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Comparative Analysis of the RA Legislation Regulating the Activity of the RA National Security Service, Special Investigation Service, Prosecutor's Office according to International (CE) Standards.

Executive Summary

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List of Abbreviations

RA – Republic of Armenia

AG – Adjunct to the Government

NSS – National Security Service

SIS – Special Investigation Service

CO – Criminal Code

CPC – Criminal Procedure Code

UN – United Nations

PACE – Parliamentary Assembly of the Council of Europe

CECM - Council of Europe Committee of Ministers

Introduction

Human rights violations and risks in each country are primarily connected with the activities of law enforcement bodies, including those of the Security Services, which is a result of the specific structure of these organizations. The National Security Service, the Special Investigation Service and the Prosecutor's office are the most important tools for ensuring the principles of the Rule of Law. At the same time, the activities of these bodies directly affect human rights, are related to the intervention of human rights and restrictions placed on individual rights.

The risk of law enforcement activities is due to the fact that they may apply various measures of crime prevention and detection, such as collecting data on persons suspected of a crime, or applying coercive measures. The absence of civil and public control mechanisms over the activities of these bodies makes their activity risky from a human rights perspective.

Special Investigation Service and the Prosecutor's Office respectively, carry out investigations into the illegal actions of officials and carry out control over the activities of other law enforcement bodies. Effectiveness of the activity of these bodies is essential in terms of the prevention of human rights violations, and the detection of violations within the framework of the activities of other law enforcement bodies. The effectiveness of preventing human rights violation risks and detection in turn is conditioned by the interdependence of these supervisory bodies.

Therefore, insufficient and ineffective civil and public control mechanisms against these agencies, can lead to unreasonable and disproportionate interference with human rights. This report attempts to study the legal norms regulating activities of the National Security Service as a part of National Security System; the Independent Investigation Body - the Special Investigation Service, which conducts investigation of crimes committed by officials; the Prosecutor's Office in relationship to the main standards prescribed in the PACE, CoE CM resolutions and recommendations. In particular, the standards prescribed in the PACE 1402 (1999)¹ recommendation, the Opinion of the Commissioner for Human Rights Concerning Independent and Effective Determination of Complaints Against the Police, PACE Recommendation 1604 (2003)¹ "Role of the public prosecutor's office in a democratic society governed by the rule of law," Recommendation CM/Rec(2012)11 of the Committee of Ministers on the role of public prosecutors outside the criminal justice system, Recommendation Rec(2000)19 of the Committee of Ministers to member states on the role of public prosecution in the criminal justice system.

¹ See Control of internal security services in Council of Europe member states link <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta99/EREC1402.htm>

Methodology

For the purposes of this study, domestic and international legal acts relating to the activities of the agencies have been analyzed; the websites of the SS, SIS, Prosecutor General's office and the information obtained through official inquiries from those agencies, Draft Criminal Procedure Code (taking into account the fact that it gives solutions to many problems) have been studied.

The study does not claim to be a complete analysis of the entire volume of these three bodies.

1. RA National Security Service

Security services naturally receive instructions from the government. They need to be adequately controlled by the executive in order to avoid that they develop a “State within the State” mentality².

1.1 General Information

The RA National Security Bodies, according to Article 2 of the RA law "On National Security," are an integral part of the RA Security System and within their jurisdiction, ensure the security of each person, society and the state.

The activity of the National Security Bodies is regulated by the RA Constitution, the RA Law "On National Security Bodies" (RA law "On National Security Bodies" was adopted on December 28, 2000), the RA law "On the Service in the National Security Bodies," other laws and sub-legislative acts.

The unified system of the National Security consists of an authorized public administration agency within the RA National Security, regional authorities subject to it, border troops, training centers, special operations and other units. The authorized body is the National Security Service, which also includes the intelligence, counterintelligence, and military counterintelligence bodies. The NSS is a adjunct agency to the government. Before December 17, 2002, it had the status of a ministry. The peculiarities of appointing the management staff of the body, the decision-making procedure within the activity of the body, and the role of the RA President within this framework, are a result of the fact of the NSS being a agency adjunct to the government (see Appendix 1).

The President, the Government and the Prime Minister do the overall management of the NSS activity, within their competence. The appointment of the NSS Director and Deputy Directors is within the President's power. The Prime Minister's participation can only be in the form of a nomination for a Director candidate. A term of office for the director and restriction of appointing the same person as a NSS director, as well as grounds for dismissal of the director, is not defined.

National security agencies operate in the following directions:

- a) intelligence activities,
- b) counterintelligence activities,
- c) military counterintelligence activities,
- d) state border protection,
- e) fight against crime.

In addition to those listed above, the RA Law “On National Security Bodies” and other laws may establish other instructions on the activity of National Security Bodies.

The National Security Service is also an authorized body in the field of information security.

² Report on the Democratic oversight of the Security Services adopted by the Venice Commission at its 71st Plenary Session (Venice, 1-2 June 2007), Point 4 See [http://www.venice.coe.int/webforms/documents/CDL-AD\(2007\)016.aspx](http://www.venice.coe.int/webforms/documents/CDL-AD(2007)016.aspx)

1.2 NSS accountability, guarantees for democratic control of activities.

According to Paragraph 1 of Article 27 of the law "On National Security", the RA President and the government conduct control over the national security activities within the powers ensured by the Constitution and laws. As stated in the Venice Commission report on the democratic control of the security services, national security services, as a rule, receive instructions from the government. They should be properly controlled by the executive, in order to avoid the formation of "state within the state" mentality.³

Under the current legislation, the possibilities of control over the activities of NSS by a representative body are very strictly limited. Those mechanisms are restricted by adopting legislative regulations by the National Assembly on the activity of National Security Service agencies, by the powers of approving the annual budget, and the government's report on the performance of the annual budget. Therefore, it is necessary that the limits and the powers of the activity of NSS are defined only by law, and not subject to any change or extension, by other legal acts. Taking into consideration the fact that the sphere is risky, the main legislation regulating the activity of the body, including the norms and regulations, shall be established by law; the law shall also define the threshold of secrecy of the activity of the agency.

Second paragraph of Article 27 of the law "On National Security Bodies" states that the members of parliament have the right to acquire information about the activities of the National Security bodies relating to their parliamentary activity as prescribed by law. In addition, in accordance with Point 1 of Paragraph 2 of Article 48 of the law "On Treatment of Arrestees and Detainees", which also applies to the detention facilities functioning within the RA NSS system AG, free access to places of arrest or detention without special permission is entitled to 1) The President of the Republic of Armenia, The Chairman of the National Assembly, the Prime Minister, the President of the Constitutional Court, the Court of Cassation, the Member of Parliament, the authorized state government body or relevant deputy.

In accordance with point 78 of the National Assembly Rules of Procedure, the Committee on Defense, National Security and Internal Affairs of the National Assembly, by its decision, may apply with requests to state and local government bodies, officials, institutions and organizations regarding the draft legislation and other issues submitted to its discussion.

The government approves of the NSS statute and distinguish the NSS structure

According to Article 87 of the RA Constitution the prime minister manages the activity of the Government and to coordinate the ministers' work, and according to the Point 121 of the Rules of Procedure the Prime Minister controls the activity of the executive power. It is also necessary to view some of the provisions of the Rules to be established by law.

³ Report on the Democratic oversight of the Security Services adopted by the Venice Commission at its 71st Plenary Session (Venice, 1-2 June 2007), Point 4 See [http://www.venice.coe.int/webforms/documents/CDL-AD\(2007\)016.aspx](http://www.venice.coe.int/webforms/documents/CDL-AD(2007)016.aspx)

The RA Constitution does not directly ensure the possibility of creating agencies adjunct to the government. At the same time according to Paragraph 1, Article 85 of the Constitution the government develops and implements the RA internal policy. The government develops and implements foreign policy in collaboration with the President of the Republic. The Government consists of the Prime Minister and Ministers. The Procedure of organizing the activities of the Government and other agencies subject to it, is established by the President's decree based on the Prime Minister's submission. The Procedure of organizing the activities of the Government and other agencies subject to it shall be prescribed by the president's decree NH-174-N dated July 18, 2007. According to Points 7 and 8 of the Procedure the Government's policy, in certain aspects, are developed and implemented by national executive agencies, which are created, re-organized and liquidated by the recommendation of the Prime Minister based on the President's decree. The national executive agencies are the RA Ministries and state government institutions adjunct to the Government. The President's Decree No. NH -1063 dated March 16, 2002 on defining the structure of the government, states that six state government institutions adjunct to the Government function until the end of the process of the state governance reforms, including the National Security Service. Therefore on one hand, according to the RA Constitution, the Government consists of the Prime Minister and ministers and does not recognize the heads of state government institutions adjunct to the Government as Government members. On the other hand, by the President's decree, defines the establishment of institutions adjunct to the Government. The law does not provide a clear answer to the question whether the institutions adjunct to the Government are in the composition of the government, or not. Only the RA President's Decree defines the establishment of the institutions adjunct to the Government and the procedure of the organization of activities.

