

# BRIEF OVERVIEW OF RECENT DEVELOPMENTS IN THE FIELD OF PERSONAL DATA PROTECTION



**DOCUMENT IS PREPARED IN COLLABORATION WITH DATA PROTECTION  
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Human Rights 4All

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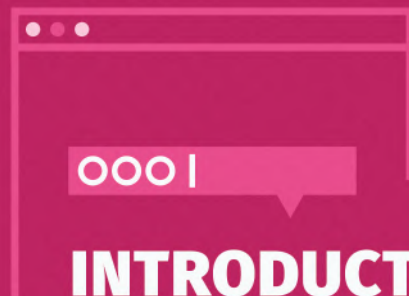
# Table of Contents

<b>List of Abbreviations</b>	<b>01</b>
<b>Introduction</b>	<b>03</b>
<b>Approximation of Georgian PDP legislation with European standards</b>	<b>05</b>
<b>Signature and ratification of Convention 108+</b>	<b>08</b>
<b>A Brief update on privacy-related Constitutional Court cases</b>	<b>11</b>
<b>A Brief outlook of SIS activities</b>	<b>14</b>
<b>Development of Human Rights Strategy 2021-2030</b>	<b>17</b>
<b>Other major highlights and concerns</b>	<b>19</b>
▪ <b>Pandemic-related data protection</b>	<b>19</b>
▪ <b>Data processing in the election process</b>	<b>20</b>
▪ <b>Allegations of illegal wiretapping and surveillance</b>	<b>20</b>
<b>Conclusion</b>	<b>24</b>



# LIST OF ABBREVIATIONS

<b>AA</b>	<b>Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, if the other part</b>
<b>ASSOCIATION AGENDA</b>	<b>Association Agenda between European Union and Georgia 2017-2020</b>
<b>COE</b>	<b>Council of Europe</b>
<b>CONVENTION 108+</b>	<b>Modernised Convention for the Protection of Individuals with regards to Automatic Processing of Personal Data</b>
<b>EU</b>	<b>European Union</b>
<b>ECHR</b>	<b>European Court of Human Rights</b>
<b>GDPR</b>	<b>General Data Protection Regulation</b>
<b>GOG</b>	<b>Government of Georgia</b>
<b>GYLA</b>	<b>Georgian Young Lawyers' Association</b>
<b>HR STRATEGY</b>	<b>Human Rights National Strategy 2021-2030</b>
<b>HR ACTION PLAN</b>	<b>Human Rights Action Plan for 2018-2020</b>
<b>HR COMMITTEE</b>	<b>Human Rights and Civil Integration Committee of the Parliament</b>
<b>IDFI</b>	<b>Institute for Development of Freedom of Information</b>
<b>IRC</b>	<b>Innovations and Reforms Center</b>
<b>LEPL</b>	<b>Legal Entity of Public Law</b>
<b>MPS</b>	<b>Members of the Parliament of Georgia</b>
<b>MIA</b>	<b>Ministry of Internal Affairs of Georgia</b>
<b>MOIDPLHSA</b>	<b>Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs.</b>
<b>NCDC</b>	<b>National Center for Disease Control and Public Health of Georgia</b>
<b>OHCHR</b>	<b>Office of the High Commissioner for Human Rights</b>
<b>OTA</b>	<b>LEPL Operative-Technical Agency of the State Security Service of Georgia</b>
<b>PDP</b>	<b>Personal Data Protection</b>
<b>SIS</b>	<b>State Inspector's Service of Georgia</b>
<b>UN</b>	<b>United Nations</b>
<b>UNDP</b>	<b>United Nations Development Programme</b>



# INTRODUCTION

# Introduction

There is probably no introduction to any report written in 2020-2021 that can avoid mentioning the Covid-19. As elsewhere, the global pandemic and related restrictive measures, along with parliamentary election and following political crisis, impacted the personal data protection landscape in Georgia, hindered the expected legislative advancements and fulfillment of GoG's commitments.

