



INTELLIGENCE OMBUDSPERSONS' OFFICE
OF THE REPUBLIC OF LITHUANIA

**ANNUAL ASSESSMENT OF THE LEGALITY
OF THE ACTIVITIES OF INTELLIGENCE
AGENCIES AND THEIR COMPLIANCE
WITH THE REQUIREMENTS OF
PROTECTION OF HUMAN RIGHTS AND
FREEDOMS**

2023

INTRODUCTION

To the Seimas of the Republic of Lithuania

Pursuant to Article 30 of the Law on Intelligence Ombudspersons of the Republic of Lithuania, I hereby submit to the Seimas of the Republic of Lithuania the Annual Assessment of the legality of the activities of intelligence agencies and their compliance with the requirements of human rights and freedoms, as well as the 2023 Activity Report.



This is the first annual assessment and activity report on a new type of oversight of intelligence agencies in the Republic of Lithuania, namely independent oversight by external experts, the introduction of which was completed in 2023. I hereby also provide general information about the oversight system for intelligence agencies in Lithuania and in the countries of the North Atlantic Treaty Organization and the European Union, as well as observations on the implementation of the legislation governing intelligence activities.

I hope that these observations will prove useful in the work of the Seimas of the Republic of Lithuania and in wider professional discussions on this topic.

DR. NORTAUTAS STATKUS

Head of the Intelligence
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A handwritten signature in blue ink, appearing to read 'N. Statkus', written in a cursive style.



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1. The framework for the protection of human rights and freedoms, protection of personal data and intelligence agencies

Respect for human rights and freedoms is a general principle in the activities of intelligence agencies (Republic of Lithuania Law on Intelligence¹ (the “Law on Intelligence”), Article 4(2)(2)). The content of this principle and the scope of implementation thereof are governed by the main legislation constituting the framework of human rights and freedoms in Lithuania: the Constitution of the Republic of Lithuania², the European Convention for the Protection of Human Rights and Fundamental Freedoms („ECHR“)³, and, to some extent, the Charter of Fundamental Rights of the European Union (the “EU“)⁴. EU law does not apply to national defence and national security.

The protection of human rights and freedoms is also enshrined in Lithuania’s key legislation governing intelligence activities (including criminal intelligence activities to the extent that they are carried out by intelligence agencies): the Law on Intelligence⁵, the Law on Intelligence Ombudspersons⁶, the Law on Criminal Intelligence of the Republic of Lithuania⁷ (the “Law on Criminal Intelligence”) and the Law on the Legal Protection of Personal Data Processed for the Purposes of Investigation, Detection or Prosecution of Criminal Offences, Execution of Criminal Penalties or National Security or Defence (the “Law on the Protection of Personal Data Processed for Law Enforcement Purposes”)⁸.

The latter piece of legislation is an extension of the EU Directive on the protection of personal data processed for law enforcement purposes⁹. The State Data Protection Inspectorate is named in the said Law as the authority ensuring the right to protection of personal data, but its powers are limited by the exception for cases where personal data are processed for national security or defence purposes (e.g. Articles 15(1), 22(4) et al. of the Law on the Protection of Personal Data Processed for Law Enforcement Purposes). According to the Law on Intelligence and the Law on Intelligence Ombudspersons, acts or omissions by intelligence agencies relating to the processing of personal data for national security or defence purposes in possible breach of the provisions of those Laws or of the Law on Personal Data Processed for Law Enforcement or National Security Purposes may be subject to a complaint filed with the Intelligence Ombudspersons.

¹ <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.106097/asr>

² <https://www.e-tar.lt/portal/lt/legalAct/TAR.47BB952431DA/asr>

³ <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.19841>

⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12016P%2FTXT>

⁵ <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.106097/asr>

⁶ <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/011b6140642211ecb2fe9975f8a9e52e/asr>

⁷ <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.434526/asr>

⁸ <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.397419/asr>

⁹ Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32016L0680>)

Oversight and control of intelligence agencies is necessary because, for the purposes of ensuring Lithuanian national security, i.e. protecting the vital interests of the State, society and citizens from internal and external threats, these agencies must take appropriate and sufficient preventive measures to prevent threats, eliminate their causes and conditions, and effectively manage the manifested threats to minimise the damage caused by them to the interests of the State, society and citizens, and they do so by taking actions that may restrict the rights and freedoms of other individuals.

In the context of the risk of unlawful restriction of human rights and freedoms, and in order to balance the interests of human rights and national security, in 2021 the Seimas established the Intelligence Ombudspersons’ Office by means of the Law on Intelligence Ombudspersons, which was intended to create an independent legal framework for the external oversight of intelligence agencies in order to guarantee the independence and lawfulness of the activities of intelligence agencies as well as compliance thereof with the requirements of protection of human rights and freedoms. The above-mentioned Law is intended to make sure that intelligence agencies, in the exercise of their functions, respect the rule of law and human rights and freedoms.