The uncertainty of the status of the institutions adjunct to the Government, in this case that of NSS, has an impact on the implementation of effective control over the activities of NSS.

According to the Article 87 of the RA Constitution, the government develops and implements foreign policy in collaboration with the President; however, at the same time the RA Government develops the internal policy. The National Security Service is not included in the government's composition, which means that the NSS Head is not authorized to participate in the country's domestic and foreign policy-making process. At the same time it is impossible to develop a full and effective policy without such an important service. Such uncertainty not only creates legal confusion but also complicates parliamentary oversight of the NSS.

In accordance with Article 32 of the RA law "On Operative-intelligence Activities," the head of the General Department shall submit a report to the RA President on each agency authorized to implement operative-intelligence actions no later than January 31 of the next year and the report will contain the following for the previous year:

- 1) the total number of motions submitted to the General Department on the control of telephone conversations as operative-investigative measures.

2) the number of motions that have been brought without the court's decision statement, and said statement has not been presented in the future.

3) the number of motions that have been brought without the court's decision statement, and the court decided not to allow implementation of such operative-intelligence measures in the future.

The activity of the NSS is subject to judicial control. Within the preliminary judicial control, it is important to note implementation of only operative-intelligence measures allowed by the court and within the post-factum judicial control also the litigation of the National Security Bodies' decisions in a court.

As part of the investigation and preliminary investigation, including the activities of NSS as a Body implementing operative-investigative measures, are subject to the prosecutor's control. In accordance with Article 35 of the RA law "On Operative-intelligence Activities," while conducting judicial management over investigation and preliminary investigation, the prosecutor controls the legality of operational-intelligence activities within the limits of its power. The prosecutor cannot have control over the organization and implementation of operative-intelligence methods.

Thus the existing norms for the NSS formation and regulation of the activity do not guarantee the possibilities of effective parliamentary, democratic and civil control.

In conclusion, the existing legislative norms on the formation of the NSS and regulation of its activities, do not guarantee the possibilities for effective parliamentary and democratic, civil control.

1.3 Concerns

1. The National Security Service activities, as an integral part of National Security bodies, are regulated by the RA Law "On National Security Bodies" as well as a number of other laws. At the same time, the list of NSS goals, objectives, functions, the procedure of work organization and management, are defined by "The charter of the National Security Service AG," which was approved by the Government's decision N 433-N dated April 17, 2003. However, the NSS's, as an authorized state governance body of the RA National Security's goals, objectives, functions and powers, should be defined by law, in one legislative act. There is also a number of overlaps and inconsistencies in the legal acts regulating the activities of NSS.

2. The capacity for secrecy of legislation on NSS activities is uncertain, which may allow for widespread abuse.⁴

3. Although both the Constitution and the Law "On National Security Bodies" define the principle of equality before the law, it can be said that there are no sufficient guarantees to prevent using the NSS as a tool of political pressure on political parties, religious organizations, and others.

4. From the analysis of the law "On National Security Bodies," RA Criminal Procedure and the Criminal Codes, it can be concluded that the RA Legislation sets the scope of the crimes for which preliminary investigation can be conducted, only by the NSS bodies. However, overly discretionary opportunities are left for the preliminary investigation by the NSS on such crimes for which the investigators of the customs authorities can also conduct preliminary investigation; or on such crimes, which investigation is conducted by the NSS investigators, if these crimes have been revealed during the examination of the case which is under their proceeding, and in this case the prosecutor's eligibility to transfer the case from one agency to another functions. There are no clearly defined criteria to act as a guide for the prosecutor in the event of transferring the case from one agency to another, which results in increases in the discretion of both national security agencies and the prosecutor. Attention should be paid to the fact that those alleged crimes for the discovery of which investigation can be conducted by the National Security and Customs Authorities and other investigative bodies, not in all cases, but can be a clear and real danger to national security.

Generally there is no confidence or certainty in the distribution of powers in the cases under the jurisdiction of the NSS Authorities and the Customs Bodies.

5. In accordance with the law "On National Security Bodies" all of the staff of the NSS are military employees and service in the NSS is a military service. The RA National Security Service is organized, designed and performs as a military structure. It is necessary to discuss the issue of replacing the military service, at least in some of the divisions of the national security, with civil service.

6. The National Security bodies are authorized to carry out an investigation and in some cases a preliminary investigation. In addition, they are also authorized to have separate detention facilities.

⁴ The issue was somewhat resolved by CCD 1010 of the RA Constitutional Court from March 6, 2012 on the case relating to the constitutionality of Point "f," Paragraph 4, Article 8 and Paragraphs 6 and 7 of Article 12 of the RA Law "On State and Official Secrets" based on the claim submitted by HCA Vanadzor. However, the requirements of this decision have not been reflected in the RA legislation.
<http://concourt.am/armenian/decisions/common/2012/pdf/sdv-1010.pdf>

Unlike the detention facilities⁵ functioning in the police system, here there is no monitoring mechanism such as a public monitoring group, and as a consequence, people in these institutions are more vulnerable, and their ill-treatment and the violations of their right to be free from unjustified imprisonment are becoming more probable.

7. There are many problems within the operative-intelligence activities in the sphere of the protection of an individual's rights.⁶ According to the new draft of Criminal Procedure Code, secret investigation activities are separated from the operative-intelligence activities. At the same time the Code defines the procedures of implementing those actions. However, there remain a number of real problems. For example, both the draft Criminal Procedure Code and the RA law "On Operative-intelligence Activities" do not define the obligation of informing about the measures used by a relevant authority, upon terminating video surveillance or tapping.

A number of issues were raised in the comparative analysis of the law "On operative-intelligence Activities" and the Principles and Standards of the Council of Europe.⁷

8. Certain criteria for the service in the NSS Bodies, as well as regulations directed towards ruling out discrimination on certain grounds have been established. However, some of the established criteria do not meet the standards of the principle of legal certainty. In particular, it is not clear as to what are the practical, personal, moral qualities, with which a person can serve on the National Security Service; and the age threshold justification is not presented in the law.

⁵ CPT has twice visited this institution in 2008 to 2010.

⁶ See also the comparative analyses of the RA Law "On Operative-intelligence Activities" and the Principles and Standards of CoE. "Bagin" advocate's office, Lusine Sahakyan, Ara Ghazaryan, Tigran Safaryan, Yervand Varosyan.

□ http://www.partnership.am/res/POS%20Publications_Arm/Comparative%20analysis%20of%20the%20Law_ARM.doc

⁷ « See also the comparative analyses of the RA Law "On Operative-intelligence Activities" and the Principles and Standards of CoE. "Bagin" advocate's office, Lusine Sahakyan, Ara Ghazaryan, Tigran Safaryan, Yervand Varosyan.

http://www.partnership.am/res/POS%20Publications_Arm/Comparative%20analysis%20of%20the%20Law_ARM.doc

2. RA Special Investigation Service

As society has become more complex in recent decades, and as scientific and technological knowledge have advanced, the special powers available to the police for the purpose of performing their duties, and their capacity to intrude in people's lives and interfere with individual human rights have increased⁸.

2.1 General Information

According to Article 17 of the RA law "On Special Investigation Service" the Special Investigation Service (hereinafter referred to as SIS) is defined as an independent state Body that is independent in exercising its powers and subject only to the law.

According to Paragraph 1 of Article 2 of the RA Law "On Special Investigation Service" the SIS conducts preliminary investigation of the cases related to the crimes committed by the officials of Legislative, Executive and Judicial bodies, employees implementing State Special Services or their complicity in connection with their positions, as well as electoral processes envisaged by the Criminal Procedure Code of the Republic of Armenia.

The activity of the Special Investigation Service is regulated by the Constitution of the Republic of Armenia, Criminal Procedure Code of the Republic of Armenia, the RA Law "On Special Investigation Service", the RA Law "On Civil Service" and other laws and legal acts.

SIS is a centralized system managed by the SIS Head. The SIS Head has two Deputies, each of whom coordinates the spheres determined by the SIS Head. The Government approves the SIS structure. SIS currently consists of three Departments – (1) a division to investigate crimes related to corruption, organized and official crimes, (2) a division to investigate tortures and crimes against a person, and (3) a division to investigate general crimes. Within the structure of the SIS there are investigators, who are adjuncts to the SIS Head. SIS has a department of investigation for tortures and crimes against a person, although the definition of the torture offense in the Criminal Code does not define an official person as a special subject of the crime. In fact, in cases of ill-treatment by officials, a criminal case is filed in SIS, based on abuse of powers accompanied by violence.

According to Article 2 of the RA Law "On Special Investigation Service" the Special Investigation Service conducts preliminary investigation of cases related to crimes committed by the officials of the Legislative, Executive and Judicial bodies, employees implementing state special services or their complicity in connection with their positions, as well as electoral procedures.

⁸ Opinion of the Commissioner for Human Rights Concerning Independent and Effective Determination of Complaints against the Police.

