Chapter 1

Democracy and Security: The Legal Framework of Security Sector Governance

Mindia Vashakmadze

Introduction

The legal framework of Georgia's security sector governance has been built over a number of years, with the last amendments to the Constitution made in February of 2004. It was constructed during politically troubled times, and the problems in the security sector have shaped the process and results. Following the break-up of Soviet Union in 1991, Georgia became an independent state and had to build up its security sector from scratch. Under the 'Law on the Transitional Period' adopted on December 20, 1990, the National Guard of Georgia was formed, followed by the creation of the Ministry of Defence in 1991[1]. However, the first elected President Zviad Gamsakhurdia did not succeed in bringing the paramilitaries under the control of the central government and was not able to consolidate the security sector. The political confrontation between the President and his opponents led to an armed conflict in which the officers of the National Guard were involved on the side of the opposition.

A military coup brought an end to Gamsakhurdia's presidency in January 1992. A Military Council that took over state power and declared the Constitution of the first Georgian Republic (1918-1921) as the supreme law of the land. The Constitution stipulated parliamentary supremacy in security sector governance[2], but this was far from the reality in the Georgia of 1992. In March 1992, after Shevardnadze returned to Georgia, the Military Council was transformed into a civilian body called the State Council. Representatives of Georgian society were invited to participate in its activities to provide a degree of legitimacy. A new Parliament, elected in October 1992, adopted a 'Law on State Power' on November 10, 1992, establishing a strong legislature. However, the Head of State was at the same time the Speaker of the Parliament, elected directly. Thus, for the next three years the legislature came under the *de facto* control of Shevardnadze.

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1 The Law on the Ministry of Defence adopted on 15th September 1991.

2 According to Article 54 of the Constitution, adopted on 21st February 1921, armed forces and other military forces were under the control of the Parliament.

The outbreak of the bloody conflict in Abkhazia from 1992 to 1993 between Georgia's armed forces and local separatists, supported by Russian soldiers and mercenaries, brought Georgia's emerging statehood to the brink of collapse. Not until 1995 Shevardnadze was able to consolidate state power as he subdued uncontrolled military commanders and strengthened the control of the central Government over Georgian paramilitaries[3]. Between 1992 and 1995 Georgia was a parliamentary republic. The presidential system of government had been discredited by the Gamsakhurdia regime, but the Parliament elected in 1992 proved a weak and politically unreliable institution. Public opinion gradually changed to a belief that only a strong President would be able to lead the country out of the chaos. The adoption of a new Constitution in August 1995 establishing a presidential system marked a significant step towards the development of proper legal tools in respect of security sector governance. Between 1995 and 1999, the Georgian Parliament elected in October 1995 passed the vast majority of laws regulating security sector governance[4].

Institutional Framework of Security Sector Governance

The Constitution contains a special chapter (Chapter VII) on 'State Defence' and several provisions related to security sector governance. The framers undertook the first deliberate attempt to introduce a separation of power in security sector governance, and to establish a balance between the democratisation and effectiveness of the military based on the rule of law. However, as following experience showed, some fundamental provisions of the Constitution remained at odds with reality. Three main state political entities shared responsibility for security sector governance in the country: the legislature, the executive and the judiciary. Their work was to be supported by state advisory bodies set up in the main by the President, who also is the Head of State.

As matters stand today, the adoption of constitutional amendments on February 6, 2004 re-moulded the existing system of checks and balances to some extent. The post of Prime Minister, which was abolished with the adoption of the 1995 Constitution, was

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3 Jürgen Gerber, *Georgian: Nationale Opposition und kommunistische Herrschaft seit 1956*, (Nomos: Baden-Baden, 1997), p 231.

4 The following laws, adopted by Parliament since 1995, formed the hierarchy of norms directly or indirectly related to the security sector: Law on Defence of Georgia, adopted on 31st October 1997; on National Security Council (24th January 1996); On State Secrecy (29th October 1996); on Special Service of State Protection (20th February 1996); on the State of Emergency (31st October .1997); on Non-Military, Alternative Labour Activity (28th October .1997); on Interior Ministry Troops (30th April 1998); on the State Border of Georgia (17th July .1998); on State Security Service (18th February 1998); on the Status of Military Personnel (25th June 1998); on Intelligence Activity (19th March 1999); on Operative-Investigative Activities (30th April 1999); on Mobilisation (23rd June 1999); on Participation of Armed Forces of Georgia in Peacekeeping Operations (22nd July 1999); on Arms, Military Material and on Export Control on the Production of Double Destination (28th April 1998); on Martial Law (31st October 1997); on Military Duty and Military Service (17th September 1997); on the Pension of the Retired Military Personnel and Personnel of the Interior Troops (16th October 1996); on the Social Security of the Families of Soldiers who died in War for the Territorial Integrity and Independence of Georgia (27th December 1996); on Collections for Call-up Deferment to this legislation (21st June 2002); Criminal Code (22nd July 1999); Administrative Code (25th May 1999).

