹, as well as with respective non-governmental organizations (NGOs). The webpage of the Parliament was also monitored for the purposed of the present research. Based on the study of the aforementioned documentation and analysis of the Committee sessions, the following assessments were prepared.

Transparency of the Committee's Work

The Committee actively cooperated with the civil society sector in the reporting period. The Committee held several meetings with representatives of NGOs both in the framework of the Defence and Security Council of the Committee, and working groups created around specific thematic issues. The Committee provided for active participation of the non-governmental sector in discussions concerning reviewed legislative acts. In such encounters, experts were given the opportunity to present their opinions to the Committee concerning the relevant topics at stake, and to hear the reasoning behind such legislative acts through discussion with the authors (representatives of the government) and members of Parliament (MPs).

The monitoring group did not face any difficulties whilst retrieving public information from the Parliament of Georgia (including the Committee's apparatus).

Law-making Activity of the Committee

Analysis of the Committee's law-making activity is an important criterion for establishing its efficiency. For research purposes, we divided in two the activities of the Committee:

- a) Drafting of a bill by the Committee's apparatus, the head or other members, and initiation of the bill by the Head of the Committee or other members²;
- b) Discussing the bill (including the bills initiated by other parliamentary or non-parliamentary subjects) and adopting respective resolutions.

Based on the documents³ made available for this research, we proceed to analyse the legislative proposals initiated by either the Committee, the Head of the Committee or a member of the Committee for the period between June 2014 and February 2016.

¹ Activities carried out by the confidence group is not a subject of this research;

² Includes initiatives on the issues related to competence of the committee (defence and security sphere). Initiatives implemented by the committee members on other issues do not represent a research subject of this research;

³ Letters № 37985/2-4 from 31 August 2015 and № 1088/2-4 from 10 February 2016 of the Parliament of Georgia apparatus;

A Committee member, Irakli Chikovani, prepared and initiated (on 13 February 2015) a bill package *On Making Amendments to the Law of Georgia on State Procurements* and the *Law of Georgia On Confidence Group*. The given package includes a binding rule for providing the Committee with non-classified information on planned procurements of the Ministry of Internal Affairs and for providing the confidence group with classified information (if the cost of the product or service exceeds GEL 2 million and the cost of the works exceeds GEL 4 million). The given bills were indeed adopted by the Parliament of Georgia⁴. It is also noteworthy that these legal amendments were preceded by the enactment of an analogous principle in relation to the Ministry of Defence of Georgia in 2013 by the Parliament of Georgia⁵.

In 2014-2015, there was also an ongoing discussion of a bill package, initiated by the Head of the Committee in April 2014 (bills *On Making Amendments to the Law of Georgia on State Secrets and the Law of Georgia on International Cooperation in Law Enforcement*); it was prepared by an interagency workgroup, created by the Head of the Committee.⁶ A roundtable discussion was held and both Georgian experts and experts from partner countries participated in discussing the bills. The bills package was adopted by the Parliament in February 2015⁷ and it aims at creating a new system for defining and protecting State secrets, strengthening security and facilitating the Euro-Atlantic integration process.

The Head of the Committee also formulated a bill *On Making Amendments in the Law of Georgia on State Compensation and State Academic Scholarships* that would maintain the right of military personnel to receive State compensation in case of dismissal for undue activity, except in the cases of offense under the Criminal Code of Georgia. The Ministry of Justice rejected the proposal⁸, and therefore the bill did not go through and was not formally initiated by the Head of the Committee.

From June 2014 to February 2016, other than preparing, initiating and discussing the aforementioned bill packages, the legal activities of the Committee also included discussing and preparing decisions on bills initiated by other parliamentary and non-parliamentary subjects. More precisely, 22 legislative initiatives⁹ were reviewed by the Committee. Five of them passed the review without comments from the Committee, whilst eight project packages received only technical comments. Thematic (either substantial or non-technical) comments were reflected in 9 decisions on legislative initiatives.

