



DEMOCRATIC OVERSIGHT OF THE INTELLIGENCE SERVICES

INTERNATIONAL STANDARDS AND GOOD PRACTICES

Tbilisi, February 2021

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Introduction

This study presents an overview of international standards and best practices of democratic oversight of intelligence services with a particular focus on the role of the civil society.

After 30 years from regaining independence from the Soviet Union, Georgia continues to face challenges as a result of politicization and lack of oversight of its intelligence services.

The State Security Service of Georgia (the SSS) is the main intelligence service responsible for counterintelligence, counterterrorism, and anti-corruption efforts.¹ The functions of the SSS include prevention and addressing of internal and external security threats through intelligence collection and analysis, the use of preventive and coercive measures, including the use of force and special equipment, and investigation of crimes relevant to its mandate. It is also responsible to ensure nuclear, radiation, chemical and biological safety at the border crossing points of Georgia and to prevent, identify and eliminate illegal circulation of weapons of mass destruction. The Head of the Service is appointed by the Parliament upon the nomination by the Prime Minister and the Government, with a simple majority of votes. The term of the office is six years. The same person can be appointed for two consecutive terms. The Head of Service is responsible for submitting annual reports to the Parliament.

The Georgian Constitution lacks specific provisions for democratic oversight of the security sector, hence, the State Security Service is subject to general Parliamentary and financial oversight provisions.² Parliamentary Rules of Procedure mandate the Defense and Security Committee to oversee activities of the national security and intelligence agencies (Art. 156).³ In addition, the Group of Trust composed of five members of the Defense and Security Committee oversees classified defense and security sector activities and classified parts of the defense budget (Art. 159). The Group of Trust meetings are held in camera and its members are required to protect any state secrets they become aware of while carrying out their duties (Art. 158). However, members of the Group of Trust do not have unlimited access to information. For instance, the Group of Trust is not permitted to request information on covert activities and covert programs (Art. 159.1). The State Security Service and other agencies may refuse sharing of requested information in the interests of “the national/public security and the State’s national interests” (Art. 159.3). The Group of Trust may inspect, no more than twice a year, the legal entity of public law – the Operative-technical Service responsible to effectuate secret surveillance (Art. 159.12). At the same time, the State Inspector’s Service has the mandate to inspect the legality of secret surveillance carried out within the scope of an ongoing criminal investigation, including criminal investigations by the State Security Service. However, it is not authorized to review the legality of secret surveillance for intelligence and counterintelligence purposes.⁴ The State Inspector’s Office acts as an individual complaint review authority.⁵ Citizens and organizations may address to the Public Defender of Georgia if they consider that their human rights were violated by the intelligence services.⁶ However, the Public Defender may only issue non-binding recommendations to the state agencies and the Parliament.

¹ The Law of Georgia on the State Security Service of Georgia. July 8, 2015. <https://matsne.gov.ge/en/document/view/2905260?publication=1>

² Constitution of Georgia, August 24, 1995. <https://matsne.gov.ge/en/document/view/30346?publication=36>

³ Rules of Procedure of the Parliament of Georgia. December 6, 2018, art. (in Georgian). <https://matsne.gov.ge/ka/document/view/4401423?publication=18>

⁴ The Law of Georgia on Personal Data Protection. December 28, 2011, art. 3. <https://matsne.gov.ge/en/document/view/1561437?publication=9>

⁵ Ibid, art. 26. See also, the Law of Georgia on the State Inspector Service, art. 15.

⁶ The Organic Law of Georgia on Public Defender. May 16, 1996, art.13-14 1. <https://matsne.gov.ge/en/document/view/33034?publication=18>

Georgian independent watchdog organizations and international reports suggest a weak oversight and politicization of the security Services in Georgia. In a joint report, prominent non-governmental organizations (hereafter NGOs) criticized the lack of statutory provisions on the independence of the State Security Service, the absence of legislative safeguards against politicization of the security service, the overwhelming powers of the Service, especially the authority to use coercive force and to operate detention facilities,⁷ and the lack of effective Parliamentary oversight in practice.⁸ Recent OSCE-ODIHR Elections Observation Reports cited main opposition parties' and local watchdogs' reports concerning intimidation of opposition and civic activists by the State Security Service,⁹ and the opening of investigations by the State Security Service shortly before elections, which, according to the reports, affected the image and reputation of opposition candidates.¹⁰ The U.S. Department of State's recent Human Rights Practices in the World Report referenced local watchdog organizations' concerns regarding the State Security Service of Georgia's secret surveillance system and its lack of political neutrality and weak oversight.¹¹

The present document provides a review of international standards and best practices of the democratic oversight of the intelligence services and the ways in which the civil society can engage in public oversight independently, or in cooperation with the oversight bodies.

Research scope and methodology

The organization of intelligence agencies varies from one jurisdiction to another. Different terminologies are used by various lawmakers and international organizations. In some cases, the terms “security services” and “intelligence services” are used interchangeably, while in others, the intelligence services form part of the security service agencies, or perform different roles depending on the nature of the threats, whether they come from domestic actors (security service), or from foreign actors (intelligence service).

For the purpose of this study, the term “intelligence service” refers to the institutions tasked by national legislation to collect, process and analyze information with an aim of enabling decision-making on addressing national security risks posed by domestic or foreign actors.¹²

This study is based on the following research methodologies:

- 1) Desk review of the academic research focused on the democratic oversight of intelligence services.
- 2) Desk review of the applicable international standards and best practices;
- 3) Desk review of legislation and official data of selected jurisdictions.

The study aims to answer the following research questions:

⁷ Transparency International Georgia, the Human Rights Education and Monitoring Center (EMC). *Reform of the Security Service in Georgia. Results and Challenges*. 2018, 9-10.

⁸ „EMC responds to the report from the State Security Service.” The Human Rights Education and Monitoring Center, April 24, 2020. <https://socialjustice.org.ge/en/products/emc-sakhelmtsifo-usaftrkhoebis-samsakhuris-qoveltsliur-angarishs-ekhmaureba>

⁹ OSCE-ODIHR. *Limited Election Observation Mission Final Report. Georgia Parliamentary Elections, 31 October 2020*. <https://www.osce.org/files/f/documents/1/4/480500.pdf>; U.S. Department of State. 2020 Country Reports on

¹⁰ OSCE/ODIHR Election Observation Mission Final Report. Georgia Parliamentary Elections, 8 and 30 October 2016, 16. <https://www.osce.org/files/f/documents/e/e/297551.pdf>

¹¹ U.S. Department of State. 2020 Country Reports on Human Rights Practices: Georgia. March 30, 2021. <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/georgia/>

¹² Caparini, Marina. "Controlling and Overseeing Intelligence Services in Democratic States." In: *Democratic control of intelligence services: Containing rogue elephants*. Ed. by Hans Born and Marina Caparini (2007): 4.

- 1) Which international standards refer to the democratic oversight of the intelligence services?
- 2) What are the basic requirements and best practices of the democratic oversight of the intelligence services?
- 3) How is the oversight carried out by Parliamentary and expert oversight bodies with the selected jurisdictions? and
- 4) In which ways can national and international NGOs contribute to the oversight of the intelligence services.

The study does not cover the oversight of intelligence service in terms of budget and financial oversight and the anti-corruption monitoring.

The study reviews international standards developed within the United Nations, Council of Europe, Organization for Security and Co-operation in Europe (OSCE) and North Atlantic Treaty Organization (NATO). Existing systems in the United Kingdom, the United States, Norway, Croatia, Finland, and Germany are reviewed. Those jurisdictions were chosen based on the following criteria: intensity of the oversight activities in recent years (the United States, the United Kingdom and Germany); countries where civil society actively engages in intelligence oversight (United States, United Kingdom, Germany and Croatia); and countries which have introduced intelligence oversight reforms with the aim of inclusion of the civil society (Croatia, Norway and Finland).

International Standards

In a democratic society, intelligence services must carry out their activities in accordance with the state's Constitutional and international human rights obligations. Depending on the functions of the intelligence services, a wide range of human rights - from the right to life, the right to personal integrity and liberty to the right to privacy can be jeopardized. In all circumstances, intelligence services must comply with the International Covenant on Civil and Political Rights and the Convention on the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights).

European Court of Human Rights analyzes the system of the external oversight and complaint review process as part of the legal analysis of the applications concerning secret surveillance and the violation of the right to privacy (Article 8 of the European Convention on Human Rights). The Court will inquire whether there are “adequate and effective guarantees against abuses” in order to assess whether an interference into the right to privacy (Article 8 of the Convention) through secret surveillance was “strictly necessary.”¹³ The Court will review, in particular, whether the system of *pre-* and/or *ex-post facto* supervision of the secret surveillance activities and the complaint review process provided sufficient safeguards against arbitrariness.¹⁴ The Court considers that the judicial control should be available, but if the review of complaints is carried out by non-judicial bodies, such bodies must be “independent of the authorities carrying out the surveillance,” and should have “sufficient power and competence to exercise an effective and continuous control.”¹⁵

¹³ ECHR, *Klass and Others v. Germany*, para. 50.

¹⁴ ECHR, *Klass and Others v. Germany*, para. 50; *Weber and Saravia v. Germany*, para. 106; *Kennedy v. the United Kingdom*, para. 153.

¹⁵ ECHR, *Roman Zakharov v. Russia* [GC], No. 47143/06, 5 December 2015, para. 275.

The UN, the OSCE and the CoE have adopted non-binding recommendations, standards and good practices concerning democratic oversight of the intelligence services. They unanimously call for effective democratic oversight of the security sector and intelligence services and provide guidance concerning the organization, independence and effectiveness of the oversight bodies, including access to necessary resources and classified information. Another source of international good practices are non-binding principles and standards developed by private non-governmental actors. Most of these documents address Parliamentary and expert/judicial oversight, while some of them advocate specifically for the inclusion of civil society in the security sector/intelligence oversight.

The United Nations Organization

The **UN Human Rights Committee’s General Comment N16 on the Right to Privacy (1988)** stresses the importance of exercising control over the bodies authorized to conduct surveillance.¹⁶ It requires the States to report on national complaint review procedures concerning arbitrary and unlawful interference with the right to privacy (Para. 6).