introduced and a two-headed executive established. The government is responsible for the implementation of domestic and foreign policy. The Prime Minister will determine the direction of governmental activities; he discusses the candidature of prospective ministers with the President before their approval by Parliament and, likewise, has the power to relieve ministers of their duty. The resignation of the Prime Minister is followed by the resignation of the entire cabinet[5]. The Prime Minister, furthermore, is responsible for the economic activities of the government and the implementation of law. However, the President may abolish unlawful acts of the government[6]. (This was the prerogative of the constitutional court before the amendments were adopted.) The defence, interior and security ministers are directly subordinated to the President[7], as they were beforehand, but, at the same time, will be members of the cabinet, under the Prime Minister. The President concentrates power in his hands while imposing the responsibility for the activities of the government on his Prime Minister. Only practice will show exactly how great the Prime Minister's reach will be in terms of security sector governance.

In this respect the division of authority between the President and Prime Minister is not clear. What is clear, however, is that the President has become stronger in his relations with Parliament. He may dismiss the Parliament if the legislature does not approve the government[8] or if it rejects the budget three times. Furthermore, the President will have the power to dismiss Parliament or the government if a simple majority of parliamentarians votes for the resignation of the government. In view of the fact that the government is essentially the President's 'team', the pressure on Parliament will grow and an imbalance can be produced. Nonetheless, the President may not dismiss Parliament during a period of martial law, if an impeachment procedure is underway in Parliament, or for six months following presidential elections, or, indeed, for six months before the end of the President's term of office. The agreement of one-third of parliamentary members is necessary to initiate a vote of no-confidence. Parliament is able to dismiss the government with three-fifths of the vote. If Parliament fails to reach this threshold, it will not be allowed to debate this question for the following six months. However, it is questionable whether the allocation of power among the executive will be redressed by this regulation.

The constitutional amendments caused strong disquiet in Georgian civil society. Firstly, there was criticism of the procedures, especially in respect of the lack of public discussion on the drafting of the constitutional amendments. Concern was also voiced about the limited time given to review and adoption of the amendments and, equally, concerning the questionable political legitimacy of the Parliament to pass them[9]. (The amendments were passed shortly before the upcoming parliamentary elections of March 2004.) Secondly,

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5 The Constitutional Amendments, adopted on 6th February, Article 18.
6 Ibid., Article 14, Par. 3.
7 Ibid., Par. 1.
8 Ibid., Article 18.
9 The new parliamentary elections took place on 28th March 2004.

criticism was directed towards the consequences of the amendments insofar as the constitutional position of the Parliament would be weakened.

Moreover, there were some misgivings about whether the amendments had been designed to satisfy the ambitions for power of certain political leaders. Presidential elections on January 2004 gave a powerful mandate to consolidate the country and to overcome corruption and economic problems facing Georgia. Flexible governance is needed, guaranteed by the division of competencies between the President and Prime Minister and the principle of collective responsibility of the government. This, in turn, will lead to improved policy execution. Under the former constitutional provisions the President was not entitled to dismiss Parliament. The only means of dismissing ministers or the President was to impeach them[10] if they violated the Constitution or committed a crime[11]. However, the impeachment procedure is very complicated. Thus the system of checks and balances established by the Constitution was based on the ability of the legislature and executive to reach political consensus. Thus, the adoption of the constitutional amendments does not necessarily represent a good example of a democratic change in the constitutional framework. Definitely, the reform causes a shift of responsibilities with regard to security sector governance. However, it should be stressed that the constitutional framework for the division of competencies between the President and Prime Minister in this respect remains unclear, which effectively enables the President to manipulate either his government or the Parliament.

The Role of the President

The President has a decisive role in the security, defence and foreign policies of Georgia. He is Supreme Commander-in-Chief and thereby guarantees the independence and territorial integrity of the country. He possesses the following powers: enacts laws related to the security policy of the state; appoints and dismisses the Chief of General Staff and his principal commanders[12], the Defence, Security and Interior Ministers; appoints the members of the National Security Council and presides over its sittings; bestows all higher military ranks; submits the candidature of the General Prosecutor to the Parliament for approval[13]; signs international treaties and agreements on security policy issues; determines the structure of the armed forces; decides on referenda; declares states of emergency and martial law; and decides on the mobilisation of armed forces.

