

This is Transparency International Georgia's Winter 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. DISMISSALS IN PUBLIC SECTOR AFTER ELECTIONS

Following Parliamentary elections, changes have taken place, and are still ongoing in the public service sector throughout the country. In a number of public institutions a lot of people have already lost jobs. Dismissals have occurred both in the capital and regions. We have observed several unfavorable trend and facts about this process, in particular:

- A large number of public service employees have **submitted resignation letters**. Considering that the unemployment rate is very high in Georgia, this trend raises doubts;
- On many occasions these individuals are pressured into turning in the resignation letters by their supervisor officials. Some officials have confirmed to have done so publicly as well;
- The dismissals in the regions occurred as a result of the **contests-certification commissions' failure to be impartial** or failure to establish such commissions at all;
- Hiring of new personnel often happens without announcement of positions and it is unclear what the selection criteria are.

Recommendations:

In order to avoid such doubts and trends, the following recommendations must be taken into consideration:

- Heads of local self-government should implement changes in staff recruitment only through the contest and certification process and decisions should be justified as much as possible. Also, they should provide more information on the professional qualifications of newly recruited employees for the interest of society.
- It is necessary that law enforcement agencies take appropriate measures on illegal dismissal from public offices, including the increased number of cases as a result of written resignation letters made under duress.
- It is highly desired that a monitoring group be established within the Prime Minister's Administration to oversee the ongoing processes in public offices, and amongst others, to pay special attention to the regions.

2. LABOR REFORM

Since the adoption of the Labor Code, it has been a topical discussion in Georgian society. The predominant claim made was the fact that it had a major focus on the rights of the employer, leading to little consideration for the rights of the employee. For this reason, the government's initiative to implement reforms in this area of law is very logical and positive.

The implemented changes made by the Ministry of Justice includes important innovations that will substantially change many aspects of labor relationships. First of all, it's worth mentioning that a step forward has been made in terms of balancing the powers and obligations of the parties. The following changes should be noted: the **protection for the employee is strengthened**; it is harder to fixed-term contracts, which promoted the vicious practice of conducting one-month long contracts; it is made impossible to dismiss someone without a legally determined basis; minimal pay for overtime work is defined, and so on.

Recommendations:

The changes are extensive and need a detailed analysis, but we would emphasize **several issues that should be better scrutinized**:

- The new procedure pertaining to the advance notice of dismissal that must be provided to employees, which proves more disadvantageous for the employee;
- In the case of collective labor, the right to strike is unjustifiably restricted;
- Furthermore, the section on collective dismissals not only contains vague elements, but also unreasonably increases the obligations of employers.

The regulation of labor relationships 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.

3. HIGH COUNCIL OF JUSTICE MONITORING

TI Georgia monitored judges' appointments, their transfers, disciplinary proceedings and transparency of activities of the High Council of Justice during the period of March-December 2012.

While monitoring **judges' appointment process**, both possible ways, envisaging designation of students of the Justice School on the judge's position and appointment of judges by the competition, were examined. The monitoring revealed that the process was not sufficiently transparent. Though, with some intervals, the Council released information about competitions, interested individuals were deprived of the chance to monitor the process. Monitoring organizations were not also able to attend the session where key decisions were adopted. It should also be noted, that registration terms for admission of students, as well as for selection of judges, were unreasonably short.

As regards **judges' transfers**, monitoring revealed that decisions are not adequately reasoned and are insufficient for implementing comprehensive monitoring. Implementation of the analysis became possible only after the working group received additional documents from the Council. Documents illustrated number of instances when grounds indicated in the decision did not come in line with legislative stipulations for transfer of judges. As for the practice of transfers, after introducing significant amendments to the law, it was not possible to make such analysis since the Council did not ensure provision of necessary information.

Unavailability of necessary information hindered the analysis of **disciplinary proceeding** carried out against judges in post-amendment period. However, assessment of information revealed that HCOJ fails to implement its obligation in terms of publication of disciplinary decisions. Even though the Council reported that disciplinary case was brought against four judges, none of the decisions were released on the website.

Insufficient transparency of the HCOJ activities was the general problem of the monitoring. It also complicated monitoring of other components. Even though the Council is a corporate administrative body obliged to conduct sessions publicly, there were instances when the Council did not release advance notification about anticipated sessions and agendas. Availability of decisions only by April 2012, should be considered as the main flaw, whereas in October and November 2012, the Council adopted number of vital decisions.

Recommendations:

- Activities of the High Council of Justice need to be more transparent. In particular, official website should provide notification about sessions and agendas;
- The Council shall release adopted decisions on the official website;

- Interested individuals should have better access to decision making process and the quality of reasoning should be improved in decision making;
- For better transparency of admission process and judges' contest, assessment and argumentation provided by HCOJ members should become available;
- Judges' transfers should be undertaken only in cases provided for by law;
- The Council should ensure publication of disciplinary decisions on its website.