2. Lithuanian intelligence system

2.1 Intelligence agencies

Intelligence agencies, having the powers granted by the State and the necessary capacity to collect, analyse and evaluate information about internal and external threats to the country’s national security and State interests, and to eliminate them, play a particularly important role in ensuring the country’s national security.

Timely provision of accurate intelligence information, assessments and forecasts to the country’s leaders and other decision-makers enable them to adopt the necessary decisions in a timely manner on matters of vital importance to the State and society. Intelligence is divided into military and non-military intelligence, external intelligence, counter-intelligence and criminal intelligence.

The Lithuanian intelligence system consists of two state institutions authorised by the Law on Intelligence to carry out intelligence activities: the State Security Department and the Second Investigation Department. These institutions carry out intelligence activities in the field of national security. The Intelligence Ombudspersons are responsible for overseeing the legality of their activities.

It should be noted that, **in the field of ensuring public security and combating crime**, criminal intelligence activities in Lithuania are carried out by seven institutions authorised by the Law on Criminal Intelligence: the Special Investigation Service of the Republic of Lithuania, the Dignitary Protection Service of the Republic of Lithuania, the Police Department under the Ministry of the Interior of the Republic of Lithuania, the Financial Crime Investigation Service under the Ministry of the Interior of the Republic of Lithuania, the Border Guard Service under the Ministry of the Interior of the Republic of Lithuania, the Customs Department under the Ministry of Finance of the Republic of Lithuania and the Lithuanian Prison Service, which is subordinated to the Ministry of Justice of the Republic of Lithuania. These institutions carry out criminal intelligence in the areas of activity assigned to them by law, such as the fight against organized and other serious crime, corruption and financial crime, illegal migration, smuggling, ensuring the safety

of the leaders of the Republic of Lithuania and foreign States, etc. Intelligence Ombudspersons do not have the authority to control the legality and factual basis of their activities.

The main objective of the activities of the intelligence agencies is to strengthen the national security of the Republic of Lithuania by collecting information on risks, dangers and threats, delivering it to the national security institutions and eliminating these risks, dangers and threats.

Intelligence activities comprise two spheres of operations: intelligence and counter-intelligence.

Intelligence and counter-intelligence in the **non-military sphere** is carried out by the **State Security Department**, a state institution accountable to the Seimas and the President of the Republic.

The State Security Department conducts intelligence and counter-intelligence in the following spheres:

- 1) in the socio-political, economic, scientific, technological and informational spheres, other than the defensive, military-political, military-economic, military-technological and military-informational spheres;
- 2) the security of the Lithuanian State diplomatic service and other Lithuanian institutions operating abroad, except for the security of the operations carried out abroad by the institutions of the Lithuanian national defence system;
- 3) the protection of information constituting a State or official secret, except for the information constituting a State or official secret of the institutions of the Lithuanian national defence system;
- 4) installation and operation and cryptographic and other types of security of electronic communications networks for public administration.

The main **objective** of the State Security Department's intelligence activities is to provide Lithuania's decision-makers with information that would help them make informed decisions about future actions in political and public life.

An important part of the activities of the State Security Department is monitoring and detecting the activities of the intelligence and security agencies of hostile States in Lithuania and addressing the threats posed by these agencies. Counter-intelligence also ensures the protection of Lithuanian State secrets.

Intelligence and counter-intelligence in the **military sphere** is carried out by the **Second Investigation Department**, an institution of the national defence system subordinate to the Minister for National Defence.

The Second Investigation Department conducts intelligence and counter-intelligence in the following spheres:

- 1) the defensive, military-political, military-economic, military-technological and military-informational spheres;
- 2) the activities of the institutions of the Lithuanian national defence system carried out abroad;
- 3) the protection of information constituting a State or official secret of the institutions of the Lithuanian national defence system.

The **objective** of the intelligence activities carried out by the Second Investigation Department is to ensure and strengthen the country's defensive potential and military security by providing timely warnings to the country's leaders and preventing threats to national security. To this end, the Second Investi-

gation Department collects, analyses, prepares and provides intelligence assessments.

The Second Investigation Department uses intelligence information to ensure intelligence warning, support national defence planning, support foreign partners, and support NATO and EU institutions.

2.2 Legality and coordination of the intelligence agencies' activities

In implementing the tasks entrusted to them, the intelligence agencies are guided by the Lithuanian Constitution, the Law on the Foundations of National Security, the Law on Intelligence, the Law on Criminal Intelligence, the Law on the Use of the Polygraph, the Law on State and Official Secrets, other legislation and the international treaties signed by the Republic of Lithuania.