This report evaluates the state of the art and progress in implementing the main priorities of the Association Agenda<sup>1</sup> and HR Action Plan<sup>2</sup> related to personal data protection. It also summarizes the significant developments and challenges, identifies possible drives for change, and provides recommendations on the most pressing issues related to data protection.

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<sup>1</sup> AA is available at <https://mfa.gov.ge/>

<sup>2</sup> HR Action plan is available at <http://myrights.gov.ge/ka/plan/Action%20Plan%202020?sphere=740&goal=741&task=>





# **APPROXIMATION OF GEORGIAN PDP LEGISLATION WITH EUROPEAN STANDARDS**



# Approximation of Georgian PDP legislation with European standards

Article 14 of The AA forms a solid ground for the cooperation of parties to ensure a high level of protection of personal data in accordance with the EU, CoE, and international legal instruments and standards. The Association Agenda's mid-term priorities included further strengthening the capacity of SIS, the continuous implementation of the legal framework on data protection in all sectors, approximation of Georgian legislation, and practice with the latest European data protection standards. The same priorities have been reflected in HR Action Plan, explicitly referring to compliance with the CoE Convention 108+ and EU GDPR.

Deriving from the priorities mentioned above, in 2018-2019, SIS developed new draft Law "On Personal Data Protection" and other associated legislative changes.<sup>3</sup> The drafting process and engagement of European expert was supported by the "Human Rights for All" program, a joint initiative of the EU and the UN agencies. On 22 May 2019 draft legislative package was initiated by a group of MPs (Sophio Kiladze, Rati Ionatamishvili ... Anri Okhanashvili, and others). The leading role was assigned to HR Committee, while Committees on Legal Issues and European Integration were asked to provide conclusions on the drafts.

Due to the delay in delivering the conclusions, mandatory for a continuation of the legislative cycle, the time limit was extended until 10 October 2019.<sup>4</sup> SIS passionately advocated for timely discussion and adoption of the package. SIS initiated and participated in several meetings with Parliament and GoG representatives. Delegation of the EU to Georgia, UNDP, and OHCHR also strongly supported the PDP law's timely adoption. In June 2020, a group of NGOs openly called upon the Parliament to renew the discussions and ensure timely adoption of the draft,<sup>5</sup> recalling that outdated Law does not respond to the current challenges. Nevertheless, the previous Parliament failed to resume the legislative process and for an almost 2-year draft is at the stage of initial consideration at the level of Parliamentary committees.

On 3 February 2021, the HR Committee of the newly elected Parliament discussed the expediency of continuing the procedures related to the PDP legislative initiative and, by issuing a positive decision, committed to intensifying the discussion on the draft package. However, as of 8 April 2021, the draft's first reading by the HR committee has not been yet held, nor the conclusions of

<sup>3</sup> Draft PDP legislative package and all associated documents are available at <https://info.parliament.ge/#law-drafting/18184>

<sup>4</sup> Decision of the Bureau is available at: <https://info.parliament.ge/file/1/BillReviewContent/230477?>

<sup>5</sup> statement available at: [http://irc.ge/new/index.php?m=123&news\\_id=107&lng=eng](http://irc.ge/new/index.php?m=123&news_id=107&lng=eng)

Committees on Legal Issues and European Integration have been presented. In the process of expected parliamentary hearings, special attention should be given to the recommendations<sup>6</sup> provided by CoE upon the request of the State Inspector - Ms. Londa Toloraia. CoE examined the compliance of draft Law with CoE data protection standards, considering, where necessary, GDPR. The CoE opinion confirmed that the legislative package is, to a great extent, in compliance with Convention 108+. It reinforces the data subject's rights, introduces a number of novelties in respect of obligations to controllers, and further strengthens SIS's investigative and enforcement powers. However, the opinion expressed concerns regarding the scope of law application and suggested reconsidering derogatory regimes related to national security and intelligence services.

