



Helsinki Citizens' Assembly-Vanadzor

**MAPPING OF THE EXISTING PROBLEMS OF PARLIAMENTARY OVERSIGHT
OF THE NATIONAL SECURITY SERVICE ACTIVITIES AND THE WAYS TO
SOLVE THEM**

2021

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INTRODUCTION

The toolkit used by national security services of the state, as a rule, includes significant elements of secrecy, assumes significant human rights restrictions. Receiving tasks by the state's political and sometimes military-political leadership, national security services can harm the public, violate the rights and freedoms of citizens and other persons.

Taking into account the closed, non-transparent nature of the activities of national security bodies, the regular contact with the information that is state and official secret, we can state that, on the one hand the legislation of the Republic of Armenia restricts the scope of activities of law enforcement bodies, including the judiciary, on the other hand, objectively, a situation arises when the beneficiaries or organizations may not be informed about the restriction of their rights or may not envision the full extent of the restriction, and therefore, may not seek to restore their violated or "affected" rights. In this regard, the exclusion of abuses and violations of the principle of legality is largely due to the existence of realistic control/oversight structures of the activities of national security bodies that ensure the national security. It is obvious that introduction of effective control/oversight systems in itself cannot be viewed separate from the organizational and functional issues of national security structures and national security bodies. Therefore, the task of ensuring control over the activities of the security bodies should be combined within the discussion of the structural issues of those bodies, the implementation of internal and external control/oversight functions, as well as the need to prevent national security threats by the state. The existing regulations on the classification of information are directly related to the activities of the national security bodies. It is necessary to identify the nature and legality of the balance between classification of information and freedom of information.

In order to identify the content of effective parliamentary oversight of the National Security Service, it is necessary to consider the issues presented below, taking into account international best practices, emphasizing the study of the experience of countries having developed security systems and the comparability of the situations of their application in the state system of the Republic of Armenia.

- Clarification of the system of national security bodies, organization of institutional activities of national security bodies, which includes the combination of preventive and punitive policy of the national security;
- Identification of the criteria for the effectiveness of centralized and separated systems of the functions of the branches ensuring national security;
- Clarification of control and oversight functions, discussion of the effectiveness of departmental and external-departmental or external oversight mechanisms, the information classification regime.

From the viewpoint of the organization of the national security bodies and their activities, the American and Western European system is interesting in terms of legal understanding of national security; elaboration, discussion, adoption of strategic legal documents of ensuring security; formation, management of centralized leading bodies and branch departments ensuring security; functioning and coordination of think tanks analyzing the information concerning security, as well as the existence of long-standing traditions and systemically viable mechanisms in the field of effective oversight by the state representative body of the activities of the bodies operating in the security system.

By this logic, the first chapter of the this Paper will present the current field of regulation of the activities of national security bodies, the second chapter will identify what national security implies, which bodies are involved in the development of initial documents of national security, how the national security preventive (formation of think-tanks) and punitive (tough and horrible methods of national security: demonstration of military force, propaganda of weapons, etc.) policies are combined. The third chapter will refer to the structure and the nature of functions of national security bodies. Particular attention will be paid to the logic and rationale for carrying out the functions performed by several bodies only by one body in other countries. The next chapter will discuss the content of the prosecutorial and judicial control/oversight of the National Security Service, as well as will present the guarantees prescribed for the implementation of the main function of the National Security Service – operational intelligence activities. Finally, in the last chapter, we will look at the mechanisms for effective parliamentary oversight, as well as we will

discuss the issues related to giving access to confidential information and information classification¹.

CHAPTER 1.

LEGAL FRAMEWORK REGARDING THE ACTIVITIES OF NATIONAL SECURITY BODIES

The legal regulations of the issues related to the organizational structure, subordination and oversight of the activities of the Republic of Armenia national security bodies are enshrined both in the Constitution of the Republic of Armenia and in a number of regulatory legal acts. The existing legal regulations in the Constitution of the Republic of Armenia, the RA Law “On National Security Bodies” (hereinafter also referred to as **the Law**), the RA Law “On the Service in National Security Bodies,” the decision of the Prime Minister of the Republic of Armenia (hereinafter also referred to as **the Prime Minister**) “On Approving the Charter and the Structure of the National Security Service” (hereinafter also referred to as **the Decision**), the RA Law “On State and Official Secret,” the RA Law “On Ensuring the Security of Persons Subject to Special State Protection,” the RA Law “On Operational Intelligence Activity” the RA Criminal Procedure Code, as well as the guide on "Personal Data Processing by State Bodies" briefly lead to the following from the viewpoint of the formation, structure, system, management and governance, oversight of national security bodies:

- The system of national security bodies of the Republic of Armenia consists of central and regional bodies, border troops, state protection service, intelligence², counter-intelligence³, military counter-intelligence and

¹ It is worth mentioning that the experts from Geneva Center for Security Sector Governance (DCAF) reviewed the Paper Dr. Hans-Jakob Schindler, intelligence expert, Germany (HS), David Watson, intelligence expert, UK (DW), Dragan Lozancic, intelligence expert, Croatia (DL), Dr Teodora Fuior, parliamentary security sector oversight expert, DCAF (TF). Their comments were included in the Paper: The comments will be referred to as “according to DCAF experts.”

² Intelligence activities, including foreign/external intelligence, are aimed at obtaining information on the threats to the national security of the Republic of Armenia and strengthening state security.

³ The grounds for counterintelligence activities are defined and can be changed by law (currently there are five: the existence of information on the special services of foreign states against the national security of the Republic of Armenia, on the intelligence activities of individuals; the need to ensure the protection of state and official secrets; the need to explore (verify) persons collaborating

investigative bodies; educational centers, special and other divisions. The National Security Service (hereinafter referred to as the **NSS**) carries out five main activities in the Republic of Armenia: intelligence activities, counter-intelligence activities, military counter-intelligence activities, protection of the state border, and the fight against crime⁴. In fact, functions that are usually performed by different bodies in Western democracies (for example, intelligence and counterintelligence are often performed by different national security agencies) are concentrated under one structure. Similarly, according to the current legislation of the Republic of Armenia, on the one hand, the National Security Service analyzes general information in order to identify security threats, on the other hand, the NSS carries out operational intelligence activities in connection with a specific crime and investigates a specific crime. In other words, the national security bodies not only receive, process, analyze the information on the threat to the security of the Republic of Armenia and predict danger, but also carry out operational intelligence measures aimed at identifying crimes and the perpetrators of crimes, searching for persons who avoid criminal liability⁵.

- The National Security Service is a body subordinate to the Prime Minister. The National Security Service is governed by the Prime Minister and directly managed by the Director of the National Security Service. In this regard, the Decision stipulates that the Prime Minister develops and implements the policy of the Government of the Republic of Armenia in the field of national security, as well as governs the national security bodies.

or collaborated with national security agencies secretly; the need to ensure internal security, etc.). The procedure for using secret methods and means in carrying out counterintelligence activities shall be established by departmental acts of the National Security Service of the Republic of Armenia.

⁴ In the framework of the fight against crime, the national security bodies carry out operational intelligence activities, carry out investigations and preliminary investigations aimed at detecting, preventing and stopping crimes within their investigative jurisdiction.

It should be noted that the police, military police, national security bodies, tax bodies, customs bodies have the right to carry out operational intelligence activities within the scope of their powers reserved to them by law in order to prevent and detect smuggling and other crimes. The penitentiary service has this right only in penitentiaries.

⁵ The national security bodies also collect information necessary for the decision on access to information that is state and official secret, to information on the staff of bodies carrying out operational intelligence activities, information to ensure the safety of the persons cooperating or cooperated with those bodies, information on to examine the persons who have applied for employment with state bodies. information, they discuss the existence of circumstances threatening the security of persons subject to special state protection.

