

# Institute for Development of Freedom of Information



## Secret Surveillance in Georgia

June 2015 – March 2016

March, 2016

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## Summary

*After thousands of shocking cases of illegal surveillance and wiretapping by the government were revealed prior to the 2012 Parliamentary Elections, regulation of this issue was placed high on the political agenda.*

*During the process the most important division of opinion concerned limiting direct access of law enforcing agencies to telecommunications data. On the one hand, the Ministry of Internal Affairs, supported by the Government of Georgia and part of Parliament members, remained strongly opposed to the suggested changes limiting this access. On the other hand, the President, CSOs united in the This Affects You campaign as well as a number of Parliament members strongly advocated for the limitation of direct access to these data.*

*After multiple discussions, extensions of the deadline, four various bills and two vetoes from the President, the Parliament adopted the government-supported bill. According to the new law, the Ministry of Internal Affairs retains its direct access to telecom operators' servers, however, after obtaining a court warrant the Ministry requires authorization, including a technical one, from the Personal Data Protection Inspector's Office in order to carry out surveillance through the so called 'two-key system'.*

*The campaign continued advocating for depriving security agencies of direct access to telecom operators' networks after adoption of the government-supported bill and filed a lawsuit in the Constitutional Court against the Parliament of Georgia. From March 31, 2015 the two-key system was launched and the Personal Data Protection Inspector assumed obligation to check whether the decision of the court (or in urgent cases of the Prosecutor's Office) to conduct surveillance is implemented in a right way.*

*Most recently, the This Affect You campaign was relaunched on March 14<sup>th</sup>, 2016, following the distribution of several sex tapes and related public protests. Furthermore, a discussion started between the Parliament, law-enforcement agencies and the Personal Data Protection Inspector on possible legislative changes to make punishment for violating privacy rights stricter.*

*On a positive note, the Supreme Court started proactively disclosing statistical information on surveillance since September 2014. This obligation was taken by the Supreme Court as a result of the recommendation made by IDFI and other CSOs in the framework of the Open Government Partnership (OGP) Action Plan of Georgia. OGP has recognized the commitment to proactively publish surveillance statistics in Georgia as one of the most successful and unique worldwide.*

The following report is an overview of the main developments in terms of regulating secret surveillance in Georgia in the period between June 2015 and March 2016. For more comprehensive background in 2013-2015 please see the report: Regulating Secret Surveillance in Georgia: 2013-2015<sup>1</sup>

## Background Information: Regulation of Secret Surveillance in 2013-2015<sup>2</sup>

Personal data protection and control of illegal surveillance and wiretapping were high on the Georgian political agenda after the 2012 Parliamentary Elections, when information up to 29,000 illegal video and audio recordings was revealed.

The new government after the 2012 parliamentary elections promised to ensure protection of personal data and control illegal surveillance and wiretapping practices. A package of legislative amendments<sup>3</sup> on surveillance related changes to five different laws was submitted<sup>4</sup> to the Parliament in July 2013, however, it was not until August 2014 that the first part of the changes were passed. Due to this delay, in March 2014 several civil society organizations (CSOs) started a campaign This Affects You – They Are Still Listening, advocating for legislative amendments for ensuring the protection of privacy. The Ministry of Internal Affairs strongly opposed the proposed changes that would limit its direct access to communication data from telecom operators. The legislative amendments on surveillance were finally adopted in August 2014, however, the clause regulating direct access to telecommunications data via the Lawful Interception Management System, or the so called “black boxes”<sup>5</sup>, was removed from the bill. Instead, it was agreed that a special commission would decide upon a mechanism for regulating this issue by November 2014.

Discussions on how to regulate access to telecommunication data were revived in September 2014, with four different proposals being presented by various actors, including two separate ones by the Georgian Dream Coalition, one by a group of CSOs, and one by the President.

