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Assessing the Essential Elements for Democratic Control of Armed Forces in Lithuania

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Introduction

An analysis of the baffling issues arising from the democratic control over military structure forms the basis of this chapter, with particular reference to legal and institutional arrangements in Lithuania. The “raison d’être” of the armed forces in contemporary democratic European States is paramount and justified by the need to protect and to ensure the security of the societies of the respective States from external threats, and – nowadays more than ever – to safeguard democratic values, the rule of law and the human rights and fundamental freedoms of all persons subject to that national jurisdiction¹. The research objective of this chapter focuses on the democratic control over militaries in Lithuania where security situation fluctuates and becomes less predictable.

On 17 January 2017, the Parliament of the Republic of Lithuania adopted the National Security Strategy, which stipulates the vital and primary interests of national security, the key risk factors, dangers and threats posed to these interests, sets the priorities and long- and medium-term tasks of the development of the national security system and foreign, defence and domestic policies. According to the Article 8, in the current period the main threat for the security of the Republic of Lithuania is posed by aggressive actions of the Russian Federation violating the security architecture based on universal rules and principles of international law and peaceful co-

1. Report on the Democratic Control of the Armed Forces adopted by the Venice Commission at its 74th Plenary Session. Venice, 14-15 March 2008. Strasbourg, 23 April 2008 CDL-AD(2008)004 Study no. 389 /2006.

existence². The question stands open whether new threat developments have an impact on civilian role and civilian control over militaries. Specifically, is it in line with the international community’s thought and its broader democratic perception, which goes beyond military threats, arms control and disarmament, and incorporates commitments to human rights and democracy?

While civilian control of the military is a sine qua non condition for democracy, the degree and type of such control will vary according to the system of government, historical traditions and cultural values, and different perceptions of threat³. The topic has never grasped significant attention of the Lithuanian scholars and practitioners. Vaidotas Urbelis explored the democratization and integration processes in the Baltic States with some reference to Lithuania⁴. He mentioned that positive change was obvious in the establishment of civil control over defence policy in the Baltic States. Examples of illegal acts from the military sector, which could threaten the interests of the society or the State, have vanished due to firm control of the national defence system exercised by the political authorities. While particular incidents may still occur in future, it is likely that these will be isolated instances that can be handled on a

2. Aggression against the neighboring countries, annexation of Crimea, the concentration of modern military equipment of the Russian Federation, its large scale offensive capabilities and their exercises near the borders of the Republic of Lithuania and other states, especially in Kaliningrad Region (Karaliaučius), cause international tension and threaten world peace. Capacity of the Russian Federation to use military and economic, energy, information and other non-military measures in combination against the neighboring countries, ability to exploit and create internal problems of the states located in the Eastern neighborhood of the Republic of Lithuania as well as preparedness of the Russian Federation to use a nuclear weapon even against the states which do not possess it is a challenge to the security of the Republic of Lithuania and the whole Euro-Atlantic community. National Security Strategy of the Republic of Lithuania. Resolution No XIII-202 of the Seimas of the Republic of Lithuania of 17 January 2017.

3. Report on the Democratic Control of the Armed Forces adopted by the Venice Commission at its 74th Plenary Session. Venice, 14-15 March 2008. Strasbourg, 23 April 2008 CDL-AD(2008)004 Study no. 389 /2006.

4. Vaidotas Urbelis, “Democratization and integration: DCAF in the Baltic States”// Legal framing of the democratic control of armed forces and the security sector: norms and realities. Belgrad, 2001.

case-by-case basis. In his further study with Tomas Urbonas, he analyzed the development of democratic control over militaries. Authors argued that despite early problems, significant progress was made in the development of civilian and democratic control of the armed forces in Lithuania since independence.