⁴ https://matsne.gov.ge/ka/document/view/3128414;

https://matsne.gov.ge/ka/document/view/3128426;

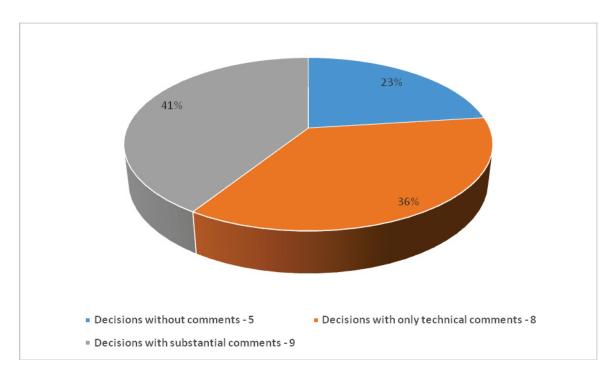
https://matsne.gov.ge/ka/document/view/1949768 https://matsne.gov.ge/ka/document/view/1949752;

⁶ Legal bills *On Making Amendments in Law of Georgia on State Secrets and Law of Georgia on International Cooperation in Law Enforcement Sphere* were initiated prior to 1 June 2014, however, they were still reflected in the report, as their discussions were ongoing in 2014-2015;

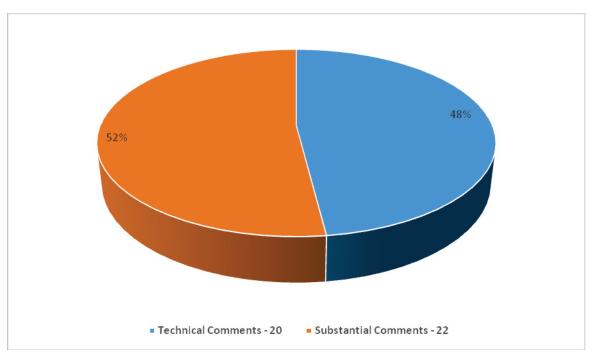
^{7 &}lt;a href="https://matsne.gov.ge/ka/document/view/2750311?publication=0">https://matsne.gov.ge/ka/document/view/2747649;

⁸ Letter of the Ministry of Justice of Georgia №9578 from 25 December 2015;

⁹ Also includes project of a resolution of the Parliament of Georgia;



In total, 42 comments¹⁰ were made by the Committee concerning the aforementioned projects in the respective resolutions, 20 of them being technical, and the other 22, substantial:



One of the important bills reviewed in 2015 by the Committee was one that was initiated by the Government of Georgia, which separated certain functions and agencies from the Ministry of Internal Affairs and, in turn, created the State Security Service. The Committee made seven

¹⁰ **Note:** only the comments reflected in the committee resolutions are taken into consideration. Opinions and remarks expressed by the committee members at the committee session that were not reflected in the resolutions are not part of the statistics. It is noteworthy that in certain cases, reporters (presenters of legal bills) and the committee members agree on expressed comments at sessions, causing the respective opinions to be included in agreement paper instead of the committee resolution;

comments on this package of bills, with four of them being of a technical nature. One of the substantial comments served to specify the functions of the newly created service in the sphere of crime prevention and eradication. The Committee in that case required extending the competences of the service only to crimes subject to its investigative subordination and not to all legal offences, a request that was accounted for in the final bill.

A group of NGOs made some remarks on the bill, and were partly considered by the Government and the Parliamentary Majority. Nevertheless, several important notes made by the civil society sector remained unaccounted for. These included different topics, such as: the mechanism of accountability of the Head of the State Security Service; the authority of the service to investigate and participate in measures against organized crime and corruption; and the authority of the service to stop and question individuals, to use enforcing measures and special technical tools. Interestingly enough, in this case the Committee did not lead the discussion on this legal package.

The Committee was actively engaged in discussions on the bill initiated by the Government of Georgia *On Security Policy Planning and Coordination Rule*¹¹. Representatives of NGOs and the National Security Council apparatus actively participated in the discussions held at the Committee concerning the project. Some of their comments concerned national and agency-level conceptual documents in the sphere of national security (definitions, regulations etc.), and others aimed at preventing the duplication of functions of the National Security Council and the State Security and Crisis Management Council.