- The main personnel of the national security bodies are servicemen. Service in the national security bodies is military service, the specifics of which are defined by law. The director of the National Security Service is accountable to the Prime Minister.
- There is no minister, subgroup of law enforcement agencies in the Government of the Republic of Armenia or any other format that will determine the main priorities of the National Security Service in the near future. Moreover, the National Security Service is not accountable to any minister-member of the Government. In Western democracies, where there are usually two or more national security services (agencies), each is accountable to a separate minister—a member of the government (State Minister, Minister of Defense, Minister of the Interior, Minister of Foreign Affairs, etc.). Often, the body, consisting of the same responsible ministers, jointly determines the main directions of the National Security Service. The situation in the Republic of Armenia is different. According to the current legislation, the Prime Minister approves the charter of the National Security Service, defines the main directions of the activity of the National Security Service, supervises the activity, listens to the reports on the activity of the National Security Service, examines the results of the activity inspection, and approves the annual balance.
- The Director of the National Security Service is appointed and dismissed by the President of the Republic of Armenia upon the recommendation of the Prime Minister. The Deputy Directors of the National Security Service are also appointed and dismissed by the President of the Republic of Armenia upon the recommendation of the Prime Minister based on the motion of the Director of the National Security Service.
- The Prime Minister appoints and dismisses the head of the General Operational-Technical Department (hereinafter referred to as the **General Department**) operating within the republican National Security Body of the Republic of Armenia (hereinafter also referred to as the **OIM**) ensuring the control over telephone conversations.
- Although the legislation of the Republic of Armenia stipulates that the general management of the National Security Service is carried out by the

Government of the Republic of Armenia, the Prime Minister is endowed with real levers. In general, national security bodies provide information on issues related to the national security of the Republic of Armenia to the Prime Minister and only upon his or her assignment — to other state bodies and organisations, or the NSS informs the Prime Minister and only by his assignment to the bodies of state system and regional government about the threat to the security of the Republic of Armenia⁶. Moreover, no later than January 31 of the following year the head of the republican National Security Body of the Republic of Armenia shall submit to the Prime Minister an annual report on the total number of motions submitted to the General Department on separate operational intelligence measures, on the number of motions that were brought without a statement of the court decision, and the statement was not submitted later, as well as on the number of motions that were brought without a statement of the court decision and the court later did not allow such operational intelligence measures.

- In the system of National Security Service of the Republic of Armenia there is no board of directors or any other structure, for example like MI5⁷, which would consist of professionals in the field, would bear "collective responsibility" for the selection of methods and ways to solve the issues set before the NSS.
- There are two legal regulations on oversight of national security bodies. First, the Prime Minister exercises oversight of the activities of the national security bodies within the framework of the powers entitled to him by the Constitution of the Republic of Armenia and by law. Second, it is established that the members of the National Assembly of the Republic of Armenia, in connection with the implementation of their activities, have the right to receive information on the activities of the national security in the manner prescribed by the legislation of the Republic of Armenia. In connection with the parliamentary oversight of the National Security Service, it should be noted that the absence of a minister with political responsibility for the activities of national security bodies in the Government at least weakens the level of accountability of the

⁶ According to DCAF experts such a regulation indicates a lack of trust in the NSS bodies, when the latter cannot decide for themselves when and what information should be provided to other bodies. These limitations are not in line with the best practices.

⁷ Counterintelligence and Security Agency of Great Britain.

National Security Service before the National Assembly. Moreover, the principles of providing the Members of Parliament with access to such information that is state and official secret are not clearly defined. The current legislation of the Republic of Armenia does not provide for any professional body adjunct to the Standing Committee on Defense and Security of the National Assembly (hereinafter also referred to as the **Committee**) that would assist the Committee to exercise effective parliamentary oversight of national security activities.

- The RA law “On State and Official Secret” does not clearly define the legal bases for classification, does not ensure clear mechanisms for the implementation of the "harm test" and "need to know" principles. This law stipulates that the Government develops and approves the list of information to be classified as state secret. Whereas, it is not necessary to be guided by a specific area, on which the information can be considered confidential/secret, but it is necessary to assess, based on clearly defined criteria, the nature of the possible damage as a result of the publication of information. The legislation of the Republic of Armenia does not provide for the possibility of appealing against decisions that deny access to confidential information. There is no institution of issuing a certificate of access to a person, which is widely used in the European Union today. In this case the person has the right to have access to confidential information also in other areas, if he/she justifies the need to access that information. Similarly, the legislation of the Republic of Armenia lacks the institute of industrial certification of companies⁸.

⁸ Industrial certification implies that a particular enterprise has the right to participate in procurement, to provide services, to perform work, as it knows how to deal with confidential information.

CHAPTER 2.

PRIORITIZATION OF THE FORMATION OF PREVENTIVE THINK TANKS OVER PUNITIVE TOOLKITS

According to Article 2 of the Law of the Republic of Armenia "On National Security Bodies," the National Security Bodies shall be the integral part of the system for ensuring the security of the Republic of Armenia and shall, within the scope of their competences, ensure the security of persons, public and the State. The general perception of the national security of the state necessarily requires the inclusion of all its components - defense, economic, social, spiritual and all other relations. Security mechanisms and methods are improved and changed over time, which should have an impact on the organizational structure of security services and sectoral functional reforms. This is especially true due to the current innovative processes of society transformation, in which the share of security risks is increasing. In particular, it refers to the fact that in today's society, the global information and communication environment, the mass media, including the new generation, pose certain risks.

It should be noted that in-depth and comprehensive analyses of defining the structure of security bodies and oversight levers, as well as of determining functional content has not been carried out or is not being carried out; extensive participation of government branches has not been ensured in the adoption of strategic documents providing information security. Moreover, the logic of the hierarchical structure of strategic documents and other legal acts is obviously disturbed in the Republic of Armenia. In particular, the main document on national security, the National Security Strategy, was adopted by the Government of the Republic of Armenia, and the resulting legislative acts by the National Assembly, such as the recent amendments to the Law "On Defense" adopted by the National Assembly regarding the a nationwide civilian militia. Whereas, the strategies, as the main legal documents, should be adopted by a body providing broad public participation and having higher legal force, from which other legal acts will be derived.

The processes going on in today's rapidly changing world, when the political boundaries drawn between states lose their former significance, the improvement of

security prevention institutions becomes imperative. It is obvious that in the information age of the 21st century, conflicts between states often deviate from the traditional military nature, gaining completely new form and content in the way of information, psychological, economic and various other wars, which are completely new issues in terms of national security. The implementation of the preventive function of national security is more important, which requires a complex analytical work that is carried out today by security providing think tanks.

Classically, in the United States Department of Defense Dictionary of Military and Associated Terms, "national Security "is defined as a collective term that encompasses the US national defense and foreign relations with the purpose of gaining:

- a. A military or defense advantage over any foreign nation or group of nations;
- b. A favorable foreign relations position;
- c. A defense posture capable of successfully resisting hostile or destructive action⁹.

This term has been widely used since 1947, when the National Security Act was passed in the United States on July 26. From 1947 until the end of the Cold War, National Security Strategic Documents viewed "national security" primarily in the context of enhanced foreign security and defense capabilities, preferring tough, terrifying methods of national security and propaganda of weapons. However, after the collapse of the Soviet Union they started to use toolkits of soft impact and such a combination of internal security mechanisms, as a result of which the development of security think tanks was pushed to the forefront; economic, environmental, energy security concepts were put forward as conceptual documents ensuring national security¹⁰.

We can distinguish the following historical types of national security systems:

- Punitive (repressive), aimed at the search for enemies, oppression, isolation, expulsion and destruction,

⁹ Dictionary of Military and Associated Terms. Department of Defense. Joint publication 1-02, 8 November 2010 (As amended through 15 February 2016), p. 162, website: https://fas.org/irp/doddir/dod/jp1_02.pdf

¹⁰ Ulman R., Redefining security, International security. Vol 8, N1., pp 129-153.