In 1990-91, as part of its struggle for independence, Lithuania began establishing armed forces. In 1992-93, Lithuanians faced problems in this area because of the absence of a clear legal framework for civil-military relations and the economic problems facing the armed forces. Since 1994, Lithuania has put in place a clear legal framework for democratic control of its armed forces⁵. Significant insights can be found at the research of Kestutis Paulauskas and Algirdas Gričius, who explored the concept of democratic control over the Armed Forces in Lithuania⁶. The authors concluded that despite some unresolved issues, the civil democratic control over the military establishment has been successfully established in Lithuania. Certain unsettled issues of civil-military relations and insufficiently effective parliamentary oversight over the military structures remain a matter of further consolidation of the democratic political system and formation of civil society. However, these issues are inherent to most states and societies in transition. Grazina Miniotaite underlined in her research that the civil democratic control over the military was successfully established in Lithuania. However, recent documents are often characterized by attempts at reconciling the contradictory ideas of maintaining a sovereign nation state and seeking for a common space of security, which is indicative of a state in transition⁷.

5. Tomas Urbonas and Vaidotas Urbelis, "The challenges of civil-military relations and democratic control of armed forces: the case of Lithuania" // *Democratic control of the military in postcommunist Europe: guarding the guards*. Houndmills: Palgrave, 2002

6. Kestutis Paulauskas and Algirdas Gričius. *Democratic Control over Armed Forces in Lithuania*. Connections. 2002.

7. Grazina Miniotaite. *The Normative Construction of the Military in Lithuania* Lithuanian Case PRIF- Research Paper No. 1/14-2007.

Karolius Liutkevičius prepared a study on parliamentary oversight towards the intelligence services⁸.

This paper is divided into three parts. The first part is focused on theoretical framework and objectives of democratic control over militaries. The second part is devoted to the development of legal framework, and the third one centres on the parliamentary oversight in Lithuania. It came to the conclusion that Lithuania crafted advanced and living legal framework to place civilian control over militaries, which was well supported by internal and external factors.

The objectives of the democratic control over the military establishment

The civilian and military relations have been largely analyzed by scholars and practitioners and their dynamics remain multi-faceted. As Larry Diamond has underlined the control of the State and its key decisions and allocations lies, in fact as well as in constitutional theory, with elected officials (and not democratically unaccountable actors or foreign powers); in particular, the military is subordinated to the authority of elected civilian officials⁹. The countries, as especially those in transition, seek to find the most rational and balanced model to establish democratic control over the military establishment and intend to refer to some models that should fit them. Andrew Cottey, Tim Edmunds and Anthony Forster provided a common analytical framework to assess the progress made and problems faced by different Central and Eastern European countries in establishing democratic control over their armed forces. The common analytical framework argued that democratic control of armed forces involves three distinct but closely related elements: the non-involvement of the military in domestic

8. National intelligence authorities and surveillance in the EU: Fundamental rights safeguards and remedies. Lithuania. Version of 6 October 2014. Lithuanian Social Research Centre. Institute for Ethnic Studies. Karolis Liutkevičius.

9. Larry Diamond, *Developing Democracy toward Consolidation* (Baltimore and London: The John Hopkins University Press, 1999), p. 11.

politics; democratic control of defence policy (in terms of force size and structure, defence spending and procurement); and democratic control of foreign policy (including decisions on the external use of force)¹⁰. DCAF indicated key principles that should be in place to regulate civil-military relations¹¹:

1. The state is the only actor in society that has the legitimate monopoly of force; the security services are accountable to the legitimate democratic authorities;
2. The parliament is sovereign and holds the executive accountable for the development, implementation and review of the security and defence policy;
3. The parliament has a unique constitutional role in authorising defence and security expenditures;
4. The parliament plays a crucial role with regard to declaring and lifting a state of emergency or the state of war;
5. Principles of good governance and the rule of law apply to all branches of government, and therefore also to the security services;
6. Security sector personnel are individually accountable to judicial courts for violations of national and international laws (regarding civil or criminal misconduct);
7. Security sector organisations are politically neutral.

The fundamental principles mentioned above constitute credible platform for democratic con-

10. The framework suggests that a range of factors influence the prospects for democratic control of the armed forces in any given country: historical patterns of civil-military relations; the country's broad domestic political, economic and social context; the international context; domestic institutional factors (particularly, the constitutional, governmental and administrative arrangements relating to control of the armed forces); and issues of 'military culture' and military professionalism. Civil-Military Relations and Defence Planning: Challenges for Central and Eastern Europe in the New Era A. Cottey, T. Edmunds, A. Forster Working Paper 09/00.