“6. [...] It is also indispensable to have information on the authorities which are entitled to exercise control over such interference with strict regard for the law, and to know in what manner and through which organs persons concerned may complain of a violation of the right provided for in article 17 of the Covenant. [...] State party reports should also contain information on complaints lodged in respect of arbitrary or unlawful interference, and the number of any findings in that regard, as well as the remedies provided in such cases.”

The **United Nations General Assembly’s Resolution on the United Nations Global Counter-Terrorism Strategy Review (2018)**¹⁷ urges all states to protect the right to privacy, while countering terrorism, in accordance with the international human rights law, and “*to ensure that interferences with or restrictions on that right [...] are subject to effective oversight and to appropriate redress, including through judicial review or other legal means*” (Para. 19).

In its latest **Resolution on The Right to Privacy in the Digital Age (A/RES/75/176)**, the **United Nations General Assembly (2020)** calls the States to establish or maintain independent, impartial, effective and adequately resourced oversight bodies and provide effective remedy to those whose right to privacy has been violated by illegal or arbitrary State surveillance. The Resolution specifically encourages consultations with the civil society while developing legislation concerning effective sanctions and remedies for the abuses of the right to privacy.¹⁸

“Paragraph 7

(d) To establish or maintain existing independent, effective, adequately resourced and impartial judicial, administrative and/or parliamentary domestic oversight mechanisms capable of ensuring transparency, as appropriate, and accountability for State surveillance of communications, their interception and the collection of personal data;

(e) To provide individuals whose right to privacy has been violated by unlawful or arbitrary surveillance with access to an effective remedy, consistent with international human rights obligations;

¹⁶ *General Comment N16: Article 17 (the Right to Privacy). The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation*, adopted by the UN Human Rights Council on its Thirty-second session on April 8, 1988.

¹⁷ United Nations General Assembly Resolution on The United Nations Global Counter-Terrorism Strategy Review (A/RES/72/284), adopted by the General Assembly on June 26, 2018, http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/a_res_72_284.pdf

¹⁸ United Nations. Resolution on The Right to Privacy in the Digital Age (A/RES/75/176), adopted by the General Assembly on December 16, 2020. <https://digitallibrary.un.org/record/3896430?ln=en>

(f) To consider developing or maintaining and implementing adequate legislation, in consultation with all relevant stakeholders, including business enterprises, international organizations and civil society, with effective sanctions and appropriate remedies, that protects individuals against violations and abuses of the right to privacy, namely through the unlawful and arbitrary collection, processing, retention, sharing or use of personal data by individuals, Governments, business enterprises and private organizations.“

The Report of the United Nations Special Rapporteur to the UN Human Rights Council on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, also known as the **UN Good Practices on Intelligence Collection and Oversight (2010)**¹⁹ enumerates 35 good practices concerning gathering of intelligence and oversight of the intelligence services.

Good Practices 6-8 lay out requirements for effective oversight in terms of the status, independence and powers of the oversight bodies, including Parliamentary and independent oversight institutions. These standards require at least one civilian oversight institution that is independent of both the intelligence and the executive. The oversight bodies should be able to check all aspects of intelligence services, including legality, effectiveness, efficiency, finances and administrative practices. More importantly, they must have full access to all relevant information and take necessary measures to protect classified information.

***Practice 6.** Intelligence services are overseen by a combination of internal, executive, parliamentary, judicial and specialized oversight institutions whose mandates and powers are based on publicly available law. An effective system of intelligence oversight includes at least one civilian institution that is independent of both the intelligence services and the executive. The combined remit of oversight institutions covers all aspects of the work of intelligence services, including their compliance with the law; the effectiveness and efficiency of their activities; their finances; and their administrative practices.*

***Practice 7.** Oversight institutions have the power, resources and expertise to initiate and conduct their own investigations, as well as full and unhindered access to the information, officials and installations necessary to fulfil their mandates. Oversight institutions receive the full cooperation of intelligence services and law enforcement authorities in hearing witnesses, as well as obtaining documentation and other evidence.*

***Practice 8.** Oversight institutions take all necessary measures to protect classified information and personal data to which they have access during the course of their work. Penalties are provided for the breach of these requirements by members of oversight institutions.*

Good Practices 9-10 relate specifically to the review of individual complaints by courts and independent oversight institutions, such as the ombudsperson institutions. The good practices require that such oversight bodies be independent of the intelligence services and the executive, and have full and unhindered access to all the relevant information, including classified material. Moreover, these institutions should be able to issue binding decisions.

***Practice 9.** Any individual who believes that her or his rights have been infringed by an intelligence service is able to bring a complaint to a court or oversight institution, such*

¹⁹ United Nations Human Rights Council (17 May 2010), “Compilation of good practices on legal and institutional frameworks and measures that ensure respect for human rights by intelligence agencies while countering terrorism, including on their oversight” (A/HRC/14/46), also known as “UN good practice on intelligence collection and oversight.” <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/134/10/PDF/G1013410.pdf?OpenElement>

as an ombudsman, human rights commissioner or national human rights institution. Individuals affected by the illegal actions of an intelligence service have recourse to an institution that can provide an effective remedy, including full reparation for the harm suffered.

Practice 10. *The institutions responsible for addressing complaints and claims for effective remedy arising from the activities of intelligence services are independent of the intelligence services and the political executive. Such institutions have full and unhindered access to all relevant information, the necessary resources and expertise to conduct investigations, and the capacity to issue binding orders.*

The Organization for Security and Co-operation in Europe

OSCE Code of Conduct on Politico-Military Aspects of Security (1994)²⁰ is a key international document, which requires the democratic control of the intelligence services and emphasizes the role of the civil society.

According to Paragraph 20 of the Code, *“The participating States consider the democratic political control of [...] internal security forces as well as of intelligence services [...] to be an indispensable element of stability and security.”*

The OSCE Code of Conduct explicitly highlights the role of the cooperation between the armed forces and civil society, and considers it as an important expression of democracy. Namely, Paragraph 20 of the Code states that the participating states *“will further the integration of their armed forces with civil society as an important expression of democracy.”* It is worth noting that the wording of this sentence is somewhat ambiguous since it does not literally refer to the democratic oversight of military or civilian intelligence services by the civil society, but rather encourages the participating States to foster armed forces’ cooperation with civil society.

Paragraph 21 of the Code mandates member states to maintain effective control of security forces by Constitutionally established democratic authorities and to ensure that those authorities fulfil their Constitutional responsibilities:

Each participating State will at all times provide for and maintain effective guidance to and control of its military, paramilitary and security forces by constitutionally established authorities vested with democratic legitimacy. Each participating State will provide controls to ensure that such authorities fulfil their constitutional and legal responsibilities. They will clearly define the roles and missions of such forces and their obligation to act solely within the constitutional framework.

The Council of Europe

The **Council of Europe Parliamentary Assembly** in its **Resolution 2045/2015** called on member States to ensure that their intelligence services, including their foreign cooperation activities are subject to adequate control by judicial and/or Parliamentary mechanisms and that oversight bodies have sufficient access to information and expertise (Para. 19.2).²¹

²⁰ OSCE, Code of Conduct on Politico-Military Aspects of Security, DOC.FSC/1/95, adopted at the 91st Plenary Meeting of the Special Committee of the CSCE Forum for Security Co-operation in Budapest on 3 December 1994 (FSC/Journal No. 94).

<https://www.osce.org/files/f/documents/5/7/41355.pdf>

²¹ Council of Europe. Parliamentary Assembly. Resolution N2045/2015, adopted by the Assembly on 21 April 2015.

<https://pace.coe.int/en/files/21692/html>

“19. The Assembly therefore urges the Council of Europe member and observer States to: 19.2 ensure [...] that their intelligence services are subject to adequate judicial and/or parliamentary control mechanisms. Those responsible for national control mechanisms must have sufficient access to information and expertise and the power to review international co-operation without regard to the “originator control” principle, on a mutual basis.”

The North Atlantic Treaty Organization

Georgia’s ambition to join the North Atlantic Treaty Organization necessitates compliance with NATO membership criteria, which requires, among other factors, the existence of effective civilian oversight of armed forces, including of an armed forces intelligence service. The North Atlantic Treaty Organization’s **Study on NATO Enlargement (1995)** is the primary document, which sets out technical and political conditions for the NATO membership. Specifically, Paragraph 72 of the Study stipulates: “Prospective members will have to have [...] *“established appropriate democratic and civilian control of their defense force.”*²² Paragraph 34, NATO’s Partnership for Peace cooperation framework with non-member states includes helping *“partners to further develop democratic control of their armed forces and transparency in defense planning and budgeting processes.”* Indeed, as part of NATO’s ongoing assistance for Ukraine and Georgia, professional training for military and related security institutions, including the intelligence services are being provided in order to improve civilian officials’ capacity to oversee the military and security sectors.²³

Standards developed by non-governmental actors

The Ottawa Principles on Anti-terrorism and Human Rights (2006) are an important source of good practices concerning the civil society oversight.²⁴ The document was developed by independent experts and human rights organizations. Part 9 of the Principles is exclusively dedicated to the oversight, review and control of security intelligence agencies. It particularly calls for the participation of civil society in the democratic oversight alongside Parliamentary, independent and judicial oversight bodies (para. 9.1.1). The Principles state that the oversight should include review of propriety (legality); effectiveness; transparency; legitimacy and accountability of security service activities (para. 9.1.2). The Ottawa Principles particularly emphasize the role of the independent review bodies (expert bodies) which should be independent from the government and institutions they oversee. Such bodies should have at least two functions: the review of the propriety (legality) of security service activities, including their policies and practices; and the review of individual complaints (para. 9.3). The Principles insist that the oversight bodies be granted with access to all levels of classified information and publish their activity reports (para. 9.1.5, 9.3.3.b, d).

