



კოალიცია
დამოუკიდებელი
და გამჭვირვალე
მართლმსაჯულებისთვის
Coalition for
an Independent and
Transparent Judiciary

Coalition Comments on the Ministry of Interior Reform Process

The Coalition for an Independent and Transparent Judiciary would like to comment on the Government of Georgia authored bill drafted as part of the Ministry of Interior reform, which provides for separation of the State Security Service from the Ministry of Interior and the resulting changes.

The Coalition welcomes readiness of the Government of Georgia to deconcentrate abundant powers within the Ministry of Interior of Georgia and set up functionally and institutionally separated State Security Service. Yet, it is important that instead of fragmented changes, it is crucial to develop an integrated concept of the Ministry of Interior reform, which will be built on the consensus vision of the state and civil society on the challenges and needs that the system is facing.

- Reform Process

We find it of vital importance that the process is carried through a dialogue between the state and civil society representatives and the civil society has adequate time and opportunity to be actively involved in all stages of the reform. Importantly, transparency of the process and involvement of NGO sector were not secured at initial stage of the bill's development, thus deserving negative response. In particular, in February 2015 an Inter-Agency Commission working on the MoI reform issues was set up by the Government resolution with the Crises Council, consisting of representatives from the state structures only (it did not include representatives of academic circles, NGOs, or expert groups). At the same time, a working group was set up with the Crises Council and, among others, NGO representatives were invited to participate. Unfortunately, there was no opportunity to have a profound debate and discussion among members as part of the working group. In general, the principles and procedure behind staffing the working group remained unclear.

On 28 March 2015 the working group has organized the only introductory meeting, attended by the Crises Management Council staff and representatives of few NGOs and academic institutions only. Following this introductory meeting, the Crises Council has not made any communication on the MoI reform. Remarkably, legislative package submitted by the Government was developed without the working group's participation and beyond its framework. As for the two workshops organized by the Government *after drafting* the bill, we would like to welcome these but obviously they cannot be viewed as a mechanism for full-fledge participation in the process.

- Reform Concept and the Draft Laws

We would like to comment the following in connection with setting up the Security Service and related issues: bearing in mind that the State Security Service activities may potentially breach universally recognized human rights and freedoms, it is crucial that any amendments in this area are based on deep

Coalition Members:

Article 42 of the Constitution
Multinational Georgia
Georgia Small and Medium
Enterprise Association
Civil Integration Foundation
Georgian Lawyers for
Independent Profession
Liberal
Center for Protection of
Constitutional Rights
International Society for Fair
Elections and Democracy
The Union "21 Century"
Georgian Young Lawyer's
Association Human Right
Center
Transparency International
Union of Meskhetian Democrats
Liberty Institute
Georgian Bar Association
Civil Development Agency
United Nations Association of
Georgia
The European Law Students'
Association
Civil Society Institute
Open Society Georgia
Foundation
Institute of Democracy
American Chamber of
Commerce
Eurasia Partnership Foundation
Institute of Development of
Freedom of Information
Human Rights Priority
Tbilisi Media Club
Human Rights Education and
Monitoring Centre
Foundation for the Support of
Legal Education
Institute of Civil Engagement
Association of law firms of
Georgia
Association of Young
Economists of Georgia
European Choice of Georgia
Liberal Academy Georgia
Partnership for Human Rights

analysis of current needs and challenges, as well as international practices and experience.

With respect to submitted legislative package we would like to focus on the following fundamental issues:

- **Risks of politicizing the Security Service** - submitted concept does not provide for fundamental changes in the activities of security services from institutional standpoint. Accordingly, availability of institutional guarantees preventing the use of security services for political purposes and pursuit of interests of the ruling authorities aimed at preserving its power and stability, is still on the agenda. Hence, it is less expected that technical separation of security services from the MoI will substantially influence their real impact on the state governing processes or social control. Although the Security Service along with the Government is accountable before the Parliament, the draft Law provides for a formal responsibility only and not exercise of a real control by the Parliament and setting up an effective accountability mechanism.
- **Major powers of the Service** – pursuant to the bill, to react to risks challenging the state security, the State Security Service staff are equipped with classical law-enforcement powers, including investigation of a case, search-detention of individuals, conduct of operative-search activities, etc. Notably, according to the recommendation of the Parliamentary Assembly of Council of Europe, in order to avoid a high risk of abuse of powers as well as duplication of functions, **security services should not be granted classical law-enforcement powers such as investigation, detention/arrest.**¹

Practices of majority of democratic states demonstrate that a key task of the security service is to collect and analyze information, and accordingly this service is not authorized to carry out detentions/arrests. Upon need, detentions/arrests are carried out through law-enforcement forces. Yet, there are countries that mandate the security service to detain a person if s/he has committed or there is a threat of committing a crime against national security. However, similar practice is mostly attributed to countries where there is no separate security service and these functions are covered by the police.²

¹ „Internal security services should not be authorised to carry out law-enforcement tasks such as criminal investigations, arrests, or detention. Due to the high risk of abuse of these powers, and to avoid duplication of traditional police activities, such powers should be exclusive to other law-enforcement agencies. “ - Recommendation 1402 (1999) of Parliamentary Assembly of the Council of Europe on Control of Internal Security Services in Council of Europe Member States;

² Guidebook on Understanding Intelligence Oversight, Geneva Center for Democratic Control for Armed Forces (DCAF), 2010, pp. 27-28;

Given the above, we find that major powers of the Security Service require fundamental revision. In particular, instead of automatically granting unlimited law-enforcement powers, it is necessary, on one hand, to analyze current practices and needs in Georgia, and on the other hand to thoroughly study the experience of above-mentioned countries, thus enabling us to select optimal model for Georgia.