**Along with the timely continuation of the legislative procedures during parliamentary hearings, it is vital to safeguard that the text maintains GDPR compliant progressive provisions and modalities on strengthened safeguards for individuals and increased transparency and accountability of all those that handle the data, including the law enforcement authorities. It is critical to ensure that derogatory regimes remain exceptional in line with the requirements of Convention 108+ and the ECHR jurisprudence, and the right to personal data protection is reconciled with other human rights and fundamental freedoms, notable freedom of expression and information. Furthermore, the exercise of the right to data protection should not be used as a general means to prevent public access to official documents.<sup>7</sup>**

**SIS should be actively engaged in discussions and consulted regarding further advancement of the text. Proper deliberation should also be given to civil society organizations' proposals, including GYLA<sup>8</sup>, IDFI<sup>9</sup>, and IRC<sup>10</sup>, that have submitted their observations to the Parliament in writing. The main concern of GYLA and IDFI is to ensure that for the processing of special categories of data, the public interest test applies and is appropriately interpreted, while IRC also suggests expanding the application of Privacy Impact Assessment (PIA) and doubling the proposed fines for the violation of the PDP law.**

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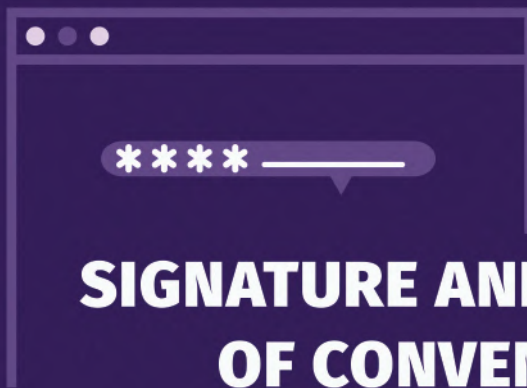
<sup>6</sup> Opinion of Directorate General Human Rights and Rule of Law, Information Society – Action Against Crime Directorate Information Society Department prepared based on the expertise by Graham Sutton and Maria Michaelidou, DGI (2020)12 Strasbourg, 3 July 2020

<sup>7</sup> Explanatory Report to the Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (page 3) available at: <https://rm.coe.int/cets-223-explanatory-report-to-the-protocol-amending-the-convention-fo/16808ac91a>

<sup>8</sup> written comments of GYLA are available at: <https://bit.ly/3oMgkFE>

<sup>9</sup> written comments of IDFI are available at: <https://bit.ly/2Snyd1l>

<sup>10</sup> written comments of IRC are available at: [http://irc.ge/new/uploads/IRC-\\_.pdf](http://irc.ge/new/uploads/IRC-_.pdf)



# **SIGNATURE AND RATIFICATION OF CONVENTION 108+**

# Signature and ratification of Convention 108+

GDPR and Convention 108+ have common DNA. Work on both legal frameworks was carried out in parallel as consistency between those documents was essential for all EU member states also bound by the Convention. One week before the GDPR came into force, on 18 May 2018, the "modernization" of Convention 108 was completed with the adoption of the amending protocol.<sup>11</sup> With the modernization, the original principles of the 1981 Convention have been reaffirmed, strengthened, and new safeguards have been laid down. The principles of transparency, accountability, data security, and privacy by design are now key elements of Convention 108+.

Parties to the Convention are no longer provided with the possibility to make declarations aimed at exempting from the Convention's application the specific types of data processing (e.g., for national security and defence purposes). They can make exceptions only to particular provisions indicated by the Convention if such an exception is provided for by Law, respects the essence of the fundamental rights and freedoms and constitutes a necessary and proportionate measure in a democratic society for: the protection of national security, defence, public safety; important economic and financial interests of the State; the impartiality and independence of the judiciary or the prevention, investigation and prosecution of criminal offences and the execution of criminal penalties; other essential objectives of general public interest; the protection of the data subject or the rights and fundamental freedoms of others, notably freedom of expression. Furthermore, restrictions on the exercise of the provisions related to transparency of the processing and data subject rights may be provided for by Law with respect to data processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes when there is no recognizable risk of infringement of the rights and fundamental freedoms of data subjects.