Parliamentary oversight

Best Practices

Born and Leigh in their **Legal Standards and Best Practice for Oversight of Intelligence Agencies (2005)** suggest that *“the entire intelligence community, including all ancillary*

²² The North Atlantic Treaty Organization. Study on NATO Enlargement, September 3, 1995. https://www.nato.int/cps/en/natohq/official_texts_24733.htm

²³ The North Atlantic Treaty Organization. NATO Summit Guide Brussels, 11-12 July 2018. https://www.nato.int/nato_static_fl2014/assets/pdf/pdf_2018_07/20180718_180711-summit-guide-brussels.pdf

²⁴ The Ottawa Principles Anti-terrorism and Human Rights, 2006. Final Version as of 8 February 2007. <https://www.refworld.org/docid/470e0e642.html>

departments and officials, should be covered by the mandate of one or more Parliamentary Oversight bodies.”²⁵ In terms of the scope of the oversight, they recommend that the oversight body’s mandate could include some or all of the following:

- “(a) legality,
- (b) efficacy,
- (c) efficiency,
- (d) budgeting and accounting,
- (e) conformity with relevant human rights Conventions,
- (f) policy/administrative aspects of the intelligence services.”²⁶

According to **the Council of Europe’s Commissioner for Human Rights**, Parliaments may achieve the “democratic” aspect of oversight through, primarily:

- “ensuring that national laws provide for comprehensive oversight of security services;
- allocating the necessary budgetary resources to non-parliamentary oversight institutions;
- overseeing the work of expert oversight bodies;
- keeping under review the efficacy of oversight institutions;
- conducting ongoing scrutiny and ad hoc inquiries into security service activity.”²⁷

The Commissioner recommended that all aspects and phases of the collection (regardless of method of collection or provenance), processing, storage, sharing, minimization and deletion of personal data by security services be subject to oversight by at least one institution that is external to the security services and the executive.²⁸ The recommendations also state that the review of legality should include the assessment of the restrictions of the right to privacy and family life, the rights to freedom of expression, assembly, association and religion, thought and conscience. The mandate of the oversight bodies should include supervision of the foreign cooperation in the field of intelligence sharing, joint operations and the provision of equipment and training.

The Venice Commission’s Report on the Democratic Oversight of the Security Services (2015) recommends that Parliaments maintain cross-party representation within the Parliamentary oversight bodies;²⁹ that Parliamentary oversight bodies have “at least a residual investigative capability of its own” and have access to information and documents from experts;³⁰ that the staff of the oversight body have relevant expertise;³¹ and that the Parliamentary oversight body’s mandate extend to the supervision of international cooperation with foreign agencies.³² Besides the oversight functions, Parliament may have a role in the appointment of the Head of the intelligence agencies and in auditing of the services.³³

²⁵ Born, Hans. Ian Leigh, DCAF, *Making Intelligence Accountable: Legal Standards and Best Practice for Oversight of Intelligence Agencies*. (Oslo, Publishing House of the Parliament of Norway: 2005), 6.

²⁶ *Ibid.*

²⁷ Council of Europe Commissioner for Human Rights. *Democratic and Effective Oversight of National Security Services*. Issue Papers, prepared by Aidan Wills, 2015, 8.

²⁸ *Ibid.*

²⁹ European Commission for Democracy through Law (Venice Commission). *Report on the Democratic Oversight of the Security Services* (CDL-AD(2015)010), updated by the Venice Commission at its 102nd Plenary Session (Venice, 20-21 March 2015), para. 24.

³⁰ *Ibid.*, para. 20.

³¹ *Ibid.*, para. 21.

³² *Ibid.*, para. 25.

³³ *Ibid.*, para. 26.

Germany

One of the best practical examples of an effective Parliamentary oversight was the reaction of the German Federal Parliament to the Snowden revelations, which exposed the US foreign surveillance practice and the Five Eyes international intelligence sharing operations involving the USA, UK, Canada, New Zealand and Australia.³⁴

In 2014, the German Federal Parliament established the **NSA Inquiry Committee** (1. Untersuchungsausschuss „NSA“) to investigate among others, the operation of the Five Eyes in Germany and the existing practices of the Federal Intelligence Service and its cooperation with the oversight bodies.

The Committee published its final 1,822 page-Report on 23 June 2017, after 134 sessions and more than 90 witness testimonies (a total of 581 hours and 21 minutes of work).³⁵ The Report analyzed the German legal framework, the work of the Federal Intelligence Service and other services, their surveillance powers, various intelligence programs carried out by the Federal Intelligence Service, the cooperation between the latter and the NSA, and the oversight system in Germany.

The German Inquiry Committee’s work led to a comprehensive reform of the German legislation in 2016, even before completing its final report.³⁶ The reform focused on foreign surveillance procedures. As a result, a new independent oversight body - the Independent Committee was established to ensure ex-ante and ex-post supervision of the foreign surveillance activities, including intelligence efforts targeting the EU institutions and public institutions of the EU member States.

United Kingdom

The Intelligence and Security Committee of Parliament (ISC) established under the Intelligence Services Act 1994³⁷ is tasked with overseeing intelligence and security services, known collectively as ‘the Agencies’.³⁸ The Justice and Security Act 2013³⁹ reformed the Committee and expanded its oversight to more organizations.⁴⁰ This covers: the Security Service (MI5), the Secret Intelligence Service (SIS or MI6), Government Communications Headquarters (GCHQ), Defense Intelligence, The Joint Intelligence Committee (JIC) and law enforcement agencies (police and Customs & Excise). The Committee’s members are nominated by the Prime Minister and approved by Parliament, to which the ISC is required to report to. The main task of the ISC is to “examine or otherwise oversee the expenditure, administration, policy and operations of [the agencies]”.⁴¹

³⁴ European Union Agency for Fundamental Rights. *Surveillance by Intelligence Services: Fundamental Rights Safeguards and Remedies in the EU. Volume II: Field Perspectives and Legal Update*, 2017, 77.

³⁵ Ibid.

³⁶ Ibid, 41.

³⁷ Intelligence Services Act (1994), available at: <https://www.legislation.gov.uk/ukpga/1994/13/contents>.

³⁸ Cat Barker et al. “Oversight of intelligence agencies: a comparison of the ‘Five Eyes’ nations” (Parliament of Australia, 15 December 2017), 39, available at:

https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1718/OversightIntelligenceAgencies.

³⁹ Justice and Security Act (2013), available at: <https://www.legislation.gov.uk/ukpga/2013/18/contents/enacted>.

⁴⁰ Cat Barker et al. “Oversight of intelligence agencies: a comparison of the ‘Five Eyes’ nations” (Parliament of Australia, 15 December 2017), 40, available at:

https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1718/OversightIntelligenceAgencies.

⁴¹ Justice and Security Act (2013), Section 2(1), available at: <https://www.legislation.gov.uk/ukpga/2013/18/contents/enacted>.

In practice, the ISC's 2018-2019 Annual Report highlights the actions and mistakes made by MI5 and Counter Terrorism Policing (CTP) in relation to the 2017 Terrorist attacks.⁴² Therefore, the Committee made 43 recommendations to both MI5 and CTP, to take actions.⁴³ The Government has 60 days to respond to reports of the Committee, which must include data about which recommendation it accepts and which were rejected (the reasoning has to be explained).⁴⁴ For this specific case, in July 2018 the Committee raised the issue that the recommendations that were accepted by the Government from previous reports, were not always implemented.⁴⁵ However, the Government later provided a document which monitors the implementation of the Committee's recommendations and provides regular updates on progress. According to the ISC, this helped the Committee to provide better oversight to the Agencies by highlighting areas where the Government was struggling to make progress.⁴⁶

Furthermore, the ISC in their most recent report criticized the Intelligence Community's handling of Russian threat.⁴⁷ The most important step that must be taken is in relation to new legislation.⁴⁸ The Committee recommends the new statutory framework to deal with espionage and the illicit financial dealings by the Russian oligarchs.⁴⁹ Additionally, the Committee in their inquiry stated that responsibilities of the organizations that tackle the Russian threat should be better defined.⁵⁰ However, there is no mention of the Government response or any new updates to the inquiry in the report. Notwithstanding that, the Committee has a positive view of the actions the United Kingdom took in the aftermath of the Salisbury attack, including expulsion of Russian 'diplomats', which sent a strong message that such actions would not be tolerated.⁵¹

United States

The United States has two Congressional oversight committees: **the United States House Permanent Select Committee on Intelligence (HPSCI)**, established by House Resolution 658 and **the United State Senate Select Committee on Intelligence (SSCI)**, created by Senate Resolution of the 94th Congress.⁵² Both Congressional oversight bodies are tasked with overseeing the United States Intelligence Community (USIC).⁵³ Collectively, they have the power to review all intelligence agencies and evaluate the legality of actions and effectiveness of the services.⁵⁴

⁴² "Annual Report 2018-2019", *Intelligence and Security Committee of Parliament*, 2020, 1, available at: https://isc.independent.gov.uk/wp-content/uploads/2021/01/20200721_HC633_CCS001_CCS0620799228-001_ISC-Annual-Report-2018-19-Web_accessible.pdf

⁴³ *Ibid.*, 4.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*, 5.

⁴⁶ *Ibid.*

⁴⁷ "Russia Report", *Intelligence and Security Committee of Parliament*, 2020, 3, available at: https://isc.independent.gov.uk/wp-content/uploads/2021/01/20200721_HC632_CCS001_CCS1019402408-001_ISC_Russia_Report_Web_Accessible.pdf

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ "Annual Report 2018-2019", *Intelligence and Security Committee of Parliament*, 2020, 3, available at: https://isc.independent.gov.uk/wp-content/uploads/2021/01/20200721_HC633_CCS001_CCS0620799228-001_ISC-Annual-Report-2018-19-Web_accessible.pdf

⁵¹ "Intelligence and Security Committee of Parliament publish predecessor's Russia Report", *Intelligence and Security Committee of Parliament*, 2019, 3, available at: https://isc.independent.gov.uk/wp-content/uploads/2021/01/20200721_Russia_Press_Notice.pdf.

⁵² Cat Barker et al. "Oversight of intelligence agencies: a comparison of the 'Five Eyes' nations" (Parliament of Australia, 15 December 2017), 2, available at:

https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1718/OversightIntelligenceAgencies.