CommDH(2009)4, 12 March 2009

□ <https://wcd.coe.int/ViewDoc.jsp?id=1417857>

The law also establishes a comprehensive list of lead employees in the Legislative, Executive and Judicial entities, persons who implement special public services. The election-related criminal cases do not include all of the articles related to the election process, but the articles included in the list as defined by the Law "On Special Investigative Service" and the RA Criminal Procedure Code, such as Articles 149 of the RA Criminal Code (Hindrance to implementation of the right to elect, to the work of election commissions or to the implementation of the authority of the person participating in elections), 150 (Forgery of election or voting results.), Article 154¹ (Making false voting ballots or transferring false or deceptive voting ballots or ballot envelopes), Article 154² amended (Hindrance to the exercise of the voter's free will).

The scope of power for SIS investigators is determined by the Criminal Procedure Code.

2.2 Special Investigation Service Accountability: guarantees for Democratic Control of activities.

The Impartiality of an Special Investigation Service is an important guarantee in a country for ensuring the protection and restoration of violated rights. At the same time, to ensure the impartiality of the activity of an independent investigation body, both institutional and operational independence, is of great importance.

As already stated, in accordance with the RA Law "On Special Investigation Service," the Special Investigation Service is an independent state body and is impartial in the performance of its duties.

The Prosecutor General of the Republic of Armenia and the authorized prosecutors has control over the legality of the preliminary investigation conducted by the SIS. In analyzing the provisions of the law, it can be concluded that if the Prosecutor's office controls the legality of the investigation carried out by the SIS, and the RA President has the opportunity to influence and intervene in the activities of the SIS. This is due to the authority of appointing, discharging and subjecting the Head of the SIS to a disciplinary sanction.

Within the framework of external accountability systems of the SIS, we consider that it is important to study the SIS accountability before the National Assembly, the President, Government and the public.

Within the framework of internal accountability systems, we will study the accountability mechanisms within the SIS.

As the analysis of the RA Law "On Special Investigation Service" indicates, direct effective accountability mechanisms of the SIS bodies towards the National Assembly are absent. The only mechanism of the National Assembly for supervising the SIS is the adoption of legislative acts in certain spheres and for the budget approval of that Body.

At the discussion of the legislative act drafts, in accordance with Article 30.1 of the RA Law "On Rules of Procedure of the National Assembly" by its decision the Committee may make inquiries to the bodies of public administration and local self government, public officials, institutions and organizations, on drafts of legislative acts and other issues submitted for its discussion. They are obliged to examine the written inquiry of the Committee and respond in writing within a 20 day period and notify the Committee, in writing, on the examination of the issue raised no later than 3 days prior to the discussion.

The same provision is defined in Point 78 of the Rules of Procedure of the Standing Committee on Defense, National Security, and Internal Affairs, according to which by its decision the Committee may make inquiries to the bodies of public administration and local self-government, public officials, institutions and organizations, on drafts of legislative acts and other issues submitted for discussion.

The Members of Parliament are also entitled to the right to make inquiries and suggestions to the bodies of public administration and local self-government, public officials, institutions and organizations and to participate in the discussion of the issues raised. The bodies of public administration and local self-government, public officials, institutions and organizations are obliged to examine the written inquiry of the Members of Parliament and respond in writing within a 10day period, except for cases prescribed by the same law.

The RA President and Government Control over the Activities of the SIS.

According to Paragraph 6 of Article 2 of the RA Law "On Special Investigation Service" the Special Investigation Service publishes information on its activities. Each year, the Head of the Special Investigation Service submits a written report to the President and to the Government of the Republic on the previous years' activities of the Special Investigation Service.

An important guarantee for the Special Investigation Service is to act as an independent body in for parliamentary oversight of its activities. There is a need to define efficient control mechanisms of the legislature over the activities of this Body. The absence of the SIS accountability before the RA representative bodies negatively affects the Body's proper execution of its powers. The obligation of reporting only to the President and the Government directly by the SIS threatens the SIS's from functioning as an independent, impartial, investigative Body.

The role of Human Rights Defender and public associations is needed for public oversight of the Special Investigation Service. From this viewpoint, administration and publication of the SIS statistics on complaints, applications accepted, cases filed, dismissed, suspended, completed and sent to court, can be significant. The obligation of producing statistical reports by the SIS to submit to the RA President but not having the obligation to publicize them was established by the legislative changes in May 2014. At the same time, according to the inquiries made to the SIS and their responses, in the first 10 days of November 2014, the RA Government should have already submitted the draft of the RA Government decision "On defining the list of mandatory statistical classifiers, statistical data (information) for the administration of the statistics of the RA Special Investigation Service and the description of the contents of the statistical reports." So far the Government's decision has not been approved. At the same time, according to the SIS responses, the SIS submitted full informative reports to the RA Prosecutor's office in accordance with N 1225-N decision from October 23, 2008, and the information was sent to the National Statistical Service after being summarized by the Prosecutor's office.

2.3 Concerns

1. From time to time the SIS makes some information on its activities available to the public; however, this information may not be considered sufficient to ensure full transparency of the SIS activities. It is therefore necessary to ensure transparency of the information through a process of statistical reports and the results of criminal cases.

2.SIS agencies not authorized to conduct investigation are limited in their powers. In particular, the SIS is not authorized to conduct operative-intelligence activities, which may result in reduced effectiveness of this Body.⁹

⁹ It is necessary to note that the issue was raised by the SIS officials.
□ <http://investigatory.am/am/News/item/202/>

3. Given that the victims are not prone to complain about human rights violations by the police authorities, it is necessary to facilitate and simplify the reporting procedure for victims to the SIS agencies. Also of importance, would be to make accessible, electronic means to file complaints, and the possibility to file a complaint by a representative of an individual.

4. The claims to inform the SIS about a serious injury or death case while in the custody of the police or during police actions, is currently not established.

5. The Criminal Procedure Code also provides an occasion for filing a criminal case the identification of data on crimes, material traces of the crimes and the consequences by the court and the judge, while fulfilling their official duties. However, a clear procedure to address the findings to the police agencies or SIS when the crime is known to the judicial authorities is not defined.

It is necessary to define clear procedures and obligations for the judicial authorities on how to transfer information to the RA Police and SIS concerning any illegal actions by the police while they exercise their powers, in case the illegal activity becomes known, as well as an obligation for the SIS agencies to carry out investigation in each case.

6. It is not clear why the SIS conducts preliminary investigation relating to election processes within certain articles of the RA Criminal Code. It is also necessary to take into account that as a result of the election process, candidates claim to have a certain official position. It should be considered that the legislation in some way equals the guarantee of the person who wants to have a position and the position holder, therefore the application of this principle is necessary to maintain within other legal regulations.

3. RA Prosecutor's Office

A prosecution service which is fearless and protective of its independence and impartiality, which is free of political control and direction, will be a bulwark for freedom and liberty.¹⁰

3.1 General Information

According to Article 103 of the RA Constitution, the RA Prosecutor's Office represents a unified system, headed by the Prosecutor General.

The Prosecutor's office is composed of the RA Prosecutor General's Office, the Military Central Prosecutor's Office, the Prosecutors' offices of Yerevan City, the Yerevan City districts, the regions (marzes), and the Military Prosecutor's Office of Garrisons (Paragraph 2, Article 3 of the RA Law "On Prosecutor's Office").

The powers exercised in the entire territory of the Republic of Armenia prescribed by Article 103 of the RA Constitution, the RA Prosecutor General is entitled to the right to manage the work of the Prosecutor's office, defines the policy of the implementation of the constitutional powers of the Prosecutor's office, and ensures the supervision of the implementation; defines the number of positions within the wage fund prescribed by law, approves the Code of Conduct for Prosecutors, the Public Prosecutor's Office statute, approves and amends the list of positions and number of staff of public servants in the staff of the Prosecutor's office.

The Prosecutor General shall be appointed by the National Assembly upon the recommendation of the President of the Republic. The Deputies of the Prosecutor General shall be appointed by the President of the Republic upon the recommendation of the Prosecutor General.

3.2 Prosecutor's Office Accountability: guarantees for Democratic Control of activities.

"The RA Prosecutor's office has a system which exercises its functions independently from the legislative, executive and judicial powers. Although the interpretation of the Article is in Chapter 6 of the Constitution, which is devoted to the judiciary, that fact does not reflect the actual place and role of the Prosecutor's office in the system of state power bodies."¹¹

The powers of the Prosecutor General's office and the procedure for the appointment of the Prosecutor General are defined in Article 103 of the RA Constitution. According to the

¹⁰ From: Attorney General's Office and The Rt Hon Dominic Grieve QC MP

Delivered on: 9 September 2013 (Original script, may differ from delivered version)

Location: The 18th Annual Conference and General Meeting of the International Association of Prosecutors, Moscow

□ <https://www.gov.uk/government/speeches/the-rule-of-law-and-the-prosecutor>

¹¹ See the RA Constitutional Comments / general editing by G. Harutyunyan, A. Vagharshyan, - "Irvunk" 2010, 1086 page /.