Each Party has to adopt in its domestic Law the measures necessary to give effect to the provisions of the Convention, demonstrate that actions are effective, and accept that the Convention Committee may check this with the new follow-up mechanism.

Convention 108+ was open for signature on 10 October 2018, and as of March 2021, 39 CoE member States and 4 non-members have signed, and 11 already ratified the Convention. Georgia is among the remaining 8 CoE member States (together with Albania, Azerbaijan, Denmark, Montenegro, Moldova, Turkey, and Ukraine) that still have not signed/ratified Convention 108+.<sup>12</sup>

<sup>11</sup> Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (CETS No. 223), 10 October 2018, available at: <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/223>

<sup>12</sup> Table of signatures and ratifications: <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/223/signatures>



SIS from 2018 urges the GoG to take a step forward and to facilitate the signature and ratification of the Convention, provided an unofficial translation of the text, organized many consultation meetings and formal as well as informal exchanges. As mentioned above, State Inspector approached CoE to provide opinion on the draft PDP law's compliance and related amendments with Convention 108+.

**Timely signature and ratification of Convention 108+ should be the priority for Georgia, first from human rights and the rule of law perspectives. However, other important dimensions are worthy of consideration, including Georgia's European integration, international and bilateral cooperation prospects, and new economic development opportunities. As an example, only two reasoning are discussed below:**

- **Within the scopes of Association Agenda and HR Action Plan, Georgia expressed its commitment to approximate its data protection legislation and practice with the latest European data protection standards. GDPR and Convention 108+ are the most recent standard-setting legal instruments with global relevance. The increasing globalization of both legal frameworks is confirmed by the increased number of GDPR-inspired national PDP laws and the number of states demonstrating interest towards Convention, including due to its (1) transborder data flow regime that facilitates the free flow of data between Parties and (2) cooperation platform for data protection supervisory authorities.**
- **According to GDPR, one way to transfer personal data outside the EU without any specific authorization is based on the Commission's "adequacy decision" establishing that a third country ensures an adequate level of protection. When assessing the level of protection, the Commission considers the different elements, including the international commitments of the third country or other obligations arising from legally binding conventions or instruments related to personal data protection. Recital 105 of the GDPR further specifies that Convention 108 accession will "in particular ... [be] taken into account". Ratification of the Convention and consolidation of national legislation and practice with European standards increases Georgia's chances for "adequacy decisions," thereby providing to Georgian authorities a more efficient mechanism for exchanging personal data with EU and its Member State institutions. It will also facilitate Georgian companies' privileged access to the EU single market and open commercial channels for EU operators.**



## **A BRIEF UPDATE ON PRIVACY-RELATED CONSTITUTIONAL COURT CASES**

# A Brief update on privacy-related Constitutional Court cases

In recent years Constitutional Court has made a number of landmark decisions related to the right to privacy, but for the purposes of this overview, a brief update on only two recent/pending cases is provided.

On 7 June 2019 Constitutional Court of Georgia declared unconstitutional and void normative interpretation of the specific provisions of the PDP law, which allowed prohibition of access to the full text of court decisions delivered within the scope of open court hearings.<sup>13</sup> The Constitutional Court indicated that the disputed norms by default established the balance in favor of personal data protection and undermined public oversight over the exercise of judicial power and judicial acts. The Court also noted that there might be circumstances where the legislature will need to strike a balance in favor of the right to privacy (e.g., in cases related to minors or intimate sphere of private life) and suggested establishing a mechanism for data subjects to object to the availability of their data. To avoid the possibility of legislative absence that immediate enforcement of the judgment could cause, Constitutional Court postponed the invalidation of the disputed provisions until 1 May 2020.