⁵³ *Ibid.*

⁵⁴ Hans Born, "Towards Effective Democratic Oversight of Intelligence Services: Lessons Learned from Comparing National Practices." *Connections* 3, no. 4 (2004): 6, available at: <http://www.jstor.org/stable/26323059>

Members of the Committees are appointed by the leaders of the House and Senate.⁵⁵ The Committees do not have complaint review power.⁵⁶

The role of the HPSCI and USIC is crucial in ensuring transparency of the US intelligence activities.

The HPSCI's authority was seriously challenged during the oversight of the US intelligence agencies mass surveillance activities following the Snowden revelations in 2013. On one hand, the work of the HPSCI led to the adoption of the USA Freedom Act (2015) which introduced new limitations on mass surveillance activities and strengthened civil liberty protections for US citizens.⁵⁷ Despite shortcomings, this reform was considered as a step in the right direction by watchdog organizations.⁵⁸

More recently, the HPSCI managed to ensure the transparency of the USIC, despite repeated refusal from the Office of the Director of National Intelligence (DNI) to declassify the USIC report concerning the murder of the United States resident Jamal Khashoggi.⁵⁹ In 2019, the Committee pushed two provisions in the FY2020 Intelligence Authorization Act, requiring the Office of DNI to publish the Report.⁶⁰ However, the Report submitted by the DNI on February 20, 2020 contained a classified Annex and did not comply with the law.⁶¹ The Committee intensified its pressure by introducing a specific provision in FY 2021 Intelligence Authorization Act and drafting the Jamal Khashoggi Press Freedom Act. On February 26, 2021, the declassified Report was made public.⁶² The Report revealed the Crown Prince of Saudi Arabia's direct involvement in the murder.⁶³

The HPSCI commits to transparency by establishing a YouTube channel, where the public can watch live unclassified public hearings to learn about Committee's oversight activities. For instance, in one of the videos titled "U.S.-China Relations and its Impact on National Security and Intelligence in a Post-COVID World", the Chairman Schiff discusses how the USIC should adapt to meet the challenges posed by China and how the Committee is operating during the pandemic.⁶⁴ The public has the opportunity to leave comments on the video.

The SSCI has been releasing reports on a biennial basis since 1977 to provide information to the American public about intelligence oversight activities.⁶⁵ The Committee investigated Russian interference in the 2016 United States elections by interviewing over 200 witnesses and reviewing large number of documents from the USIC and other parties.⁶⁶ The unclassified preliminary

⁵⁵ Judith K. Boyd, "Improving U.S. Congressional Oversight of Intelligence Services: A Comparative Policy Approach." *American Intelligence Journal* 28, no. 1 (2010): 33, available at: <http://www.jstor.org/stable/44327128>.

⁵⁶ Ibid.

⁵⁷ USA Freedom Act (H.R. 2048, Pub.L. 114-23).

⁵⁸ "Strengthen the USA Freedom Act." Human Rights Watch. May 19, 2015, accessed on April 1, 2021.

<https://www.hrw.org/news/2015/05/19/strengthen-usa-freedom-act>

⁵⁹ "Chairman Schiff Requests Director of National Intelligence Haines Declassify Report on Jamal Khashoggi's Murder," Press Releases, U.S. House of Representatives Permanent Select Committee on Intelligence, January 22, 2021, available at:

<https://intelligence.house.gov/news/documentsingle.aspx?DocumentID=1113>.

⁶⁰ "Chairman Schiff Statement on Release of Report on Jamal Khashoggi's Murder," Press Releases, U.S. House of Representatives Permanent Select Committee on Intelligence, February 26, 2021, available at: <https://intelligence.house.gov/news/documentsingle.aspx?DocumentID=1117>.

⁶¹ Ibid.

⁶² Ibid.

⁶³ Ibid.

⁶⁴ HPSCI, "U.S.-China Relations and its Impact on National Security and Intelligence in a Post-COVID World," House Intelligence, July 1, 2020, video, available at: <https://www.youtube.com/watch?v=x-WdgL9N9dQ>.

⁶⁵ Select Committee on Intelligence, "Report of the Select Committee on Intelligence United States Senate Covering the Period January 3, 2017 to January 3, 2019" (Report 116-20, U.S. Government Publishing Office, Washington, 2019), preface, available at:

<https://www.intelligence.senate.gov/publications/report-select-committee-intelligence-united-states-senate-covering-period-january-3>.

⁶⁶ Ibid, 2.

findings and recommendations were published in 2018.⁶⁷ Moreover, the Committee held hearings to address Russian threats to the United States, such as cyber-attack threats.⁶⁸ The SSCI also discussed in the Report how it closely monitored theUSIC’s role in counterterrorism activities through scheduled hearings and meetings with theUSIC staff.⁶⁹ Specifically, the Committee met with government officials on several occasions to review howUSIC performs its operations to track terrorist travel and cross-border movement.⁷⁰ This includes assessing the effectiveness ofUSIC’s counterterrorism efforts as well as cooperation among its partners.⁷¹

Norway

Norwegian Parliamentary Oversight Committee on Intelligence and Security Services, also known as theEOS Committee is responsible for supervision of the Norwegian Intelligence Service (NIS), the Police Security Service (PST), the Norwegian National Security Authority (NSM), and the Norwegian Defense Security Department (FSA) – are collectively branded as the “EOS services”.⁷² The Committee is governed in accordance with The Act Relating to Oversight of Intelligence, Surveillance, and Security Services of 3 February 1995 no. 7 (The Oversight Act).⁷³

Seven members of the Committee are elected by the Storting (Parliament of Norway) at a plenary session on the advice of the Storting’s Presidium.⁷⁴ The term of office is five years. While the members can be re-elected, they cannot stay in the Committee for more than ten years and deputy members cannot be re-elected.

The EOS Committee works independently of the Storting, and the Members of Parliament cannot serve as members of the Committee (persons who have worked for EOS service are also excluded).⁷⁵ However, the Storting may give an order to the Committee to investigate a specific case which is within the Committee’s mandate (To date, this has not occurred). Moreover, due to the nature of the Committee’s activities, the members have a duty of secrecy and a top-level security clearance in accordance with the national and NATO regulations.

The main functions of the EOS Committee are to safeguard individuals’ right to privacy, to ensure that the EOS services do not violate people’s rights and do not use more excessive measures than necessary; that the services act in line with human rights and do not harm the interests of society.⁷⁶ However, the authority of the EOS Committee does not extend to the review of surveillance targeting persons not residing in Norway.⁷⁷

⁶⁷ Ibid.

⁶⁸ Ibid, 13.

⁶⁹ Ibid, 14.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² “About the EOS Committee”, Norwegian Parliamentary Oversight Committee on Intelligence and Security Services, EOS Committee, Accessed March 22, 2021, <https://eos-utvalget.no/en/home/>.

⁷³ <https://lovdata.no/dokument/NL/lov/1995-02-03-7> (in Norwegian).

⁷⁴ “Who are we?”, Norwegian Parliamentary Oversight Committee on Intelligence and Security Services, EOS Committee, Accessed March 22, 2021, <https://eos-utvalget.no/en/home/about-the-eos-committee/who-are-we/>.

⁷⁵ “Frequently asked questions about the EOS Committee”, Norwegian Parliamentary Oversight Committee on Intelligence and Security Services, EOS Committee, Accessed March 22, 2021, <https://eos-utvalget.no/frequently-asked-questions-about-the-eos-committee/>.

⁷⁶ Svein Grønner et al. “Annual Report 2019”, *The EOS Committee*, 2019, 7, available at: <https://eos-utvalget.no/en/home/publications/annual-reports/>.

⁷⁷ “Area of oversight”, Norwegian Parliamentary Oversight Committee on Intelligence and Security Services, EOS Committee, Accessed March 22, 2021, <https://eos-utvalget.no/en/home/about-the-eos-committee/area-of-oversight/>.

The Committee can only conduct “reviews of legality.”⁷⁸ Meaning, the efficacy or prioritization of the resources of the EOS services is beyond the Committee’s purview. The Committee is not authorized to order the EOS services to take specific action on the issue in question nor formulate a decision to which such services are compelled to conform.⁷⁹ Nevertheless, the Committee can give its opinion on the issues it investigates and make recommendations. For example, the Committee can recommend a practice or measure to be changed or an issue to be reconsidered.

According to the Oversight Act Section 17, every year the Committee publishes a report concerning its activities, which is available to the public.⁸⁰

In practice, in 2019, the Committee requested verbal and written briefing from the NIS regarding what type of intelligence information is disclosed to foreign partners.⁸¹

Additionally, individuals and organizations can lodge complaints with the Committee if they believe that the EOS services have committed an injustice.⁸² In 2019, the Committee accepted 26 complaints to consider, in comparison with 19 in 2018.⁸³ The Committee processed 13 complaints against PST in 2019. Out of 13, ten complaint cases were concluded and resulted in no criticism of the agency.⁸⁴

Recently, there were instances where the Committee publicly raised criticism of the PST’s “unlawful collection of information.” In 2019, the EOS Committee criticized mass collection and storage of information about Norwegian citizen’s air travel by PST.⁸⁵ Following the review of the case, the Committee expressed its dissatisfaction with the way the PST addressed the issue, and called to refrain from “further unlawful collection of information” and to delete all information that was collected unlawfully.⁸⁶

Committee devotes special attention to public outreach and inclusion of the general public in its work. Since 2016, the Committee has organized annual conferences with the participation of all relevant actors, including civil society to discuss its activities. In 2019, the EOS Committee sought to bring transparency and raised public awareness of the importance of the democratic oversight of the intelligence services.⁸⁷ Throughout the year, the Committee organized public outreach activities and gave talks to students about democratic oversight.⁸⁸

⁷⁸ Svein Grønner et al. “Annual Report 2019”, *The EOS Committee*, 2019, 7, available at: <https://eos-utvalget.no/en/home/publications/annual-reports/>.

⁷⁹ Ibid.