After multiple discussions, extensions of the deadline and two vetoes from the President, the Parliament adopted the government-supported bill. According to the adopted bill, the Ministry of Internal Affairs has retained its direct access to telecom operators’ servers, however, after obtaining a

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<sup>1</sup><https://idfi.ge/en/regulating-secret-surveillance-in-georgia-2013-2015>

<sup>2</sup> This is a brief overview intended to create background for the recent developments in 2015-2016. For more comprehensive information about the process in 2013-2015 please see the report: Regulating Secret Surveillance in Georgia: 2013-2015

<https://idfi.ge/en/regulating-secret-surveillance-in-georgia-2013-2015>

<sup>3</sup> Parliament of Georgia, Package of Legislative Amendments on Surveillance, <http://parliament.ge/ge/law/24/23>

<sup>4</sup> The authors were:

1. First Deputy Chairman of Legal Affairs Committee and member of the Georgian Dream Coalition MP Shalva Shavgulidze;
2. Chief Specialist of the Legal Issues Committee of the Parliament of Georgia Lika Sajaia;
3. Editor-in-Chief of the Rezonansi Newspaper Lasha Tugushi;
4. Journalist Zviad Koridze

<sup>5</sup> A system enabling surveillance of telecommunication services via direct access to telecommunications data

court warrant the Ministry requires authorization, including a technical one, from the Personal Data Protection Inspector's Office in order to carry out surveillance through the so called 'two-key system'.<sup>6</sup>

The Ministry of Internal Affairs had time until March 31, 2015 to ensure functioning of the two-stage electronic system<sup>7</sup>. From March 31, 2015 the so called "two-key" system was launched and the Personal Data Inspector took obligation to check whether the decision of the court (or in urgent cases of the Prosecutor's Office) to conduct surveillance is implemented in a right way.

## This Affects You Campaign

The campaign This Affects You – They Are Still Listening was started by several civil society organizations (CSOs) in March 2014 in order to advocate for legislative amendments for ensuring the protection of privacy. The group continued advocating for depriving security agencies of direct access to telecom operators' networks after the Parliament adopted a government-supported bill on the Lawful Interception Management System, or so called "black boxes"<sup>8</sup> in November 2014. The main object of criticism from the campaign was the direct access of the Ministry of Internal Affairs to the data held by telecommunication companies. In addition, the opponents of the government-backed bill criticized its technical wording that left room for the ministry to bypass the Personal Data Protection Inspector. The group also raised concerns about conflict of interest in the functions of the Personal Data Inspector, specifically the oversight of surveillance and access to surveillance through the second 'key'. Furthermore, the group of CSOs criticized the aggressive statements of then Prime Minister Irakli Gharibashvili claiming that CSOs involved in the campaign, "damage Georgia's international reputation and undermine the country's security".

The group of CSOs united in the This Affects You campaign claimed that the government-supported bill regulating access to telecom operators' servers that was eventually adopted into law had worsened the legislative changes that were made a few months earlier, in August 2014<sup>9</sup>. CSOs continued their campaign advocating for depriving security agencies of direct access to telecom operators' networks, and highlighted the following shortcomings of the new system:

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<sup>6</sup>"two-key" control mechanism – "Key" refers to direct access to telecom operators' servers. In the "two-key" system although the Ministry of Internal Affairs retains its direct access to telecom operators' servers, after obtaining court warrant the Ministry shall require authorization, including technical one, from Personal Data Protection Inspector's Office in order to carry out surveillance.

<sup>7</sup>Law of Georgia on Personal Data Protection, Article 55(1), transitional provisions: <https://matsne.gov.ge/en/document/view/1561437>; Criminal Procedure Code of Georgia 332<sup>3</sup>. Entry into force of two-stage electronic system of secret investigation (in Georgian): <https://matsne.gov.ge/ka/document/view/90034>

<sup>8</sup> A system enabling surveillance of telecommunication services via direct access to telecommunications data

<sup>9</sup><http://transparency.ge/en/post/general-announcement/affects-you-beselia-popkhadze-sesiashvilis-draft-step-backwards-protection-civil-liberties>

## Regulating Secret Surveillance in Georgia: June 2015 – March 2016

- a. The two-key control mechanism is only used during telephone surveillance, and not during metadata collection (time, place, duration of a call) or internet traffic (including communication content).
- b. Investigative authorities can collect information from a computer system without strict limitations, such as consideration of the category of crimes or justification of urgent public necessity; even communication unrelated to the investigation may be recorded.
- c. Law-enforcement agencies can obtain the following information without court approval – length of communication, people involved in communication, location etc. and can save this data for up to 2 years.
- d. The Law of Georgia on Counterintelligence Activities enables State Security Service of Georgia to conduct surveillance without court approval and control, and without involvement of the Personal Data Protection Inspector. The law also permits phone or internet surveillance based on a written approval from one of the involved parties.