The Law on Intelligence and other regulations govern the rights and responsibilities of intelligence agencies and intelligence officers, the procedure for authorising and carrying out intelligence activities, the conditions and procedures for using intelligence information and other issues.

In order to ensure the effectiveness and legality of the activities of intelligence agencies, they must be conducted in accordance with the principles of intelligence activities. Article 4 of the Law on Intelligence requires the activities of intelligence agencies to be based on the general legal principles (legality, respect for human rights and fundamental freedoms, primacy of the public interest and national interest, and accountability to the highest authorities of the State) and on the specific principles (political neutrality, non-disclosure of methods of operation, timeliness, objectivity and clarity).

The activities of the Lithuanian intelligence agencies are **co-ordinated** by the State Defence Council of the Republic of Lithuania (the "State Defence Council"), which is headed by the President. The State Defence Council **defines** annual intelligence information **needs and priorities**, which serve as a basis for the **creation of tasks** for the intelligence agencies. In accordance with the intelligence information needs and priorities set by the State Defence Council, the Director of the State Security Department sets the intelligence tasks for the State Security Department, while the Minister for National Defence sets the intelligence tasks for the Second Investigation Department. The State Defence Council also approves the strategies of the intelligence agencies, assesses the adequacy of the intelligence information provided by the intelligence agencies in relation to intelligence information needs and priorities, makes recommendations to the intelligence agencies on the effectiveness of their intelligence activities, and decides on other issues related to the coordination of the intelligence agencies.

The heads of the intelligence agencies have the authority to deal with the issues of interaction and coordination between the agencies.

3. Intelligence information gathering and the protection of human rights

Intelligence is searched for, collected, processed and evaluated using a variety of intelligence methods and tools, with the help of technological and software capabilities of artificial intelligence. The effectiveness of decision-making depends on the speed at which information is gathered, processed and communicated to decision-makers, as well as the relevance and reliability of the intelligence information provided.

Intelligence agencies collect information in all ways and by all means provided for by law. Some of these are classified, which distinguishes intelligence from scientific, journalistic or other investigations, where the methodology is disclosed and can be discussed in public. Intelligence agencies must conceal their investigative methodology and intelligence tactics so that they do not become known to the intelligence and security services of hostile countries and criminal organisations and do not enable them to undermine the work of the intelligence agencies.

Intelligence information **is collected using the intelligence methods**, by court-sanctioned actions, by obtaining data from State and public registers, information systems and databases, as well as by obtaining data from legal entities and/or natural persons.

The intelligence methods as well as the procedure and conditions for the application thereof are defined by the Government. The following methods can be used to gather information¹⁰: *open-source intelligence, human source intelligence, signals intelligence, communications intelligence, electronic intelligence, cyber intelligence, image intelligence, radar intelligence, acoustic intelligence, measurement intelligence, etc.* When defining the intelligence tasks, the Minister for National Defence and the Director of the State Security Department also specify the intelligence methods to be used by the intelligence agencies subordinate to them in the performance of those tasks. The intelligence methods cannot be used longer than the duration of the intelligence task.

Information is also **collected in the course of court-sanctioned actions**: by monitoring and recording the content of information, correspondence and other personal communications transmitted by electronic communications networks; by entering and examining a person's home, other premises or vehicles; by secretly taking and inspecting documents and items; by obtaining information on individual electronic communications; by monitoring and recording any financial transactions, etc.

The most appropriate methods or tools to use in a given situation are determined by the nature and objectives of the intelligence tasks. Most of the time, a variety of methods and tools are used simultaneously to obtain the information needed for decision-making.

In counter-intelligence operations, intelligence agencies **have the right** to carry out criminal intelligence investigations in accordance with the procedure laid down in the Law on Criminal Intelligence and to apply criminal intelligence information gathering methods: to conduct covert human intelligence activities; to conduct inquiries; to search premises, vehicles and areas; to conduct surveillance of persons and vehicles; to conduct sting operations and stakeouts; and to use other methods and tools prescribed by the Law on Criminal Intelligence.

The lawful and justified use of intelligence methods and judicially sanctioned actions may restrict certain human rights and freedoms because, for example, the right to privacy and protection of personal data is not absolute.¹¹ These rights may be proportionately restricted in order to protect the public interest,¹² however the Constitution of the Republic of Lithuania

and the European Convention on Human Rights, as well as the jurisprudence of Lithuanian courts lay down the criteria and conditions for lawful restriction of human rights:

1. both the right to privacy and the right to the protection of personal data can be legitimately constrained for the purpose of protecting a higher value, without prejudice to the rule of law;
2. the restriction is deemed lawful if:
 - a. personal rights are restricted in accordance with the law;
 - b. the restriction in accordance with the law is limited to what is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

While the requirement to restrict a person's rights by law is specific and clearly defined, the other conditions for a lawful restriction are a value judgement and must be reasonable and proportionate to the objectives pursued in each individual case.