11. Parliamentary oversight of the security sector: Principles, mechanisms and practices. IPU-DCAF handbook. Geneva, 2003.

trol over militaries. Failed implementation or inability to employ them to full extent might have negative or even detrimental effects to further development of democracy and successful transition.

The development of legal framework for the democratic control over militaries in Lithuania

Following the thoughts of Vaidotas Urbelis and Tomas Urbonas, the concepts of civil-military relations and democratic control of the military that emerged as a consequence of political transformations in Lithuania in the 1990's are comprised of three principles¹². First, subordination of the military to civilian authority by legal and institutional mechanisms. Second, the political neutrality of the military imposed by external limits and internalised through professional ethic. Third, non-interference of civilian authorities in the pre-defined military domain.

The build-up process of the Lithuanian Armed Forces was complicated and affected by various internal and external factors. After the collapse of the Soviet Union, Lithuania and the whole society searched for new democratic ways to consolidate the political system and to make it credible. The process of democratization is multi-faceted and included to some extent some interventions at the very beginning in the domain of civil-military relation. The Armed Forces (hereinafter referred as AF) were crafted from a scratch. In the early 90s the development process was rather chaotic with a single objective to build up some structures being able to slow down aggression deriving from the East. According to V.Urbelis, from 1990 to 1993 the development of defence structures proceeded in a somewhat confused manner, and the subordination of the military to civilian authority lacked appropriate over-

12. Tomas Urbonas and Vaidotas Urbelis, "The challenges of civil-military relations and democratic control of armed forces: the case of Lithuania'//Democratic control of the military in post-communist Europe : guarding the guards. Houndmills: Palgrave, 2002.

sight mechanisms¹³.

Three facts need to be explored in light of democratic control over military establishment, which include the adoption of the Constitution in 1992, the withdrawal of the Russian army and application for full fledged membership for NATO. The basic constitutional provisions on national defence (Chapter 13) outline the character of the civil-military relations¹⁴. According to Article 140, the State Defence Council, consisting of the President (Head of the Council), the Prime Minister, the Chairman of the Parliament, the Minister of National Defence, and the Commander of the Armed Forces, co-ordinates the main issues of the national defence. The Constitution establishes direct accountability of the Government, the Minister of National Defence and the Commander of AF to the Parliament for the management of the AF of Lithuania. The Parliament is also granted the right to impose martial law, to declare mobilizations, and to decide on the employment of the AF for the defence of state or for the implementation of international commitments (Article 142). The Constitution forbids the appointment of active servicemen as Minister of National Defence and names the President as the Supreme Commander of the armed forces¹⁵. These constitutional provisions constitute the legal basis for the application of the principle of civilian control over the AF.

As a matter of fact the Constitution enshrined fundamental principles in relation of democratic control over the military establishment. Nevertheless, experts claimed that the years

1992–1994 marked the ‘transitional’ phase of the Baltic States’ civil-military relations, and were characterized by a period of economic and financial crises therefore Lithuania had an extremely limited legislative framework to support the establishment of democratic control over its AF¹⁶. Furthermore, Lithuanian political elite and newly create defence forces had to handle the presence of the Russian troops on the ground. A timetable for the withdrawal of the AF of the Russian Federation from the territory of Lithuania, with the deadline for the final withdrawal of the army being 31 August 1993, was signed on 8 September 1992. Later problems related to non-compliance with the timetable for the withdrawal of the Russian army and the suspension of the withdrawal, which was announced on several occasions, did not change the deadlines that had been set¹⁷.