On April 8<sup>th</sup>, 2015, a number of CSOs representing This Affects You campaign filed a lawsuit in the Constitutional Court against the clauses in the laws on Electronic Communications and Personal Data Protection as well as Criminal Procedure Code that allow the Ministry of Internal Affairs to retain direct and unimpeded real-time access to the data of electronic communication companies. The data that is easily accessible for investigative agencies includes length of communication, people involved in communication, place, visited web-sites, etc. The Constitutional Court started deliberating on the lawsuit submitted by This Affects You campaign on December 17<sup>th</sup>, 2015<sup>10</sup>, and the hearing was continued on February 3<sup>rd</sup>, 2016<sup>11</sup>. During the February hearing, the parties made final statements, after which the Constitutional Court is expected to make its decision.

Another lawsuit on the same issue was submitted to the Constitutional Court on January 30<sup>th</sup>, 2015, by the Public Defender. The Public Defender also included the issue in his annual report presented to the Parliament. According to the Public Defender, the direct access of the Ministry of Internal Affairs to communication data violates the constitutional right to privacy. This is the second instance of the Public Defender appealing legal amendments concerning illegal surveillance. The first instance in May 2014 raised the same concerns regarding the direct access of the ministry and lack of protection of personal information. The Constitutional Court has started deliberating on the Public Defender's lawsuit, but has yet to make its final decision.

On March 28<sup>th</sup>, 2016, the Public Defender launched a campaign titled The Timer is On<sup>12</sup> calling on the investigative authorities to identify and punish those who illegally obtained/created and disseminated the video footage of private life in early March. Within the framework of this campaign

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<sup>10</sup>[http://www.osgf.ge/index.php?lang\\_id=GEO&sec\\_id=15&info\\_id=4360](http://www.osgf.ge/index.php?lang_id=GEO&sec_id=15&info_id=4360)

<sup>11</sup><http://rustavi2.com/en/news/38110>

<sup>12</sup><http://www.ombudsman.ge/en/news/public-defender-launches-campaign-against-release-of-video-footage-showing-private-life.page>

the Public Defender promised to periodically update the public on the progress made by the investigation.

### Recent Cases of Illegal Surveillance and Revival of This Affects You Campaign

Recent developments have revived public concerns over illegal surveillance. On October 29, 2015, wiretapped recordings of conversations between Georgia's former President and current Governor of Odessa Region Mikheil Saakashvili, opposition leaders and the director of Rustavi2 television company Nika Gvaramia **were leaked on a website called Ukrainian WikiLeaks that is hosted and registered in the Russian Federation.** The opposition party leaders blamed the government for conducting 'mass illegal' surveillance. Gvaramia stated that the law enforcement agencies did not have any legal ground for monitoring his phone calls.<sup>13</sup>

The leaked recordings included calls between the users of Viber, a free calls and messaging application. The State Security Service announced that it would launch a probe regarding these secret recordings. Deputy head of the State Security Service Levan Izoria said that, "as part of the ongoing investigation, origins and authenticity of the recordings distributed by media outlets will be determined; all the necessary investigative activities will be carried out and all the relevant persons will be interrogated for the purpose of verifying information in the recordings as well as the information that was made available through the operative-investigative activities."

The Public Defender responded by calling on the Chief Prosecutor's Office to launch an investigation of the origin and the legality of obtaining the recordings, as well as whether Georgia's law enforcement agencies were involved in conducting secret online surveillance. In addition, the Office of the Personal Data Protection Inspector also started to look into whether Georgian courts had granted permission for carrying out surveillance. In case such permission was granted, the Inspector will then identify the scope of surveillance activity determined by the court.<sup>14</sup>

Another secret surveillance case was reported in March 2016. Namely, one of the opposition leaders (Free Democrats) Aleksi Petriashvili and his wife, journalist Eka Mishveladze claimed<sup>15</sup> that their Viber conversations were wiretapped and that Eka Mishveladze was shown the copy of her conversations in summer 2015.