Special legislation broadens the President's competencies even further. The President submits the military doctrine and other conceptual documents concerning military re-structuring to Parliament for approval[14]; confirms the military-operative plans for the territory; the

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10 The Constitution of Georgia, Article 64, Par. 1.
11 Ibid., Article 63-64.
12 The Constitutional Amendments, adopted on 6th February, Article 14, Par. 4.
13 Ibid., Article 16.
14 The Law on State Defence, adopted on 31st October 1997.

dislocation of the armed forces and military installations; weapons programme and military technology development[15]; confirms the structure of the interior forces[16]; approves the state programme on the activities of the security service[17]; confirms the statute and structure of the special service for state protection[18]; plays an important role in the implementation of state policy on state secrecy; confirms the list of information containing state secrecy and the list of state officials who are authorised to issue permits on access to state secrecy or who are authorised to classify the information as a state secrecy; determines other regulations concerning the classification and marking of information[19]; has important competencies with regard to the import and export of military arms and materials of double destination[20]. The President issues further decrees to facilitate the implementation of the laws adopted by Parliament. Thus the implementation of the security policy remains out of formal parliamentary control to a significant extent. It is not clear how the President and the Prime Minister will share the responsibilities in the implementation of the special legislation on security sector governance. There are loopholes for further inconsistency within the Georgian constitutional system that could cause further undemocratic developments or arbitrary decision-making.

The Role of the Parliament

The Parliament is elected by universal adult suffrage for a term of four years and will consist of two chambers once the territorial integrity of Georgia has been restored, whereupon the Upper Chamber, the Senate, will be made up of representatives from the regions[21]. As matters stand, it is a unicameral body, and elections are conducted using a mixed system: national party lists compete for 150 seats in a proportionate system, while 85 seats go to single mandate constituencies. Under the Georgian Constitution, Defence and Security are prerogatives of the Central Government of Georgia[22], and, as such, the territorial entities do not maintain any independent armed forces. This constitutional provision, however, is not effective since two regions of Georgia that are currently the focus of separatist conflicts and are not, in effect, under the control of the central government[23].

According to the Constitution, Parliament determines the foreign and security policy priorities of the country. During the drafting process some experts regarded the norm as a relic from Soviet times, when Supreme Councils of Soviets had constitutionally declared but empty

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15 The Law on State Defence, Article 5.
16 The Law on the Interior Forces, Article 7.
17 The Law on State Security Service, Article 19.
18 The Law on Special Service of State Protection.
19 The Law on State Secrecy, Article 4, Par. 2.
20 The Law on Arms, Military Material and on Export Control on the Production of Double Destination, adopted on 28th April 1998, Article 6.
21 The Constitution of Georgia, Article 4.
22 Ibid., Article 3.
23 For example, the separatist regimes in Abkhazia and South Ossetia recently decided to hold collective military training exercises to guarantee military readiness for possible military attack by the Government of Georgia, in: http://www.sakartvelo.info, 29th January 2004.

responsibility while the true power rested with the Communist Party elite[24]. These expectations were not entirely groundless. A lack of true debate in the Parliament on issues of security sector governance is evident. Moreover, parliamentary control over the security sector is not firm. Indeed, owing to the instability of the political landscape and the persistent economic crises, there can be no long-term parliamentary control since Parliament itself faces great difficulty in employing and retaining highly-qualified and expert staff.

The primary function of the Parliament remains in legislating on security and defence policy issues. In this respect, it determines the structure and activities of the executive branch of government, defines the numerical strength of the armed forces by passing a respective law yearly, and adopts the defence budget. However, the influence of the Parliament on the executive is weak, since it is not able to participate in the elaboration of the budget or to change the budget draft by means of parliamentary deliberation. According to the recent amendments to the Constitution, the legislative function of the Parliament could be weakened even further. The Prime Minister may call for a vote of confidence in Parliament with regard to the State Budget, Tax Code and the Law on the Structure and Activities of the Executive[25]. Moreover, the Parliament may adopt a law leading to changes in state revenues or which envisages new financial obligations of the state, only after the government consents to it[26].

Nonetheless, the Parliament approves major appointments within the security sector, even though some important appointments were made without parliamentary approval before the constitutional reform of February 2004. The Parliament consents to deployments of foreign forces in Georgia and the deployment of the Georgian military abroad, ratifies international treaties on military issues and joining international security or defence organisations, approves declarations of emergency, martial law and the mobilisation of troops. In these respects, Parliament possesses a 'war and peace' power. Parliamentary deliberations are public and, therefore, the main instrument for transparency with regard to security sector governance.

The legislature can hold hearings and ask questions[27]; set up any number of special parliamentary committees on a permanent basis to scrutinise parliamentary control of the government and prepare security policy issues for the plenary discussion[28]; set up an investigative commission[29] able to hold respective public officers accountable for their financial and political wrongdoing. The special legislation adds further responsibilities to Parliament in security sector governance. It determines state policy in respect of state secrecy[30], can form a 'Trust

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24 Gaul Wolfgang, *Verfassungsgebung in Georgien: Ergebnisse internationaler rechtlicher Beratung in einem Transformationsstaat*, (Berlin 2001) (Georgische Übersetzung), p. 147.