The Committee supported the presented project. Moreover, the resolution noted that "comments were made by the Committee members, the National Security Council, the Legal Department of the Parliament of Georgia and an NGO – Atlantic Council of Georgia. During the discussion of the bill at the session Part of the comments made about the bill were considered by its initiator and respectively reflected in the edition of the bill."

After adopting the law, dividing functions (authorities) between the National Security Council and State Security and Crisis Management Council and their coordination has become a matter of discussions and criticism from the representatives of the civil sector.

The Committee reviewed the bill *On Making Amendments to the Law of Georgia on Nuclear and Radiation Security.* The Committee supported the given legal proposal and considered the comments. In this regard, it is important that the Committee requested to regulate the issues related to the provision of security in locations of radioactive waste and adjacent territories with legal acts instead of bylaws, which is reflected in the resolution.

The Committee did not support the bill presented by the parliamentary faction 'United National Movement' On Making Amendments in the Law of Georgia on Legal Condition of Foreigners and Non-Resident Individuals. ¹² The Committee explained the negative decision by referring to "the importance of conducting correct policy concerning migration processes and visa procedures in the process of association with the EU" and the bill presented by the Government concerning the facilitation of the procedure of issuing visas.

In May 2015, the Parliament of Georgia adopted amendments to the *Law of Georgia on Legal Condition of Foreigners and Non-Resident Individuals* initiated by the Government of Georgia that, in many ways, facilitated the visa regime for foreigners.

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¹¹ The law that created State Security and Crisis Management Council;

 $^{^{\}rm 12}$ The legal bill implied to facilitate visa regulations;

The Committee's substantial comment played a positive role in the bill presented by the Government of Georgia to the Parliament of Georgia, *On Making Amendments to the Criminal* Code. This aimed to criminalise "call with the aim of inciting hatred". Based on the Committee's analysis, the given project was corrected considering the Law on Freedom of Speech and Expression.

In June 2015, the Head of the Committee held a working meeting with representatives of NGOs with the aim of identifying the existing flaws and of discussing possible amendments in the *Law of Georgia on Confidence Group*. At this meeting, the Head of the Committee addressed the experts with a request to submit legal proposals to the Committee apparatus that would provide for increased tools of activity of the Confidence Group.

No additional meetings were held in the reporting period concerning the present topic.

The analysis of the Committee's practical work and interviews conducted within this framework reveal that the scarcity of bills initiated by the Committee, including comments presented to them, may be connected to the preliminary coordination (prior to initiating project) and the discussion of the Government's daily agenda issues for debate between the Parliamentary Majority and the Executive Government.

Budgetary Control

One of the major tools for conducting budgetary control by the Parliament of Georgia is the right to approve and amend the Law of Georgia on the State Budget. In this process, the discussion of projects and proposals provides the Committee with effective tools to determine and supervise the main directions of activity of the security bodies.

According to public information received by the apparatus of the Parliament of Georgia¹³, the Committee has not expressed any comment on the bill on the *2016 State Budget*. The Committee's decision on 2015 budgetary law includes a general remark that implies a request for increasing budgetary funding for the ministries of defence and internal affairs for the promoting of the Euro-Atlantic integration processes.

Moreover, the Committee reviewed the *Bill on Making Amendments to the 2015 State Budget*. The Committee's decision on the given project is only informative; as it describes the main points of the project and does not contain any kind of remark or recommendation.

¹³ Presented by the letter №37985/2-4 from 31 August 2015 and letter №1088/2-4 from 10 February 2016 of the apparatus of the Parliament of Georgia: decisions №11241 from 10 October 2014, №37908 from 3 July 2015 and №11574 from 7 October 2015 of the committee;

An effective tool to ensure the implementation of authority supervision is reviewing the annual report of the State budget in the Parliament (and in the Committee). According to documentation presented by the apparatus of the Parliament¹⁴, in the reporting period the Committee reviewed the 2013 and 2014 state budget completion reports, but no comments were added.