⁸⁰ “Annual reports”, Norwegian Parliamentary Oversight Committee on Intelligence and Security Services, EOS Committee, Accessed March 22, 2021, <https://eos-utvalget.no/en/home/publications/annual-reports/>.

⁸¹ Svein Grønner et al. “Annual Report 2019”, *The EOS Committee*, 2019, 9, available at: <https://eos-utvalget.no/en/home/publications/annual-reports/>.

⁸² “Frequently asked questions about the EOS Committee”, Norwegian Parliamentary Oversight Committee on Intelligence and Security Services, EOS Committee, Accessed March 22, 2021, <https://eos-utvalget.no/frequently-asked-questions-about-the-eos-committee/>.

⁸³ Svein Grønner et al. “Annual Report 2019”, *The EOS Committee*, 2019, 9, available at: <https://eos-utvalget.no/en/home/publications/annual-reports/>.

⁸⁴ Ibid, 21.

⁸⁵ Svein Grønner et al. “Special report to the Storting on PST’s unlawful collection and storage of information about airline passengers”, *The EOS Committee*, 2019, 5, available at: <https://eos-utvalget.no/wp-content/uploads/2020/01/special-report-PST-airline-passenger-information-december-2019.pdf>

⁸⁶ Ibid, 22.

⁸⁷ Svein Grønner et al. “Annual Report 2019”, *The EOS Committee*, 2019, 44, available at: <https://eos-utvalget.no/en/home/publications/annual-reports/>.

⁸⁸ Ibid.

Since 2016, the EOS Committee established annual conference to provide a forum of discussion for civil society and the intelligence agencies to examine how to improve the efficacy of the Committee's work.⁸⁹

Since 2013, the Norwegian EOS has cooperated with foreign intelligence oversight bodies through the Nordic Meetings for Oversight Bodies. The meetings are held every two years and are designed to share experiences and good practices among five Nordic nations.⁹⁰

Finland

Intelligence Oversight Committee of the Parliament is in charge of the legislative supervision of intelligence operations.⁹¹ The Parliamentary Committee is also responsible for the supervision of the Finnish Security and Intelligence Service (SUPO).⁹²

The Committee is made up of 11 permanent and two deputy members.⁹³ If a Member of Parliament is suggested as a member/deputy member of the Intelligence Oversight Committee, he/she can request from the Data Protection Ombudsman to verify if the SUPO's information system has any data related to the MP in question.⁹⁴ The Data Protection Ombudsman's findings are then reported to the requesting MP, the chair of the MP's legislative group, and the Parliament's Secretary-General.⁹⁵

Unlike the Intelligence Ombudsman, which oversees the legality of the individual intelligence operations, the Committee reviews the implementation and aptness of intelligence operations and supports the protection of fundamental human rights in intelligence activities.⁹⁶ In addition, the Intelligence Oversight Committee reviews reports made by the Intelligence Oversight Ombudsman and processes its findings.⁹⁷ Moreover, the Committee takes part in the selection of the Intelligence Oversight Ombudsman by voicing its views to the Finnish government.⁹⁸

Oversight by Expert Bodies

Best Practices

Expert security/intelligence oversight bodies are considered to be best placed to conduct detailed day-to-day oversight of the legality of security service activities.⁹⁹ As of 2017, 16 European Union Member States had set up at least one expert body exclusively dedicated to intelligence service

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ "What is an Intelligence Ombudsman?" The Intelligence Ombudsman, Accessed March 27, 2021, available at:

<https://tiedusteluvalvonta.fi/en/oversight-of-intelligence>

⁹² "Regulatory Control," Finnish Security and Intelligence Service, Accessed March 27, 2021, available: <https://supo.fi/en/regulatory-control>.

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ "Intelligence Oversight Committee," Parliament of Finland, Accessed March 27, 2021, available at:

<https://www.eduskunta.fi/EN/valiokunnat/tiedusteluvalvontavaliokunta/Pages/default.aspx>.

⁹⁷ Ibid.

⁹⁸ "Intelligence Oversight Committee," Parliament of Finland, Accessed March 27, 2021, available at:

<https://www.eduskunta.fi/EN/valiokunnat/tiedusteluvalvontavaliokunta/Pages/default.aspx>.

⁹⁹ Council of Europe Commissioner for Human Rights. *Democratic and Effective Oversight of National Security Services*. Issue Papers, prepared by Aidan Wills, 2015, 8.

oversight.¹⁰⁰ In other states, data protection authorities and ombudspersons play certain oversight roles.¹⁰¹

The Council of Europe Commissioner for Human Rights in its Report on Democratic Oversight of Intelligence Services (2015) points out that ombudsperson's oversight model is deficient for the intelligence oversight purpose as the institution may only issue recommendations and thus cannot provide an effective remedy if a violation is detected.¹⁰² Moreover, an expert body, unlike a Parliamentary oversight body, has a greater expertise and time in the oversight of security and intelligence services and is less affected by the risks of politicization.

To ensure the legitimacy of the expert bodies, **the Venice Commission** considers it a good practice to appoint its members by Parliament.¹⁰³ On another hand, the Venice Commission recommends that the members' tenure be longer than the standard electoral period, to minimize politicization.¹⁰⁴ It is also advised that the expert body's mandate be defined by statute.¹⁰⁵ "*Expert bodies should be able to present special reports as well as an annual report,*" and "*the government should not normally be able to control whether a report is published at all, and when it is published.*"¹⁰⁶

Expert bodies within the Council of Europe, effectuate six different types of supervision, namely: "*ensuring legality, efficacy (that the agency is actually securing its objectives), efficiency, budgeting and accounting, conformity with relevant human rights conventions, and policy/administrative aspects of the intelligence services.*"¹⁰⁷ Some expert bodies are created exclusively to supervise surveillance activities of the intelligence services, or even specific forms of surveillance, such as strategic surveillance.¹⁰⁸

Germany

The German G10 Commission functions as an independent oversight body and is tasked to review the necessity and permissibility of all surveillance measures implemented by the federal intelligence services, including the Federal Intelligence Service; the Federal Office for the Protection of the Constitution; and the Military Counter-Intelligence Service).¹⁰⁹ It also has the authority to review complaints concerning targeted and strategic surveillance.¹¹⁰

The Commission issues ex-ante authorizations for all surveillance measures upon the request of the Minister of Interior. It also supervises the work of the surveillance agencies in relation to collecting, processing and using the personal data obtained through the surveillance measures.

¹⁰⁰ European Union Agency for Fundamental Rights. *Surveillance by Intelligence Services: Fundamental Rights Safeguards and Remedies in the EU. Volume II: Field Perspectives and Legal Update*, 2017, 67.

¹⁰¹ Council of Europe Commissioner for Human Rights. *Democratic and Effective Oversight of National Security Services*. Issue Papers, prepared by Aidan Wills, 2015, 8.

¹⁰² Ibid, 51.

¹⁰³ European Commission for Democracy through Law (Venice Commission). *Report on the Democratic Oversight of the Security Services* (CDL-AD (2015)010), updated by the Venice Commission at its 102nd Plenary Session (Venice, 20-21 March 2015), para. 34

¹⁰⁴ Ibid, para. 229.

¹⁰⁵ Ibid, para. 237.

¹⁰⁶ Ibid, para 37.

¹⁰⁷ Ibid, para. 233.

¹⁰⁸ Ibid, para. 234.

¹⁰⁹ "Arbeit und Aufgaben." G 10-Kommission. Bundestag. https://www.bundestag.de/ausschuesse/weitere_gremien/g10_kommission/aufgabe-538796, Accessed on April 1, 2021

¹¹⁰ European Union Agency for Fundamental Rights. *Surveillance by Intelligence Services: Fundamental Rights Safeguards and Remedies in the EU. Volume II: Field Perspectives and Legal Update*, 2017, 119.

The G10 Commission is composed of four members and four deputy members appointed by the Parliament.¹¹¹ Members of the Commission are independent and they may or may not be members of Parliament.

The G10 Commission reviews citizen complaints related to the right to privacy abuses by the intelligence services. The Commission has its own staff.

The G10 Commission has full access to all information collected and processed by the intelligence agencies. The Commission and its employees conduct on-site inspections. Intelligence agencies are required to provide access to any offices at any premises of the intelligence agencies, and must give full access to all documentation and data.

Another type of expert body is the **German Independent Committee** (Unabhängiges Gremium) at the Federal Court of Justice. It was established as part of the Security sector reform carried out in 2016 to strengthen safeguards for the foreign surveillance procedure.¹¹² The Independent Committee has the power to review the legality and necessity of the Federal Intelligence Service's strategic foreign communications data surveillance.¹¹³ The Committee consists of two judges and a prosecutor and acts as a non-political independent oversight body.

According to the German legislation, surveillance of the communications in foreign countries, including the communications of EU citizens, EU institutions and public institutions of the EU Member State is permitted. However, the collection of the foreign telecommunication content data from telecommunication networks may be ordered only by the Federal Chancellery and subject to ex-ante approval by the Independent Committee (Unabhängiges Gremium).

The Independent Committee is also granted ex-post review powers when the surveillance measures are deployed on EU, or other foreign citizens.¹¹⁴

The German law requires the Federal Intelligence Service to disclose information on foreign surveillance to the Independent Committee. However, the law requires the intelligence services to disclose less information than for the ex-ante control of domestic surveillance.

United Kingdom

The United Kingdom's Intelligence Agencies are overseen by an independent expert body, known as the Investigatory Powers Commissioner's Office (IPCO).¹¹⁵ IPCO is tasked with ensuring investigations carried out by the Agencies are in line with the law. The authorization and inspection of the use of investigatory powers, namely, surveillance and collection of communication data, as outlined in the Investigatory Powers Act 2016¹¹⁶ are part of IPCO's oversight.¹¹⁷ The Investigatory

¹¹¹ "Mitglieder." G 10-Kommission. Bundestag. https://www.bundestag.de/ausschuesse/weitere_gremien/g10_kommission/aufgabe-538796, Accessed on April 1, 2021

¹¹² European Union Agency for Fundamental Rights. *Surveillance by Intelligence Services: Fundamental Rights Safeguards and Remedies in the EU. Volume II: Field Perspectives and Legal Update*, 2017, 45.