25 The Constitutional Amendments, adopted on 6th February, Article 18.

26 Ibid.

27 The Constitutional Amendments, adopted on 6th February 2004, Article 7.

28 The Constitution of Georgia, Article 56, Par. 1.

29 Ibid., Par. 2.

30 The Law on State Secrecy, adopted on 29th October 1996, Article 3, Par. 1.

Group' that may have access to classified information[31] and, through the Committee on Defence and Security, oversees the activities of the Intelligence Department[32] and State Security Service[33]. However, effective mechanisms which would truly facilitate the implementation of democratic control over the security sector are not well developed—and parliamentarians lack the experience given by practice and precedent that Western parliamentarians amply possess.

The Role of the Government

The Georgian Government, together with the President, implements security policy. The Cabinet proposes laws and budget drafts, and is responsible for conducting international negotiations on security policy matters and arms procurement. The key ministries with regard to security sector governance are the Defence, Security and Interior ministries. The Ministry of Defence represents a state agency overseeing the armed forces, and is thus responsible for defending the state from outside threats, as well as for the proper training and development of the Georgian armed forces and the fulfilment of defence tasks facing the country[34]. New constitutional amendments could weaken the parliamentary accountability of the Defence Ministry, which is set to be transformed into a civilian institution[35]. The principle of collective responsibility of the government lessens the possibility of differentiating between the ministers. Their political fate depends on the position of the Prime Minister. There is no place for an effective parliamentary intervention in this respect. Though the Parliament can raise the question of the responsibility of the ministers, the final decision rests with the Prime Minister[36].

Other state agencies participating in the implementation of Georgian security policy are the Ministry of Foreign Affairs, the State Department for Border Guards, the Intelligence Department and the Special Service for State Protection. The Parliament approved the structural reforms of the executive on February 11, 2004 as a result of which the Intelligence Department was be subordinated to the Security Ministry and the Border Guards Department was being merged into the Interior Ministry.

Georgian military forces include armed, border and interior forces. The armed forces are made up of Land, Air and Naval Forces. However, the Law on Defence does not exclude the creation of any other military forces by way of laws passed by Parliament[37]. Georgia has armed forces for the defence of the independence, sovereignty and territorial integrity of the country and for the fulfilment of international

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31 The Law on the Trust Group, adopted on 4th March 1998.
32 The Law on Intelligence Service, adopted on 19th March 1999, Article 16.
33 The Law on the State Security Service, adopted on 18th February 1998, Article 18.
34 Amendments to the Law on State Defence, adopted on 26th October 2001.
35 Thereafter the Chief of General Staff will undertake the operational command of military forces and become a military advisor to the President. The civilian Defence Minister will be charged with the budget, procurements and international relations.
36 The Constitutional Amendments, adopted on 6th February 2004, Article 7.
37 The Law on State Defence, Article 4.

obligations[38]. The Constitution forbids a merger of the army, police and the state security service[39]. However, the armed forces may be charged with keeping law and order within the country. This regulation constitutes an *ultima ratio* – only a subsidiary rule. In this case, parliamentary approval will be needed. Moreover, according to the Military Doctrine adopted in 1997, armed forces may be used for the restoration of public order within the state if the international community consents to this action. Although this is difficult to implement in practice, the concern of the Georgian authorities to adhere to international standards in this respect is evident.

Georgian Interior Forces, according to the Law on Interior Forces adopted on April 30, 1998, provide security within the state. They protect public order, the rule of law and human rights against crime and violence; in this respect they assist the Interior Ministry and Ministry of Security. Interior forces are charged with fighting terrorism and organized crime. Moreover, they participate in the defence of the country in wartime. The law does not specify, however, how the interior troops would be involved, or which role they would play, in wartime. During peacetime the Interior Forces are subordinated to the Interior Ministry, which, under the NATO action plan, is to be transformed into a civilian and border control state agency. The Law on Interior Forces must consequently be redefined: the Interior Troops should be demilitarised, and their military and police functions should be clearly determined in the new regulations adopted by Parliament to meet the norm outlined in Article 78 of the Constitution.

The activities of the State Security Service are regulated by the Special Law adopted on February 18, 1998. The State Security Service provides external and internal security for the country. It represents a politically neutral state agency gathering and analysing information pertaining to external and internal threats. In situations of crisis, the Security Service acts in coordination with other state agencies. However, in this respect, the clear division of competencies is still outstanding and in need of clarification. The State Security Ministry, which co-ordinates the activities of various security units, is to be transformed into a security service without the power of investigation into economic crimes.

It must be stressed that parliamentary control over the respective Ministries still remains incomplete. While there are some general tools provided under the Constitution, the special legislation does not specify these rules and does not establish any clearly-defined mechanisms of control. Furthermore, the ongoing reforms within the security sector require professional and responsible ministers with expanded competencies to take independent decisions. Under the current constitutional amendments, which establish centralised state power, ministers' individual responsibility is diminished.

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38 The Constitution of Georgia, Article 98.