The intelligence information obtained is processed, assessed, analysed and used to produce intelligence products (intelligence notices, reports, assessments, etc.). Intelligence products must be developed in accordance with the principles of objectivity and clarity, aiming for information that is unbiased, impartial, properly verified and evaluated. Efforts are made to differentiate and adapt intelligence products to specific user groups according to their needs. Intelligence assessments must be provided to users in order to give them timely warnings and to respond to significant geopolitical developments in the regions of the world important to Lithuania.

There is room for irregularities in all phases of the intelligence cycle, including collection, processing and analysis as well as provision of intelligence information to national security authorities.

4. Control and oversight of intelligence agencies

Given the broad powers conferred upon intelligence agencies, it is crucial to ensure that their intelligence activities are lawful and that their actions are reasonable and proportionate. It is equally important that human rights and freedoms are adequately protected in the collection, storage, processing, protection and use of intelligence information. To ensure the oversight of the legality and effectiveness of intelligence agencies, they are subjected to parliamentary, judicial, executive controls as well as independent controls by external experts.

Parliamentary control of intelligence agencies is carried out by the Seimas Committee on National Security and Defence in accordance with the procedure laid down in the Seimas Statute. The Committee monitors the compliance with laws and regulations by intelligence agencies and intelligence officers in the conduct of intelligence activities; draws up proposals for the improvement of the legislation relating to the activities of intelligence agencies and the protection of human rights in the context of intelligence and counter-intelligence activities; examines complaints from individuals concerning the actions of intelligence agencies and intelligence officers; and deals with any other matters relating to parliamentary control.

The State Defence Council, which coordinates the activities of intelligence agencies, and the Government of the Republic of Lithuania (hereinafter the "Government") exercise the **executive oversight of intelligence agencies**. The Government

¹⁰ The website of the Ministry of National Defence of the Republic of Lithuania, <https://kam.lt/zvalgyba/>

¹¹ Guide on Article 8 of the Convention - Right to respect for private and family life, European Court of Human Rights, 7, https://www.echr.coe.int/Documents/Guide_Art_8_ENG.pdf

¹² See, for example, Judgment of the Court of Justice of the European Union of 9 November 2010 in *Volker und Markus Schecke GbR (C-92/09) and Hartmut Eifert v Land Hessen (C-92/09 and C-93/09)*, EUR-Lex, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62009CJ0092>.

exercises control over the intelligence agencies in accordance with the intelligence information needs and priorities approved by the State Defence Council, informs the intelligence agencies about the intelligence information needs to ensure national security, and receives information from the intelligence agencies on the risks, dangers and threats to national security.

The courts exercise **judicial control of legality** by authorising or refusing to authorise actions of the intelligence agencies in accordance with the provisions of Article 13 of the Law on Intelligence. The State Audit Office carries out **control of the financial operations** of the intelligence agencies.

The **independent external expert control** of intelligence agencies is carried out by the **Intelligence Ombudspersons** in accordance with the procedure laid down by the Law on Intelligence Ombudspersons. They oversee the legality of the activities of intelligence agencies and assess compliance with the requirements for the protection of human rights and freedoms, also investigate complaints from individuals about the actions of intelligence agencies or intelligence officers that violate human rights and freedoms in the conduct of intelligence and counter-intelligence operations.

In order to ensure the legality, cost-effectiveness, efficiency, effectiveness and transparency of the activities of the intelligence agencies, the heads of intelligence agencies are obliged by the Law on Intelligence to organise the **internal control** of the institutions under their supervision.

5. Methods of oversight of intelligence agencies conducted by independent experts

In recent years, in response to the new challenges in the digital era, and in particular the increased threat of terrorist attacks, some EU and NATO countries (e.g. Denmark, the United Kingdom, the Netherlands, Finland, Sweden and the Czech Republic) have adopted new or substantially amended intelligence laws, extending and strengthening their powers to use a range of intelligence methods. Also, in response to public concerns about possible violations of fundamental human rights and the protection of privacy, the oversight mechanisms for intelligence services have been strengthened by creating so-called independent oversight and control bodies and by giving additional rights to the existing ones.

The total of 17 NATO, EU and European Economic Area countries (in addition to Lithuania) have established bodies for expert intelligence oversight and control. In some countries such bodies are involved both in authorising the application of intelligence methods and in overseeing their application, while in others the authorities that approve the use of intelligence methods are different from those that oversee their application. The grounds and powers for an expert oversight body are different. The process of establishing such bodies involves various branches of government, and their composition, form of management and names are different: committees, tribunals, commissions, ombudspersons etc.