¹¹³ Ibid, 78

¹¹⁴ Ibid. 78.

¹¹⁵ Cat Barker et al. "Oversight of intelligence agencies: a comparison of the 'Five Eyes' nations" (Parliament of Australia, 15 December 2017), 40, available at:

https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1718/OversightIntelligenceAgencies.

¹¹⁶ Investigatory Powers Act (2016), available at: <https://www.legislation.gov.uk/ukpga/2016/25/contents/enacted>.

¹¹⁷ "What we do", Investigatory Powers Commissioner's Office, Accessed March 23, 2021, <https://ipco.org.uk/>

Powers Commissioner (IPC) has an obligation to submit an annual report to the Prime Minister, which is later submitted to Parliament with necessary reductions.¹¹⁸

In 2019, IPCO engaged with a variety of NGOs, academics and various international oversight bodies to share and learn from best practices about the oversight regime.¹¹⁹ Moreover, the number of regular announcements on their website has increased at the end of 2019. This included the IPC's activities and participation in conferences and events regarding work of the organization. In order to improve transparency, the new Head of Communications and Engagement was appointed.

In 2018, IPCO with the help of ISC, NGOs, and members of civil society made submissions to the Government to improve the "Consolidated Guidance to Intelligence Officers and Service Personnel on the Detention and Interviewing of Detainees Overseas, and on the Passing and Receipt of Intelligence Relating to Detainees (the Consolidated Guidance)."¹²⁰ On 12 June 2019, the IPC submitted its recommendations to the Prime Minister.¹²¹ The recommendation was accepted by the Government, and on 18 July 2019, a new version (The Principles) was published.¹²² Later, on 13 December 2019, the Prime Minister instructed the IPC to keep an overview of The Principles and its compliance by intelligence agencies.¹²³ This demonstrates the effectiveness of the IPCO and its engagement with the public, but the detailed report on compliance with The Principles has yet to be published in the 2020 Annual Report.¹²⁴

Lastly, the Investigatory Powers Tribunal (IPT) as a specialized court, which receives and determines complaints about the illegal use of covert methods by the Agencies. The IPT provides a right to redress for people to whom unlawful actions under the Regulation of Investigatory Powers Act 2000 (RIRA)¹²⁵ were used, or if there were human rights infringements under the Human Rights Act 1998.¹²⁶

The United States of America

In 2007, the US Congress established the **U.S. Privacy and Civil Liberties Oversight Board (PCLOB)** - an independent bipartisan agency within the executive branch according to the requirement set by the Implementing Recommendations of the 9/11 Commission Act.¹²⁷

The Board has two main functions: oversight and advice. The PCLOB has also two main responsibilities: (1) to review the implementation of the executive branch policies, procedures, regulations that the executive branch takes to protect the Nation from terrorism and to ensure that

¹¹⁸ Cat Barker et al. "Oversight of intelligence agencies: a comparison of the 'Five Eyes' nations" (Parliament of Australia, 15 December 2017), 40, available at:

https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1718/OversightIntelligenceAgencies.

¹¹⁹ Sir Brian Leveson, "Annual Report of the Investigatory Powers Commissioner 2019", *Investigatory Powers Commissioner's Office*, 2020, 23, available at: https://ipco.org.uk/docs/IPC%20Annual%20Report%202019_Web%20Accessible%20version_final.pdf.

¹²⁰ IPCO, *Consultation on the Consolidated Guidance*, 2018, available at:

<https://ipco.org.uk/docs/IPCO%20Consultation%20on%20the%20Consolidated%20Guidance.pdf>

¹²¹ Sir Brian Leveson, "Annual Report of the Investigatory Powers Commissioner 2019", *Investigatory Powers Commissioner's Office*, 2020, 13, available at: https://ipco.org.uk/docs/IPC%20Annual%20Report%202019_Web%20Accessible%20version_final.pdf.

¹²² Her Majesty's Government, *The Ten Principles*, 2019, available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/818306/20190718_The_Principles_relati_to_the_detention_and_interviewing_of_detainees_overseas.pdf.

¹²³ Sir Brian Leveson, "Annual Report of the Investigatory Powers Commissioner 2019", *Investigatory Powers Commissioner's Office*, 2020, 13, available at: https://ipco.org.uk/docs/IPC%20Annual%20Report%202019_Web%20Accessible%20version_final.pdf.

¹²⁴ *Ibid.*

¹²⁵ Regulation of Investigatory Powers Act (2000), available at: <https://www.legislation.gov.uk/ukpga/2000/23/contents>

¹²⁶ Cat Barker et al. "Oversight of intelligence agencies: a comparison of the 'Five Eyes' nations" (Parliament of Australia, 15 December 2017), 40, available at:

https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1718/OversightIntelligenceAgencies.

¹²⁷ Pub. L. No. 110-53, § 801(a), 121 Stat. 266, 352-58 (2007).

privacy and civil liberties are protected; (2) to ensure that liberty concerns are appropriately considered in the development and implementation of laws, regulations, and policies related to counter-terrorism efforts.¹²⁸

The PCLOB is comprised of four part-time members and a full-time chairman, all appointed by the President and confirmed by the Senate. It also has its own staff.¹²⁹

The PCLOB publishes bi-annual reports and oversight reports concerning the implementation of the US surveillance programs and protection of privacy and civil liberties.

PCLOB's reports on the US Foreign Intelligence Surveillance operations played an important role in improving legislative safeguards for the right to privacy of American citizens following the Snowden revelations about the US surveillance programs. In 2013, 13 Members of the US Senate asked the PCLOB to review two US surveillance programs and provide an unclassified report. The Board organized public hearings and met with the Intelligence Community and the Department of Justice, White House, and Congressional committee staff, privacy and civil liberties advocates, academics, trade associations, and technology and communications companies. PCLOB produced two reports. The Report on the Telephone Records Program conducted under Section 215 of the USA PATRIOT Act and on the Operations of the Foreign Intelligence Surveillance Court contained 236 pages and included specific recommendations to ensure privacy and protection of the US citizens' civil liberties.¹³⁰ The second Report dealt with the Surveillance Program operated Pursuant to Section 702 of the Foreign Intelligence Surveillance Act and concerned the US's surveillance program directed at international telephone and internet communications.¹³¹ The Report contained 196 pages and proposed policy recommendations to strengthen privacy safeguards and to address the identified issues.

The PCLOB's recommendations were reviewed by the US Congress and, as a result, the US Freedom Act was adopted in 2015,¹³² imposing new limitations on American intelligence agencies, including the National Security Agency, from bulk collection of telecommunication metadata on US citizens.

Croatia

In 2002, Croatia established an independent expert oversight mechanism - **the Council for Civilian Oversight of Security and Intelligence Agencies** (formerly: Council for Oversight of the Security and Intelligence Agencies) based on the Security Services Act of 28 March 2002.¹³³ Within the European Union, the Croatian model is considered as an example of good practice of the inclusion of civil society in the democratic oversight.¹³⁴

¹²⁸ "History and Mission." U.S. Privacy and Civil Liberties Oversight Board, Accessed on April 1, 2021. <https://www.pclob.gov/About/HistoryMission>

¹²⁹ Ibid.

¹³⁰ U.S. Privacy and Civil Liberties Oversight Board. January 23, 2014. *Report on the Telephone Call Records Program Conducted Under Section 215 of the USA PATRIOT Act and on the Operations of the Foreign Intelligence Surveillance*. Surveillance Court https://documents.pclob.gov/prod/Documents/OversightReport/ec542143-1079-424a-84b3-acc354698560/215-Report_on_the_Telephone_Records_Program.pdf

¹³¹ U.S. Privacy and Civil Liberties Oversight Board. *Report on the Surveillance Program Operated Pursuant to Section 702 of the Foreign Intelligence Surveillance Act*. July 2, 2014. <https://documents.pclob.gov/prod/Documents/OversightReport/823399ae-92ea-447a-ab60-0da28b555437/702-Report-2.pdf>

¹³² USA Freedom Act (H.R. 2048, Pub.L. 114–23).

¹³³ "Council for Civilian Oversight of Security and Intelligence Agencies - 6th term," Croatian Parliament, Accessed March 28, 2021, available at: <https://www.sabor.hr/hr/council-civilian-oversight-security-and-intelligence-agencies-6th-term>.

¹³⁴ European Union Agency for Fundamental Rights. *Surveillance by Intelligence Services: Fundamental Rights Safeguards and Remedies in the EU*. Volume II: Field Perspectives and Legal Update, 2017, 70.

The Civilian Council is composed of a chairperson and six members appointed by the Parliament for a four-year period. They can be re-appointed.¹³⁵ Council members must be citizens and hold university degrees. At least one member should have a degree in law, one in political science and one in electrical engineering. Furthermore, the chairperson and members of the Council cannot be “members of the top leadership of any political party.

The Council operates under the auspices of the Domestic Policy and National Security Committee; however its work and activities are independent.

The Council has a key role promoting democracy and civilian oversight of security and intelligence services. According to Article 111, Provision 1 of the Security and Intelligence System Act of 17 May 2006, the Council is responsible to: (1) monitor the legality of intelligence agencies activities; (2) oversee the implementation of measures for confidential data gathering, which restricts human rights and fundamental freedoms; (3) submit findings to the National Security Council, the Speaker of the Parliament, the Chairperson of the Parliamentary Committee charged with national security and the directors of security and intelligence organizations.¹³⁶

Moreover, the Civilian Council provides a way for citizens, state bodies and NGOs to file complaints on illegal procedures in the activities of intelligence agencies, with special focus on “violations of constitutionally-guaranteed human rights and fundamental freedoms.”¹³⁷

To perform the duties, the Council can access any reports and documents of the agencies and conduct interviews with agency heads and other officers to evaluate the legality of the activities. If illegalities are discovered, the Council must report the oversight results to the President of Croatia, Speaker of Parliament, Prime Minister and Chief Public Prosecutor.¹³⁸ Additionally, at the Speaker’s request and at minimum once every six months, the Council chairperson must issue a report of Council’s oversight.