With regards to monitoring, the practice of informing the Committee about high-cost procurements as established in the legislation¹⁵ was studied. By analysing the documentation¹⁶, we can see that the pertinent governmental authorities were transmitting legally defined information to the Committee, following the Committee's knowledge concerning wide-scale State procurements. However, the studied material does not include data on how to use this information in a meaningful manner (retrieving additional information, asking questions, inviting accountable officials, Committee discussions etc.).

Together with other important tools for budgetary control in the security sector, both assessments of NGOs' monitoring and decisions of the State Audit Service (those concerning expenditure of budgetary funds and material resources by the bodies in the security sector) may be used.

Committee hearings were not held in the reporting period concerning the aforementioned research and assessments.

Official Correspondence Analysis

Within the framework of monitoring, correspondence between the Committee (the head or the apparatus) and the bodies involved in the security sector (Government Administration, Ministry of Defence, Ministry of Internal Affairs, State Security Service, Intelligence Service, Ministry of Justice and General Prosecutor's Office) was studied.

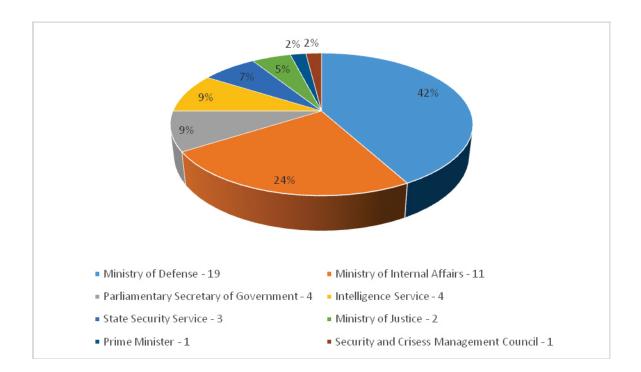
The documentation analysis revealed that from June 2014 to February 2016, 45 letters¹⁷ were sent by the Committee to the aforementioned agencies. From them, 19 were sent to the Ministry of Defence, 11 to the Ministry of Internal Affairs, 4 to the Parliamentary Secretary of the Government, 4 to the Intelligence Service, 3 to the State Security Service, 2 to the Ministry of Justice, 1 to the Prime Minister of Georgia, and 1 to the Security and Crisis Management Council.

¹⁴ Decision of the Committee №7687 from 21 July 2014, presented by letter of the apparatus of the Parliament №37985/2-4 from 31 August 2015;

¹⁵ Article 22² of Law of Georgia on State Procurement and article 9, point 3¹ of the Law of Georgia on Defence;

¹⁶ Letters 27.06.2014 №5 14 00400048, 16.02.2015 №2 15 00118930, 20.07.2015 № 1 15 00576940, 24.11.2015 № 1 15 00981472, 24.11.2015 №8 15 00979922, 31.03.2015 №7 15 00246924, 14.11.2014 № 8 14 00760916, 30.06.2015 № 3 15 00511259 of the Ministry of Defence of Georgia:

¹⁷ The data does not reflect the letters of the Committee forwarding applications presented by citizens to the respective bodies of the Executive Government;



From these letters, 21 concerned invitations to the bodies' representatives to participate in meetings (including roundtable discussions and seminars held with the support of the Committee), as well as invitations of the Committee's apparatus employees to the events planned by the Executive Government's bodies.

5 letters requested a report from the Ministry of Defence on studying and reacting to the correspondence (mostly, citizens' applications) sent from the Committee.

On three occasions, the Committee sought information from the Parliamentary Secretary on the completion of tasks designated in the legislation of Georgia (concerning bylaw normative acts preparation and adoption).