Despite the reasonable timeframe given by the Constitutional Court, neither necessary legislative amendments for ensuring the accessibility of court decisions were adopted nor effective mechanism for exercising the data subject right to object to their data disclosure was introduced. IDFI 2021 study on Transparency of Judiciary in Georgia<sup>14</sup> revealed that when public information is requested, common courts do not provide the full text (with non-anonymized personal data) of the decision, even though normative content of relevant articles of PDP Law, which restricted the disclosure of the full text of court decisions are void since 1 May 2020. Moreover, none of the common court judgments delivered after 30 April 2020 are available through the search engine of court decisions, even though article 13 of the Organic Law on Common Courts<sup>15</sup> explicitly requires the publication of decisions. **It is essential to ensure that newly elected Parliament timely addresses the above-mentioned issue and possible legal regulation fully respects and complies with the Constitutional Court ruling.**

<sup>13</sup> Decision of the Constitutional Court of Georgia on the case of “Private legal entity “Media Development Fund” and private legal entity “Institute for Development of Freedom of Information” against Georgian Parliament”, available at: <https://www.constcourt.ge/ka/judicial-acts?legal=1268>

<sup>14</sup> Transparency of Judiciary in Georgia, available at: <https://bit.ly/3wo8p3Y>

<sup>15</sup> Organic law is available at: <https://matsne.gov.ge/ka/document/view/90676?publication=41>

Another important long-awaited ruling of the Constitutional Court that could seriously impact the legal framework and practices of covert surveillance is related to constitutional lawsuits filed on 6 April 2017 by the Public Defender and 326 citizens of Georgia. It should be noted that in 2016 Constitutional Court already examined and ruled unconstitutional legal norms that entitled State Security Service to have direct and unrestricted access to telecom operators' network and retain copied metadata for up to two years. Court has also concluded that SIS's oversight mandate did not constitute sufficient external control that is adequate and effective.<sup>16</sup> Constitutional Court declared the disputed norm unconstitutional on 14 April 2016 but postponed the deadline for entry into force of the decision until 31 March 2017. In March 2017, Parliament adopted legislative amendments that changed the management of technical infrastructure used for secret surveillance and revised the controlling scheme. However, Public Defender, civil society organizations, and other applicants considered that legislation contradicted the judgment of 14 April 2016 and lodged another lawsuit. Applicants ask to rule unconstitutional the provisions of the laws on electronic communication, LEPL – Operative-Technical Agency and Criminal Procedure code regulating wiretapping, real-time access to communications data by Operative-Technical Agency, and its competence to copy and retain the electronic communication identification data. **The last hearing on the case was held in April 2019, and since that Court is at the stage of deliberation and decision-making. As mentioned above, the Constitutional Court decision might lead to a revision of legislation regulating access to communication data for investigative and counterintelligence purposes and stimulate the advancement of external oversight mechanisms.**

<sup>16</sup> More information about the case could be seen in IDFI publication Secret Surveillance in Georgia – Analysis of the legislation and practice available at:

[https://idfi.ge/public/upload/Rule\\_of\\_Law/secret\\_surveillance\\_in\\_georgia-ENG.pdf](https://idfi.ge/public/upload/Rule_of_Law/secret_surveillance_in_georgia-ENG.pdf)

<sup>17</sup> Decision N1/1/625,640 is available at: <https://www.constcourt.ge/ka/judicial-acts?legal=2299>

<sup>18</sup> Information about hearings is available at: <https://constcourt.ge/ka/media/news>





## **A BRIEF OUTLOOK OF SIS ACTIVITIES**

# A brief outlook of SIS activities

SIS is a well-functioning independent institution, although, with the adoption of the initiated draft amendments, SIS's investigative and enforcement powers will be further strengthened. The covid-19 pandemic impacted the SIS activities, and there was a decline in the number of complaints it received in 2020. Based on 305 citizen complaints (decrease by 27.3% compared to 2019) and 119 inspections (reduce by 23.3% compared to the previous year), SIS revealed 123 violations (compared to 135 in 2019) of the PDP Law and imposed a financial penalty in 60 and a warning in 54 instances. Administrative liabilities were applied to private companies in 59% of cases, to public institutions in 26%, and law enforcement bodies in 15% of cases.