Constitutional remarks, "The meaning of Article 103 of the Constitution provides a note that the Republic of Armenia is one of the countries where the Prosecutor's office is a separate system with constitutional status headed by the Prosecutor General."¹²

The RA Law "On Prosecutor's Office" defines the independence of prosecutors as a guarantee for their legal protection. According to Paragraph 1, Article 44 in the course of performing his/her activities the prosecutor shall be independent and shall obey only the law.

The law defines the accountability and control mechanisms of the activities of the RA Prosecutor's Office.

According to Paragraph 1, Article 5 of the RA law "On Prosecutor's Office" the Prosecutor's Office shall inform the public of its activities carried out, insofar as it is without prejudice to human and citizen's rights, freedoms and legitimate interests and for the protection of state secrets and other secrets protected by law.

The RA Prosecutor's office informs the public of its activities via its official web-site.

The RA Prosecutor's office, as an independent Body, shall submit to the President of the Republic and to the National Assembly of the Republic of Armenia a report on the activities of the Prosecutor's Office for the previous year. (Paragraph 2, Article 5 of the RA Law "On Prosecutor's Office"). The report is submitted in a procedure defined by the National Assembly Rule of Procedure.

According to Paragraph 1, Article 104 of the RA law "On Rules of Procedure of the National Assembly" the reports are debated during a sitting of the National Assembly by a special procedure. According to Article 59 of the same Law in cases of special procedure, the author or the main speaker introduces the preferable procedure in his/her report and the National Assembly assumes the relevant decision without any discussion whatsoever. The same Article defines that no special procedure may limit the number of speakers or those asking questions, or limits the time foreseen for speeches or questions as prescribed by this Law.

Irrespective of the presented regulations, the Prosecutor Office's report has not been debated in the National Assembly, as a result of which the Members of Parliament do not have the chance to ask questions, have discussions and make speeches on the report. It is necessary to note that the procedure of discussing a report on the activities of the previous year submitted by the RA Prosecutor's office was clarified by the Law of March 11, 2014 "On Making amendments in the RA law "On Rules of Procedure of the National Assembly"" and "Making amendments in the RA law "On the Prosecutor's Office." The legislative amendment was initiated by a few members of Parliament.¹³

¹² See the same source.

¹³ <http://www.parliament.am/drafts.php?sel=showdraft&DraftID=6369&Reading=0>

The minimum requirements for the content of the report submitted by the Prosecutor's Office have not been defined. As a result of studying the report submitted by the RA Prosecutor's Office in 2010, 2011 and 2012 the following observations can be made:

▪ Full or summary information on certain powers were essentially missing in the reports. The reports contain information on the number of crimes recorded and revealed during the year and information on the completion of the cases in the following areas:

- Crimes against humanity;
- Crimes against property;
- Crimes against economic activity;
- Crimes of general character;
- Crimes in the sphere of illegal drug circulation;
- Corruption and organized crime:

▪ Information is presented accordingly about the agencies against which control is held

• On cases examined by the materials prepared in the Investigation Department of the RA National Security Service AG

• On cases examined by the RA Special Investigation Service,

▪ The report notifies about the implementation of the powers of the Prosecutor's office, in particular:

- Protection of state interests,
- In the sphere of control over the use of punishments and other forms of coercion,
- Control (in some spheres) over the investigation and preliminary investigation, appeal of judgments, verdicts and decisions of the courts and defense of accusation in the court,

▪ Separate information is presented by divisions or departments :

- Activity conducted by the RA Military Prosecutor's office;
- Organizational-oversight activity of the Prosecutor's office;
- Activity conducted in the direction of international-legal support of the Prosecutor's office;
- Activity of the RA Prosecutor's office in the sphere of ensuring legal grounds;
- Work with the staff of the RA Prosecutor's office;
- Examination of complaints and applications received in the RA Prosecutor's office;
- Work to ensure publicity and public awareness on the activities of the RA Prosecutor's office,
- Activity of "Prosecutors' School" state non-commercial organization.

Thus, the reports of the Prosecutor General's Office were not debated in the parliament, nor did the published reports contain complete information on all aspects of its activities.

Other mechanisms of control over the activities of the RA Prosecutor's Office are the adoption by the National Assembly legislative regulations regarding the Prosecutor's Office, the right of National

Assembly committees and parliamentarians to make inquiries and proposals to state and local government agencies, officials, institutions and organizations and to participate in the discussion of raised issues .

The Human Rights Defender can be viewed as a public control mechanism, as well as the "Freedom of Information" law, based on which the citizens and public associations may acquire information on the activities of the Prosecutor's Office.

Internal Accountability and Control Mechanisms of the RA Prosecutor's Office

In accordance with Point 2, Paragraph 1, Article 10 of the RA Law "On Prosecutor's Office" the Prosecutor General defines a policy for exercising the constitutional powers of the Prosecutor's Office and ensures control of the implementation of the policy. The procedure for conducting control is defined by the Rules of Procedure of the RA Prosecutor's office.

The Rules of Procedure specifies the control of the activities of the Prosecutor's offices and control of the Prosecutor General, and execution of the Prosecutor General's acts.

According to Point 78 of the Rules of Procedure of the Prosecutor's Office in order to ensure execution of the objectives of the Prosecutor's Office control of the activity of the Prosecutor's offices is carried out by the Prosecutor General or Deputy Prosecutor General. Control is held through studies and inspections carried out by the divisions of the Prosecutor's offices.

Both inspections and studies are conducted in accordance with the instruction by order of the Prosecutor General or Deputy Prosecutor General. The inspection order notes the name of the department carrying out the inspection, name, and position of the prosecutor (prosecutors or working group members) conducting the inspection, the legal basis for inspection, purpose, and date of the inspection. Any prosecutors not specified in the order for inspection cannot participate in the inspection. The rules of procedure of the RA Prosecutor's office currently do not propose specific requirements and accordingly the number of prosecutors is determined on the day of the inspection.

The order of the Prosecutor General or Deputy Prosecutor General on inspections must contain the name of the department carrying out the inspection, name, surname, position of the prosecutor (prosecutors or working group members) conducting the inspection, the legal basis for inspection, purpose, and date of the inspection.

Inspections are carried out based on the following documents;

- reports presented by the relevant prosecutors' offices;
- program on inspection findings for excluding shortcomings based;
- Prosecutor General or Deputy Prosecutor General's assignment;

Inspections are carried out based on other situations requiring needs for further study (Point 80 of the Rules of Procedure of the Prosecutor's office);

Control by the RA Prosecutor's offices is held through inspections and studies, which are carried out by the departments of the RA Prosecutor's office. Concurrently, and despite the fact that the requirement for guarantees is much lower while conducting studies¹⁴ than conducting inspections, the prosecutors conducting inspections and studies have the same duties and powers while exercising their functions. The Rules of Procedure of the RA Prosecutor's Office do not specify in which cases inspections and in which cases studies are carried out.

The Rules of Procedure also stipulates that the control is also performed by systematic study and analysis of statistical and other information, work programs, prosecution acts, orders, reports received from the Prosecutor's offices, materials (Point 105 of the Rules of Procedure of the Prosecutor's Office). A question arises on who can conduct such control and with which procedures.

The implementation of Prosecutor General or Deputy Prosecutor General's assignments, including those relating to complaints and their discussion, are supervised by the heads of structural divisions of the Prosecutor's office or by the Prosecutor General's office or by senior prosecutors and prosecutors of the Military Central Prosecutor's office (Article 106 of the Rules of Procedure of the Prosecutor's Office). This control procedure and boundaries are not clearly defined.

We may conclude that the process of conducting control of the implementation of the Prosecutor's Office and prosecutors is not properly regulated, which cannot guarantee assurance of the independence or impartiality of the prosecutors.

3.3 Concerns

1. Prosecutors considered superior to any prosecutor are entitled to terminate or modify the acts adopted by the subordinate prosecutor, except in cases when the subordinate prosecutor is exercising his/her powers of implementing control over the legality of investigation and preliminary investigation. This exception is derived from the principle of independence of the prosecutor and acting without the prosecutor's permission and consent of the superior prosecutor while supervising the legality of investigation and preliminary investigation. However, such a situation may be a factor disturbing the impartiality of the prosecutor.