- Conservative-power, aimed at ensuring the security of the ruling elite and political regime, which in turn relies on force and uses flexible means: bribery, deception, false opposition, etc.,
- Democratic, based on the legislation of a democratic state, which presupposes mostly non-violent methods of ensuring security.

The first two types are more typical of authoritarian regimes. Democracies have security agencies that provide specific political information to the country's leadership, help to develop effective steps to prevent and stop intelligence-led underground operations by other hostile institutions. Countries in transition from totalitarian to democratic systems are often characterized by authorities and security bodies, which, being part of the public administration system, perform the function of providing mandatory advice to other government agencies, overseeing their activities, including personnel issues, business trips abroad, etc. In the changing world of the 21st century, think tanks play a key role in predicting the future of security and the development of foreign and domestic policies in various areas of the State's activities. One of the most important guarantees for the professional work of the security bodies is the work combined with the think tanks. They carry out practical political expertise; prepare analytical materials and fundamental works. All these types of intellectual products form the necessary preconditions for understanding the strategic content of global processes, as it is based on achieving the desired political, socio-economic results in the process of change in the world of politics and economy. This is the main difference between the results of the work of think tanks and academic research activities. It should be noted that the systematic cooperation of the security bodies and the think tanks began after the Second World War, when system-organizations were formed, the task and the scope of research of which is to study and analyze multidisciplinary issues related to the foreign and domestic policy of the state, society, its development and implementation. At the same time, it should be noted that the result of the system-building work of the think tanks should be considered the organizationally diversified activities of the security bodies in different countries, or in other words, their activities in different state bodies and primarily in the law enforcement system. Among the leading think tanks that contribute to the formation and development of institutional structures of the security services are the think tanks of the United States, Great Britain and Sweden.

In connection with the above, there is a need to comment on the differences between the hard and soft tools of national security. In the conditions of using a hard/tough toolkit, the states consider the demonstration of military force, the propaganda of its comparative advantages as a primary factor, moreover, not avoiding its use. The policy of soft power is mostly emphasized by the work of balanced think tanks, as well as by the neutral use of strategic weapons (for example, the display of strategic weapons, the demonstration of nuclear potential by states). The purpose of think tanks is the purposeful use of the security potential of the state and exclusion of the miscalculated and inaccurate use of the security potential. They are also aimed at considering the influence factors on the societies of friendly and hostile states and developing methodological directions. All this means complex analytical work.

The main strategic directions of the national security of the state are enshrined in the strategic documents, in the legal acts adopted on the basis of them. Besides, security sector strategies in the military and defense spheres are developed. In fact, the logic of coordinating the work of national security bodies by the collegial body responsible for state security, in this case the Security Council (hereinafter referred to as SC)¹¹ does not work. In the existing perceptions of ensuring national security in the Republic of Armenia, and therefore the formation of the system of national security bodies. The logic of ensuring national security does not include the approaches to develop strategic national security documents by the SC, to discuss and adopt them with a high level of public participation - by the executive and legislative bodies, as well as the need to adopt the principles of sector government bodies¹² of the national security. Unfortunately, there are no think tanks in the Republic of Armenia that would analyze and filter the information in various fields related to the national security.

The issue of the hierarchical structure of the adoption of doctrinal documents or concepts in the field of national security, the subsequent documents, their messages, the reaffirmation of the internal documents to be adopted by the sectors of the national security is extremely important. These national security documents are submitted by the head of the executive branch, but in order to submit them, the

¹¹ Another constitutional body in the field of security can act as such a body.

¹² The national security branch management bodies are considered to be the bodies carrying out intelligence and counter-intelligence function.

representatives of the executive branch must submit a message to the legislature and, in some cases, be approved by the legislature¹³.

The adoption of documents related to the national security is preceded by analytical work with the participation of military, foreign ministries and intelligence services. In the United States, the highest advisory body to the President, the National Security Council, develops key doctrinal national security strategies, develops situational assignments that require external, intermediate and operational security interventions, thus ensuring overall strategy guidance. In the White House the NSC work is coordinated by the National Security Assistant to the President - the Executive Secretary of the National Security Council (the National Security Assistants to the four branch ministers appointed by the President, namely Justice, Energy, Defense and Finance are subordinate to him/her) and by the Director of the Situational Analysis Group¹⁴.

The work of the bodies ensuring the national security of the Republic of Armenia is not based on the analyses of think tanks. There are no systemic approaches. Demographic problems in the Republic of Armenia, which currently need urgent solution, necessarily require economic and social security. It is obvious that it is impossible to underestimate the economic security component, taking into account the aggressive policy of neighboring Azerbaijan and Turkey towards the Republic of Armenia, which aims to isolate the Republic of Armenia from regional infrastructure, weaken economic resistance and thus weaken public immunity. In this regard, it is important to implement programs aimed at taking Armenia out of economic isolation, which currently remains unresolved due to various corruption processes, although it is a key component of national security.

As an example, we can present the North-South program, which started in 2012 and was supposed to end in 2019. It will be a military-political program linking the Islamic Republic of Iran from the south and Georgia from the north, with huge transit potential and reducing the cost of cargo transportation by up to 30%. It has not only regional but also enormous geopolitical significance, as it is an infrastructure that connects the countries of the Persian Gulf to the Black Sea region. In contrast to the

¹³ Complete or partial episodes of the policy of the branch bodies may be subject to confidentiality and in the process of their adoption, closed discussions may be organized between the members of the government and the relevant committees of the legislature.

¹⁴ The mission of the situational group is to analyze the issues that have arisen spontaneously for national security.

program under discussion, in recent years Azerbaijan and Turkey have completed projects isolating Armenia from regional economic processes, such as the construction of the Baku-Tbilisi-Kars, Rasht-Astara railway junctions, which are "deals directly against the security of the Republic of Armenia." It should be noted that the disclosures about the program under discussion even after the revolution of 2018 show the inadmissible attitude of the state towards the most important programs for the national security of the state. Such a policy shows that the provision of security in the Republic of Armenia is not yet considered as a process of building the institutional systems that ensure security, but is carried out exclusively through the exercise of powers of intelligence, counter-intelligence and fight against crime. This policy can lead to a disproportionate perception of the security environment due to the lack of institutional systems. For comparison, the national security strategies of Turkey and Azerbaijan indicate the development of territorial infrastructure by years, the observation of which shows the implementation of the policy of intensifying the isolation of the Republic of Armenia by the above-mentioned states. In this regard, the National Security Strategy of the Republic of Armenia adopted in 2020 is more remind of a Declaration, though it had to contain all the necessary steps and measures to be taken to form the security systems of the Republic of Armenia. For example, in the context of ensuring economic security as a component of security, the strategy mentioned the provision of economic competition, etc. However, the strategy does not specify what specific steps should be taken to achieve these goals. The same goes for other areas that do not contain specific actions, and regarding the legal security, the strategy is simply silent about it.

In order to give a more comprehensive content to national security, it is necessary to expand the composition of the Security Council by involving the responsible heads of the intelligence, counter-intelligence subdivisions of the national security bodies, the responsible financial and energy systems of the state.¹⁵ In addition, members of the Standing Committee on Defense and Security of the National Assembly may be invited to discussions on crises or more important issues¹⁶.

¹⁵ Decide the issue of the final composition as a result of discussions.

¹⁶ According to DCAF experts, MPs should not be involved in the Security Council on a permanent basis, as the Security Council should be accountable to the parliament. They can be invited as needed.

CHAPTER 3.

THE STRUCTURE AND FUNCTIONS OF NATIONAL SECURITY BODIES

The archival data are scarce, but give grounds to conclude that the special services were an integral part of the security system of the first Republic of Armenia. In 1918-20 this powerful structure did not manage to become a completely independent service, but functioned as a department of intelligence and counter-intelligence of the General Staff of the Republic of Armenia Ministry of Defense. The Soviet state security bodies, including the relevant units of Soviet Armenia, regularly became a tool of punitive policy.