39 Ibid., Article 78, Par. 2.

The National Security Council

The National Security Council established under the Constitution[40] has a wide range of competencies in terms of security sector governance. It is regulated by the law on the National Security Council of Georgia adopted on January 24, 1996. The National Security Council is an analysing, advisory, and co-ordinating state body charged with the organisation of state defence and military strengthening. The Council decides on the strategic questions of foreign and domestic policy, stability and public order. It elaborates of the National Security Concept; debates state programmes on state defence and security, and makes proposals on Georgian co-operation with international organisations. Furthermore, the Council discusses the stationing of foreign troops in Georgia; elaborates draft laws and submits staffing levels for the Armed Forces to Parliament for approval; co-ordinates inter-agency co-operation through its permanent commissions and organises this cooperation during states of emergency and periods of martial law. However, it is not accountable to Parliament for its activities and may therefore be regarded as an undemocratic state body[41]. Some experts, moreover, view the Council as a 'small cabinet' because of its broad competencies and side functions[42]. Its decisions do not formally bind the President, but still bear considerable weight in the shaping of state security policy. Generally, the Council strengthens the political position of the President.

Democratic Control, Transparency and Accountability

The Constitution stipulates certain other independent institutions that may control the activities of the Executive and Legislature in the security sector. The Constitutional Court[43] has jurisdiction over constitutional claims and disputes. The Public Defender oversees the state of affairs with regard to the implementation of human rights. Additionally, there exists the General Prosecutor's Office[44], to whom the Military Prosecutor is subordinated. The Audit Chamber controls the use of governmental revenues in the security sector[45] and is accountable to the Parliament. We shall consider the Audit Chamber first, because it is the main agency for insuring accountability.

The Constitutional Court and Public Defender represent two new institutions established under the Constitution in 1995. The Constitutional Court may resolve disputes between state agencies on the division of competencies in the security sector, decide on individual claims in respect of human rights' violations by state authorities, and rule on the constitutionality of signed international agreements prior to

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40 The Constitution of Georgia, Article 99.

41 Gaul, Wolfgang, p. 241.

42 Archil Osidze & Ivlian Haindrava, 'Civil-Military and Interagency Cooperation in the Security Sector Reform in Georgia', in Philipp H. Fluri & Velizar Shalamanov (eds.), *Security Sector Reform, Does it Work?*, (?: Sofia, 2003), p. 195.

43 The Constitution of Georgia, Article 83, Par. 1.

44 Ibid., Article 91.

45 Ibid., Article 97.

their ratification by Parliament. In addition, the Court enjoys certain other competencies provided under the Constitution[46]. The Constitutional Court recently started proceedings in connection with one of the first cases directly related to the constitutional division of competences between the centre and regions in the security sector.

General courts have jurisdiction over legal disputes arising from the implementation of the legislation on social security, call-up, deferment, conscription, the legal status of the military, and crimes stipulated by the Criminal Code of Georgia. They may, furthermore, facilitate the implementation of fundamental human rights enshrined in both the Constitution and the European Convention on Human Rights. The investigation into a crimes committed by members of the military forces are carried out by the Military Prosecutor's Office of Georgia. There are no special military courts but the Parliament can establish them during a state of war.

The Parliament appoints a Public Defender. There is no military ombudsman in Georgia, and, therefore, human rights' violations within the military are the Public Defender's concern. He can enter military installations to investigate and to request information from those involved or suspected of involvement in any alleged violation[47]. State authorities are obliged to help the Public Defender in exercising his functions. The Public Defender may propose amendments to the legislation, recommend state agencies to act properly, or initiate criminal or constitutional proceedings in courts. He can approach the President or report to Parliament on actual human rights' violations. The Public Defender can contribute to the transparency and public discussion by informing the public through the mass media about the results of his activities. However, his decisions are not legally binding and are often simply ignored. For example, in 2001, the Public Defender submitted a recommendation to the Parliament that a Parliamentary Commission be set up to investigate and study the reasons behind instances of homicide and suicide in the armed forces. However, this recommendation did not lead to the establishment of the recommended Commission[48].

The restriction of human rights can be a grave problem in a country like Georgia beset with domestic crises. When limiting human rights in the security interest of the community, the state authorities must observe the principles of legality and proportionality. In all cases of restriction, the Parliament should have some control over the respective state agency. According to the Law on State Secrecy adopted on October 29, 1996, no information may be qualified as a state secret if this endangers human rights or public health and safety. However, the greater share of information related to defence and security is nonetheless classified as such. The actual legislation on state secrets should be amended in line with the interests of civil society and of human rights. All laws and international treaties related to human rights

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46 Ibid., Article 89.