Additionally, on March 11<sup>th</sup>, a video supposedly depicting personal life of one of the opposition leaders was anonymously posted on YouTube. This was followed by a brief period when YouTube was blocked for the users of Georgia's two major internet service providers, Silknet and Caucasus Online, during which the video was removed<sup>16</sup>. A few days later another sex tape was anonymously

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<sup>13</sup>Civil.Ge, Wiretapped Recordings of Saakashvili Discussing Rustavi 2 TV Leaked. 30.10.2015. Retrieved from:

<http://www.civil.ge/eng/article.php?id=28713>

<sup>14</sup><http://netgazeti.ge/news/72841/>

<sup>15</sup><http://web1.rustavi2.com/en/news/41936>

<sup>16</sup><http://www.civil.ge/eng/article.php?id=29040>

posted including threats to one journalist and several politicians from the government as well as the opposition to stop their professional activities until March 31<sup>st</sup>. Following these threats, on March 31<sup>st</sup> yet another sex tape was posted anonymously, and removed shortly afterwards. In response to the latter fact, the Prosecutor's Office made a statement on March 31<sup>st</sup> that "all necessary investigative proceedings are being undertaken in order to detect the authenticity, origin of the recordings and to prevent any attempts of its further distribution"<sup>17</sup>. The Prosecutor's Office also stated that the recordings were created before October 2012 and were not uploaded from Georgia<sup>18</sup>.

The Personal Data Protection Inspector was critical in her special statement made on the same day, and claimed that even though Georgian citizens showed respect towards protection of privacy, the society had lost hope for rapid investigation of these fact. Furthermore, she called on the authorities to ensure transparency of the investigation, ensure rapid and effective process and involve foreign professionals and services; continue reforms of investigative bodies and strengthen legislative guarantees to protect privacy. Also, the Personal Data Protection Inspector called on the Prime Minister and the Parliament of Georgia to create a coordinating group in charge of developing an action plan for dealing with the abovementioned cases<sup>19</sup>.

The Public Defender referred to the abovementioned cases in the 2015 annual report presented to the Parliament.<sup>20</sup> According to the report, the cases of March 2016 were partially caused by the impunity and ineffective investigation of previous cases of similar nature. The Public Defender called on the Prosecutor's Office to investigate these cases in a timely and effective manner. The Public Defender also expressed hope that the Parliament of Georgia would tighten sanctions for breach of privacy.

The release of the first sex tape on March 11<sup>th</sup> caused the revival of the This Affects You campaign with the slogan – "surveillance continues, dissemination continues". After the press conference announcing this decision of the campaign, CSO representatives met with the President of Georgia, who promised to ensure exemplary punishment of anyone trying to use illegally obtained sex tapes as a threatening tool<sup>21</sup>. Prime Minister Giorgi Kvirikashvili also condemned the secretly recorded sex tape leak, evaluated it as "blackmail of the entire society" and promised to hold those filming or distributing such recordings accountable in the strictest way possible by law<sup>22</sup>.

The This Affects You campaign held a rally in front of Tbilisi Concert Hall on March 19<sup>th</sup><sup>23</sup>. The gathered citizens and representatives of the civil society and media protested the disclosure of recordings depicting private life by holding a procession from Tbilisi Concert Hall to the Government

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<sup>17</sup>[http://pog.gov.ge/eng/news?info\\_id=898](http://pog.gov.ge/eng/news?info_id=898)

<sup>18</sup><http://www.civil.ge/geo/article.php?id=30230>

<sup>19</sup><http://personaldata.ge/en/personalur-monatsemta-datsvis-inspektoris-sagangebo-gantskhadeba/546>

<sup>20</sup><http://www.ombudsman.ge/ge/reports/saparlamento-angarishebi>

<sup>21</sup><http://www.civil.ge/eng/article.php?id=29042>

<sup>22</sup><http://www.civil.ge/eng/article.php?id=29038>

<sup>23</sup><https://idfi.ge/en/this-affects-you-campaign>

Chancellery. Their main demands included an objective investigation of the disclosure of the above footage and a meeting with government representatives. The protesters also demanded:

- Identification of persons responsible for recording, holding, and distribution of the above footage and holding them responsible with the full extent of the law. This concerns both old uninvestigated cases as well as recent ones.
- Tightening of regulations for the purpose of preventing illegal surveillance.
- Creation of an independent investigative agency separate from law enforcement authorities that will investigate the crimes committed by law enforcement representatives and have the authority to carry out criminal prosecution.

At the same time, the Speaker of the Parliament of Georgia Davit Usupashvili and representatives of the Georgian Dream ruling coalition met senior officials from law enforcement agencies and the Personal Data Protection Inspector on March 19, 2016, to discuss possible legislative changes to make punishment for violating privacy rights stricter<sup>24</sup>.