Political turbulences, economic uncertainties and limited funding overshadowed the real situation within the AF. Their popularity and credibility decreased and the implementation of the principles of democratic control of the militaries was lagging behind. The turning point in prompting the implementation and refinement process was caused by significant changes in the Lithuanian foreign and security policy. While at the beginning of 90s Lithuanian policy makers had placed neutrality as a primary choice of their foreign and security policy, in 1994 the situation changed. Immediately after the withdrawal of the Russians troops, on 5 October 1993 the political parties of Lithuania addressed the president regarding the integration of the Republic of Lithuania into NATO. And on 4 January 1994 the president sent a letter to NATO Secretary General Manfred Wornier expressing the desire of Lithuania to become a NATO member. This move brought about significant changes in light of democratic control over militaries. Firstly, it indicated Lithuanian readiness to completely

13. There was also an insufficient or non-existent legal framework to support the reform process, and, perhaps more importantly, both the military and civilians lacked experience in constructing state defense policy. Political parties frequently clashed over fundamental principles of defense policy and were not able to provide clear guidelines for defense planning. Vaidotas Urbelis, "Democratization and integration: DCAF in the Baltic States" // Legal framing of the democratic control of armed forces and the security sector: norms and realities. Belgrad, 2001.

14. See more: Grazina Miniotaite. The Normative Construction of the Military in Lithuania Lithuanian Case PRIF- Research Paper No. I/14-2007.

15. Grazina Miniotaite. The Normative Construction of the Military in Lithuania Lithuanian Case PRIF- Research Paper No. I/14-2007.

16. Vaidotas Urbelis, "Democratization and integration: DCAF in the Baltic States" // Legal framing of the democratic control of armed forces and the security sector: norms and realities. Belgrad, 2001.

17. Freedom Day. Website of the Lithuanian Parliament. http://www3.lrs.lt/pls/inter/w5_show?p_r=9522&p_k=2.

ASSESSING THE ESSENTIAL ELEMENTS FOR DEMOCRATIC CONTROL OF ARMED FORCES IN LITHUANIA

Year	Document	Provisions
1996	The Basics of National Security of Lithuania	A section of the document is devoted to issues of “democratic control over the armed forces” (chapter 8) and is based on the relevant provisions in the Constitution. It is stressed that all decisions on defence policy and AF are to be made by the democratically elected civilian government. The document underwrites the publicity of decisions on defence policy and defence expenditure; it also establishes the main principles and procedures of the civilian control of AF. However, the document “failed to establish a clear definition of the parliamentary overview and provided only limited tools of accountability and control”.
1998	Law on Organization of the National Defence and the Military Service	The law of 1998 sets forth the fundamentals of organization, command and control of the national defence system, and establishes the procedures for the implementation of military and civilian service within the national defence system. According to the law, the national defence system consists of 1) the Ministry of National Defence; 2) the AF and, in time of war, other armed forces: border police, special police units and citizens in organized resistance (guerrilla) units subordinate to the Commander of the Armed Forces; 3) the Lithuanian Military Academy, the Non-Commissioned Officer (NCO) School and other military schools; 4) other state institutions established by the Ministry of Defence or subordinate to the Minister of National Defence; 5) infrastructure assigned to National Defence and the enterprises established by the Ministry of National Defence. The Law prescribes that “the principle of democratic civilian control shall be applied to all institutions within the national defence system” (Art. 6). The document underwrites the requirement that Seimas determines the amount of funds to be allocated for the development of the AF, the acquisition of weapons and other support equipment.
2000/ 2004	Military Defence Strategy	It underlined that democratic control over the AF remained to be one of the four pillars of the Lithuanian defence policy. The process of formation of defence policy is the prerogative of civilians. The President of the Republic is the Supreme Commander of the State’s AF. The chain of command of the military operations and other defence actions starts from the President of the Republic and, through the Minister of National Defence, passes to the Commander of the Armed Forces. The Commander of the AF is subordinated to the Minister of National Defence.
2002	National Security Strategy	Democratic control is of the main principles of the Lithuanian defence policy. The principle of democratic civilian control is well established. All the decisions on the defence policy of Lithuania and use of the AF are taken by the democratically elected civilian authorities.
2012/ 2016	Military Strategy	Democratic civilian control is fundamental principle in implementing military strategy, implying that democratically elected civilian authorities take decisions in relation to Lithuanian defence policy, enlargement of military capabilities and its usage.