47 The Law on Public Defender, adopted on 16th May 1996.

48 Report of the Public Defender of Georgia on the Situation of the Protection of Human Rights and Freedoms in Georgia, Second Half of 2001, p. 34, in: http://www.ecoi.net/pub/mv170_publicdefender-geo.pdf

protection must be published and made accessible to ordinary citizens. In practice, citizens' awareness of the existing and not systemically published laws and international treaties involving Georgia (i.e. those which may be applied directly within the state) is very low, which makes security sector governance less effective.

Security Sector Governance in Emergency Situations

Constitutions provide for emergency situations, when a state of emergency can be declared in cases of war, mass disorder, and violation of national territorial integrity, military coup, armed insurrection, environmental disaster or epidemic or in other cases where state agencies are unable to exercise their functions properly. Georgia has encountered emergencies, external and domestic, larger and smaller in scope. There was a military coup in 1992 removing the President from power; there have been military insurgencies; there was the Rose Revolution where a President resigned from office—reluctantly—after having to flee from the building of the Parliament. In this section, we shall consider the rights and role of the Parliament in emergencies.

The decision of the President to declare a state of emergency or to impose martial law must be submitted to the Parliament within 48 hours for approval[49]. During a state of emergency or a period of martial law, the President of Georgia is authorised to restrict the exercise of certain rights and freedoms enshrined in the Constitution. If the Parliament does not consent to the declaration of the state of emergency or the imposition of martial law, the Presidential decision will have no legal effect. Furthermore, Parliament must give its consent to any prolongation of the state of emergency. According to the new constitutional amendments, the Parliament, which has been dismissed by the President, convenes to approve or to prolong the state of emergency or state of war. If the Parliament does not convene or does not approve the presidential decision on the state of emergency within five days, it will be dissolved. The state of war must be terminated if the Parliament does not confirm it within 48 hours[50].

The Constitution does not provide to which extent respective rights can be restricted and does not specify any system of control over these restrictions. The Parliament may convene on its own initiative and sit until the end of a particular situation. This regulation aims at the prevention of power abuse by state agencies in an emergency situation. However, it does not provide any concrete mechanisms in this respect for how Parliament might continue to oversee the activities of state authorities during the state of emergency. In addition to human rights' restrictions, the use of military force during the state of emergency is prohibited without a parliamentary agreement. Thus, Georgian law establishes the formal supremacy of the Georgian Parliament in the declaration and abolition of a state of emergency. However, during the state of emergency itself, the President possesses superior power. He

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[49] The Constitution of Georgia, Article 73, Par. 1.

[50] The Constitutional Amendments, adopted on 6th February 2004, Article 5.

issues binding decrees and is ultimately responsible for state defence, security and public order.

The Constitution does not explicitly envisage a parliamentary agreement *a posteriori*. Given that a state of emergency, in most cases, represents an immediate danger to the community that must be prevented rapidly and that parliamentary deliberations may prove time-consuming, it seems problematic to tag an *a priori* approval of the Parliament onto an ongoing crisis situation. It is, on the other hand, self-evident that the declaration of a state of emergency can be abused by an undemocratic regime if there is no parliamentary control in place. Georgia has suffered from such an instance of abuse in one of its regions, where the local leader declared a state of emergency and restricted political rights disproportionately.

We will here consider two cases where the President acted to quell military disobedience, in 1998 and 2001, because they illuminate the question of Presidential actions and Parliamentary consent. On October 19 1998 Colonel Akaki Eliava with a group of supporters joined by some 130-150 servicemen seized weapons and some heavy armaments and set off for Kutaisi, the country's second largest city. The mutineers demanded Shevardnadze to resign and restore the "legitimate" government of former President Gamsakhurdia. Blocked by units of the Armed Forces, there was exchange of gunfire with casualties. Shevardnadze called upon the rebel leaders to lay down arms and said he was ready to declare emergency law in the country. By October 20 the rebels had been disarmed, active leaders arrested, though Eliava had escaped. Thereupon Shevardnadze declared the mutiny over and no need to declare emergency law. Nonetheless, Shevardnadze ordered the use of armed forces without a formal *a priori* agreement of the Parliament. At a session of the Parliament on October 19, the Chairman of reporting on regarded the revolt as "… an attempt at a *coup d'etat* and at bringing about chaos in the country". A Parliamentary session on October 20 supported the President's actions without raising the issue of whether a declaration of emergency, and the Parliament's *a priori* consent to the Government actions had been required—presumably because that would have delayed and limited the room for manoeuvre of the officials in charge. Therefore, the activities of the Parliament in this respect could be qualified as tacit consent.