The history of the security bodies of Armenia, with all its sharp turns, must show the necessary will also during the history of the third republic to form security bodies and systems in accordance with the principles of a democratic state. Of course, the main security body in the Republic of Armenia is the National Security Service. However, a proper level of cooperation with other bodies in the field of state security is a great necessity, as the sources of information possessed by other bodies can significantly affect the level of security. In this respect, the opinion that the National Security Service has all the necessary tools to ensure the security of the state in different directions is wrong. Therefore, it is extremely important both to define national security and to study the organizational-structural, functional and oversight principles of the bodies ensuring it.

After the declaration of independence, the State Security Committee /KGB/ was renamed the State Department of National Security of the Republic of Armenia by the Law "On the Structure and Composition of the Government of the Republic of Armenia" adopted on 4 December 1991. Article 1 of the RA Law "On National Security Bodies" defines national security as a state of State and society, where security of persons, society/public and the State, territorial security, territorial integrity of the country, constitutional order, normal economic development, protection of material and spiritual values of the public, protection of citizens' rights and freedoms, protection of the environment from internal and external threats is ensured.

The mentioned formulation, as a result of the comparison with the analysis of the security environment of the Republic of Armenia, identifies that it is necessary to carry out stable and fundamental work with the national security bodies and related

institutions, significant organizational and structural changes of the national security bodies, radical changes in the methodology. Moreover, the above-mentioned components of the current security environment of the Republic of Armenia cannot be considered separately, and only their combination will allow to comprehensively ensure the targeted and sustainable development of the state.

The state body ensuring the national security of the third Republic of Armenia has operated in various structural positions at various stages, including in the status of the Ministry of National Security and Internal Affairs, but at all stages was subordinate to the head of the executive power (to the president of the Republic of Armenia before the Constitutional amendments of 2015, and to the Prime Minister of the Republic of Armenia after the amendments). The organizational and structural issue of national security bodies is also related to the exercise of control and oversight of the latter's activities. The activities of national security bodies, in terms of accountability, should follow the principles of the centralized system, including as a law enforcement body with powers exercised within the framework of prosecutorial and judicial control. In terms of control, national security bodies should have the oversight functions exercised by only the executive branch. The transition to the parliamentary republic by 2015 constitutional amendments, did not, however, provide legal preconditions for ensuring tools of effective parliamentary oversight of the activities of the national security bodies.

Successful and effective national security systems are formed by states that have built a proper legal framework in the field of national security and hierarchic system of national security with a stable logic of higher governance, sectoral coordination, branch governance, as well as with complete legal regulations of effective parliamentary and other control systems over the activities of those bodies. Armenia has not established such a system yet.

In the Republic of Armenia, as already mentioned, the NSS is a body subordinate to the executive power and apart from the executive power, effective control and oversight mechanisms, in particular, parliamentary oversight and civil control are not envisaged in the case of the National Security Service. On the other hand, no member of the government is politically responsible for the activities of the National Security Service. The National Security Service in the Republic of Armenia is a body subordinate to the Prime Minister, whose general management is carried

out by the Government, the governance is carried out by the Prime Minister of the Republic of Armenia, and directly managed by the Head of the National Security Service, who is appointed by the President of the Republic of Armenia upon the Prime Minister's recommendation.

It should be noted that the head of the National Security Service has changed several times in the last three years. It is necessary to consider the possibility of appointing (electing) the head of the National Security Service by the National Assembly for a certain period of time, which will ensure the independence of this structure from the executive power. Moreover, service in the National Security Service is military service, while in the western world, the intelligence and counter-intelligence officers are civilians; this is mainly due to the new challenges facing national security, especially by the introduction of think tanks. It should be noted that it is very important to set standards for serving in the National Security Service, have programs aimed at raising the qualification of employees, train them, as well as ensure a high level of technical equipment. Through parliamentary oversight, the parliament must constantly monitor, ensure that the established standards are met, and that proper work is done to improve the staff training programs.

One of the important principles of the national security bodies is their functional separation by functions, and therefore by bodies. In particular, in the Russian Federation the Federal Security Service of the Russian Federation and the General Intelligence Service are the branches of national security bodies.

The US intelligence service is the Central Intelligence Agency, which coordinates the US intelligence data, develops databases and conducts necessary methodological preparations for intelligence. In other words, it is a systematized intelligence service. The other intelligence service, the National Security Agency, carries out its intelligence function using a more secret methodology and is related to the field of communications espionage. Such separation of functions and bodies allows to develop professional skills according to the directions of national security, which in turn ensures the differentiation in the methodology of activities, excludes the concentration of all levers under one body, and horizontal oversight levers between national security bodies emerge. On the other hand, it should be noted that the most problematic is the formation of a culture of sharing information between these bodies, the realization of the need to work together in certain areas. DCAF experts

also pointed out that there are small countries with well-developed security systems where these functions are performed under one body, the experts mostly attached importance to the existence of real mechanisms of accountability of national security bodies. In other words, best practice does not necessarily imply the separation of these functions.

Currently the main spheres of the Republic of Armenia national security bodies are intelligence, counter-intelligence, law enforcement activities, as well as the protection of state border.

Intelligence: Intelligence activities, including foreign intelligence, are activities carried out within the competence of the national security bodies aimed at obtaining information on the threats posed to the national security and at strengthening the security of the state. From the viewpoint of carrying out intelligence activities, cooperation with other executive bodies is extremely important. Their legal regulations are envisaged by domestic legislation and jointly adopted legal acts, such as jointly adopted acts on cooperation between the national security bodies of the Republic of Armenia and special police units of the Republic of Armenia. Regulations on cooperation with international organizations shall be defined by international treaties. The legal way of conducting intelligence activities is the procedure of operational intelligence activities, including the use of secret methods and means.

Counterintelligence: The grounds for counterintelligence activities are defined and can be changed by law. At the moment there are five of them: existence of information on the intelligence activities of special services and other organisations of foreign states, as well as separate individuals, against the security of the Republic of Armenia, necessity for ensuring protection of information containing state and official secret, necessity for watching (checking) persons cooperating or having cooperated, on a confidential basis, with the National Security Bodies, necessity for ensuring internal security, etc.

Military counterintelligence: Military counter-intelligence activities shall be carried out by the military counterintelligence body (services, divisions, units) of the Authorised Body in the Armed Forces of the Republic of Armenia, the Police troops of the Republic of Armenia, other troops and units, as well as administration bodies thereof for the purpose of disclosing, preventing and disrupting crimes under the

investigative jurisdiction thereof, protecting from infiltrations of the special services of foreign states, as well as assisting the command in the preservation of combat readiness and combat training.

Pre-investigation or law enforcement activities: In the field of combating crimes, the national security bodies carry out investigation and preliminary investigation of crimes within their jurisdiction under the Criminal Procedure Code of the Republic of Armenia, also supporting their realization by carrying out operational intelligence actions.

State border protection: The protection of the state border of the Republic of Armenia shall be carried out by border guard troops, in compliance with the legislation of the Republic of Armenia and international treaties of the Republic of Armenia.

The counter-intelligence activities of the national security bodies of the Republic of Armenia may also affect the secrecy of correspondence, telephone conversations, postal, telegraphic and other messages of the citizens of the Republic of Armenia, the inviolability of the citizens' residences.

In particular, in order to carry out counterintelligence activities, the national security authorities shall, at the request of the court, provide official documents relating to the grounds for the counterintelligence activities (except for operational-official documents, which contain information on persons co-operating or having cooperated, on a confidential basis, as well as on organizing counterintelligence activities. on the practices, methods and means).

The decision of the court on the right to carry out counter-intelligence activities and the materials that served as a basis for its adoption shall be kept in the national security bodies in the manner prescribed by law.