## The Two-Key System in Practice – Personal Data Protection Inspector

According to the legislative amendments made in November 2014, the so called ‘two-key’ system was launched on March 31, 2015, and the Personal Data Inspector took obligation to check whether the decision of the court (or in urgent cases of the Prosecutor’s Office) to conduct surveillance is implemented in the right way. The first results of the monitoring carried out by the Office of the Personal Data Protection Inspector (April-December, 2015) are summarized in the Annual Report 2015<sup>25</sup>.

In order to implement new functions, a special structural division – Law Enforcement Body Oversight Unit was formed within the framework of the Office of the Personal Data Protection Inspector. The goal of the oversight unit is to ensure efficient monitoring of covert investigative activities of law enforcement bodies through analyzing the information provided by the Court, the Prosecutor’s Office and e-communication companies, as well as through the electronic control system<sup>26</sup>, two-step electronic system<sup>27</sup> and special data bank electronic control system<sup>28</sup>. Furthermore, the IT

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<sup>24</sup><http://www.civil.ge/eng/article.php?id=29052>

<sup>25</sup><http://personaldata.ge/ge/publications/annual-report>

<sup>26</sup>Electronic Control System – combination of technical and software solutions to ensure that the logging of data by an authorized body monitoring system commands are processed with cryptographic methods, the logging of data of commands performed by the Legal Interception Management System are automatically communicated to the Personal Data Protection Inspector, these data are processed with cryptographic methods and that the results are automatically collated; Source: Law Of Georgia On Personal Data Protection, <https://www.matsne.gov.ge/ka/document/view/1561437?impose=translateEn>

<sup>27</sup>A Two-Step Electronic System – approach for performing covert investigative actions by giving electronic consent to conduct a covert investigative action; Source: Law Of Georgia On Personal Data Protection, <https://www.matsne.gov.ge/ka/document/view/1561437?impose=translateEn>

<sup>28</sup>Special Data Bank Electronic Control System – combination of technical and software solutions to ensure that the data logging operations performed within the copied data banks of an authorized body provided in Article 83(1)(b) of the Law of Georgia on



department of the Office of the Personal Data Protection Inspector started a 24-hour service in order to ensure monitoring through the two-step electronic system.

Before allowing secret wiretapping, the Office of the Personal Data Protection Inspector checks the existence of a court ruling or a decree of the prosecutor, as well as correspondence of information provided in these rulings/decrees with the electronic request initiated by an operative-technical department of a state security service. The Inspector only allows secret wiretapping if it does not find any discrepancies. In addition, the Inspector also controls the duration of surveillance and halts access to the surveillance channel as soon as the deadline expires.

According to the analysis of the Office of the Personal Data Protection Inspector in the period between April and December 2015, surveillance motions were granted most often in relation to documents/information on users of a service that a service provider stores as computer data or in any other form, differs from internet traffic and content data, and which can be used to establish/determine<sup>29</sup>: a) the type of communication services and technical means used, and the time of service; b) the identity of the user, mail or residential address, phone numbers and other contact details, information on accounts and taxes, which are available based on a service contract or agreement; c) any other information on the location of the installed communications equipment, which is available based on a service contract or agreement. The least number of motions were connected with controlling post/telegraph shipments and internet traffic.

According to the Annual Report of the Office of the Personal Data Protection Inspector, **there were approximately 4 cases a month (April-December, 2015) when the Inspector did not allow secret wiretapping due to flaws such as no indication of the duration of surveillance or discrepancy of the data.** Furthermore, in 2015 there were 26 cases, when protocols on destroying materials that were illegally known or obtained through investigative activities were not presented on time. However, these protocols were provided by the Prosecutor's Office upon request of the Office of the Personal Data Protection Inspector.

The Office of the Personal Data Protection Inspector is also in charge of monitoring cases when electronic communication companies provide law-enforcement agencies with identification data of e-communication (not in real time). According to the law, e-communication companies must notify the Inspector about such cases within 24 hours. **In 2015, the Office of the Personal Data Protection Inspector has checked 20 cases when e-communication companies provided law-enforcement agencies with identification data of e-communication and has found 6 cases with possible violations of law.** Namely, the Personal Data Protection Inspector has found that in 6 cases the Ministry of Internal Affairs and e-communication companies processed identification data of e-communication in violation of existing rules. The Ministry of Internal Affairs had requested

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Electronic Communications are automatically communicated to the Personal Data Protection Inspector.; Source: Law Of Georgia On Personal Data Protection, <https://www.matsne.gov.ge/ka/document/view/1561437?impose=translateEn>

<sup>29</sup> Article 136, Law Of Georgia, Criminal Procedure Code Of Georgia, <https://matsne.gov.ge/en/document/view/90034>

communication companies to provide data such as telephone number, IMEI code, demographic data of a user and other details of a SIM card, etc. The Personal Data Protection Inspector concluded that based on the preconditions given in the Law on Operational and Investigative Activities there was insufficient justification to disclose the above-mentioned data in those 6 instances, and that IMEI code can be considered as personal data.