On May 20, 2001 a unit of the Armed Forces numbering some 400 servicemen refused to obey the orders of their Commander and moved to the area of the Mukhrovani near Tbilisi, seizing facilities of Interior Ministry troops. The reason for their disobedience was non-payment of wages and other social grievances. Armed Forces blocked the base. President Shevardnadze demanded the insurgents to surrender. The Parliament reacted immediately, convoked a closed-door emergency session of the parliamentary bureau, the supreme administrative body of the Parliament, in which all groups and committees are represented, although it does not possess explicit legal authority. After the session, the members of Parliament declared that the force of arms was not to be used against the insurgents, unless the situation had come to an impasse. Thus, the Parliament entrusted the Executive with deciding how the

situation could be dealt with, but called on the government to do everything to bring the crisis to a peaceful end as soon as possible. Shevardnadze negotiated personally with the insurgents, and the battalion returned to its place of station. Thereby, the Parliament accepted the decision of the Executive by not restricting its power of discretion to use force.

On November 22 demonstrators took over the Parliament building, where Shevardnadze was scheduled to address the first session of a new legislature. Compelled to abandon his address he fled to his official residence, issued a statement condemning the events as an attempted *coup d'etat* and said he had no alternative but to declare a state of emergency and restore order with the help of the Interior Ministry and the Armed Forces. Burdjanadze, as Chair of the outgoing Parliament, immediately declared that in accordance with the Constitution she assumed presidential powers. The dramatic situation ended with Shevardnadze resigning in return for immunity from prosecution. The US recognized Burdjanadze as acting President.

The solution was a political one, with domestic and international actors. Thus it circumvented a constitutional solution, which, even in calmer political circumstances than those of November 2003 would have been a complicated subject to resolve. The Constitution requires that in order for the state of emergency to come into force, it must be ratified by Parliament within 48 hours. If that happens, Parliament must remain in session until the state of emergency is lifted. Neither parliamentary nor presidential elections may be held while a state of emergency remains in force. Moreover, the Constitution precludes a Parliament debate on impeaching the President as long as a state of emergency is in effect. Shevardnadze could be legally removed only by a two-thirds vote by the outgoing Parliament, but the Constitution precludes a Parliament debate on impeaching the President as long as a state of emergency is in effect. A legal interpretation on the constitutionally valid powers of the Parliament in this contradictory situation would test the skills of constitutional law experts.

Generally speaking, the executive should be able to order armed operations in situations of immediate danger and thereupon seek parliamentary approval as soon as possible. The new constitutional amendments weaken the position of Parliament in this respect. The presidential power on the use of force will be strengthened. According to the new amendments to the Constitution, the President decides on the use of force and submits it to the Parliament for approval within 48 hours[51]. The Parliament confirms the presidential decision. According to the prior constitutional provision, the use of force was forbidden without parliamentary consent. Thus the presidential powers have increased.

Social Security and the Legal Status of the Military

The Constitution of Georgia provides for military duty for every Georgian citizen[52]. According to the Law on the Status of Military Personnel adopted on July 25, 1998, the state guarantees the social and legal protection of military servicemen and their families. The state also has to guarantee the equality of all members of the military. Thus, the

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[51] Ibid., Article 24.

[52] The Constitution of Georgia, Article 101.

authorities are obliged to prevent corruption and other forms of discrimination within the security sector. However, that the state has hitherto been unwilling to fight corruption and has been fully unable to provide elementary living conditions for the military. Discontent and mutinies within the armed and interior forces that took place between 2001 and 2003 stemmed from a widespread discontent from the social circumstances of military personnel. After the Mukhovani mutiny, largely caused by degrading life for service members, in May 2002, Interior Ministry Forces mutinied; in July 2002, 100 young army officers resigned, accusing the Ministry of Defence of corruption; in March 2003 army officers entered the Isani military base and demanded their wages.

After Mukhovani, President Shevardnadze told journalists that he had given the soldiers his "word as the President and Commander-in-Chief that none of them would be troubled by an investigator because the state itself is no less guilty for what has happened". He continued, "If our servicemen lived in normal conditions, there would have been no mutiny". Shevardnadze stressed that the country's leaders "bear moral responsibility for the incident" and that "the authorities and the country's population should pay more attention to the army" [53]. As the Head of State and the Supreme Commander in Chief of the military, Shevardnadze had been in the best position to observe the dire plight of the Armed Forces.

According to Colonel Avtandil Davitadze, the head of the Defence Ministry's financial department, the situation in the Army was catastrophic. The stockpile of foods had been gradually exhausted; there was no money to purchase new uniforms for recruits; officers had not received their salaries for the last four months. As it appeared later, the money was used in the "black" alcohol business. In March of that year, two officers of had committed a suicide for financial hardships and inability to maintain their families. Moreover, the military is beset with problems of social discrimination, as it is mainly young people from impoverished families, who can not afford a payment for call-up deferments, who serve in the army. The Law on Alternative Labour Service adopted in 1997 was not implemented until 2002.