10 of the letters were sent to the bodies of the executive Government of Georgia with regards to social issues. Interestingly enough, they were addressed by the Head of the Committee to the Prime Minister, dated 3rd June 2015, and raised the issue of a monthly GEL 1,000 State compensation given to the families of those employees from the Ministry of Defence deceased whilst carrying out their duties.¹⁸ Legal amendments were not envisaged at that point, so the present studied documentation does not indicate the Government's position on the subject.

On 10th December 2015, the Head of the Committee addressed the Ministry of Defence on the need of amending errors in the contract form of military service that was approved by the decree of the Minister of Defence and indicated several problematic points. In the same letter¹⁹, the Head of the Committee expressed his views on the need for discussing the topic within the Committee itself. The monitoring and documentation analysis reveals that neither Ministry of Defence nor the Committee

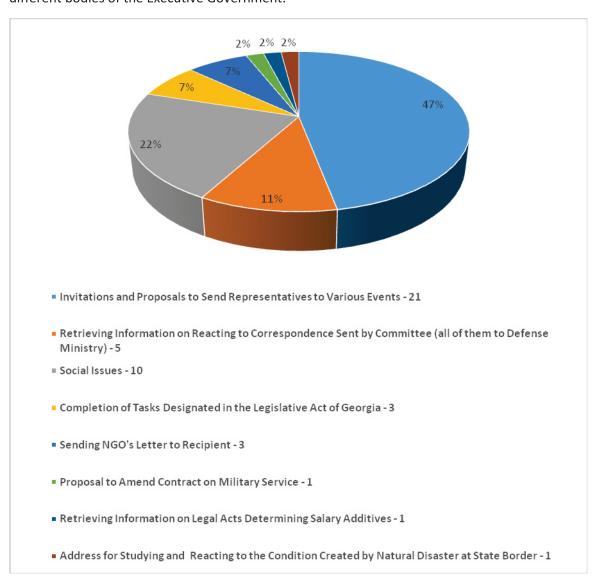
¹⁸ On 25 July 2013, based on the legal amendment made by the Parliament of Georgia, family members of the Defence Ministry employees that were deceased during international operations or other peacekeeping activities and the deceased or wounded and deceased for territorial integrity, freedom and independence receive a monthly compensation amounting GEL 1,000.

¹⁹ Letter of the Committee Head №11247/4–8 from 10 December 2015;

have made any substantial steps in this regard up until now (on 15th February 2016, Ministry of Defence of Georgia notified the Head of the Committee that measures were envisaged to improve the contracts of military personnel and that such process was to be conducted in close cooperation with the Committee)²⁰.

The Head of the Committee also took interest in the legal acts of the Ministry of Defence that served as basis of giving out additives to military personnel and citizens employed at General Staff of Georgian Armed Forces and Infantry and LEPLs of defence system²¹. The Committee was provided with the given data; however, the studied materials do not reveal any further steps taken by the Committee concerning this issue.

The following diagram shows detailed information about the content of the letters sent to the different bodies of the Executive Government:

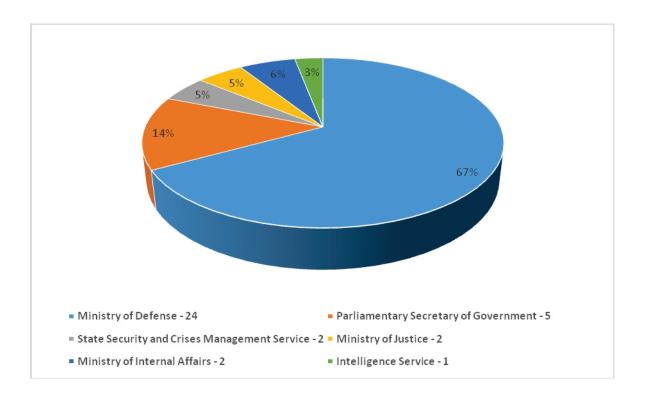


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²⁰ Letter of the Deputy Minister of Defence of Georgia № 61600146013 from 15 February 2016;

²¹ Letter of the Committee Head №8084/4–8 from 7 September 2015;

For the purposes of the present research, the correspondence sent by the Government to the Committee was also studied. In the period between June 2014 and February 2016, 36 official letters were sent to the Committee. From them, 24 letters were sent from the Ministry of Defence, 5 from the Parliamentary Secretary of the Government, 2 from the State Security and Crisis Management Service, 2 from the Ministry of Justice, 2 from the Ministry of Internal Affairs, and 1 from the Intelligence Service.