Even though it was not possible to impose administrative penalty in the abovementioned cases due to the statute of limitation of two months, according to the decision of the Inspector, **the Ministry of Internal Affairs and e-communication companies were ordered to process identification data of electronic communication according to the law. Furthermore, the illegal practice of requesting identification data of electronic communication based solely on a letter has been eradicated.**

### Legislative Amendments to Personal Data Protection

In September 2015, the Personal Data Protection Inspector presented draft legal amendments to Members of Parliament<sup>30</sup>, asking for more oversight mechanisms over law enforcement agencies, since the existing ones were insufficient for monitoring the secret surveillance practice. The Inspector stressed that the elaboration of a system that would fully resolve the problem of eavesdropping and surveillance appeared difficult. To overcome this shortcoming, the Inspector initiated several legislative amendments to ten different legal acts. **Her proposal encompassed issues such as enlargement of the scope of the law, specific regulation of audio recording and audio monitoring, more precise definition of the legal grounds for processing of sensitive data and for trans-border flows.** The draft legal amendments also envisage increase of fines in cases where data breach is related to more than 100 data subjects.

Additionally, since intelligence services were recently separated from the Ministry of Internal Affairs in order to transform the latter into a civil service institution, the newly established State Security Service was also granted the authority over secret surveillance measures. Consequently, additional clarifications and changes are needed to the surveillance law. Otherwise, the existing legislation does not rule out illegal eavesdropping that would bypass the Inspector. Therefore, **civil society organizations claim that the Personal Data Inspector should be provided with sufficient leverage to exert strict and proper control over law enforcement agencies in regards to secret surveillance.**

The draft legislative changes were prepared in order to synchronize and harmonize the data protection legislation with European standards and improve existing gaps. As of March 2016, these amendments are being consulted with experts from the Council of Europe and have not yet been initiated in the Parliament of Georgia.

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<sup>30</sup><http://personaldata.ge/en/personalur-monatsemta-datsvis-inspeqtorma-sakanonmdeblo-tsinadadebebis-proeqti-parlamentis-tsevrebs-gaatsno/394>

## Recommendations of CSOs on government surveillance and wiretapping within the Open Government Partnership (OGP) Action Plan of Georgia (2014 and 2015)

The Institute for Development of Freedom of Information (IDFI) together with other CSOs has been actively involved in advocating for better access to information<sup>31</sup>. As a result, some international obligations taken by Georgia within the framework of the Open Government Partnership (OGP) initiative also contribute to more transparency and accountability in conducting surveillance by the government. Namely, recommendations<sup>32</sup> prepared by IDFI in cooperation with the OGP Georgia Forum member organizations and presented to OGP Georgia Secretariat to be included in the Georgian 2014-2015 OGP Action Plan<sup>33</sup> also included a recommendation related to surveillance – improving legislation and proactive transparency on surveillance – which has been accepted and included in the Action Plan.

After the Supreme Court representative did not express the court's official position regarding the proactive disclosure of statistical data on government surveillance, OGP Forum member organizations publicly appealed<sup>34</sup> to its Chairman. The Supreme Court considered the recommendation and took the commitment in the framework of the OGP Action Plan of Georgia to proactively disclose statistical information on surveillance since September 2014.

According to one of the amendments to the Criminal Procedure Code of Georgia, made on August 1, 2014<sup>35</sup>, **the Supreme Court of Georgia took obligation to proactively disclose the registry of actions of secret investigation on an annual basis**. The registry includes information such as the number of motions applied to the court on secret investigations, information on judgments made on these motions, information on destroying the data collected via investigation and search activities not connected with criminal behavior but containing information on personal life. The Supreme Court of Georgia has met its obligation and by the end of 2014 published the data of the registry for the period between August 18 and December 31 in 2014<sup>36</sup>.