* Based on Grazina Miniotaite. The Normative Construction of the Military in Lithuania, Lithuanian Case PRIF- Research Paper No. I/14-2007. *Constitution of the Republic of Lithuania*, 1992, Vilnius: Publishing house of the Seimas of the Republic of Lithuania; *Law on the Basics of National Security of Lithuania* (1997) ‘Lietuvos respublikos nacionalinio saugumo pagrindų įstatymas’, *Valstybės žinios*, 2: 2-20. *Law on Organization of the National Defence and the Military Service*, 1998; *National Security Strategy of the Republic of Lithuania* (2002), *The Military Defence Strategy of the Republic of Lithuania* 2004, *Military Strategy* 2012, *Military Strategy* 2016.

change its orientation and move on towards the West. Secondly, it signalled commitment to implement NATO policy and values related to democratic control over militaries. The Parliament of Lithuania adopted new laws and regulations, which strengthened and embedded the concept of democratic control.

The wide spectrum of strategic documents and laws have created solid basis for civilian democratic control over the military establishment. Lithuanian membership at NATO has significantly contributed to the implementation of democratic control in line with mutually agreed principles and practice. To join the Alliance, nations are expected to respect the values of the North Atlantic Treaty, and to meet certain political, economic and military criteria, set out in the Alliance's 1995 Study on Enlargement. These criteria include a functioning democratic political system based on a market economy; fair treatment of minority populations; a commitment to resolve conflicts peacefully; an ability and willingness to make a military contribution to NATO operations; and a commitment to democratic civil-military relations and institutions¹⁸. Democratic political system and democratic control over militaries plays a significant role in the preparation process for membership. Lithuania fully complied with the requirements and this fact was legally established. The norms of civilian democratic controls are repeated even in the recent documents. For example, according to paragraph 5 of the 2016 approved Military Strategy, democratic civilian control remains fundamental principle in implementing military strategy, implying that democratically elected civilian authorities take decisions in relation to Lithuanian defence policy, enlargement of military capabilities and its usage.

The role of parliamentary oversight in Lithuania

As already mentioned, the Parliament plays a crucial role in establishing civilian control over militaries through holding the executive ac-

countable for the development, implementation and review of the security and defence policy, authorising defence and security expenditures, declaring and lifting a state of emergency or the state of war. In fulfilling the functions, the parliamentary oversight may deal with at least three issues¹⁹. Firstly, secrecy laws may hinder efforts to enhance transparency in the security sector. Especially in emerging democracies or conflict-torn countries, laws on secrecy may limit or jeopardise parliamentary oversight of the security sector. Secondly, the security sector is a highly complex field, in which parliaments have to oversee issues such as weapons procurement, arms control and the readiness/preparedness of military units. Not all parliamentarians have sufficient knowledge and expertise to deal with these issues in an effective manner. Nor may they have the time and opportunity to develop them, since their terms as parliamentarians are time-bound and access to expert resources within the country and abroad may be lacking. Thirdly, the emphasis on international security cooperation may affect the transparency and democratic legitimacy of a country's security policy, if it leads to parliament being left out of the process. It is therefore crucial that parliament should be able to provide input to, participate in debates and decisions in international arena.

The Parliament in Lithuania plays an important role in controlling the military²⁰. Parliamentarians approve the budget, establish the legal basis for national defence, determine the level of AF, vote on appointment or dismissal of senior military officers, approve the policy guidelines and priorities. Acting on proposals made by the President of the Republic, they have a right to declare a state of war, issue mobilization and demobilization orders, determine AF availability for fulfilling

18. NATO Study on Enlargement 1995, www.nato.int.

19. Parliamentary oversight of the security sector: Principles, mechanisms and practices. IPU-DCAF handbook. Geneva, 2003.

20. Vaidotas Urbelis, "Democratization and integration: DCAF in the Baltic States" // Legal framing of the democratic control of armed forces and the security sector: norms and realities. Belgrad, 2001.

international obligations of the state.

However, this process continuously faces some issues. According to the study conducted by Kestutis Paulauskas and Algirdas Gričius, the Parliament lacked in relevant civilian expertise on military matters. Shortage of civilian expertise in its turn triggers other problems: lack of transparency in the procurement of weapons and ever-feasible corruption. The democratic control over the activities of other military structures, especially intelligence service, did not receive due consideration among the leading decision makers and member of parliament, posing some difficulties to the democratic political process²¹. Though their insights were revealed in 2002, some of them remain relevant and request further improvements. For example, the State Security Department is accountable to the Parliament of the Republic of Lithuania, as well as to the President of the Republic of Lithuania. The Second Investigation Department (military intelligence) is subordinated to the Minister of National Defence who is a civilian. Both the State Security Department and the Second Investigation Department are supervised by the Parliamentary Committee on National Security and Defence²².