It should be noted that some of the above-mentioned activities assigned to the national security bodies of the Republic of Armenia by the legislation of the Republic of Armenia are disputable from the point of view of effective implementation of functions and in some sense, unnecessarily burdens the activities of the national security bodies. In particular, it refers to the fight against crime¹⁷. While not ruling out the importance of disclosing or preventing crimes during their activities - intelligence, counterintelligence and military counterintelligence operations, by the national

¹⁷ Point 28, Article 15 of the RA Law "On National Security Bodies."

security services as part of their intelligence, it should be noted that reservation of the investigative function to the national security bodies, in fact, does not derive from the content of the implementation of the main function of that body - ensuring the security of the state, and most importantly, from effectiveness. In particular, national security bodies are working together with the relevant state bodies to implement measures aimed at disclosing corruption in the state and local self-government bodies. While emphasizing the fight against corruption in terms of national security, it should be noted that in the narrow sense it is not the main function of the national security bodies, and while being guided by such logic, the national security bodies should be reserved the power to investigate crimes against the life of a person, as well as functions in the field of healthcare, etc. Orientation should be the principles of narrow and wider interpretation of security. An example is the function of the US Federal Bureau of Investigation in investigating national security crimes. They are related to the investigation of cases of espionage and state treason.

The content of a number of criminal cases currently being investigated by the Investigation Department of the National Security Service of the Republic of Armenia does not derive from the functional nature of the NSS and it is conditioned exclusively by the regulations enshrined in the RA Criminal Procedure Code on investigative subordination, according to which the RA NSS Investigation Department has the competence to investigate a wide range of criminal cases.

In this regard, it is suggested separating the subdivisions carrying out intelligence and counter-intelligence services with the status of separate state bodies. The exercise of law enforcement functions should be limited to cases of crimes against national security.

CHAPTER 4.

THE ESSENCE OF OVERSIGHT AND CONTROL MECHANISMS OF THE NATIONAL SECURITY BODIES, GUARANTEES FOR STRENGTHENING THE RULE OF LAW AND PROTECTION OF HUMAN RIGHTS

According to the current legislation of the Republic of Armenia, as a result of operational intelligence activities, operational intelligence actions can be carried out, which are classified into two types: operational intelligence measures aimed or not aimed at obtaining evidence. In other words, as a result of some operational intelligence actions (for example, internal surveillance, external surveillance, operative experiment, control of correspondence, postal, telegraphic and other messages, control of telephone conversations, etc.) evidence is obtained in the context of a specific crime. Meanwhile, in Western European countries, these two functions are differentiated. In the case of initiating a criminal case, the investigator must personally carry out investigative actions, such as interrogation, in order to obtain evidence, and not instruct the "internal surveillance" operational intelligence measure and obtain evidence. Operational intelligence measures should be taken to direct the investigator on what investigative actions should be taken in order to obtain evidence, and not to carry out activities instead of the investigator. Taking into account the possibility of obtaining evidence as a result of operational intelligence activities, the legislator has set, however, a number of guarantees aimed at eliminating arbitrariness, which are summarized below:

- a. The operational intelligence activity is carried out on the basis of the principles of legality and protection of human rights. This implies that the defined operational intelligence measures must be carried out in compliance with the procedure prescribed by the legislation, and in case of human rights restrictions the requirements of the Constitution of the Republic of Armenia must be followed. The current legislation of the Republic of Armenia defines the procedure for carrying out separate operational intelligence measures. For example, "internal surveillance" - tracing of a person (persons) inside the residence, with or without use of special or other technical means, and monitoring of certain incidents and events as well as the corroboration of

surveillance results with or without use of video recording, audio recording, photographic, electronic and other means. Similarly, Imitation of taking or giving bribes, as an operational intelligence measure, may be carried out only for the disclosure of the crime of taking and giving bribes based exclusively on the written statement of the person who was offered to take or give a bribe¹⁸. The legislation of the Republic of Armenia stipulates that the results of operational intelligence measures are proved exclusively through video recording or audio recording, and video recording or audio recording in a person's apartment is carried out exclusively by a court decision. So, operational intelligence measures must be implemented in compliance with the established conditions.

- b. Every person, within a period of three months after the denial to institute a criminal case or termination of a criminal case against him/her as a result of absence of incident of crime or corpus delicti in his/her conduct, or after the caused damage is deemed lawful under the criminal law, or his acquittal - shall be entitled to demand from bodies carrying out operational intelligence activity materials and documents acquired as a result of operational intelligence measures. However, provision of these materials and documents shall be denied should it pose a threat of disclosure of state or official secret, or when the provision thereof may disclose secret staff officers of bodies carrying out operational intelligence activity and persons that have secretly cooperated or cooperate with these bodies.
- c. The list of special technical means used during operational intelligence measures shall be approved by the Government of the Republic of Armenia upon submission by the National Security Service.
- d. Special technical means used during operational intelligence measures shall not harm human life and health as well as the environment.
- e. The use of special technical and other means specified (developed, planned, adjusted) for acquiring confidential information and conducting operational intelligence measures by state authorities, departments or natural and legal persons not authorized under this Law shall be prohibited.

¹⁸ The terms "receive a bribe" and "give a bribe" are used in this law in the sense defined by the Criminal Code of the Republic of Armenia.

- f. State bodies, organizations and citizens in the manner prescribed by law, have the right to demand compensation for material damage caused by illegal actions of national security bodies.
- g. When carrying out their activity, officers of operational departments are guided by law and accountable to their immediate superior. When receiving an order or instruction, the officer of the operational department shall, in case of doubts regarding the lawfulness of the received order or instruction, immediately report in writing to the issuer of the order or instruction or the superior of the latter or their substitute. If the issuer of instruction confirms in writing the given order or instruction, the officer of the operational department shall execute it, unless the given order or instruction results in criminal liability prescribed by law. The person who has confirmed in writing the order or instruction bears responsibility for the execution thereof by the officer of the operational department.
- h. Conducting of operational intelligence measure of wiretapping is carried out by the operational-technical general department operating within the republican national security body of the Republic of Armenia upon motion of the bodies authorized to conduct such operational intelligence measure in accordance with the legislation of the Republic of Armenia.
- i. Exclusion of arbitrariness when measures are taken to allow citizens to access information that constitutes a state and official secret. Provision of these materials and documents shall be denied should it pose a threat of disclosure of state or official secret, or when the provision thereof may disclose secret staff officers of bodies carrying out operational intelligence activity and persons that have secretly cooperated or cooperate with these bodies.

It is obvious that some of these guarantees are not observed in practice. For example, we could not find a single case when a person was compensated for material damage caused by the illegal actions of the national security bodies. Similarly, the inquiries did not reveal any cases in which any officer of the operational department ever reported his or her doubts regarding the lawfulness of the received order or instruction to the issuer of the order or instruction or the superior. In order to maintain the principles of legality, proportionality and efficiency, it is necessary to

establish reasonable prosecutorial control, judicial and parliamentary oversight, which we will refer to below. In order to ensure the mentioned guarantees and the principle of legality, in general, it is very important to establish codes of conduct for NSS employees, to have effective internal control mechanisms, to introduce internal and external complaint redress structures. At the same time, as much as possible, it is necessary to publish certain information so that citizens are aware of such structures and apply with their complaints. As for their effectiveness, it will be possible to measure the effectiveness of the existing mechanisms through parliamentary control.

4.1 PROSECUTIONAL MONITORING/CONTROL

The study of the functional areas of the national security bodies clearly shows that the main way of their implementation is operational intelligence activity. The scope of these actions is closely intertwined with human rights and freedoms or, to be more precise, with their restriction, so it is necessary to consider them in the context of introduction of effective control and oversight systems.

The operational intelligence activity of national security bodies in the field of fight against crime is entrusted to the Prosecutor's Office of the Republic of Armenia. In other words, the limits of prosecutorial control over the operational intelligence work carried out by the national security bodies refer exclusively to the functions of investigation and preliminary investigation. Meanwhile, the prosecutorial control/monitoring cannot be exercised within the framework of intelligence and counter-intelligence activities carried out by the national security bodies, as the functional spheres in question are not in the field of investigation and preliminary investigation. As long as intelligence and counterintelligence are not linked to crime, the prosecutor's office cannot exercise any control powers of the activities of national security bodies. In this regard, it should be noted that some operational intelligence actions can be carried out exclusively within the framework of judicial oversight.