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<sup>31</sup><https://idfi.ge/en/2014-15-action-plan-ngo-recommendations>

<sup>32</sup> Institute for Development of Freedom of Information (IDFI), "Recommendations Regarding the 2014-2015 Action Plan of the Government of Georgia for Open Government Partnership (OGP) Initiative", May 2014, <http://bit.ly/1vxvgFk>

<sup>33</sup> 2014-2015 Action Plan of the Government of Georgia for Open Government Partnership (OGP), (in Georgian) <http://www.justice.gov.ge/Multimedia%2FFiles%2FOGP%2FOGP%20AP%202014-2015.pdf>

<sup>34</sup> Institute for Development of Freedom of Information (IDFI), Appeal of the OGP Forum Member Organizations to the Chairman of the Supreme Court of Georgia Konstantine Kublashvili, <https://idfi.ge/en/cso-address-supreme-court>

<sup>35</sup> Article 143<sup>10,1</sup> Criminal Procedure Code of Georgia, <https://matsne.gov.ge/ka/document/view/190034>

<sup>36</sup> <http://www.supremecourt.ge/files/upload-file/pdf/2014w-statis-faruli-reestri.pdf>

Regulating Secret Surveillance in Georgia: June 2015 – March 2016

<b>Registry of Actions of Secret Investigation Proactively Disclosed by the Supreme Court of Georgia (August 18 – December 31, 2014)</b>							
<b>Court</b>	<b>Received</b>	<b>Not considered</b>	<b>Considered</b>	<b>Among them Motions</b>			<b>Destroyed</b>
				<b>Granted</b>	<b>Partially granted</b>	<b>Not granted</b>	
<b>Total in Georgia</b>	<b>936</b>	<b>18</b>	<b>918</b>	<b>596</b>	<b>78</b>	<b>244</b>	<b>10</b>
<b>Tbilisi</b>	681	15	666	426	67	173	9
<b>Batumi</b>	19	3	16	11		5	
<b>Kutaisi</b>	39		39	26		13	1
<b>Rustavi</b>	33		33	29	2	2	
<b>Gori</b>	68		68	58	4	6	
<b>Akhaltzikhe</b>	9		9	4		5	
<b>Poti</b>	6		6	6			
<b>Telavi</b>	15		15	7		8	
<b>Zugdidi</b>	25		25	10	1	14	
<b>Samtredia</b>	2		2			2	
<b>Mtskheta</b>	15		15	10	1	4	
<b>Zestaponi</b>	5		5	1	1	3	
<b>Sighnaghi</b>	2		2	1	1		
<b>Senaki</b>	2		2		1	1	
<b>Bolnisi</b>	2		2	1		1	
<b>Ozurgeti</b>	10		10	5		5	
<b>Khelvachauri</b>	1		1			1	
<b>Akhalkalaki</b>	1		1			1	
<b>Khashuri</b>	1		1	1			

The Supreme Court continued to disclose the registry of actions of secret investigation in 2015 as well<sup>37</sup>:

<b>Registry of Actions of Secret Investigation Proactively Disclosed by the Supreme Court of Georgia (2015)</b>							
<b>Court</b>	<b>Received</b>	<b>Not considered</b>	<b>Considered</b>	<b>Among them Motions</b>			<b>Destroyed</b>
				<b>Granted</b>	<b>Partially granted</b>	<b>Not granted</b>	

<sup>37</sup><http://www.supremecourt.ge/files/upload-file/pdf/2015w-statistic-reestrir-monacemebi.pdf>

Regulating Secret Surveillance in Georgia: June 2015 – March 2016

<b>Total in Georgia</b>	<b>2719</b>	<b>26</b>	<b>2693</b>	<b>2098</b>	<b>251</b>	<b>344</b>	<b>26</b>
<b>Tbilisi</b>	1854	14	1840	1367	230	243	20
<b>Batumi</b>	115	1	114	96	4	14	1
<b>Kutaisi</b>	137	3	134	109	10	15	3
<b>Rustavi</b>	76	5	71	67		4	1
<b>Gori</b>	163		163	158	5		
<b>Akhaltzikhe</b>	23		23	22		1	
<b>Poti</b>	17			14	2	1	
<b>Telavi</b>	54		54	50		4	1
<b>Zugdidi</b>	76	1	75	62		13	
<b>Samtredia</b>	12		12	5		7	
<b>Mtskheta</b>	43		43	38		5	
<b>Zetaponi</b>	5		5	2		3	
<b>Sighnaghi</b>	27		27	25		2	
<b>Senaki</b>	7		7	4		3	
<b>Bolnisi</b>	6			5		1	
<b>Ozurgeti</b>	45		45	31		14	
<b>Khelvachauri</b>	10		10	5		5	
<b>Sachkhere</b>	5		5	1		4	
<b>Khashuri</b>	17		17	16		1	
<b>Gurjaani</b>	26	2	24	21		3	
<b>Tetritskaro</b>	1		1			1	