In terms of the principle of appointment, according to which the members of the external independent expert oversight body are appointed by parliaments, and/or in terms of the scope of their mandate, the Lithuanian Ombudspersons' Office is the closest to the independent expert oversight bodies for intelligence agencies of Norway (Norwegian Parliamentary Oversight Committee on Intelligence and Security Services), Portugal (Council for the Oversight of the Intelligence System of the Portuguese Republic), Croatia (Council for Civilian Oversight of Security and Intelli-

gence Agencies), Belgium (Standing Committee R), the Netherlands (Dutch Review Committee on the Intelligence and Security Services), and Finland (Intelligence Ombudsman).

In Lithuania, the external independent **oversight of the legality** of the activities of intelligence agencies, carried out by the Intelligence Ombudspersons, includes:

- **assessing the compliance** of the activities of intelligence agencies and the actions and decisions taken by intelligence officers with laws and regulations and with the requirements for the protection of human rights and freedoms, as well as the compliance of internal statutes with laws and regulations;
- **inspections and investigations** by the Intelligence Ombudsperson of possible non-compliance of the activities of intelligence agencies and the actions and decisions by intelligence officers with human rights and freedoms and the requirements of laws and regulations;
- **examination of complaints and reports** about potentially unlawful activities of the intelligence agencies, actions and decisions by intelligence officers, and violations of the requirements for the protection of human rights and freedoms.

In order to make sure that the requirements for the protection of human rights and freedoms are respected in intelligence and counter-intelligence activities, and to verify the existence of grounds for initiating an Intelligence Ombudsperson's investigation, the Intelligence Ombudspersons carry out inspections of intelligence agencies. Where there are grounds for doing so, the Ombudsperson may open an investigation on his/her own initiative. The Intelligence Ombudsperson carries out scheduled, unscheduled and follow-up inspections of the legality of the activities of intelligence agencies to evaluate the compliance of the activities, actions, decisions and internal statutes of intelligence agencies and intelligence officers with the requirements of laws and regulations, and to establish and verify the relevant facts.

During the inspections and investigations carried out by the Intelligence Ombudspersons, the Intelligence Ombudspersons and the staff of the Intelligence Ombudspersons' Office authorised by the Intelligence Ombudspersons to assist the Intelligence Ombudspersons in the performance of their functions as defined by the Law on Intelligence Ombudspersons and holding the permit to work with or have access to classified information marked "Top Secret" are entitled to access the information constituting a State secret or an official secret and to receive documents (including documents containing information constituting a State or official secret), where that is necessary for the performance of the duties of the Intelligence Ombudsperson, with the exception of information on the identities of covert human intelligence sources or classified intelligence officers and the information received from foreign partners.

They also have the right to enter the premises of intelligence agencies, to receive explanations from intelligence officers and other persons involved in the Intelligence Ombudsperson's investigation on the issues pertaining to the ongoing inspections and/or investigations, and to receive reasoned rulings from regional courts authorising intelligence information gathering actions. It should be noted that the Intelligence Ombudsperson does not evaluate the factual basis or legality of court rulings. It should also be noted that Intelligence Ombudspersons and the employees of the Intelligence Ombudspersons' Office are obliged to protect State, official, commercial or bank secrets as well as personal data under statutory protection.

The Intelligence Ombudsperson may carry out an investigation on his/her own initiative in response to indications that in-

telligence agencies and/or intelligence officers may be abusing their powers or may be violating human rights and freedoms or legitimate interests, or may be violating the data processing requirements applicable to data processed for the purposes of national security or defence, or may be otherwise violating human rights and freedoms in the field of public administration.

In the absence of such grounds, but in order to ensure the accuracy and clarity of the legal regulation of activities and the statutory compliance of implementing practices, the intelligence agency may receive *recommendations and/or advice* from the Intelligence Ombudsperson.

An investigation by the Intelligence Ombudsperson may also be initiated following a report by an intelligence officer or a complaint from an applicant. Intelligence Ombudspersons hear complaints from applicants and reports from intelligence officers, carry out relevant investigations and take decisions on the complaints/reports examined. They communicate the decisions adopted to the applicants, reporting persons, heads of the intelligence agencies under investigation and other authorities or interested persons referred to in the decisions. **The decisions of the Intelligence Ombudspersons are of advisory nature.** The Intelligence Ombudsperson does not have the power to adopt an enforceable decision with positive consequences for the complainant.

Mediation may be used to resolve the complaint as quickly as possible. The right of the Intelligence Ombudspersons to mediate is provided in Article 21 of the Law on Intelligence Ombudspersons. This is a traditional right of Ombudspersons, intended to resolve a problem in good faith by discontinuing an activity that may violate human rights and freedoms or the legitimate interests of the complainant. By mediating between individuals and State authorities and by making recommendations on how a complaint should be resolved, the Intelligence Ombudsperson draws the attention of intelligence officers to any shortcomings in their work and potential human rights violations.