- **Compulsory measures** – in accordance with the bill, in terms of application of compulsory measures the staff of the Service are in fact on equal terms with the police staff. We think the need to grant such powers to the Security Service representatives requires critical analysis.

Remarkably, majority of democratic states do not grant the security service the right to use force. Moreover, in terms of use of force, the service staff is on equal terms with ordinary members of the society. In cases when the security service requires use of force measures in view of specifics of its activities, it is obligated to approach police units for assistance. International experience refers to powers of the security service staff to address the police with a request to arrest a person who has committed or there is a suspicion of committing a crime against national security, as well as to request the escort of police officers in concrete operations should there be a suspicion that their lives could be jeopardized.³

- **Appointment of the Security Service Head** – under the concept, the Prime Minister nominates the Security Service Head and submits the candidate to the Government. In case of the Government support, the nominee is submitted to the Parliament, which elects the Service Head by a simple majority. Pursuant to the proposed amendments, a role of the legislative body is increased in terms of appointment of the Service Head as well as expressing a vote of no confidence and hearing the annual report, which is clearly positive. Yet, nevertheless, under the proposed concept the decision is made by the parliamentary majority only. Taking into account that the Prime Minister, the Government and the parliamentary majority represent the same political team that had won the elections, the proposed multi-tier system of selecting the Service Head fails to eliminate the risk of taking a single-handed decision by a concrete political group and selecting the Security Service Head nominee on political grounds.
- **Legalization of the so-called “ODRs” (current reserve officers)** – pursuant to the Statute of the Ministry of Interior approved by the 13

³ Guidebook on Understanding Intelligence Oversight, Geneva Center for Democratic Control for Armed Forces (DCAF), 2010, p. 30;

December 2013 Resolution N337 of the Government of Georgia, the Ministry of Interior is authorized to appoint security officers in the state institutions and authorities of special importance. NGOs have numerous criticized malpractices of the so-called "ODRs", which are the relicts of the Soviet Union and are not found in any of the democratic states. The Coalition for an Independent and Transparent Judiciary has discussed this issue in detail at the 9 February 2015 conference, attended by the Deputy Minister of Interior, Levan Izoria and the Chairman of the Committee for Defense and Security, Irakli Sesiashvili. They have also mentioned that the current system is flawed, requiring reform. Nevertheless, draft Law proposed by the Ministry of Interior does not revoke the so-called "ODR" institute and reform the system but legalizes the "ODR" institute. Instead of the Government resolution, now the law will authorize the Security Service to appoint security officers in various agencies. The state must reject the Soviet methods of protecting country's security and the so-called "ODR" institute. The Ministry of Interior reform will be successful only if built on respect of human rights and democratic values.

- **Personal data protection** - further, given the specifics of the Service's activities, equally important is the availability of concrete regulations on personal data protection, which would define not only time-frames of preserving various categories of personal data but forms of their destruction upon need and the regime of access of individuals to different types of personal data.⁴ The issue is vastly important given that the Law of Georgia "on Personal Data Protection" does not apply to processing of data qualifying as state secret for the purposes of state security (including economic security), defense, intelligence and counter-intelligence activities.

In addition to the above, we believe it is hugely important that the consistent concept on MoI reform adequately addresses number of challenges facing the law-enforcement system and does not limit itself only to separation of the Security Service from the Ministry. For the initiated amendments to be flawless and adequate, in light of current reality we find the reform must address issues such as:

- **The problem of politicizing the law-enforcement system, and namely the policing services;**
- **High degree of centralization and the risk of political influence on law-enforcement services;**

⁴ Joint Opinion of the Venice Commission and Directorate of Human Rights of the Directorate General of the Human Rights and Rule of Law of the Council of Europe on the Draft Law Amending and Supplementing Certain Legislative Acts, Promoted by the Intelligence and Security Service of the Republic of Moldova, Par. 50, 2014;

- **Duplication of competences and vague functions of individual services;**
- **Dangerous nature of preventive law-enforcement functions;**
- **Gaps within investigation system;**
- **Need to improve the system of disciplinary liability of the Ministry of Interior staff;**
- **Objective and impartial investigation of offences committed by law-enforcers;**
- **Introduction of high standards of transparency and accountability.**

Taking into account the above views, we consider that number of issues within the proposed legislative package require further revision, so that it includes firm institutional guarantees of securing political neutrality of the Security Service, improves the accountability mechanism of this Service, and that powers granted to it by current version of the draft Law are rethought in terms of current practice and international experience.

As for the reforming of the Ministry of Interior itself, we hope the proposed amendments are only the first stage of the process, and further steps will aim to analyze problems the system is facing, hence ensuring the initiation of improved and adequate amendments consistent with a current reality.