From the viewpoint of ensuring legality in the implementation of operational intelligence activities within the framework of law enforcement function, the mechanisms of prosecutorial control cannot be considered complete in terms of preventing illegal actions. Thus, in terms of criminal procedure, the legal regulations of this process are enshrined in the Criminal Procedure Code of the Republic of Armenia and the Law "On Operational Intelligence Activities." In particular, in accordance with Article 35 of the Law "On Operational Intelligence Activities" when exercising procedural governance over the preliminary investigation and inquest, the prosecutor carries out monitoring/control over the lawfulness of operational intelligence activity within the limits of powers vested in him/her by law. Means of organisation and implementation of operational intelligence activity are not subject to monitoring/control by the prosecutor. The heads of operational intelligence bodies shall, upon the request of the prosecutor, communicate to the latter the documents

which serve as a ground for these activities as well as other necessary information. The prosecutor shall ensure the confidentiality of the documents and information communicated by bodies carrying out operational intelligence activity. Information with regard to the staff of bodies carrying out operational intelligence activity and persons secretly cooperating with these bodies shall be communicated to the prosecutor only by consent of these persons except for the cases when the issue of their criminal liability arises. It should be noted that in the current system of operational intelligence activities, especially in the system of national security bodies, the activities of the bodies are outside the scope of prosecutorial control, and at the request of prosecutors these bodies often refuse to provide information, citing confidentiality of data sources. Moreover, the national security bodies have exceptional technical capabilities, which allow them to control various media outlets, including the work of prosecutors, which is a clear basis to insist on the necessity for external oversight of the service. The principle of separation of powers and mutual restraint requires active parliamentary oversight in this area.

4.2. JUDICIAL OVERSIGHT/CONTROL

It is necessary to point out the following legal regulations revealing the content of judicial oversight:

- In accordance with Article 34 of the RA law “On Operational intelligence Activity” operational intelligence measures internal surveillance, interception of correspondence, postal, telegram and other communications; ensuring access to financial data and secret monitoring of financial transactions, imitation of taking and giving bribes, external surveillance with use of technical means (if the person, against whom the external surveillance is carried out, could not reasonably have assumed the possibility of conducting it) may be conducted only by authorisation of the court.
- Article 284 of the RA Criminal Procedure Code defines: operational intelligence activities concerning the restriction of the individual's right for the confidentiality of correspondence, telephone conversations, mail, telegrams and other communications are carried out only with a court ruling. The ground for the authorization of operational intelligence measures is the justified decision of the head of the body in charge of operational intelligence actions (The decision indicates the grounds for operational intelligence measures, the data which is planned to obtain as a result of these measures, the venue and deadline of the measures, and all data necessary for the court to make a decision). It follows from the analysis of this article that the court, as a rule, considers the legality; and other materials substantiating the need for operational intelligence measures related to substantiation are often not presented on the grounds that there is a risk of violation of state or official secret or when secret staff officers of bodies carrying out operational intelligence activity and persons that have secretly cooperated or cooperate with these bodies, sources of relevant information or methods of obtaining them can be identified.
- In accordance with Article 294 of the RA Criminal Procedure Code Illegal and /or groundless decisions and actions of the bodies carrying out operational intelligence activities may be appealed in court by the suspect, the accused, the attorney, the victim, the participants of the criminal proceedings, and other

persons, whose rights and legal interests have been violated by those decisions and actions. Recognizing the complaint as grounded, the judge makes a decision on the obligation of the body conducting the proceedings to eliminate the violation of the rights and freedoms of the person. Finding that the appealed actions were taken in accordance with the law, and that the rights or freedoms of the person are not violated, the court decides to reject the appeal.

The judicial control/oversight is, in fact, focused on monitoring compliance with the requirements of the law. For example, the "imitation of receiving a bribe or giving a bribe" can be carried out if there is a subject of corpus delicti, otherwise the implementation of this activity is illegal. The issues of the appropriateness of the choice of this or that operational intelligence activity or the methods chosen/used by the national security bodies in the course of their activities is, in fact, beyond the scope of judicial control. In other words, judicial control concerns only the permission to carry out the above-mentioned actions, while the legality of the implementation process, in fact, remains outside the control. As mentioned above, there is a lack of effective oversight by any body to enforce some of these guarantees.

Here are some more examples. The current legislation of the Republic of Armenia stipulates the exclusion of arbitrariness when making a decision on granting access to state and official secrets, but the legislation does not provide any possibility to appeal the decision of denying access to confidential information; or though it is clearly defined that in case of denial to institute a criminal case a person can receive the results of the operational intelligence activities, they can receive a response that that they have not implemented such activities, and there is no leverage to verify the credibility of that response. Of course, control can be exercised within the executive branch, with internal control structures in place, but given that the oversight body may be the initiator of illegal activities, it is necessary to provide control mechanisms that exclude the interests of the department by another branch of government. In other words, the possibility of using secret methods and means of national security activities requires consistent use of other mechanisms of external state control over the activities of national security bodies even under judicial control, of which parliamentary oversight should be considered more effective. It may be implemented by professional support bodies set up under the standing parliamentary

committees, usually composed of independent professionals (Great Britain, Norway, etc.).

CHAPTER 5.

MECHANISMS FOR EFFECTIVE PARLIAMENTARY OVERSIGHT OF THE NATIONAL SECURITY BODIES

The current legislation of the Republic of Armenia does not provide for mechanisms of effective parliamentary oversight of the activities of national security bodies. As it was mentioned, the only special legal regulation in the field of national security bodies exists in Article 27 of the Law "On National Security Bodies," according to which the deputies of the National Assembly of the Republic of Armenia shall, as concerns parliamentary activities thereof and as prescribed by the legislation of the Republic of Armenia, have the right to receive information on the activities of the National Security Bodies. The Constitution and the legislation of the Republic of Armenia envisage the possibility for deputies to make inquiries, but the state structures have a wide discretion to classify the information as state and official secret, thus hindering the exercise of effective parliamentary oversight.

The procedures for applying the "need to know"¹⁹ principle to more effective parliamentary oversight by MPs are not clearly defined. Moreover, no minister exercises effective civilian control over the National Security Service and the national security services are under the direct supervision of the head of the National Security Service, who is a military and subordinate to the Prime Minister. In other words, the National Security Service is a body subordinated to the Prime Minister, which has enormous powers, such as collecting general information, analyzing, conducting operational intelligence activities to identify national security threats, investigating into some types of crimes, but in fact, accountability to the parliament is missing. Moreover, the structure of the national security bodies of the Republic of Armenia is not based on the principle of diversification discussed in this report.

The study of the powers given to the national security bodies under Article 15 of the RA Law "On National Security Bodies" necessarily requires provision of proper oversight mechanisms, as some of them are implemented through secret operational intelligence activities, the legality of which will guarantee effective protection of human rights and exclusion of abuse of power.