If the mediation procedure cannot resolve the complaint, it will be investigated on its merits. The mediation procedure can reduce the time taken to investigate complaints/reports and help resolve issues of concern to complainants quickly enough.

The Law on Intelligence Ombudspersons stipulates that natural and legal persons have one year to submit complaints/reports from the date of the impugned acts of the intelligence agencies and/or intelligence officers or from the date of the decision challenged. Complaints/reports submitted after the specified time limit and anonymous complaints will not be examined, unless the Intelligence Ombudsperson decides otherwise. Similarly, a re-submitted complaint/report will not be examined, unless it reveals new and relevant circumstances.

The head of the Office may adopt a decision refusing to examine a complaint/report within 10 working days of receipt thereof if the investigation of the circumstances referred to in the complaint/report does not fall within the Ombudsperson's remit, the complaint/report on the same issue has already been examined or is being examined in a court of law or is being examined by other competent state institutions or bodies, or a procedural decision to launch a pre-trial investigation has been adopted with respect to the subject-matter of the complaint/report. In the event of any of the above decisions, the applicant or intelligence officer who lodged the complaint/report will be notified accordingly and informed of the grounds for refusal to examine the complaint/report.

The Intelligence Ombudspersons contribute to the effective protection of human rights and freedoms by investigating complaints, conducting inspections, conducting investiga-

tions on their own initiative, and mediating between individuals and public authorities. Human rights are effectively protected only if all the available human rights remedies are being enforced. Trust in the State and its intelligence agencies is an important resilience factor. Lithuanian people need to be assured that their rights and freedoms are protected, and effectively defended in the event of a possible violation.

6. Inspections carried out by the Intelligence Ombudsperson

6.1 Follow-up verification of the implementation of the recommendations issued in the CNSD's 2020 Decision

Having commenced familiarisation with the situation at the State Security Department concerning the legality of its activities and the guarantees of human rights and freedoms, the Intelligence Ombudsperson carried out the first follow-up verification of the Department's compliance with the recommendations issued in the CNSD Decision No 104-SPR-4 of 30 March 2020.

To comply with the recommendations of the CNSD decision, in 2020 the State Security Department made a number of amendments to its internal regulations and adopted new ones in order to thoroughly and clearly define the procedure for adopting decisions on the collection and verification of intelligence information in registers, information systems and databases.

In response to the recommendations of the CNSD, first of all, the State Security Department's procedure for screening natural and legal persons was adopted and now stipulates that decisions, tasks and orders to initiate the gathering of intelligence information and/or to carry out screening of information concerning natural and/or legal persons allegedly posing risks, dangers or threats that may be relevant to the interests of the State should be drafted and recorded only in writing or in the information systems of the State Security Department, with a clearly stated basis for said collection and screening. Searches are recorded and their legality and factual basis can be verified and assessed.

The legal basis for the screening of individuals can be found in the provisions of the Law on Intelligence, the Law on Criminal Intelligence and other special laws that oblige the State Security Department to provide conclusions on the threat to national security posed by individuals (e.g. *Republic of Lithuania Law on the Legal Status of Aliens, Law on Citizenship, Law on the Protection of Objects Critical for National Security, Law on the Control of Strategic Goods, Law on the Control of Weapons and Ammunition, Law on Aviation, etc.*).

According to the screening procedure for individuals, the heads of the structural units of the State Security Department are responsible for the legality, proportionality and objectivity of the screening performed. If it is determined that a person was subjected to screening in violation of the above-mentioned principles, the data collected must be destroyed, and the officials responsible for the violation may be prosecuted in accordance with the law.

The State Security Department's Rules on the processing of personal data and the implementation of the rights of data subjects and the Department's Procedure for the submission and examination of information on infringements have also been adopted. The Department also has internal control units (Internal Security and Audit), which are responsible for controlling the evaluation of the operational, management, compliance and

information systems, as well as for monitoring compliance with human rights and freedoms in the activities of the State Security Department. Subsequently, the Intelligence Ombudspersons' Office advised the heads of the State Security Department on possible concrete actions to strengthen internal controls.

A conclusion may be drawn that the recommendations of the CNSD have been implemented, except for one important document which should codify the use of intelligence information gathering techniques and methods and the oversight of application thereof in a single document.

Internal control at the State Security Department is organised in such a way as to ensure the legality of intelligence/counter-intelligence activities from the decision to launch the gathering, verification, processing and analysis of intelligence information to the provision of the information to decision-makers. It should be noted that certain aspects of internal control at the State Security Department could still be improved. The Intelligence Ombudsperson reported to the CNSD on the implementation of the above recommendations on 27 September 2023.