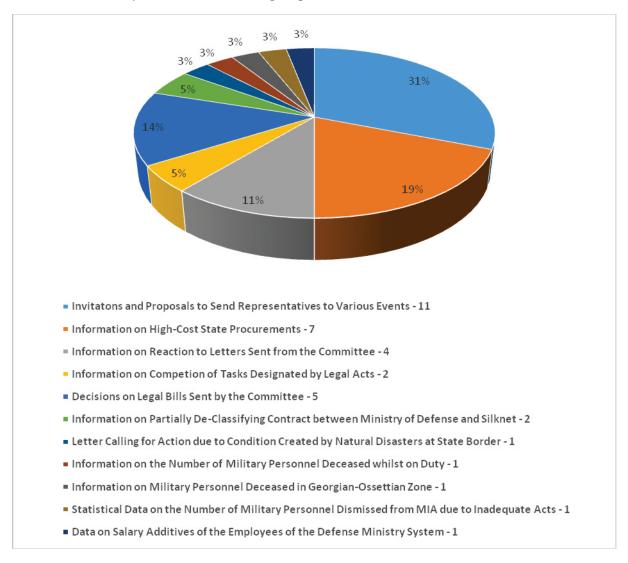
As for the contents, 11 letters concerned invitations to the Committee representatives to participate in various meetings (roundtable discussions, seminars etc.) and other related organisational matters.

7 letters of the Ministry of Defence present information on already planned high-cost State procurements to the Committee. Based on this request, copies of the resolutions of the Minister of Defence on partially de-classifying the contract between JSC Silknet and the Ministry of Defence of Georgia were also sent to the Committee.

The correspondence also includes four responses of the Ministry of Defence to the letters sent from the Committee.

In the reporting period, the Parliamentary Secretary of the Government of Georgia provided the Committee with information on the process of implementation of tasks designated by legislation (adopting bylaw normative acts). In this letter we also find decisions of the Parliamentary Secretary of the Government and other bodies on certain bills, and also the requirements for the Government bodies to provide data to the Committee and to review the Committee's queries.

For a detailed view, please see the following diagram:



Note: the information in the letters does not include data about correspondence that includes secret information between the Committee and respective state bodies.

The Committee Sessions/Committee Hearings

The monitoring of the Committee sessions in the reporting period (from 1st June 2015 to February 2016) shows that 16 sessions were held. The sessions include the report of the Minister of Defence that the Committee heard following Parliamentary regulations, concerning the ongoing implementation of the governmental programme²².

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²² (**Note:** in the same period, the Government of Georgia was given vote of confidence and the process included a joint session of four parliamentary committees, where Ministers of Internal Affairs, Defence, Justice, Correction and Legal Assistance, Internally Displaced Persons from the Occupied Territories, Refugees and Accommodation and Reconciliation and Civic Equality were auditioned);

The Minister of Defence explained in detail the reforms and initiatives implemented and planned in the Ministry, including those activities carried out within the framework of NATO-Georgia Substantial Package, adopted at the Wales Summit of NATO. During the session, the Head of the Committee showed interest in the preparation process of an informational security doctrine that was envisaged by the Government programme.

As a result of analysing the Committee monitoring and the public information provided, we can see that written communications between the Committee and the Ministry of Defence are much more intensive than with any other body of the security sector.

It is noteworthy that in the reporting period, on numerous occasions, public attention was drawn to important issues concerning state security, including negotiations with Gazprom and their possible influence on the country's energy security.

In the same period, public perception of an increase in the crime rate also became a subject of debate, and reports on collecting and disseminating materials displaying private life were also widespread.