¹⁹ "Need to know"

The issue of implementing effective control mechanisms over the functions performed by the national security bodies, as mentioned, is an urgent need due to the specificity of the means and mechanisms used during the operational intelligence activities. In particular, from the viewpoint of human rights protection, the control of the operational intelligence activity “telephone conversations” discussed in recent years is provided only by the General Operational-Technical Department operating within the republican National Security Body of the Republic of Armenia upon the motion of the body authorized to carry out such an action in the manner prescribed by law. The head of the General Department is appointed and dismissed by the Prime Minister of the Republic of Armenia, and the general management of the General Department is carried out by the head of the republican body of the Republic of Armenia - the head of the NSS. Moreover, the responsibility for ensuring operational and technical conditions with telecommunications operators rests with the General Department. The above-mentioned legal regulations indicate that the national security bodies have the exclusive authority of carrying out control over telephone conversations by providing a channel to the national security bodies, and the appointment and dismissal of the heads of the department, as well as the heads of the national security bodies by the head of the executive body means that it is clearly necessary to change the legal procedures to ensure accountability to the legislature by national security bodies. It is necessary to control the strict observance of the provision defined in Part 1, Article 31 of the Law “On Operational Intelligence Activities,” according to which, with the aim of control over telephone conversations through creating operational-technical conditions by the Service for the police or penitentiary service bodies (including providing communication means, direct control and corroboration of data, information, reports received by the police or penitentiary service bodies), the General Department and the national security bodies are prohibited to monitor and / or corroborate that data, information and reports. Control over telephone conversations/wiretapping is the secret monitoring of conversations, including internet telephone conversations and electronic communication, carried out using special and other technical means. The implementation of the mentioned action is related to both the landline communication/fixed telephony and the mobile communication services, the legal regulations of which are given in Article 26 of the Law “On Operational Intelligence Activities”. It follows from the content of the article

that as a result of this operational intelligence activity a wide range of information is obtained about a wide range of persons, both the entity under control and the users of telephone numbers having indirect connection, through controlling all means of communication. The internal surveillance and other operational intelligence activities should be assessed according to the same principle, in the case of which the factor of control over the internal life of the person directly derives from their content²⁰. Finally, unlike other law enforcement agencies, which can carry out the above-mentioned operational intelligence activities exclusively in the criminal field, or in other words, under the supervision of the prosecutor in order to obtain evidence in the framework of investigation, preliminary investigation or criminal cases, the national security bodies can carry out the above-mentioned operational intelligence activities as part of intelligence, counterintelligence, military counterintelligence functions, which implies a higher level of risk of human rights violations and requires a high level of accountability, thus it is necessary to establish effective parliamentary oversight structures to fill the gap (uncontrollable sphere).

National security agencies - intelligence, counterintelligence and other services must be accountable to the executive and legislative bodies. The mechanism of its implementation should be the adoption of basic documents of national security - the National Security Strategy adopted by the National Assembly, the approval of the departmental implementation documents by the Prime Minister of the Republic of Armenia. The annual reports of the heads of the intelligence and counterintelligence services should be discussed in the National Assembly, combining open and closed regimes. As a result of the discussion of the reports, opportunity should be provided to raise the issue of compliance of the heads of the relevant departments with their positions and to ensure the participation of the Prime Minister in the discussion.

In order to increase the accountability of the national security bodies to the legislature, we will propose to organize a discussion of the half-year reports of the heads of the National Security Intelligence and Counterintelligence Services with the participation of the NA Standing Committee on Defense and Security, if necessary,

²⁰ According to Article 22 of the law "On Operational Intelligence Activity," internal surveillance is to track a person in the apartment with or without special technical means and to control the course of concrete events and cases, as well as to fix the results of the observing with video, audio recording, photographing, electronic or other media. Moreover, the meaning of a residence should be viewed in the sense defined by the RA Criminal Procedure Code.

organize a closed discussion with the entire composition of the National Assembly. Similarly, the members of the Standing Committee may prepare quarterly reports on the results of the activities of the intelligence and counterintelligence services and submit them to the National Assembly. Moreover, the NA Standing Committee should be given an opportunity to get acquainted with the analysis of intelligence and counter-intelligence information in the Security Council, access to information, appropriate packages related to the protection of human rights related to the implementation of operational intelligence activities with password protection guarantees and mechanisms. Some functions may be reserved to the supporting body adjunct to the Committee in the event of formation of such a body, which will presumably consist of independent experts (more details below). By the same logic, the members of the NA Standing Committee can be provided access to the strategies of the current activities of the intelligence and counter-intelligence services. Assigning certain powers to the National Assembly or the NA Standing Committee on Defense and Security (appointment of candidates, approval of the nominated candidate, the right to veto, preliminary approval, etc.) in the appointment of certain officials can also be considered.

The US legislation provides for effective systems for the application of control mechanisms to the activities of national security agencies. The decisions of the US administration in the field of national security are subject to constant scrutiny, the legal procedure of which is the justified function of influencing and verifying those decisions - the procedure of regular hearings, which forces the executive to thoroughly substantiate strategic national security documents before the Congress²¹.

Such a procedure obliges the American administration to be in permanent accountability, to make extensive use of the work of the experts, to organize a military-strategic policy that truly strengthens national security. From this point of view, national security systems in the United States provide an opportunity to ensure strategic stability, while ensuring flexibility in the field to bring policy directions in line with the requirements of the time.

In order to carry out professional oversight of the operational intelligence activities, the Committee is proposed to establish a support body adjunct to the

²¹ It should be emphasized that the secret methodology of the activities of the branch departments is not included. Meanwhile, the reports on the results of the secret methodology can be discussed in the hearings.

Committee. The existence of an independent body is substantiated by the following assertions:

- MPs are politicians, while professionals are needed to exercise parliamentary oversight of certain issues. Therefore, especially in the field of security, countries with parliamentary governance have a large number of such structures, consisting of former national security officers, judges, secret officers, lecturers, who support the parliament to exercise effective parliamentary oversight. In objection to the argument that such specialists can be involved as experts and there is no need to form an autonomous independent body, we can state that in that case their independence will be greatly diminished, the political element in their activities will not be ruled out, autonomy will not be ensured.
- The significance of the existence of bodies consisting of independent professionals lies in the fact that the parliament is often guided by political goals, conducts voting for political motives, while the bodies with the participation of independent professionals are independent and function freely.
- Especially in our country, when the formation of parliamentary commissions of inquiry to conduct investigations requires a vote in the National Assembly, the Standing Committee on Defense and Security cannot initiate the functions of the commission of inquiry, their formation presupposes political processes; independent bodies adjunct to the Parliament can initiate investigations and publish reports.
- These autonomous, Committee supporting bodies can work more effectively with civil society. NGOs and specialists in the field sometimes do not want to cooperate with the parliament, taking into account the political orientation of the members and the political context of their activity. The parliament should be a bridge between the civil society and the executive power. The existence of these independent bodies makes the participation of civil society even easier.
- The formation of these autonomous bodies supporting the committee is viewed as a concession to the political minority, when the latter are offered to

nominate a certain number of members. This ensures that the minority is more heard, and that these bodies are highly trusted.

- Given the broad parliamentary oversight leverages of security agencies (budget adoption, oversight of budget execution, etc.), it is more appropriate to set up these structures under the Committee (rather than the Office of the Human Rights Defender, the Supreme Judicial Council, etc.). The executive is more vigilant when that body operates within the legislature.

The autonomous body adjunct to the Committee does not control a specific body, but focuses on the activities of bodies authorized to carry out certain actions, for example, all structures that have the authority to carry out operational intelligence activities (in the case of the Republic of Armenia: national security bodies, police, military police and intelligence agencies of the Ministry of Defense).

This autonomous supporting body adjunct to the Committee may consist of five members (hereinafter referred to as the Members). Moreover, the term of office of the Members should preferably be one year longer than the term of the current parliament, so that the Members are not associated with the current political palette. Members should also have access to specific information²².

The independent body adjunct to the Committee should have the authority to conduct inspections in national security bodies, to request separate cases for investigation or packages of operational intelligence measures, to examine the received complaints, to raise certain issues on its own initiative, to make analyses. It may act on its own initiative, on the instructions of the NA Committee on Defense and Security, or on the basis of a received complaint. Members should find out whether human rights have been violated, whether the procedure and conditions established by law for the implementation of certain operational intelligence measures have been followed, whether the established guarantees have been observed, whether the expediency of the methods aimed at achieving the goal has been assessed, in other words, application of the principles of legality,

²² In accordance with Article 4 of the law "On State and Official Secret" based on the importance, the nature of information constituting state and official secrets and the extent of measures required for protection of the information three levels of confidentiality are defined: "Of Special Importance", "Top Secret", "Confidential".

proportionality, necessity and effectiveness in the application of human rights restraint mechanisms have been assessed right. When processing personal data, this independent body adjunct to the Committee should examine whether the security authorities have been guided by the principle of proportionality of personal data processing, whether a specific purpose of personal data processing has been defined, whether useful, necessary, moderate means of processing personal data suitable for the achievement of the defined goal have been envisaged, whether the minimum amount of personal data processing required to reach the defined goal has been ensured, whether a certain period of time for personal data necessary to achieve the defined goal has been envisaged. Similarly, this body should follow that some personal data that are not necessary to achieve the intended goal are not processed, or so that such processing of personal data is not envisaged if the intended goal can be achieved in a depersonalized manner.