6.2 Verification of data at the request of the Seimas Temporary Panel of Inquiry

At the request of the Seimas Temporary Panel of Inquiry for a parliamentary inquiry into possible illegal collection and use of information about individuals, possible illegal influence on the activities of intelligence agencies and other law enforcement authorities, possible interference in the 2019 Lithuanian presidential election process, possible illegal support for that electoral political campaign, possible violations of whistleblower rights and possible illegal influence in imposing sanctions on the Republic of Belarus, the Intelligence Ombudsperson collected and delivered the information necessary for the ongoing parliamentary inquiry.

The Intelligence Ombudsperson, having taken note of the issues raised in the request, having assessed and summarised the material received from the State Security Department and the data collected, prepared a reply to the Inquiry Panel. The Inquiry Panel has been provided with responses to all the questions posed, to the extent permitted by law and the applicable statutory procedures.

The summarised results of this review will also be presented to the CNSD.

6.3 Inspections of the internal control system of the intelligence agencies

In 2023, a review of the effectiveness of organisation of the internal control system of the intelligence agencies was launched. The Ombudsperson familiarised himself with the intelligence agencies' internal regulations on internal controls, the Regulations of the internal control units and the job descriptions of intelligence officers.

In accordance with the recommendation of the Intelligence Ombudsperson and pursuant to the Auditing Rules of 2023 for data processing in the Data Processing and Intelligence Analysis Subsystem of the Communication and Information System of the State Security Department, the State Security Department carried out an audit of the actions of 3% of the users of the Data Processing and Intelligence Analysis Subsystem of the Communications and Information System in 2023, which did not reveal any irregularities of data processing.

The review of the organisation of the internal control system of the intelligence agencies will be completed in 2024 and, based on its outcomes, intelligence agencies will receive conclusions and recommendations on how to improve this control.



Legislative proposals to improve the oversight and control of intelligence activities

In order to ensure more effective protection of human rights and freedoms and to introduce legal clarity in the regulation of the activities of intelligence agencies, in 2023 the Intelligence Ombudspersons' Office prepared and submitted proposals for amendments to Articles 5, 11, 12, 16 and 24 of the Law on Intelligence, Articles 26 and 28 of the Law on the Intelligence Ombudspersons and Article 22 of the Law on Criminal Intelligence to the Seimas Committee on National Security and Defence and the Seimas Commission for Parliamentary Control of Criminal Intelligence.

7.1 Proposals for improving the provisions of the Law on Intelligence

Taking into account the fact that the provisions of the said Law should be aligned with the publicly available information on intelligence methods published by the Lithuanian intelligence agencies themselves (e.g. <https://kam.lt/zvalgyba/>), the Intelligence Ombudspersons' Office has proposed that the Seimas should no longer treat the intelligence methods applied by the intelligence agencies as classified or declassified information, but at the same time recommended that the procedure and conditions for the application of intelligence methods should be maintained as classified.

Proposals were put forward on the use of measures that are not subject to judicial approval but restrict the privacy of individuals, with a view to introducing legal clarity at legislative level on the standards for the protection of human rights and freedoms in the conduct of intelligence activities:

- 1) It was proposed that intelligence and counter-intelligence activities should be carried out on the basis of intelligence information needs and priorities identified and adopted at least once a year and endorsed by the State Defence Council, and on the basis of intelligence tasks. Imposition of the above intervals of review and approval under the Law of Intelligence clearly establishes the time limit for the application of extra-judicial measures and contributes to the protection of human rights and freedoms.
- 2) A recommendation was made to disallow the use of intelligence methods beyond the duration of the intelligence task, thus clearly linking the use of intelligence methods to a specific task and preventing the possible use of intelligence methods outside of the intelligence task.
- 3) It was proposed to define a time limit for the retention of intelligence information and to refer to the retention regime, i.e. to provide that intelligence information cannot be retained for longer than is necessary for the performance of intelligence and counter-intelligence tasks.
- 4) It was proposed to establish a unit within the intelligence agencies or appoint an intelligence officer for the evaluation of human rights protection. The said proposals were taken into account in the adoption of the amendments to the Law on Intelligence¹³.

¹³ <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.106097/asr>

7.2 Proposals for improving the provisions of the Law on Intelligence Ombudspersons

The Intelligence Ombudspersons' Office has submitted proposals for improving the provisions of the Law on Intelligence Ombudspersons, namely intended to: (1) reduce the administrative burden, by providing that the structure of the Office is to be approved by the head of the Office; (2) ensure social security for family members of an Intelligence Ombudsperson in the event of his/her death, by establishing that the family members are entitled to an allowance equal to the salary of three months. The said proposals were taken into account in the process of adoption of the amendments to the Law on Intelligence Ombudspersons¹⁴.