It should also be noted that media outlets denounced on numerous occasions illegal actions of law enforcement and security bodies' representatives, with the most noticeable cases including unlawful usage of so-called "narushilovkas" ²³ by particular individuals.

As a result of studying the Committee's activities, no information was found on written queries from the side of the Committee on these issues to the Government entities, or about discussions held on the aforementioned matters.

International Agreements and Issues Related to Participation in International Missions

From June 2014 to February 2016, 11 international agreements were reviewed by the Committee. The issue of approving the sending of Georgian Armed Forces to various international missions and operations was also discussed. Positive resolutions were issued in all the cases.

Confidence Vote on Government Composition and Governmental Programme - Participation in Appointments and Dismissals of Officials

From June 2015 to February 2016, the Committee reviewed the government composition and its programme three times and voted for its confidence. The proposal of the Government of Georgia for appointing the Head of State Security Service was also given the vote of confidence.

²³ A document that in certain cases waives an activity carried out by a law enforcement and/or State Security Service member whilst performing official duties of control of law enforcement bodies;

Recommendations

- Actively use the legislative right to invite representatives of the Executive Government to the Committee hearings with the aim of carrying out effective supervision over the security sector;
- PRequest on a regular basis the necessary information to establish parliamentary supervision over the respective bodies of the Executive Government, as well as to formalise the receiving of such information;
- Formulate proposals on additional tools for strengthening democratic control over the security sector. For this purpose, the Committee should study both international practices and the recommendations of local NGOs;
- Ensure the Committee's effective participation in budget planning for defence and security bodies. To this end, the Committee should also create additional tools for receiving information on financial needs and expenses of state bodies, as well as an effective mechanism to review and analyse the data received by the Committee. In addition, it should also study and discuss the reports of the State Audit Service, as well as the assessments made by NGOs on this matter;
- Considering the complex security environment in the region and the rise of asymmetric threats, discuss the possibility of building the capacity of the bodies in the field of security, including, if need be, an increase of funds;
- > Study the existing tools, including relevant legislation, in the hands of the Executive Government to react to hybrid threats and formulate proposals for their effective provision;
- Develop legal proposals for specifying functions and providing for efficiency of coordination mechanisms between the Security and Crisis Management Council and the National Security Council. In this regard, special attention should be paid to the available tools for informing the President of Georgia in the event of a crisis that could potentially require a state of emergency or war;
- Due to necessity of consolidating public around key objectives of the state security and with the aim is to support consensus between political forces on fundamental issues of national security, formulate and submit a set of specific proposals (project of decision) for the Parliament for approval. In this regard, strategic communication on security and foreign policy issues should be given special attention;
- Establish effective monitoring of the ongoing reforms at the Ministry of Internal Affairs (MIA) and State Security Service (SSS). In this respect, study the process of formation and execution of action policies and documents containing defining principles or separation of duties between structural subdivisions;
- Discuss the provision of accountability mechanisms of the Head of the State Security Service;
- Considering the existing perception by the population of an increase in crime, study and analyse, together with respective committees of the Parliament, the existing strategy to fight crime and the response of the Ministry of Internal Affairs on improving the present situation;
- ➤ Carry out efficient control of the implementation of legally defined defence planning documents (including the National Security Concept of Georgia). To this end, develop efficient coordination tools between State bodies. In addition, get the Committee actively engaged in the process of Strategic Defence Review (SDR) at the Ministry of Defence of Georgia;

- Actively monitor the implementation of the NATO-Georgia Substantial Package. In this regard, to study the process of the Executive Government's preparations for the NATO's Warsaw Summit in order to allow the active participation of the Parliament of Georgia in the process (in order to be able to efficiently advocate for Georgia's interests in the upcoming Parliamentary Assembly of NATO).
- > Strengthen the human resources of the apparatus of the Committee so that it is able to effectively study and analyse the existing challenges in the fields of defence and security and, therefore, to make adequate recommendations to the Committee.

The recommendations were prepared according to the issues identified in the reporting period related to the work of the Committee.