This body in Scandinavian countries, which supports parliamentary oversight of the security sector, does not have the authority to order government agencies to take any action, its decisions are usually of a recommendatory nature, but in reality have a high weight and mandatory nature. The whistle blower institute may be applicable when national security personnel contact a Member when they notice deficiencies or violations of the law in the relevant department.

This independent body adjunct to the Committee should submit an annual report to the National Assembly, which will disclose the problems in the national security bodies, point out the recorded violations, the incomplete practice, which will enable the Government of the Republic of Armenia and the MPs to offer systemic solutions. Similarly, the MPs should be given the opportunity to ask additional questions, which should be answered by this professional and independent body. It is important that the Minister in charge of civilian oversight of the relevant service (Minister of the Interior, Minister of Defense, Minister of Foreign Affairs, Minister of Justice, etc.) come up with a plan to correct the deficiencies raised in the annual report. Within the framework of the same sitting, the Chairman of the NA Committee on Defense and Security or the Chairman of the supporting body adjunct to the Committee should report on the measures taken by the relevant Minister under the previous year's program, thus, in essence, assessing the activities of a specific Minister. Finally, the recommendations in this paragraph to entitle the Committee

with additional powers may similarly apply to the professional structure adjunct to the Committee (prepare quarterly reports, have access, etc.).

RECOMMENDATIONS

Summarizing the views on the organizational and functional issues of the national security bodies, on the departmental and extra-departmental control and oversight mechanisms of their activities, and the experience of leading countries, we present the following recommendations aimed at increasing the effectiveness of the activity of National Security Bodies of the Republic of Armenia.

- Establish brain system-centers that analyze and filter information related to national security in the Republic of Armenia in various fields. The processes taking place in today's fast changing world, the unprecedented equalization when the political boundaries between states lose their former significance, require the introduction or improvement of security prevention institutions.
- Discuss the possibility of separation of functions and bodies in the current national security system, which will contribute to the development of professional capacity according to the directions of national security, which in turn provides a differentiated methodology of activities, excludes the concentration of all levers under one body. In particular, to separate the subdivisions carrying out the intelligence and counter-intelligence services with the status of separate state governing bodies. Carry out a law enforcement function exclusively in cases of crimes against national security.
- Discuss the issue of legislative possibilities of introducing control mechanisms over operational intelligence activities in the field of intelligence and counter-intelligence by studying the experience of other countries, provided that the regime of secrecy is maintained.
- Make the national security bodies - intelligence, counter-intelligence and other services, truly accountable to the executive and legislative bodies. The mechanism of its implementation is the adoption of the basic documents of national security - the national security strategy by the National Assembly, the approval of the departmental documents of implementation by the RA Prime Minister. Establish discussion of the annual reports of the heads of the intelligence and counter-intelligence services in the National Assembly, combining the open and closed regimes. Consider raising the issue of distrust

as a result of the discussion of the reports and ensuring the participation of the Prime Minister in that²³.

- Introduce in the system of ensuring national security in the Republic of Armenia the logic of coordination of the work of the national security bodies by the collegial body responsible for the security of the state, in this case by the Security Council²⁴. Within the logic of ensuring national security, develop the national security strategic documents by the Security Council and make them a subject of joint discussion by the executive and legislature, as well as adopt principles of the work of the system of national security branch management bodies based on strategic documents²⁵. To restore the logic of the hierarchical structure of strategic documents and other legal acts obviously disturbed in the Republic of Armenia (strategies, as the main legal documents, should be adopted by a body providing broad public participation and having higher legal force, from which other legal acts will be derived).
- Expand the composition of the Security Council with the appropriate number of the leadership of the intelligence and counter-intelligence subdivisions of the National Security Services, with the responsible heads of the state financial and energy systems²⁶.
- Consider the possibility of reserving certain levers to the National Assembly or the NA Standing Committee on Defense and Security in the appointment of certain officials (selection of candidates, approval of the nominated candidate, the right to veto, preliminary approval, etc.). In the third chapter, it is proposed to elect the head of the National Security Service by the National Assembly for a certain period of time, as it is envisaged for the Prosecutor General.
- Organize a discussion of the half-year reports of the heads of the National Security Intelligence and Counterintelligence Services with the participation of the NA Standing Committee on Defense and Security, if necessary, organize a closed discussion with the entire composition of the National Assembly.

²³ Make clarifications on these legal regulations within the framework of constitutional and legal reforms.

²⁴ Another constitutional body in the field of security can act as such a body.

²⁵ The national security branch bodies are considered to be the bodies carrying out intelligence and counter-intelligence function.

²⁶ Decide the issue of the final staff composition in discussions.

Provide the members of the Standing Committee with a mandate to analyze the information on intelligence and counter-intelligence in the Security Council, provide access to information and appropriate packages related to the protection of human rights in connection with the implementation of operational intelligence activities with password protection guarantees and mechanisms.

- Preparation of quarterly reports by the members of the Standing Committee on the results of the activities of the intelligence and counterintelligence services in closed regime and submission to the National Assembly.
- Provide the Chairman and Deputy Chairman of the NA Standing Committee with access to the strategies of the current activities of the intelligence and counter-intelligence.
- Clarify the legal bases for classification, in particular the mechanisms for the implementation of the "harm test" (assessment of possible damage caused by the publication of information) and "need to know" principles. When classifying information, be guided primarily by the principle of "harm test" and not by classifying information on specific areas arbitrarily. Establish the possibility of appealing against a decision to deny access to confidential information, as well as introduce the institution of certification of access to confidential information (in which case a person will have access to any information of the same kind of confidentiality if he/she substantiates the need for access to information regardless of which agency handles the information). Consider another body in the role of an authorized body to provide access to classified information instead of the National Security Service, to oversee the implementation of legislation in the field, in particular to carry out regular declassifications, and to ensure compliance with the requirements of legislation in the field of information protection.
- Give legal access to the MPs involved in the Standing Committee on Defense and Security of the National Assembly, establish vetting mechanisms to be included in this committee, if necessary, with certain guarantees, or by force of law at least give the Chairperson or Deputy Chairperson access to confidential information.

- Establish a body adjunct the National Assembly or the National Assembly Standing Committee on Defense and Security to assist in effective oversight of the security sector (consider the Norwegian model). To give the supporting body the authority to conduct inspections in the national security bodies, to request certain cases, packages of the implementation of operational intelligence measures, to examine the received complaints, to raise certain issues on its own initiative, to carry out analyses. The supporting body may act on its own initiative, on the instructions of the NA Committee on Defense and Security, or on the basis of a complaint received. The supporting body should consist of trusted experts, retired judges, theorists, who will be elected by the National Assembly. The supporting body will make at least an annual report or submit thematic extraordinary reports, will provide recommendations. When discussing the current annual report of the supporting body, the National Assembly may discuss the solutions given to the issues raised in the previous annual report, in the extraordinary reports, and the steps taken with their consequences.

It should be noted that the DCAF suggested to consider as an alternative the establishment of a Standing Committee in the National Assembly to exercise parliamentary control over the National Security Service and other bodies authorized to carry out operational intelligence activities. Moreover, the latter will have representatives from all the political parties that are represented in the parliament, which should undergo vetting in line with the criteria of serving in the National Security Service. As a result, there are two options: an autonomous body of independent experts or a committee of members of parliament, which will be served by a secretariat of experts.