The 2020 report of SIS confirms the increase of violations related to data security measures (30% in 2020 against 20% in 2019) and data processing without a legitimate basis (24% in 2020 compared to 18% in 2019). Breaches of data subject's rights (8% in 2020 compared to 9% in 2019) were almost the same, while violations of data processing principles (15% in 2020 compared to 18% in 2019) and video surveillance regulations (6% in 2020 compared to 12 % in 2019) have decreased. SIS also delivered 237 instructions and recommendations and provided 3129 consultations (an increase by 5% compared to 2019) to various public and private organizations.

The share of complaints against private organizations has decreased from 81% in 2019 to 77% in 2020, while the ratio of complaints against law-enforcement bodies has grown from 11% in 2019 to 14% in 2020. The proportion of complaints against public authorities has increased by only 1% (9% in 2020 and 8 % in 2019).

Built on international standards and best practices, considering data subject categories, sensitivity and volume of data processed, and other risk factors, in 2020, SIS has elaborated special criteria for identifying high-risk data processing activities to be examined with the SIS's initiative. Out of 119 Inspections, 31% of inspections have been carried out with the SIS initiative and based on the above criteria.

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<sup>19</sup> SIS's 2020 activity report is available at: <https://personaldata.ge/>

In 2020 SIS released Recommendations on personal data protection in the course of the fight against Covid-19 (Coronavirus)<sup>20</sup>, addressing the issues related to data processing by healthcare institutions, processing the data of employees, distance learning, and remote working. Besides, SIS has provided recommendations to MoIDPLHSA on the "Stop Covid" mobile application. It also examined and provided advice on the legal acts, including governmental decrees regulating data processing and sharing between public authorities to prevent the spread of the infection and administering restrictive measures. Moreover, SIS examined the 24<sup>21</sup> pandemic related new data processing activities, including data processing by NCDC, "Covid clinics" and "Covid hotels"; data processing of infected and self-isolated citizens by MIA; online learning at universities and schools; thermal screening at airport and shopping malls. As a result of the inspections, administrative liabilities (7 warnings and 5 fines) were imposed to 12 data controllers. SIS also issued a mandatory 25 assignment and 4 recommendations.

SIS also circulated an informative document on personal data processing in the election process and delivered special training to election commission representatives. In 2020 SIS actively used online formats for capacity building of its staff and awareness-raising of data controllers as well as the general public. SIS has published other important recommendations and case studies in the field of health and juvenile<sup>22</sup>

**Under the EU and CoE legal frameworks, the independent and efficient supervisory authorities are considered one of the essential elements of the right to the protection of personal data. GDPR also provides detailed rules for independent supervisory authorities' functioning, including provisions on the resources necessary for the effective performance of their tasks and powers, and it envisages fines of up to €20 million or 4% of the data controller's annual revenue. The current sanctioning system and limited timeframe for imposing sanctions often limit SIS's possibility to address the infringements of the PDP law adequately and do not encourage data controllers to invest in privacy-friendly data processing systems. Therefore, strengthening SIS enforcement powers and revising sanctioning arrangements are vital.**

<sup>20</sup> Recommendations is Eglarsh are available at: <https://bit.ly/3bRRezV>

<sup>21</sup> 12 based on complaints and 12 with its initiative.

<sup>22</sup> As this report is prepared before the publication of the SIS annual report, overview is based on statistical information shared by SIS and information available at: <https://personaldata.ge/>



# **DEVELOPMENT OF HUMAN RIGHTS STRATEGY 2021-2030**



# Development of Human Rights Strategy 2021-2030

The work on this brief overview coincides with the elaboration of the second National Human Rights Strategy intended to cover the years 2021-2030. The Strategy development process led by the Administration of the GoG is strongly supported by the EU, UNDP, and OHCHR. Draft Human Rights Strategy creates a consolidated framework for reinforcing the strong and unified national system to protect fundamental human rights and advance institutional democracy. The strategy also aims to strengthen personal data protection and legislative framework. **Approximation of PDP legislation with European standards (explicitly referring to GDPR and Convention 108+) must remain under the short-term priorities, while effective implementation of new legislation both in public and private sectors should be the continuous process. The strategy should also aim to advance mechanisms for preventing and effectively investigating infringements of the right to privacy, including the secrecy of private communication.**



