

This is Transparency International Georgia's Spring 2013 Work Card. It gives a summary assessment of the key areas in the country that are of crucial importance to the development of a transparent, accountable and democratic state. The Work Card will be published quarterly, covering different issues that are crucial for that specific period.

The assessments are followed by concrete recommendations for improvements. They are in no way meant to be exhaustive, but provide a brief overview of areas in need of further attention.

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1. SECRET SURVEILLANCE

The Ministry of Interior maintains 'black boxes' in the server infrastructure of all major telecommunication companies.

- These black boxes allow law enforcement bodies and security services to monitor all communication passing through the system, including text messages, internet traffic and phone calls.
- According to telecom insiders, the authorities have the technical capacity to monitor 21,000 mobile phone numbers at any point in time.
- This real-time monitoring is done through a direct connection; no further assistance from telecom companies is needed.

By law, the use of intercepts is subject to authorisation by a judge. However, judges are typically not informed in depth about the subject matter of the investigation and are not told the results of the surveillance. In the past, judges have rubber-stamped prosecutors' applications for surveillance and communication interception. It is not clear to what extent this is still the practice.

Georgia's legal framework provides insufficient safeguards and fails to satisfy minimum standards for phone interception established by the European Court of Human Rights. Namely, the legislation does not provide for time limits, limits on who may be wire-tapped, limits on what crimes qualify for surveillance, procedures for sharing or storing data obtained from wiretaps and its deletion.

Recommendations:

- The Ministry of Interior should remove its 'Black Boxes' from the infrastructure of telecommunications companies. The existence of direct, unlimited access to peoples' communications data undermines the concept of independent court oversight over interception and creates an intrinsic risk for abuse.
- The relevant legislation should be changed as to reflect the human rights standards as developed by the European Court of Human Rights in the area of secret surveillance.
- The government should establish a strong oversight mechanism for surveillance and communication data retention by law-enforcement bodies. This oversight mechanism should have sufficient resources and enjoy a high level of independence from the executive branch of government.
- The government should regularly and proactively release aggregate information about the number of cases in which surveillance is applied, the number of applications rejected by courts, the type of surveillance used, the duration of these efforts, the aggregate number of individuals affected and the articles of the criminal code under which this surveillance measures were approved.

2. CHANGES IN LEGISLATION ON ILLEGAL BORDER CROSSING

According to the current Law of Georgia on Occupied Territories, illegal entry of foreign citizens and stateless persons into Abkhazia and so-called South Ossetia is punishable by fine or two to four years of imprisonment.

- Under the proposed changes, however, the above-mentioned offence committed for the first time shall not entail criminal responsibility and shall result in an administrative fine in the amount of 400 GEL;
- Criminal responsibility shall be imposed if the person commits the same offense again, but, even in that case, the sanction is still a fine.

- The new initiative provides for up to one year imprisonment for the above offence only in the case, if it is committed under aggravating circumstances (multiple violations, using violence or threat of violence, etc.), while, under the current legislation, the punishment incurred for such offences is up to five years in prison.

Recommendations:

The above package of amendments is obviously designed to radically liberalize the existing sanctions, which we welcome. Nevertheless, we believe that:

- Such changes should not be restricted only to illegal border crossing in the occupied territories, but should also extend to illegal movement over any segment of the border throughout the entire country.
- If the law is adopted in its present state, we will witness a situation under which a fine of 400 GEL will be imposed for illegal border crossing in the occupied territories, while illegal crossing of other sections of the state border will result in three to five years in prison, which is clearly inconsistent.
- We advise the government to apply a comprehensive approach to this issue and effect complete harmonization of regulations on illegal border crossing.

3. CHANGES TO THE LABOR LEGISLATION

Discussions on the pending Labor Code amendments are still underway. Parliament already passed changes to the Labor Code with its second hearing, however several paragraphs were not agreed upon and those were excluded during voting. These paragraphs are at the core of the reform initiated by the Ministry of Justice and we hope that the Parliament comes to an agreement on these important regulations. Our organization has presented its opinion and remarks for the proposed draft law at numerous times in writing as well as at the committee sittings.

Recommendations:

Many of our recommendations were taken into consideration by the lawmakers, however there are number of issues which we believe require further discussion, namely:

- provisions concerning more flexible regulation pay for overtime and
- the right to strike, which is unjustifiably restricted.

We hope that all relevant stakeholders will be involved at the next stages of the discussion of the draft law. The regulation of labor relations is one of the main issues of public policy, and during its reform the interests of employees and employers should be greatly taken into consideration. This should be done in such a way that will not cause damage to the labor environment, creation of new jobs, investment climate, human rights and other important factors of the country.