According to some experts the power to terminate the decision on rejecting to initiate a criminal case by the RA Prosecutor General may lead to double conviction and violation of the principle (non bis in idem) of inadmissibility of punishment.¹⁵

2. Control of the investigation and preliminary investigation by the Prosecutor's Office is ineffective. The fact of ineffective control of the investigation and preliminary investigation by the Prosecutor's Office was recorded in 2013 in the Human Rights Defender's report on the Human Rights Defender's Activities and

¹⁴ <http://genproc.am/am/50/item/4617/>

¹⁵ <http://iravaban.net/77787.html>

Violation of Human Rights and Fundamental Freedoms in the Country.¹⁶ In October-November of this year (2014) the Prosecutor's Office initiated criminal cases against the investigators of the RA Investigation Committee on the basis of a number of abuses during the preliminary investigation of the criminal case. In the given case, taking into account that even during the investigation of these cases there was prosecution supervision, it was obvious that in the case of proper prosecution control the abuses of the investigators should have been stopped by the prosecutors. At the same time, in light of the above-mentioned case, only one criminal case was filed by the prosecutor on the basis of official negligence in the course of supervising the preliminary investigation and the court ruling. We also consider alarming the Prosecutor General's approaches to the operations performed by the Prosecutor's Office – the Prosecutor General said in an interview that "the arrest of the accused and the suspect is viewed as a precautionary measure, respectively."¹⁷

3.The prosecutor's refusal from a criminal prosecution is defined as an obligation on one hand, and as a power on the other, and in another case it is defined as a jurisdiction. (See Paragraph 3 of Article 25 of the RA Law "On Prosecutor's Office," Point 6, Paragraph 3, Article 53 and Point 9, Paragraph 1, Article 54 of the RA Criminal Procedure Code.) According to Article 306 of the Criminal Procedure Code (Prosecutor's participation in the court trial and consequences of failure to attend the session) the prosecutor must reject the prosecution if he/she is convinced that it had not been confirmed during the court trial. That is to say, the legislature on one hand is defined as an obligation for the prosecutor and on the other hand the decision-making is left to the subjective assessment of the prosecutor. Such an unclear definition of a function can create room for abuses.

4.According to Paragraph 4 of Article 27 of the RA law "On Prosecutor's Office" if the prosecutor considers that there are sufficient grounds for bringing an action with regard to the protection of state interests, he/she shall, before bringing an action, have the right to make a warning to the person — having caused damage to the state interests — on voluntarily compensating the damage. This provision defines the prosecutor's discretionary power to take measures for actions aimed at resolving the dispute not by court, which may also lead to non-uniform application of the provision in practice and to a number of abuses.

5.According to Paragraph 1 of Article 28 of the RA Law "On Prosecutor's Office", it is defined that the prosecutor participating in the case shall be obliged to appeal against the judicial act not having entered into legal force, which to his/her opinion is not within reason or is illegal. The prosecutor may appeal against both the judicial acts rendered in criminal cases, and the judicial acts rendered on cases filed and examined within cases of the state interest defense. The judicial act on criminal cases, in respect of civil action, may be appealed by the prosecutor if it relates to property interests of the State. (Paragraph 5 of Article 28 of the RA law "On Prosecutor's office"). The Prosecutor General and his/her deputies may appeal against a judicial act on a civil or administrative case concerning the state interests, irrespective of

¹⁶ "In a number of cases the Prosecutor's Office did not have proper control over the actions of investigators, as a result of which the aggrieved did not get the decision on suspension of the criminal case, the procedure of debating the reports on crimes was not followed. As a result, the law requirements have been violated and people were deprived of effective protection of their rights."

¹⁷ See the report-program titled "What is important for the Prosecutor General in the work of the Prosecutor's Office." (from 13:20 minutes)
https://www.youtube.com/watch?v=uibX_q-9v-Q

the participation of the Prosecutor's Office in the examination of the case. An appeal may be brought by the immediate prosecutor (accusing prosecutor, or the prosecutor participating in the trial) and by the superior prosecutor, taking into account that judicial acts not having entered into legal force can be appealed against by the prosecutor participating in the trial or by the superior prosecutor. Only the Prosecutor General and his/her deputies may file a cassation appeal against the judicial acts having entered into legal force. In court the appeal is defended by the prosecutor who brought the appeal and if the appeal was brought by the Prosecutor General or his/her deputy, then the appeal is defended by him/herself or another prosecutor by his/her assignment. The RA Civil Procedure Code defines that in cases of appellate appeal the prosecutor is entitled to bring an appeal against a judgment and in cases of cassation appeal the Prosecutor General and his/her deputies are entitled to bring an appeal against a judgment only in cases stipulated by law. (Point 2, Paragraph 1, Article 205 and Point 2, Paragraph 1, Article 223 of the Civil Procedure Code): The RA Administrative Procedure Code defines that both the appellate and the cassation appeals can be brought by the Prosecutor General and his/her deputies (Point 2, Paragraph 1, Article 117.1 and Point 2, Paragraph 1, Article 118.1 of the RA Administrative Procedure Code), again in cases stipulated by law.

Within criminal proceedings, the prosecutor or the superior prosecutor are entitled to the right to bring an appellate appeal. The Prosecutor General and his/her deputies are entitled to the right to bring cassation appeal as required by law.

It is alarming that an appeal may be brought by an immediate prosecutor or the superior prosecutor, and at the same time the appeal may be withdrawn not only by the prosecutor who brought the appeal, but also by the superior prosecutor. Such regulations are possibilities for direct interventions by the superior prosecutors to the activities of the prosecutor, which violates the independence of the prosecutor and this can disrupt the principles of a unified institution such as the Prosecutor's Office.

4. Summary

The role of the RA National Security, Special Investigation Service and Prosecutor's Office is unique in the system of state governance.

These three agencies are law enforcement agencies. The NSS and the SIS are authorized to perform investigation within their jurisdiction; the Prosecutor's Office is entitled to supervise the investigation and preliminary investigation conducted by these two agencies. In the case of NSS it supervises the investigation and preliminary investigation; in the case of SIS it supervises the preliminary investigation.

Being one of the most important instruments in the field of human rights, the legislation regulating the activities of these three agencies defines the principles of respecting the dignity of human rights; however, there is a high risk of human rights violations by these agencies. Moreover, these violations can happen directly when they are violating the rights of individuals during their work (violating the negative obligations of the state), or as a result of not taking proper, adequate and effective measures for the violated rights of an individual (while performing positive obligations).

The National Security Service has the authority to perform investigation and preliminary investigative activities for a wide range of crimes prescribed in the RA Criminal Code, including preliminary investigations within cases related to the crimes committed by officials of the Special Investigation Service or with their complicity in connection with their positions; to have detention facilities, as well as it is the sole agency to ensure operational intelligence activity by controlling telephone conversations. At the same time, it is an authorized Body performing national security functions. It is a Military Body (the service in the national security agencies is a military service). The ultimate goal and the title of the National Security Body is the protection of national security, which includes not only the protection of individual rights, but a number of other principles, such as security of a person, society and the state, territorial integrity, sovereignty, constitutional order, normal development of economy, protection of the material and spiritual values of society, rights and freedoms of citizens, and internal and external threats to the environment. Several of the above-mentioned concepts are evaluative and their meaning and perception is not rigid, they can change over time, or as a result of policy change. Something that was once considered a material or a spiritual value for society cannot be considered as such at a later time, which can allow for arbitrary misuse and abuse of those concepts. As it states in the Venice Commission report on “Democratic oversight of the security services”¹⁸ “Security services have inbred in them a potential of abuse of State power.”

“The subjectivity and flexibility of the notion of ‘national security,’ combined with its vital importance to the State, mean that governments have a wide margin of maneuver in this area. They could be tempted to use the security services to pursue illegitimate aims. It is thus necessary to establish mechanisms to

¹⁸ Venice Commission report on “Democratic oversight of the security services”
□ [http://www.venice.coe.int/webforms/documents/CDL-AD\(2007\)016.aspx](http://www.venice.coe.int/webforms/documents/CDL-AD(2007)016.aspx)

prevent political abuse, while providing for effective governance of the agencies.” Because of this, the national security agencies indiscriminately have to choose between different values and principles. These preconditions form the approach of the National Security Service and the employees to the functions performed by them, which in terms of human rights, is more dangerous and risky when performing the authority of investigation and preliminary investigation of criminal cases.

The Special Investigation Service, in its right, is an independent Body, which aims to conduct a preliminary investigation of criminal cases while trying to maintain independence and objectivity in view of public authority, is an additional challenge. The SIS is authorized to examine cases related to the crimes committed by persons implementing state special services or their complicity in connection with their positions, i.e. prosecutors, employees of the investigation committee, police officials (except for police troops), national security (except for frontier troops and armed subdivisions), tax officials, customs agencies, agencies providing compulsory enforcement of judicial acts, criminal executive and rescue bodies, as well as the legislative, executive and judicial bodies employees implementing state special services. The SIS role is to ensure human rights protection in cases of alleged violations by the above-mentioned representatives, as a result of which to support the improvement of the quality of services provided by these bodies and to support the guarantee of respect for human rights. In order to avoid possible pressure and corruption risks while performing such an activity, it remains an important issue to ensure administrative, operational and financial independence and to ensure protection of the rights and social welfare of the SIS officers. It is also necessary to ensure a system of accountability, which should not put a Body under subordination of the respective department, thus providing control over the Body by a representative body, a higher level of public accountability and existence of public oversight mechanisms. The Prosecutor's Office is the only Constitutional Body of the three – the formation of the Prosecutor's Office and the list of powers are established in the Constitution, thus emphasizing the important role of this Body in the sphere of the Rule of Law and administration of justice.