The Council of Civilian Oversight and its members are accountable to the Parliament for their work, but the legality of its activities is monitored by the Domestic Policy and National Security Committee.

Finland

In 2019, Finland established its first specialized expert oversight body – the **Intelligence Ombudsman**, following the adoption of the “Civilian Intelligence Act.”¹³⁹ This is an example of a most recent reform for strengthening expert oversight of the intelligence services within the European Union member states.

The Intelligence Ombudsman is an independent expert body that supervises the Finnish Security and Intelligence Service (SUPO), the Intelligence Division of the Defense Command (PE

¹³⁵ “Council for Civilian Oversight of Security and Intelligence Agencies - 6th term,” Croatian Parliament, Accessed March 28, 2021, available at: <https://www.sabor.hr/hr/council-civilian-oversight-security-and-intelligence-agencies-6th-term>.

¹³⁶ “10th term of the Croatian Parliament (22 July 2020),” Croatian Parliament, July 22, 2020, available at: <https://www.sabor.hr/en/committees/council-civilian-oversight-security-and-intelligence-agencies-10-term>.

¹³⁷ “Council for Civilian Oversight of Security and Intelligence Agencies - 6th term,” Croatian Parliament, Accessed March 28, 2021, available at: <https://www.sabor.hr/hr/council-civilian-oversight-security-and-intelligence-agencies-6th-term>.

¹³⁸ Ibid.

¹³⁹ “Legislation in Finlex,” The Intelligence Ombudsman, Accessed March 27, 2021, available at: <https://tiedusteluvalvonta.fi/en/legislation>.

TIEDOS) and the Finnish Defense Intelligence Agency (PVTIEDL).¹⁴⁰ The Intelligence Ombudsman is appointed for a five-year term by the Finnish government.¹⁴¹

The Intelligence Ombudsman's key responsibilities include monitoring the legality of intelligence operations (gathering techniques and processing of intelligence information), ensuring that human rights are protected in intelligence activities, reviewing legislation and making any necessary recommendations.¹⁴²

The Intelligence Ombudsman has broad investigative authority and right to access all relevant information.¹⁴³ The Intelligence Ombudsman can track the use of SUPO intelligence gathering operations in real time and has the authority to suspend their use.¹⁴⁴ Any unlawful activity detected by the Ombudsman should be referred to relevant authorities for preliminary investigation.¹⁴⁵

The Intelligence Ombudsman reviews individual complaints related to unlawful surveillance, or other alleged abuses committed by one of the supervised intelligence agencies.¹⁴⁶

The Ombudsman issues annual reports. Its first report was issued on 9 June 2020.¹⁴⁷

Types of the Civil Society Engagement in Intelligence Oversight

The review of academic literature reveals that civil oversight of intelligence services faces numerous challenges. Firstly, due to a limited access to classified information concerning activities of security and intelligence agencies, civil society organizations rely on informal sources of information, such as journalistic reports.¹⁴⁸ Second challenge for civil society oversight is a lack of understanding and technical expertise among the civil society members about concerns of the intelligence and security services. Lastly, civil society does not have formal enforcement tools, necessary to keep the intelligence services accountable through oversight.

However, civil society and citizens oversight of the intelligence services can effectively engage in informing policy makers at a local level of communities' security concerns and how they are affected by the activities of the intelligence services. They can provide expertise and alternative perspectives on national security policy issues. Finally, they can contribute to transparency and public accountability of intelligence service and their oversight bodies.

The Council of Europe's Commissioner for Human Rights in his Report on the Democratic Oversight on Security Service (2015) reviews five ways in which NGOs contribute in a

¹⁴⁰ "Civilian intelligence protects Finland's national security," Ministry of the Interior, accessed March 27, 2021, available at: <https://intermin.fi/en/police/civilian-intelligence>

¹⁴¹ "What is an Intelligence Ombudsman?" The Intelligence Ombudsman, Accessed March 27, 2021, available at: <https://tiedusteluvalvonta.fi/en/oversight-of-intelligence>

¹⁴² "What is an Intelligence Ombudsman?" The Intelligence Ombudsman, Accessed March 27, 2021, available at: <https://tiedusteluvalvonta.fi/en/oversight-of-intelligence>

¹⁴³ "Civilian intelligence protects Finland's national security," Ministry of the Interior. Accessed March 27, 2021, available at: <https://intermin.fi/en/police/civilian-intelligence>

¹⁴⁴ "Regulatory Control," Finnish Security and Intelligence Service. Accessed March 27, 2021, available: <https://supo.fi/en/regulatory-control>.

¹⁴⁵ Ibid.

¹⁴⁶ "Complaints and investigation requests." The Intelligence Ombudsman. Accessed April 2, 2021. Available: <https://tiedusteluvalvonta.fi/en/complaints>

¹⁴⁷ "Regulatory Control," Finnish Security and Intelligence Service. Accessed March 27, 2021, available: <https://supo.fi/en/regulatory-control>.

¹⁴⁸ Caparini, Marina. "Controlling and Overseeing Intelligence Services in Democratic States." In: *Democratic control of intelligence services: Containing rogue elephants*. Ed. by Hans Born and Marina Caparini (USA, Burlington: Ashgate Publishing Company, 2007): 12, 9.

democratic oversight of security/intelligence services: (1) engaging in security service legislative reforms process; (2) campaigning for Parliamentary *ad hoc* inquiries; (3) monitoring of, and cooperation with the oversight bodies; (4) litigation; and (5) international standard-setting.¹⁴⁹

Similarly, the European Union Agency for Fundamental Rights (FRA) in its report *Surveillance by Intelligence Agencies (2017)*, found that NGOs were active in launching lawsuits in various EU Member States; that they promoted reforms; developed international principles applicable to oversight of intelligence services; and acted as watchdogs of legislative processes.¹⁵⁰ However, FRA observed that intelligence services rarely engaged with the civil society organizations and where/when they did so, cooperation efforts took the form of ad hoc consultations.¹⁵¹ Conversely, the Report cited the Croatian Council for Civilian Oversight of Security and Intelligence Services as an example of the greater involvement of civil society representatives in the oversight of the legality of operations of intelligence services.¹⁵²

Other reports confirm the paramount role of the civil society's cooperation with the intelligence oversight bodies, pointing out that such engagement is necessary for achieving civil society's goals. This is due to the fact that oversight bodies have authority to access classified information and conduct in-depth reviews of the intelligence agencies that are otherwise inaccessible for civil society organizations. Indeed, in recent years, experts observed increased opportunities for civil society organizations to engage with oversight bodies in many countries.¹⁵³ The United States and United Kingdom were considered to have a good practice of engagement between the oversight bodies and the civil society, while Germany and Norway were classified as countries with developed oversight but with less external engagement.¹⁵⁴

In terms of activities, civil society organizations may resort to:

- awareness raising;
- monitoring;
- research;
- advocacy;
- training; and
- litigation.¹⁵⁵

Participation in legislation and policy development

A Handbook for Civil Society Organizations on the Public Oversight of the Security Sector (2008) jointly developed by the Geneva Centre for the Democratic Control of Armed Forces (DCAF) and the UNDP proposed a number of actions through which civil society organizations can contribute to the Legislative and policy design process.¹⁵⁶ Namely, they can:

- “Carry out fact-finding studies;

¹⁴⁹ Council of Europe Commissioner for Human Rights. *Democratic and Effective Oversight of National Security Services*. Issue Papers, prepared by Aidan Wills, 2015, 39-40; 59-60.

¹⁵⁰ European Union Agency for Fundamental Rights. *Surveillance by Intelligence Services: Fundamental Rights Safeguards and Remedies in the EU. Volume II: Field Perspectives and Legal Update*, 2017, 69.

¹⁵¹ *Ibid.*, 70.

¹⁵² *Ibid.*

¹⁵³ Bradford Franklin, Sharon, Eric King. *Strategies for Engagement Between Civil Society and Intelligence Oversight Bodies*. New America. November 2018, 8. <https://www.newamerica.org/oti/reports/strategies-engagement-between-civil-society-and-intelligence-oversight-community/>

¹⁵⁴ *A Handbook for Civil Society Organizations on the Public Oversight of the Security Sector (DCAF, UNDP: 2008)*.

¹⁵⁵ *Ibid.*

¹⁵⁶ Public Oversight of the Security Sector. *A Handbook for Civil Society Organizations*, Ed. by Eden Cole, Kerstin Eppert and Katrin Kinzelbach, (Geneva: DCAF and UNDP, 2008), 72. www.dcaf.ch/Publications/Public-Oversight-of-the-Security-Sector

- *Petition or brief members of parliament;*
- *Organize lobbying campaigns;*
- *Give oral or written evidence to parliamentary hearings or to committees;*
- *Supply an expert adviser to a parliamentary committee;*
- *Draft legislation or legislative amendments for members of parliament;*
- *Criticize legislation and legislative amendments;*
- *Draft alternative white papers on security policies.”*

Furthermore, civil society organizations can:

- *Provide alternative assessment of the main threats to national and public safety and security, as well as the appropriateness and effectiveness of the state’s responses.¹⁵⁷*
- *Share reports analyzing how local communities are affected by the intelligence service, especially Marginalized groups, such as ethnic and religious minorities, indigenous and tribal peoples, and what are their views about their security needs.¹⁵⁸*

NGOs in the Council of Europe member states regularly contribute to the legislative process by making submissions when Parliament is adopting or amending laws governing security services.¹⁵⁹

Civil society watch-dog organizations in the United States and the United Kingdom routinely engage with the Parliamentary oversight committees and contribute with the expertise to ensure that human rights are protected. They regularly publish policy briefs, legislative proposals and monitoring and/or research findings and advocate with the Parliamentary oversight committees. This is the case with the **American Civil Liberties Union; Open Society Foundations Justice Initiative Program; Amnesty International;** and **Privacy International** (see the Annex). In addition, the **American Civil Liberties Union, Open Society Foundations Justice Initiative** and **Amnesty International** raise awareness and advocate for representing the perspectives of the marginalized communities that are disproportionately affected and profiled by the intelligence service activities (see the Annex).

