NGOs call on government to undertake real reform of law enforcement system

Excessive concentration of power in the Ministry of Internal Affairs (MIA) has always been subject to criticism. A comprehensive reform and depoliticizing of the Ministry was one of the election promises of the Georgian Dream. In the beginning of 2015, Irakli Garibashvili, the Prime Minister, announced a start of the reform of the MIA. As part of the reform, the government proposed a draft law on State Security Service which also envisaged amendments to up to 50 other laws. The bill, together with its

applicable amendments, was adopted by the Parliament after the third reading on 8 July.

Representatives of the government have stated multiple times that the civil society organizations had been actively participating in the process and that NGOs had received convincing answers to all their questions. Despite our will to be active participants in the process, our involvement in preparations of the drafted bill was formal and ineffective. The government had not studied the problem before proposing the bill and had not developed the vision and reform concept. Therefore, the entire process was inadequately considered, planned, and organized.

The bill itself was drafted behind closed doors and was not discussed even at the special workshop held for the sole purpose of the reform. As a result of such a process, we now witness a reform which adequately addresses the extent of the problems in the system. It is clear that the authorities failed to demonstrate a distinctive political will to end multiple wrongful institutions and practices in the law-enforcement system, as well as to conduct real, open, and participative reform.

Despite our activism and efforts of certain MPs at committee hearings in the Parliament, a substantive improvement of the law could not be achieved and no comment on principal issues has been taken into account.

Even though we fully realize the importance of separation of the police and security services, the NGOs cannot positively assess this law and the entire reform due to the following:

1. Concentration of Excessive Power and Vagueness and Duplication of Functions

We welcome the move to separate the Security Service from the MIA. However, the Law on State Security Service is an example of a good idea that has been wrongly implemented. As a result of disassembling one powerful ministry, we will now create two agencies with excessive power, duplicate functions, and high risk of abuse of office. The Security Service □□ mandate and competences are not clearly regulated, which poses the risk that the Service will be used for other purposes, including political purposes, due to its strict confidentiality and lax control. The risk is also heightened by the appointment and dismissal procedures of the head of the Security

Service. It is unclear where the Service is located in the political governance system and therefore, issues such as institutional subordination, coordination, and supervision remain vague. In particular, it is not clearly specified as to what procedure should be used to determine the Service □□ strategic goals and policy priorities. In addition, it is unclear as to how it will be ensured that the Service □□ actions are compatible with state □□ security policies and how inter-agency coordination and political supervision will be achieved.

2. Non-compliance with International Principles

Concentration of excessive power in the Security Service is not in compliance with the guideline principles of the Parliamentary Assembly of the Council of Europe, which provide that internal security service agencies may not have such law-enforcement powers, such as investigation and detention of persons, as this poses a risk of abuse of power.

3. Functions of State Security Service

According to the law, the Security Service has powers relating to analysis, counter-intelligence, law-enforcement, use of force, prevention, and investigation. Such a broad array of powers of the Service poses the risks of duplication of powers with MIA and abuse of power by the Security Service. It is especially dangerous that investigations will be conducted by an agency which also has the function of counter-intelligence and therefore, as part of the process, is authorized to gather information without court supervision.

4. Low Standard of Transparency of Security Service

A lower standard of transparency applies to the Security Service than the law-enforcement and investigative agencies. This is proven by the fact that regulations governing all units of the Service (counter-intelligence department, counter-terrorism center, State Security Agency/SSA) are confidential. However, when the Security Service exercises its investigative, preventive, and law-enforcement functions, it comes in direct contact with citizens. Therefore, such a low standard of transparency poses a particularly high risk of human rights violation.

5. Weak External Control

Presenting the account of affairs by the head of the Security Service to the Parliament does not ensure any real control. The supervisory functions of the Personal Data Inspector do not cover confidential information processed for the purposes of state security.

The Security Service should have been created with some understanding of oversight mechanisms in order to avoid a closed-type agency with a large amount of personal data concentrated in its sphere without any oversight mechanism.

6. Retaining Soviet-style Elements of Security Service – so-called "ODRs"

The so-called □□□□A were not an institution that required reform. It was required to abandon this wrongful practice which allows the Security Service to have permanent observers in state institutions. This is still permitted under the new laws.

7. Eavesdropping and Interceptions with Old Problems

The technical device, together with the high risk of abuse of power, remains in the hands of the agency which has investigative, preventive, and law-enforcement functions, and therefore is professionally motivated to obtain as much information as possible.

8. Issues not Covered by MIA reform

The reform did not cover important issues such as: effective internal and external oversight mechanisms for the Security Service and the MIA, reform of the general inspection, creation of an independent investigative mechanism, regulation of issues related to interceptions, determination of career development and promotion system in the MIA and the Security Service, optimization of effective and organized structure of MIA's departments, strengthening of transparency and court control mechanisms.

The reform will result in a Security Service with excessively concentrated power equipped with a mechanism allowing for total control, as well as a means to

unjustifiably and arbitrarily infringe upon human rights. Vesting in often duplicated powers relating to investigation, prevention, analyzing, and law-enforcement is ineffective. We cannot qualify the technical separation of the Security Service from the MIA as a reform of the system. We call upon the government to take effective steps in undertaking a real reform.

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