In May 2013 "The Assessment Report of the Prosecutor's Office"¹⁹ was published. According to the authors, the International and European documents relating to the prosecution services are the same with many of the elements; the values and standards included in them can be divided into the following broad categories: normative values, prosecution, independence and accountability, service guarantees and professional requirements, and relations of prosecutors and other participants of the criminal justice system.

As a result of the research, a series of recommendations have been presented which are directed towards the publicity of the activities of the Prosecutor's Office and establishment of guarantees ensuring the independence of prosecutors.

The definition of the powers of the Prosecutor's Office, the procedure of appointing the Prosecutor General by the RA Constitution is intended to provide actual independence of this body. Because this Body holds much power and independence, it becomes necessary to have effective controls and require

¹⁹ RA Prosecutor's Office's assessment report, May, 2013

□ https://genproc.am/upload/File/Pearson_%20Report_%20ARM_%20May%202013.pdf

accountability from this Body. The Prosecutor's Office obliges to use more serious moral obligations of society and carries out control over the most severe punishments applied by the state.

In democratic governments committed to the Rule of Law, the prosecutor must exercise this power responsibly and be able to demonstrate that fact to the public.²⁰ The prosecutor's office, in their activities, should be primarily responsible and accountable to the public. Public accountability implies the accountability before the public representatives - the Legislature.

It is worth noting that although the RA Legislation obliged the Prosecutor's Office to present the National Assembly an annual report, the Report has not been debated in the National Assembly. By legislative amendments made in 2014, it appears that they have tried to solve this issue, as a result of which the Prosecutor General's report should be verbally discussed during the session of the National Assembly in 2015.

All three bodies being studied are greatly involved and have significant roles in the process of establishment of the Principle of Justice and the Rule of Law in the Republic of Armenia. At the same time, these institutions have a very wide scope of powers, and in cases of the National Security Service and the Prosecutor's Office, the powers are also multi-facet and multi-layered. The SIS is only limited to conducting preliminary investigations on a certain range of criminal cases. The NSS agencies and the Prosecutor's Office have comprehensive powers. The powers of the Prosecutor's Office are not limited to the field of criminal prosecution, as a consequence of which the administrative authorities may be dependent of the Prosecutor's Office in performing their responsibilities.

Some of the norms regulating the activities of the NSS, SIS, Prosecutor's Office, including the powers, duties, and relations with other public bodies, comply with international standards. At the same time, there are a number of regulations that do not correspond to international standards and are risks in the field of human rights. In this sense, the issue of these agencies' direct dependence on the RA president is of critical concern and this is even more problematic in the case of the SIS and NSS.

This dependence is reflected with the decisive role of the RA President to appoint senior officials to these agencies (in the case of the Prosecutor's Office the deputies of the Prosecutor General, in the case of the RA Special Investigation and National Security Services the Heads of agencies, deputy Heads of agencies and Heads of important divisions of the agency) and also the power to dismiss them from positions.

Therefore, no matter to what extent the legislation regulating the activity of these agencies is in line with international standards, the condition of dependence on one body significantly reduces the effectiveness of their activity as independent bodies.

This problem is exacerbated in the absence of adequate control mechanisms by the Representative Body. A control mechanism only over the Prosecutor's Office is developed by the RA National Assembly, and

²⁰ Ronald F. Wright and Marc L. Miller, *The Worldwide Accountability Deficit for Prosecutors*, 67 Wash. & Lee L. Rev. 1587 (2010),

□ <http://scholarlycommons.law.wlu.edu/wlulr/vol67/iss4/9>

although this mechanism is still not functioning to its full content and extent, the 2014 legislative changes seem to be directed towards the regulation of that control mechanism and its proper use.

Taking into account the above-mentioned, we may say again that in Armenia the control mechanism by a Representative Body over the three agencies being studied, as well as the actual accountability before the public, is not ensured.

There are a number of other problems in the sphere of the RA NSS, SIS and Prosecutor's office, such as the fact: that the RA National Security Service is a military entity, the National Security Service's activities are regulated by a sub-legislative act, violations of individual's rights during operative-intelligence activities and the legislative regulations supporting those violations, the absence of power by the SIS to conduct preliminary investigation, non-compliance of torture as a type of crime defined in the RA Criminal code to the UN Convention against Torture and other cruel, inhuman or degrading treatment or punishment, insufficient guarantees of the supervising prosecutors' independence, as well as unclear scope of control and regulations in the prosecution system over the activities of prosecutors, non-uniform use of terminology in legal acts regulating the activity of the Prosecutor's Office, and the use of different terms within the same legal sphere.

5. Recommendations

National Security Service

1. Replace the phrase “in the police troops of the Ministry of Interior” with “In the police troops” in the Article 12 of Law «On National Security bodies».
2. Fully implement the recommendations presented as a result of the analysis of “Comparative Analysis of the RA law “On Operative-Intelligence Activities” and the Council of Europe Principles and Standards”
3. Clearly state the grounds and requirements for admittance and dismissal for service in the NSS, in particular;
4. Define the grounds for dismissal of the NSS Director;
5. Make clear the contents of the practical, personal, moral characteristic, requirements and the requirement conditioned by official necessity;
6. Define criteria for the Prosecutor to be conducted while handing over the case to another Body as prescribed by Paragraph 9 of Article 190 of the RA Criminal Code.
7. Define criteria to be conducted relating to which cases the Body should conduct preliminary investigation in cases prescribed by Paragraph 4 of Article 190 of the RA Criminal Procedure Code.
8. Define which NSS Body or sub-division is responsible to carry out operative-intelligence measures.
9. Develop a departmental list of information to be classified in accordance with the Constitutional Court Decision N 1010 and Paragraph 5, Article 12 of the RA Law "On State and Official Secrets."
10. Define the objectives, goals, functions and powers of the National Security Service, as an authorized body of state governance in the national security sector, into a law with one legislative act.
11. Replace the military service of the National Security Service with Special Civil Service.
12. Make necessary changes and additions in the RA Law “On Operative-intelligence Activity” along with the RA Criminal Procedure Code.
13. Define in the RA Law “On Operative-intelligence Activity” the necessity for use of other investigation actions or less interventional operative-intelligence measures before using more risky measures.
14. Define in the RA Criminal Procedure Code and the RA Law “On Operative-intelligence Activity” the obligation of informing a person by a relevant Body about the intervention means used, within a three-day period upon terminating video surveillance or tapping.
15. In accordance with paragraph 1, Article 47 of the RA Law "On Treatment of Arrestees and Detainees" create a Public Monitoring Group conducting public control in the NSS detention.
16. Define the procedures and contents of the reports, statistical data to be submitted to the RA Government and RA President by the NSS.
17. Define the obligation of annual reporting to the National Assembly by the NSS about their activities and the procedure to be used when discussing the report in the National Assembly.

18. Develop and approve the Government's decision establishing the mandatory statistical classifications for administration of statistics by the NSS, the list of statistical data (information) and the description of the content of statistical reports.
19. Ensure public access to statistical reports prepared by the NSS.
20. Study the NSS Rules of Procedure in terms of compliance with the RA law "On Legal Acts;" ensure the principle that all the necessary legal regulations are clearly defined by law.

Special Investigation Service

1. Regardless of the circumstances, define the mandatory condition of termination of the SIS Officer's powers, in cases of filing a criminal case against him/her.
2. Define by the RA Criminal Code, torture as a type of crime which would comply with the definition of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
3. Develop and approve the RA Government's decision establishing the mandatory statistical classifications for administration of statistics by the SIS, the list of statistical data (information) and the description of the content of statistical reports.
4. Ensure public access to statistical reports prepared by the SIS.
5. Define for the SIS the powers for conducting investigations.
6. Define the powers of the RA Police and SIS which apply to the Prosecutor's Office asking to assign the SIS to conduct a preliminary investigation on cases which will be necessary based on ensuring comprehensive, thorough and impartial investigation and the necessity of public interest.
7. Establish the opportunity for persons to present a report via certified telegram, phone, radiogram, e-mail.
8. Define a clear procedure to address the information about illegal actions of the police while fulfilling their official duties to the RA Police and SIS by the judicial authorities when the crime is known to them.
9. Define the power for the SIS to conduct investigation in cases of all offenses relating to the electoral processes prescribed by the RA Criminal Code.
10. Define the obligation of annual reporting to the National Assembly by the SIS about their activities and the procedure of discussing it in the National Assembly.
11. Define the procedure for the discussion of annual reports submitted to the RA Government by SIS during Government session.
12. Define a mandatory requirement for the Police to inform the SIS about serious injuries or death of persons while under police surveillance.