On the other hand, think tanks in the United States and Germany, like **Brookings Institution** and **Heritage Foundation**, regularly provide alternative perspectives on national and foreign security threats to the public and Parliaments (see the Annex).

Participation in Oversight

Civil society, especially the watchdog organizations, plays a crucial role in “activating” oversight by relevant Parliamentary or professional oversight bodies either by pressing for the creation or expansion of oversight bodies, or by advocating for oversight bodies to address specific programs or issues.¹⁶⁰ NGOs within the Council of Europe regularly campaign for *ad hoc* inquiries on security service activities and contribute their expertise to such inquiries.

¹⁵⁷ Ibid, 60.

¹⁵⁸ Ibid. 87.

¹⁵⁹ Council of Europe Commissioner for Human Rights. *Democratic and Effective Oversight of National Security Services*. Issue Papers, prepared by Aidan Wills, 2015, 39-40.

¹⁶⁰ Council of Europe Commissioner for Human Rights. *Democratic and Effective Oversight of National Security Services*. Issue Papers, prepared by Aidan Wills, 2015.

The role of the American and British non-governmental civil liberties organizations, such as the **Human Rights Watch; American Civil Liberties Union; Open Society Foundations; Amnesty International; Privacy International; Big Brother Watch** and others, were paramount in demanding sorrow scrutiny of Snowden revelations concerning the US balk surveillance and foreign intelligence gathering efforts. As a result, Parliamentary and expert oversight bodies in the United States and the United Kingdom carried out inquiries, held public hearings, produced reports and proposed legislative changes to better protect privacy and civil liberties of their own citizens.

Civil society organizations may have a crucial role in improving the security service oversight through cooperation with, and monitoring of the Parliamentary and expert oversight bodies.

DCAF-UNDP Handbook for Civil Society Organizations on the Public Oversight of the Security Sector (2008) recommends a list of research activities through which civil society can contribute to the oversight by Parliamentary and/or professional oversight bodies.¹⁶¹ Namely, civil society may carry out research in the following areas and share the findings with the oversight bodies:

- *What is the quality of democratic oversight and security sector governance within the state?*
- *How effective are mechanisms for policy development and implementation?*
- *How has the security sector evolved over recent years, and what have been the drivers of change? How do different parts of the security sector interact, on paper and in practice?*
- *Are the goals and priorities of the security sector in line with overall national trends and priorities in other spheres?*
- *How much corruption is there within the system, and what are the consequences of this corruption?*
- *Reports on the Investigation of abuses of power by security officials*
- *Budget and financial monitoring reports analyzing how security budgets are allocated and spent.*

Concerning the monitoring of the oversight bodies, the Council of Europe's Commission for Human Rights Report (2015) cites the example of Montenegro's **Institut Alternativa**. Since 2010, that organization has conducted monitoring and published annual reports on the implementation of the law on Parliamentary Oversight of the National Security and Defense Sector with the focus on the work of the Committee charged with the oversight of the security sector.¹⁶²

Addressing Cases of Human Rights Abuses

Civil society organizations may have a significant impact on addressing human rights abuses by the intelligence agencies. Loada and Moderan proposed three ways in which civil society organizations can cooperate to strengthen national complaint review bodies with the mandate to examine citizen's complaints against abuses committed by the intelligence service officials, including ombuds institutions.¹⁶³ Namely, civil society organizations may:

¹⁶¹ Public Oversight of the Security Sector. A Handbook for Civil Society Organizations, Ed. by Eden Cole, Kerstin Eppert and Katrin Kinzelbach, (Geneva: DCAF and UNDP, 2008), 54-61. www.dcaf.ch/Publications/Public-Oversight-of-the-Security-Sector

¹⁶² Council of Europe Commissioner for Human Rights. *Democratic and Effective Oversight of National Security Services*. Issue Papers, prepared by Aidan Wills, 2015, 59.

¹⁶³ Loada, Augustin, Ornella Moderan, "Civil Society Involvement in Security Sector Reform and Governance" in *Toolkit for Security Sector Reform and Governance in West Africa*, ed., Ornella Moderan (Geneva: DCAF, 2015), 37.

- “inform citizens about the competencies of the ombuds institution and about how to register a complaint against a security institution;
- support victims at an early stage in terms of preparing their cases for submission to the ombuds institution;
- support complainants with regards to the follow-up on their complaints and their outcomes.”

Civil society organizations in the United States and the European Union lead strategic litigations involving abuses committed by security services before national and international courts. This includes not only secret surveillance, but also other illegal practices, such as secret detention facilities, renditions, and torture.

Open Society Justice Initiative; Reprieve; the Polish Helsinki Foundation for Human Rights; Privacy International; Big Brother Watch; and **Liberty** played an instrumental role in bringing domestic and international litigation against governments in relation to secret prisons, renditions, bulk surveillance and international intelligence sharing.¹⁶⁴

The pending case before the Grand Chamber of the European Court of Human Rights - **Big Brother Watch and others v. the United Kingdom** concerning the violation of the right to privacy will have a significant impact on the future of the intelligence agencies work within the Council of Europe. In this case, two watchdog organizations, **Big Brother Watch and English Pen**, as well as the other applicants challenge the United Kingdom’s practices of bulk interception, international intelligence sharing, acquisition of communications data by intelligence agencies and the functioning of intelligence oversight bodies.¹⁶⁵

Engagement with the Intelligence Community

Civil society organizations can benefit from experience and knowledge sharing through joint workshops, discussion forums and training sessions to better understand the intelligence community’s legitimate concerns and to share their perspectives with the intelligence service.

DCAF-UNDP Handbook for Civil society organizations recommends that civil society organizations with the expertise in effective, transparent and democratic security sector governance provide training for government officials, including intelligence service employees.¹⁶⁶ It also recommends organizing joint training sessions with both security service employees and civil society organization members to address the issue of mistrust between these two groups.

German think tank Stiftung Neue Verantwortung (SNV) is in charge of organizing European Intelligence Oversight Network. The cooperation platform offers a space for European intelligence oversight officials and civil society experts to conduct regular and structured exchange.¹⁶⁷ The project connects European intelligence oversight bodies to share good practice, explore opportunities for collaborative work, and try to jointly solve shared challenges, which oversight bodies have been facing.

¹⁶⁴ Council of Europe Commissioner for Human Rights. *Democratic and Effective Oversight of National Security Services*. Issue Papers, prepared by Aidan Wills (2015), 59.

¹⁶⁵ ECHR, *Big Brother Watch and Others v. the United Kingdom*, nos. 58170/13 and 2 others, § ..., 13 September 2018.

¹⁶⁶ Ibid. 119

¹⁶⁷ Bradford Franklin, Sharon, Eric King. *Strategies for Engagement Between Civil Society and Intelligence Oversight Bodies*. New America. November 2018, 14. <https://www.newamerica.org/oti/reports/strategies-engagement-between-civil-society-and-intelligence-oversight-community/>

International Standard Setting

Finally, NGOs working on human rights issues play an important role in advancing international standards in the field of security services.

In 2006, the **Ottawa Principles on Counter-terrorism and Human Rights** were published as a result of the independent experts and human rights organizations cooperation.¹⁶⁸ The Ottawa Principles is an important source that sets good practice standards concerning the operation of security services and democratic oversight, with emphasis on the role of civil society.

In 2013, **Open Society Justice Initiative (Open Society Foundations)** led a comprehensive effort with the participation of 500 experts worldwide, including security professionals. The effort resulted in the launch of the **Global Principles on National Security and the Right to Information (Tshwane Principles)**.¹⁶⁹ The Tshwane Principles provide detailed guidance on effective oversight of the security sector, including intelligence services, specifically in terms of the type of information which should be available for the oversight bodies; ways in which secret information should be protected; and efforts for increasing accessibility of activity reports e for the public.¹⁷⁰

In 2013, leading privacy and security experts and NGO representatives drafted the **International Principles on the Application of Human Rights to Communications Surveillance**, endorsed by more than 400 NGOs. Specifically, the International Principles include recommendations concerning digital surveillance.¹⁷¹

Since 2014, the **American Civil Liberties Union Foundation (ACLU)** advocates for the adoption of a new General Comment N16 on the Right to Privacy by the UN Human Rights Committee. In 2015, the ACLU developed a proposal for a new General Comment N16, taking into account advances in digital surveillance techniques and practices.¹⁷²

Conclusions

The study demonstrates that international standards require for intelligence services to be subject to democratic oversight. While applicable international standards are more developed and detailed concerning the Parliamentary and independent oversight, they also acknowledge the role of civil society and encourage the cooperation between intelligence services and civil society.

Parliamentary and expert oversight bodies are organized differently in each of the examined jurisdictions. However, there is a trend towards establishing specialized expert oversight bodies; and towards improving Parliamentary oversight bodies cooperation with civil society; and towards transparency.

¹⁶⁸ Ibid.

¹⁶⁹ “*Global Principles on National Security and the Right to Information (Tshwane Principles)*.” Open Society Justice Initiative, June 12, 2013. <https://www.justiceinitiative.org/uploads/bd50b729-d427-4fbb-8da2-1943ef2a3423/global-principles-national-security-10232013.pdf>

¹⁷⁰ Council of Europe Commissioner for Human Rights. *Democratic and Effective Oversight of National Security Services*. Issue Papers, prepared by Aidan Wills, 2015, 39.

¹⁷¹ Ibid, 40.

¹⁷² American Civil Liberties Union Foundation. *Informational Privacy in the Digital Age. A Proposal to Update General Comment 16 (Right to Privacy) to the International Covenant on Civil and Political Rights* (February, 2015).

https://www.aclu.org/sites/default/files/field_document/informational_privacy_in_the_digital_age_final.pdf

DCAF-UNDP Handbook and the Council of Europe Commissioner for Human Rights' 2015 Report offers practical examples and ways for the civil society to engage in the oversight of the intelligence service and their oversight bodies, through specific advocacy, research, monitoring, training, awareness raising and litigation activities.

Tbilisi, February 2021