7.3 Proposals for improving the provisions of the Law on Criminal Intelligence

The Intelligence Ombudspersons' Office suggested clarifying the powers of the Intelligence Ombudspersons with regard to the legal regulation of the external oversight of criminal intelligence activities carried out by intelligence agencies when exercising the rights and obligations of criminal intelligence entities. A proposal was made to clarify the powers of the Intelligence Ombudspersons by means of separate paragraphs in Article 22 of the Law on Criminal Intelligence enabling the Intelligence Ombudspersons to fully exercise their rights and duties as provided for in Articles 11 and 12 of the Law on Intelligence Ombudspersons, without evaluating and questioning the decisions taken by a prosecutor or court regarding the legality of authorising the criminal intelligence activities of intelligence agencies in accordance with the procedure laid down in the Law on Criminal Intelligence. The purpose of the proposed amendment to the Law was to regulate more precisely and clearly the independent external control of the activities of intelligence agencies in criminal intelligence investigations. The above proposal was taken into account in the draft amendment to Law No XI-2234 on Criminal Intelligence, submitted on 8 January 2024¹⁵.

8. Areas of inspections planned for 2024

The Intelligence Ombudspersons carry out inspections, in accordance with the Regulations and the Rules of Procedure of the Intelligence Ombudspersons' Office, to determine whether there are grounds for opening an Intelligence Ombudsperson's investigation. These can be scheduled, unscheduled and follow-up inspections. Scheduled inspections are carried out in accordance with the Annual Plan for Inspections approved by the head of the Office. Unscheduled and follow-up inspections are carried out in accordance with separate plans approved by the head of the Office.

The inspections scheduled for 2024 will cover the following areas:

- compliance of intelligence information gathering and screening of natural or legal persons carried out by intelligence agencies with the requirements of legality and the protection of human rights and freedoms during the 2024 election campaigns;
- respect for the principles of timeliness, objectivity and clarity in the provision of intelligence information to the national security institutions;

- legality and validity of the use of intelligence information by intelligence agencies in launching criminal intelligence investigations;
- follow-up of the results of the review of the effectiveness of the internal control system.
- the effectiveness of measures to ensure the reliability of personnel of intelligence institutions.

9. Closing remarks

Intelligence agencies have an internal control system for intelligence activities in place. Intelligence agencies have internal control units responsible for ensuring respect for human rights and freedoms in accordance with the Law on Intelligence and the internal control regulations adopted by the intelligence agencies. The lawfulness and factual basis of the collection, storage and use of intelligence information is ensured by the heads of the intelligence agencies and their departments.

The work of intelligence agencies in Lithuania is overseen and controlled by various institutions: the State Defence Council, the courts, the Seimas Committee responsible for parliamentary scrutiny of intelligence agencies, the Government, the General Prosecutor's Office (in the case of criminal intelligence investigations), the National Audit Office, the State Data Protection Inspectorate, and the Intelligence Ombudspersons' Office. All of the above-mentioned external oversight and control bodies and types of oversight are necessary to ensure the legitimacy of the activities of the intelligence agencies and to promote effective internal control within the intelligence agencies.

Oversight and control of intelligence agencies includes preventive action (consulting, recommendations and assessment of regulatory compliance, i.e. *ex ante action*), routine controls (inspections and investigations, i.e. *ex durante action*), and investigation of complaints or reports in the event of a possible violation of human rights, i.e. *ex post facto action*).

A prerequisite for effective oversight of the activities of intelligence agencies is comprehensive and continuous access to all the data needed for oversight. In this context, the Intelligence Ombudspersons' Office will actively participate in the planned ex post evaluation of the functioning of the Law on Intelligence Ombudspersons and make concrete proposals for the adjustment and expansion of the powers of the Intelligence Ombudspersons, in particular by strengthening the day-to-day control of the intelligence agencies.

Another key challenge is to reconcile the principles of protecting human rights with those of ensuring national security, because over-emphasising either of these principles would be detrimental either to the protection of human rights or to the safeguarding of national security. Legal provisions should therefore be improved in order to ensure that information of national security relevance on the situation of human rights and freedoms in the country's intelligence agencies is provided to the State institutions that control them and to the public.

¹⁴ <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/011b6140642211ecb2fe9975f8a9e52e/asr>

¹⁵ Proposal for Draft Law No XIVP-1377(2) for the amendment of Law No XI-2234 on Criminal Intelligence (Irs.lt), <https://e-seimas.lrs.lt/portal/legalAct/lt/TAK/c6bef410b43a11ee9269b566387cfecb?jfwid=-107u6slp1x>



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