Prosecutor's Office

1. Unify the terminology used in legal acts regulating the activities of the Prosecutor's Office.
2. Define the minimum criteria for the, nomination and appointment for the position of the Prosecutor General.
3. Clearly define the case when the prosecutor is entitled and when he is obliged to withdraw the accusation.
4. To make Point 5, Paragraph 2, Article 27 of the RA Law "On Prosecutor's Office" a separate paragraph.
5. In the case of filing a claim for protection of state's interests, to clearly define the prosecutor's duty to notify the person, accused of any damage, about the possibility to voluntarily compensate for the damage, before the state files a claim.
6. To make clear guarantees for the prosecutor's independence in his/her activities. In order to ensure the independence of a supervising prosecutor, to abolish the right of bringing an appellate appeal by a superior prosecutor, as well as the right of the superior prosecutor to withdraw the appeal filed by the Prosecutor.
7. To make clear the scope of control of the prosecutors' activities in the system of the RA Prosecution.
8. To establish the definition of the term "official duties" of the prosecutor.
9. To establish the competence of the RA NA to nominate a candidate to the office of the RA Prosecutor General.

6. Appendices

Appendix 1

Powers of Officials

Official Name of Body	RA President	NSS Director	Direct Head of Body
National Security Service	Creates, re-organizes the service, terminates its activity		
	Appoints and discharges the service director	Nominates the candidate for the service director	
	Appoints the deputy directors		
RA State Protection Service	Implements the service management	Implements the general service management	Implements the direct service management
Operative-technical general department functioning within the system of the RA national Security republican Body		Implements the general management of the General Department	The direct management is implemented by the head of the General Department
	Appoints the head of department and discharges from his/her position by the introduction of the head of RA national Security republican Body	Introduces the candidate for the head of General Department to the President	
	Approves the charter, structure and the number of appointees of the General Department by the introduction of the head of the RA National Security republican Body	Develops and submits to the President the charter, structure and the number of appointees of the General Department	
Border troops	Appoint and dismiss the Commander of Border Troops		Performs direct management

*Operative-intelligence measures and the authorized agencies
/According to the RA law "On Operative-intelligence Activity"/*

	Police	Military Police	National Security Agencies	Customs Agencies	Tax Agencies	Penitentiary service	The court decision is necessary
1. Operative inquiry	X	X	X	X	X	X	
2. Obtaining operative information.	X	X	X	X	X	X	
3. Collection of comparative research samples	X	X	X	X	X	X	
4. Purchase-inspection					X		
5. Controlled supply and purchase	X	X	X	X	X	X	
6. Research of items and documents	X	X	X	X	X	X	
7. External observation	X	X	X	X	X	X	X ²¹
8. Internal observation	X	X	X	X		X	X
9. Personal identification	X	X	X	X		X	
10. Research of buildings, constructions, sites, and transport means	X	X	X		X	X	
11. Control of correspondence, mail, telegraph and other communications	X	X	X			X	X
12. Control of telephone conversations	X		X			X	X
13. Operative investment	X	X	X	X	X	X	
14. Operative experiment	X	X	X	X	X	X	
15. Ensuring access to financial data and secret control of financial transactions	X		X				X
16. Imitation of taking or giving bribe	X	X	X				X

²¹ External observation can be held only by the permission of the court, if it is not possible to do without use of technical means and person(s) against whom the observation is held, could not reasonably assume the possibility for conducting such a measure.

*The grounds and terms for secret investigation: Checklist
/According to draft law of the Criminal Procedure Code/*

	Terms Secret	<i>What evidences are necessary to obtain</i>	<i>In case of what gravity of crime</i>	<i>Against whom</i>
1.	Internal observation	<p>There are sufficient grounds to suppose that as a result relevant evidence can be obtained significant for the proceedings and, at the same time, it is reasonably impossible to obtain that evidence in another way</p>	Proceedings on alleged grave and particularly grave crimes	1) against the physical person on whom there are evidences of an alleged crime.
2.	External observation		Proceedings on alleged grave and particularly grave crimes	2) against an accused.
3.	Control of correspondence and other non-digital reports		Proceedings on alleged grave and particularly grave crimes	3) against the physical person on whom there is grounded allegation that he/she has regularly communicated or may reasonably communicate with the accused.
4.	Control of digital, including telephone conversations		Proceedings on alleged grave and particularly grave crimes Also proceedings on alleged not grave and medium-gravity crime prescribed by Paragraph 4, Article 256 of the draft Criminal Code	4) against the legal person on whom there is grounded allegation that his/her activity may fully or partially be managed, controlled or directed by the persons mentioned in Points 1 or 2 of this paragraph.
5.	Control of financial transactions		Proceedings on alleged grave and particularly grave crimes	Only in the cases, when the information to be obtained can refer to the accused or the legal entity about whom there is a grounded assumption that its activity can fully or partially managed, controlled or directed by the accused.
6.	Imitation of taking or giving bribe		Proceedings on alleged grave and particularly grave crimes	Exclusively against the person on whom there are evidences of an alleged crime.

Appendix 4. Summary Information about the RA NSS, SIS and Prosecutor's Office

	RA National Security Service	RA Special Investigation Service	RA Prosecutor's office
	www.sns.am	www.investigatory.am	www.genproc.am
Legal status of the Body	Body adjunct to the RA Government	Independent Investigation Body	Independent Constitutional Body
Main legal acts regulating the activity	RA Constitution, 27.11.2005 RA CPC 01.07.1998 RA law "On National Security Agencies", 24.01.2002 RA law "On Service in National Security Agencies", 11.04.2003 RA law "On Operative-intelligence Activity", 22.10.2007	RA Constitution, 27.11.2005 RA CPC , 01.07.1998 RA law "On Special Investigation Service", 28.11.2007	RA Constitution, 27.11.2005 RA CPC , 01.07.1998 RA law "On Prosecutor's Office", 22.02.2007
Powers	a) intelligence, b) counterintelligence, c) military counterintelligence. d) Protection of state boundaries. e) combat against crimes	1) The Special Investigation Service conducts preliminary investigation of the cases related to the crimes committed by the officials of Legislative, Executive and Judicial bodies, employees implementing State Special Services or their complicity in connection with their positions, as well as electoral processes envisaged by the Criminal Procedure Code of the Republic of Armenia.	1) Instigates criminal prosecution. 2) Conducts control over the legality of the investigation and criminal investigation, 3) Defends the accusation in the court. 4) Files a claim to the court on protection of state interest. 5) Appeals the court judgments, verdicts and decisions. 6) Holds control over the legality of punishments and other means of coercion.
Main legal acts of International Law ²²	PACE Recommendation 1402 (1999) on the Control of internal security services in Council of Europe member states. PACE Recommendation 1713 (2005) on Democratic oversight of the security sector in member states.	Opinion of the Commissioner for Human Rights Concerning Independent and Effective Determination of Complaints Against the Police. CommDH(2009)4, 12 March 2009 CPT Standards, CPT/Inf/E (2002) 1 - Rev. 2013 CoE CoM Resolution (97) 24 on the Twenty Guiding Principles for the Fight Against Corruption, Adopted by the Committee of Ministers on 6 November 1997 at the 101st session of the Committee of Ministers. General Comment No. 3 of the	UN • Guidelines on the Role of Prosecutors Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990 • Resolution 17/2, adopted by Commission on Crime Prevention and Criminal Justice (CCPCJ), Strengthening the rule of law through improved integrity and capacity of prosecution services, 2008 • "Strengthening the rule of law through improved integrity and capacity of prosecution services" Report of the Secretary-General, 24 January 2011

²² The universal legal acts defining fundamental human rights and freedoms are not presented.

		<p>Committee against Torture on Implementation of article 14 by States parties of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 13 December 2012</p>	<p>CoE</p> <ul style="list-style-type: none"> • The role of public prosecution in the criminal justice system, Recommendation Rec(2000)19, adopted by the Committee of Ministers of the CoE on 6 October 2000 • Opinion No 3(2008) of the Consultative Council of European Prosecutors (CCPE) on “The Role of Prosecution Services outside the Criminal Law Field” • Opinion No. 5 on “Public prosecution and juvenile justice Yerevan Declaration”, adopted during the 5th plenary meeting the CCPE, which took place in (Yerevan (Armenia), 19-21 October 2010). • Opinion No. 6 of the Consultative Council of European Prosecutors (CCPE) on “The relationship between prosecutors and the prison administration” adopted during the 6th plenary meeting (Strasbourg, 24-25 November 2011) • Opinion (2012) No. 7 of the Consultative Council of European Prosecutors (CCPE) on “The Management of the Means of Prosecution Services” Adopted by the CCPE at its 7th Plenary Meeting (Strasbourg, 26-27 November 2012) • Opinion No.12 (2009) of the Consultative Council of European Judges (CCJE) and Opinion No.4 (2009) of the Consultative Council of European Prosecutors (CCPE) to the Attention of the Committee of Ministers of the Council of Europe on the Relations Between Judges and Prosecutors in a Democratic Society. • Standards of professional responsibility and statement of the essential duties
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				and rights of prosecutors, adopted by the International Association of Prosecutors on the twenty third day of April 1999
Head of Body		Head of the RA National Security Service	Head of the RA Special Investigation Service	RA Prosecutor General
Appointment and discharging of the Head of Body		Is appointed and discharged from the position by the RA President by the suggestion of the Prime Minister. No terms of office is defined.	Is appointed by the RA President by the nomination of the Prime Minister. Terms of office is 6 years.	Is appointed by the RA National Assembly by the suggestion of the RA President. Terms of office is 6 years.
Control	RA National Assembly	No immediate control mechanism is defined. It is possible to conduct control through legislative activity and inquiries.	No immediate control mechanism is defined. It is possible to conduct control through legislative activity and inquiries.	Every year before April 1, the Prosecutor General submits a report about the previous year's activities to the National Assembly.
	RA President	NSS bodies are obliged to present information to the RA President and other state bodies and organizations by his assignment, about issues relating to national security. ²³	Every year the Head of the Special Investigation Service presents a written report to the RA President about the previous year's activities. A disciplinary penalty is applied against the Head of the Special Investigation Service. Applies the disciplinary penalty "decrease in a title of the high-ranking employees by one rank." Apply incentive measures in cases prescribed by Law. Can extend the age of serving in office for 2 years for the SIS Head and his/her Deputy.	Every year, before April 1, the Prosecutor General together with the National Assembly submits a report about the previous year's activities to the RA President. By the suggestion of the Prosecutor General appoints the Deputies of the Prosecutor General: By the suggestion of the Prosecutor General applies punishments "severe reprimand, demoting the class rank by one degree, removal from office" against deputies. Applies penalty "demoting the class rank by one degree" against the Prosecutor General.
	RA Government	NSS bodies are obliged to present information to the RA Government and other state bodies and organizations by their assignment, about issues relating to national security. ²⁴	Every year the Head of the Special Investigation Service presents a written report to the RA Government about the previous year's activities.	No immediate control powers are defined. It is possible to conduct control through legislative activity and inquiries. Powers of adopting some legal regulations for the activity of the Prosecutor's office are defined, such as the list of