International Peacekeeping

All International agreements on the participation of Georgian troops in peacekeeping, peace enforcement and all other peace operations must be ratified by Parliament in accordance with the law on the Participation of Georgian Armed Forces in Peacekeeping Operations adopted on July 22, 1999. The main responsibilities for decision making and the co-ordination of the participation in international peacekeeping are divided between the President, Parliament, the Foreign Affairs Ministry and the Defence Ministry. If the Government plans to participate in peacekeeping operations that may include the use of force, the Foreign Affairs Ministry must negotiate a draft agreement with that respective

[53] Pravda online, http://english.pravda.ru/cis/2001/05/26/5985.html,CNN "Georgia mutiny troops return to base", May 26, 2001, in: http://www.cnn.com/2001/WORLD/europe/05/26/georgia.army/index.html.

country, which determines the number of deployed troops, their stationing, tasks, readiness and means of participation. This widens the scope for parliamentary consent. It must be assumed that the legal power over ongoing operations does not pass to Parliament, but instead rests with the Executive. The Parliament does not have the right to recall the deployed troops.

Once a year, the Foreign and Defence Ministries of Georgia submit a report to Parliament concerning the participation of Georgian forces in peacekeeping, peace-enforcement and other peace operations[54]. Georgia's capabilities in peacekeeping operations are limited; for the time being the Parliamentarians are unlikely to have an urgent interest in controlling them. However, the Parliament should be kept informed about any ongoing peace operation on a regular basis by means of its Defence or Foreign Relations Committee. Equally, parliamentarians who are experts in that field should also be included in any delegations sent to visit deployed forces.

The fight against terrorism has been one of the most crucial security challenges for Georgia in the last few years. After the attacks of September 11, 2001, the issue of terrorism is now discussed in terms of state sovereignty. In this respect, a new role for Parliament in controlling the activities of state authorities, which bear the responsibility for fighting terrorism, must be defined and founded on a clear constitutional basis. According to the recent practice with regard to the deployment of US military specialists in Georgia, co-operation with other countries to fight international terrorism must also be placed under the Georgian Constitution and approved by Parliament.

Conclusion

During the last decade Georgia has been undergoing almost continual changes in its political system, which has effectively hindered the establishment of a consolidated security sector. The Parliament, whose primary function is to control the Government, has been dominated mainly by the Executive. The adoption of the Constitution had to guarantee the stability of the political system on the one hand, and establish a stronger Parliament on the other. But its suitability already been brought into question by 2001, when the President announced plans to introduce a cabinet system and consolidate his power. After the revolutionary change in 2003 the new political leaders of the country strengthened the Presidency through the establishment of a Cabinet to be headed by the Prime minister. Thus the syndrome of constitutional ambiguity concerning the Parliament and Executive domination in policy seems set to persist.

Defence reform and an overall reform of the security sector are under way in Georgia. After the 'Rose Revolution' the government that came into office undertook a broad and far-reaching reform of the security sector, in the Ministry of Defence, Interior, the Border Guards, and intelligence. The defence budget of the Armed Forces has been

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[54] The Law on the Participation of Armed Forces of Georgia in Peacekeeping Operations, adopted on 22nd July 1999, Article 10.

significantly increased. A National Security Concept is being developed, and the Parliament will consider it. To some extent, the security sector reforms are driven by domestic needs, because security sector malfunctioned, to some extent, by foreign policy considerations. The Government has declared a certain course toward the EU and NATO membership, and hopes to get admitted to the Membership Action Plan. Both NATO and the EU pay attention to security and defence reforms. But both are just as much interested in the political and democratic side of reform. They look intently at the role of Parliaments in defence and security.

Among the goals that Georgia's Government has to attain are: planning force improvement, defence resource management, economic policy, and improvement of interoperability of armed forces with NATO, which provides evaluation of a country's progress, provides technical and political guidance, and supplies defence planning expertise. This is the security and defence part of the reform. There also is a political part. Countries that intend to join the MAP (and, in the future, NATO) pursue internal policies based on strengthening democracy and the rule of law, respect for human rights, the principle of separation of powers and judicial independence, democratic elections, political pluralism, and freedom of speech and press. This will include ensuring the adaptation of all relevant legislation in pursuit of these policies.

Georgia has certainly created a strong framework of civilian control over the security sector and the Government is bent on reform. But the parliamentary sector within the framework is not very strong. It will be difficult to balance the self-contained and unaccountable Executive if democratic control is not institutionalised through an effective Parliament. Moreover, the preventive and controlling function of parliamentary consent to the activities of the Executive with regard to security sector governance could be weakened within the new system. Parliament will come under pressure to consent to the respective decisions of the President and Government. As a result, parliamentary involvement in security sector governance could be marginalised. Past experience teaches that the personal and unilateral decisions in this respect during the last decade in Georgia have led to many acute problems in state-building, the establishment of democracy, conflict prevention, the promotion of human rights and dealing with external threats. In view of this, an optimal balance between the branches of government, and between democracy and effectiveness, must be maintained and improved through the institutional practice and civil society's involvement in such a way that the people's sovereignty, as guaranteed under the Georgian Constitution, is not undermined.