The Committee on National Security and Defence carries out parliamentary control of intelligence authorities, which includes determining whether the intelligence authorities carry out their activities in accordance with the laws of the Republic of Lithuania, examining complaints of persons regarding actions of intelligence authorities' officers, suggesting and preparing amendments to the legal acts regulating the activities of the intelligence authorities, as well as determining deficiencies in activities of the intelligence authorities and preparing recommendations for their elimination. The Committee has the right to receive intelligence authorities' reports, as well as oral and written explanations

21. Kestutis Paulauskas and Algirdas Gričius. *Democratic Control over Armed Forces in Lithuania*. Connections. 2002.

22. The Law of the Republic of Lithuania on Intelligence, Article 21, 2012.

from the heads and officers of intelligence authorities, however it does not have the power to carry out inspections and audits²³. Intelligence services possesses exclusive rights to obtaining the information and their accountability always remains questionable and moves slightly beyond the parliamentary oversight. It would be very unlikely that the intelligence service could manipulate or misbehave nonetheless due to the nature and character of intelligence services such possibility might exist.

The second issue is related to procurement process in the military establishment. In summer 2016, a military procurement scandal took place in Lithuania. The public procurement office evaluated some contracts made by the Ministry of National Defence at the request of law enforcement authorities and found violations. President Dalia Grybauskaitė said that it was "an open robbery of Lithuanian people" and urged Lithuanian Defence Minister Juozas Olekas to take personal responsibility²⁴. She reminded that the country's defence ministry is responsible for the army's public procurement. Surprisingly the case surfaced in the wake of the Parliamentary elections and the social democrats lost it partly due to the military procurement scandal as they delegated the minister. This demonstrates that there is a room for improvement for parliamentary oversight though pro-active involvement of media and public opinion also played a role in invoking disciplinary and political sanctions to those guilty.

Conclusions

Lithuania crafted advanced and living legal framework to place civilian control over militaries, which was well supported by internal and external factors. The principles of democratic control en-

23. National intelligence authorities and surveillance in the EU: Fundamental rights safeguards and remedies. Lithuania. Version of 6 October 2014. Lithuanian Social Research Centre. Institute for Ethnic Studies. Karolis Liutkevičius.

24. Lithuanian defense officials shaken by suspicious public procurement. 31-08-2016 // <http://m.apa.az/en/world-news/europe/lithuanian-defense-officials-shaken-by-suspicious-public-procurement>.

shrined in strategic military documents and laws are constantly repeated demonstrating no lenience or flexibility to misbehaviour of those who might undermine the standards of civilian control. Even in the Military Strategy adopted in 2016 the democratic civilian control remained its fundamental implementing principle, implying that democratically elected civilian authorities take decisions in relation to Lithuanian defence policy, enlargement of military capabilities and its usage.

Though the democratic control over the military establishment has received little sustained scholarly attention in Lithuania in the recent years, their insights needed to be reassessed and reviewed. Their concerns were explicitly raised about the credibility of parliamentary oversight, which lacked in relevant civilian expertise on military matters leading to transparency issues in the procurement of weapons. Insufficient consideration towards the activities of intelligence services was among those pos-

ing some difficulties to the democratic political process.

It should be noted that the intelligence services are subordinated to the Committee of National Security and Defence that has pretty broad competence in the domain though it does not have the power to carry out inspections and audits. Furthermore, due to the nature and role of the intelligence services there is an existing possibility for slight misbehaviour though very unlikely in case of Lithuania.

The issue of military procurement was exemplified with the case surfaced in summer 2016, when the Ministry of Defence made some contracts violating the law. However, the president, media and public opinion invoked disciplinary and political sanctions to those guilty underlining that parliamentary oversight could be supplemented by other relevant instruments, not necessarily those set out in the law.

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