²³ The same source

²⁴ The same source

				physical disabilities and diseases hindering appointment in the position of Prosecutor, the description of the uniform and the symbol, and the procedure of their use.
	RA Courts	<p>The Court conducts preliminary control over the implementation of operative-intelligence activities.</p> <p>In particular, some operative-intelligence activities can be implemented only by the permission of the Court.</p> <p>The Court's post factum control over the decisions made by the Body.</p>	The Court conducts post factum control over the decisions, actions /inaction/.	The Court conducts post factum control over the decisions, actions /inaction/.

7. Literature

1. RA Laws

- RA Constitution (with amendments from November 27, 2005)
- RA law “On National Security Bodies” (December 28, 2000)
- RA law “On Service in the Security Bodies” (April 11, 2003)
- RA law “On Information Freedom” (September 23, 2003)
- RA law “On Ensuring Security for Persons Subject to State Protection” (December 3, 2003)
- RA law “On Border troops” (November 20, 2001)
- RA law “On Operative-Intelligence Activities (October 22, 2007)
- RA law “On State Border” (November 20, 2001)
- RA law "On Treatment of Arrestees and Detainees", (February 6, 2002)
- RA law “On State and Official Secrets” (December 3, 1996)
- RA law “On Special Investigation Service” (November 28, 2007)
- RA law “On Civil Service” (December 4, 2001)
- RA law “On Military Service” (September 16, 1998)
- RA law “On Rules of Procedure of the National Assembly” (February 20, 2002)
- RA law “On Prosecutor’s Office” (February 22, 2007)
- RA Prosecutor General’s Decree “Rules of Procedure of the RA Prosecutor’s Office”
- RA law “On Investigation Committee” (May 19, 2014)

2. RA President’s Decrees

- “On Appointing K. Petrosyan as Director of the National Security Service of the Republic of Armenia” (December 17, 2002 - 1220-A)
- “On Discharging K. Petrosyan from the Position of the Director of the National Security Service Adjunct to the Government of the Republic of Armenia” (November 4, 2004 - 194-A)
- “On Appointing G. Hakobyan as Director of the National Security Service Adjunct to the Government of the Republic of Armenia” (November 8, 2004 - 195-A)
- “On Defining the Procedure of Organizing the Activity of the Government of the Republic of Armenia and State Government and other Bodies Adjunct to It” (July 18, 2007 - 98-N)
- “On Approving the Government Structure of the Republic of Armenia” (March 16, 2002 - 1132-N)

3. Codes

- Criminal Code of the Republic of Armenia (April, 18 1998)
- Criminal Procedure Code of the Republic of Armenia (July 1, 1998)
- Administrative Procedure Code of the Republic of Armenia (December 5, 2013)
- Penitentiary Code of the Republic of Armenia (December 24, 2004)

4. RA Government Decisions

- “On Approving the Statute of the National Security Service Adjunct to the Government of the Republic of Armenia” (April 17, 2003 - 433-N)

- "On Approving the List of Special (developed, planned and adapted) Technical Means used during Operative-Intelligence Measures" (July 3, 2008 - 810-Ն)
- "On Defining the List of Physical Disabilities and Diseases Hindering Appointment in the Position of a SIS employee" (February 13, 2008 - 143-N)
- "On Approving the Work Procedure of the Competition Committee of the Special Investigation Service" (February 28, 2008 - 180-N)
- "On Defining the List of Physical Disabilities and Diseases Hindering Appointment in the Position of Prosecutor and State Servant in the RA Prosecutor's Office Staff, and on Providing a Reference Letter on the Absence of Physical Disabilities and Diseases Hindering Appointment in the Position of Prosecutor and State Servant in the RA Prosecutor's Office Staff" (November 15, 2007 - 1348-N)

5. Judiciary Acts

- Civil Case N 08-617 of the RA Court of Cassation (May 23, 2008)
- CCD 1010 Decision of the RA Constitution (March 6, 2012)

6. RA Draft Laws

- Draft of Criminal Procedure Code of the Republic of Armenia

7. International Legal Regulations

- PACE Recommendation 1402 (1999) on the Control of internal security services in Council of Europe member states.
- Convention for the Protection of Human Rights and Fundamental Freedoms (4 November 1950)
- Role of the public prosecutor's office in a democratic society governed by the rule of law Recommendation 1604 (2003)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (10 December 1984)
- Committee of Ministers Recommendation No. R (87) 18
- PACE Recommendation 1402 (1999) on the Control of internal security services in Council of Europe member states.
- PACE Recommendation 1713 (2005) on Democratic oversight of the security sector in member states.
- Opinion of the Commissioner for Human Rights Concerning Independent and Effective Determination of Complaints against the Police. CommDH(2009)4, 12 March 2009
- CPT Standards, CPT/Inf/E (2002) 1 - Rev. 2013
- CoE CoM Resolution (97) 24 on the Twenty Guiding Principles for the Fight Against Corruption, Adopted by the Committee of Ministers on 6 November 1997 at the 101st session of the Committee of Ministers.
- General Comment No. 3 of the Committee against Torture on Implementation of article 14 by States parties of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 13 December 2012

- Guidelines on the Role of Prosecutors Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990
- Resolution 17/2, adopted by Commission on Crime Prevention and Criminal Justice (CCPCJ), Strengthening the rule of law through improved integrity and capacity of prosecution services, 2008
- “Strengthening the rule of law through improved integrity and capacity of prosecution services” Report of the Secretary-General, 24 January 2011
- The role of public prosecution in the criminal justice system, Recommendation Rec(2000)19, adopted by the Committee of Ministers of the CoE on 6 October 2000
- Opinion No 3(2008) of the Consultative Council of European Prosecutors (CCPE) on “The Role of Prosecution Services outside the Criminal Law Field”
- Opinion No. 5 on “Public prosecution and juvenile justice Yerevan Declaration”, adopted during the 5th plenary meeting the CCPE, which took place in (Yerevan (Armenia), 19-21 October 2010).
- Opinion No. 6 of the Consultative Council of European Prosecutors (CCPE) on “The relationship between prosecutors and the prison administration” adopted during the 6th plenary meeting (Strasbourg, 24-25 November 2011)
- Opinion (2012) No. 7 of the Consultative Council of European Prosecutors (CCPE) on “The Management of the Means of Prosecution Services” Adopted by the CCPE at its 7th Plenary Meeting (Strasbourg, 26-27 November 2012)
- Opinion No.12 (2009) of the Consultative Council of European Judges (CCJE) and Opinion No.4 (2009) of the Consultative Council of European Prosecutors (CCPE) to the Attention of the Committee of Ministers of the Council of Europe on the Relations Between Judges and Prosecutors in a Democratic Society.
- Standards of professional responsibility and statement of the essential duties and rights of prosecutors, adopted by the International Association of Prosecutors on the twenty third day of April 1999

8. Other

- RA Constitutional Comments, “Irvavunk” (2010)
- The report of European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Armenia from 15 to 17 March 2008, Strasbourg (19 March 2010)
- RA Government Annual Report on 2012 Stet Budget Performance
- Report of the Venice Commission on the “Democratic oversight of the Security Services” (1-2 June 2007)
- The Worldwide Accountability Deficit for Prosecutors, Ronald F. Wright and Marc L. Miller, 67 Wash. & Lee L. Rev. 1587 (2010), <http://scholarlycommons.law.wlu.edu/wlulr/vol67/iss4/9>