The existing data is not sufficient for complete comparison in order to reveal trends of actions of secret investigation between 2014 and 2015 (in case of 2014 information is available only on the second half of the year.)

In addition, the Supreme Court published statistics on motions regarding telephone secret surveillance and recording<sup>38</sup>. According to these statistics, **in 2014 there were in total 1074 motions, out of which 894 were granted**. Unfortunately, this information is not detailed and the data does not specify which public institutions made these motions in the Supreme Court (Prosecutor's Office, Ministry of Internal Affairs, Investigation Service of the Ministry of Finance).

<sup>38</sup><http://www.supremecourt.ge/files/upload-file/pdf/2014w-statis-faruli-sat.mosmenebi.pdf>

Motions on Telephone Surveillance Received by Tbilisi City Court from the Prosecutor’s Office of Georgia (The information received by IDFI from the High Council of Justice of Georgia in 2013 <sup>39</sup> )			
Year	Received	Granted	Granted %
2011	7195	7187	99,86%
2012	5951	5939	99,80%
2013 (January–May)	1400	1259	89,93%
Motions on Telephone Surveillance Received by Courts of First Instance (Data proactively disclosed by the Supreme Court of Georgia)			
2014	1074	894	83,24%
2015	373	Fully Granted: 261	Partially Granted: 45 Total: 306 82%

Based on the information received by IDFI as well as that published by the Supreme Court, **the number of motions made to courts on secret surveillance has significantly decreased in 2014, compared to previous years.** For instance, only in case of Tbilisi Prosecutor’s Office, Tbilisi City Court received 7195 motions on telephone surveillance in 2011, 5951 in 2012 and 1400 motions in the first 5 months of 2013<sup>40</sup>. The Courts of First Instance received 1074 motions in 2014 and only 373 motions in 2015.

**The statistics also reveal that the percentage of granted motions has decreased – while 99,86% of motions were granted in 2011, the courts granted only 83,24% of motions in 2014 and 82% of them in 2015<sup>41</sup>.** The 2015 data proactively published by the Supreme Court is more detailed and for the first time gives additional information such as the number of partially granted motions (45 cases in 2015), as well as information about duration extensions for existing motions on telephone surveillance. In case of the latter, there were 85 motions to extend the duration, out of which 72 were fully granted, 9 were partially granted, and 4 were not granted.

Also important is the fact that the statistics before 2014 show only the data for Tbilisi City Court, while the proactively published information by the Supreme Court covers all courts of the first instance. Therefore, **the actual number of motions received by the courts of the first instance in the entire country was probably even higher in 2011-2013 than it is shown in the statistics below.**

<sup>39</sup><https://idfi.ge/en/decreased-motions>

<sup>40</sup><https://idfi.ge/ge/statistical-data-idfi-practice>

<sup>41</sup><http://www.supremecourt.ge/files/upload-file/pdf/2015w-statistic-farul-miyuradebaze.pdf>

## Regulating Secret Surveillance in Georgia: June 2015 – March 2016

The proactive publication of surveillance statistics in Georgia was recognized as a featured commitment in the Open Government Partnership (OGP) March Newsletter.<sup>42</sup> According to the newsletter, **“This commitment might be making Georgia one of the few countries in the world that proactively publishes surveillance data”**.

While it is indeed a step forward that the statistics on surveillance is being published proactively, there is room for improvement in terms of transparency if the published data is organized by courts, applicant public institutions, quarters and months, and the data on surveillance which is performed via other telecommunication channels is published, and last but not least, the data is proactively published in a more user-friendly manner.

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<sup>42</sup><http://us3.campaign-archive2.com/?u=b25f647af089f5f52485a663d&id=b6718d6f0e&e=%5bUNIQID%5d>