## **OTHER MAJOR HIGHLIGHTS AND CONCERNS**

# Other major highlights and concerns

## ▶ PANDEMIC-RELATED DATA PROTECTION

In general, the state of emergency announced on 21 March 2020 did not substantially limit data protection rights. GoG ordinance #181 of 23 March 2020 "on the Approval of Measures to be Implemented in connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19) in Georgia"<sup>23</sup> until 23 May 2020 suspended the timeframe established by the legislation for releasing personal information. Moreover, State Inspector was authorized to suspend the review of cases if circumstances did not allow its comprehensive, complete, objective, and timely examination. In the context of the COVID-19 health crisis, the GoG also used the possibility provided for by Article 15 of the European Convention on Human Rights and Article 4 of the International Covenant on Civil and Political Rights and derogated from certain obligations under particular articles of the treaties, including Article 8 - the right to respect for private and family life<sup>24</sup> and Article 17 respectively.<sup>25</sup>

Bulk and mandatory application of contact tracing apps or facial recognition systems, as well as unproportionate processing of data or illegal disclosure of patient's information by health authorities or providers, have not been reported. However, the serious concern raised cyberattack carried out on 1 September 2020 against the computer system of MoDPLHSA<sup>26</sup>. Cyberattacks attempted to access medical records and pandemic management information stored in the databases of the Ministry and its units, including those of the National Center for Disease Control and Public Health and Richard G. Lugar Center for Public Health Research, which played a vital role in Georgia's response to the outbreak. According to MIA, the cyber attack was carried out by a foreign special service. Part of the authentic documentation obtained along with falsified documents were uploaded on one of the foreign websites and made available to the users. Although MIA does not specify the state from which the cyberattack was carried out, the case circumstances and disinformation campaign preceding the attack indicated the Russian trace with high probability. MIA stated that it would appeal to the partner states for assistance in the rapid and effective investigation of the crime. Additional information about the investigation in progress has not been yet disseminated.

<sup>23</sup> Ordinance is available at: <https://matsne.gov.ge/en/document/view/4830610?publication=41>

<sup>24</sup> Note Verbale to the Secretary General of the CoE is available at: <https://rm.coe.int/16809cff20>

<sup>25</sup> Depositary notification of Georgia is available at: <https://treaties.un.org/doc/Publication/CN/2020/CN.125.2020-Eng.pdf>

<sup>26</sup> Additional information is available at: [https://idfi.ge/en/strategy\\_of\\_russian\\_cyber\\_operations](https://idfi.ge/en/strategy_of_russian_cyber_operations);  
<http://gtarchive.georgiatoday.ge/news/22260/MIA%3A-Cyber-Attack-Carried-Out-on-the-System-of-Lugar-Lab>

## DATA PROCESSING IN THE ELECTION PROCESS

Practices of tracking voters and attempts to influence them by processing their data were first reported during the 2017 local self-government elections, and since then, Public Defender, SIS, election observer organizations urge Georgian Parliament and Central Election Commission to ensure more vigorous application of data protection principles and the adoption of new regulations limiting the voter tracking and preventing misuse the personal data in the election process.

According to ODIHR Limited Election Observation Mission Final Report,<sup>27</sup> during the 2020 parliamentary elections, the secrecy of votes inside the voting booth was mainly respected; however, video recording and photographing of voters casting their ballots without their consent contributed to a potentially intimidating environment in the majority of visited polling stations. According to the report, such recordings constituted another means of tracking voters, which could potentially be misused by political stakeholders after election day. **The report calls for regulating the use of video cameras in polling stations to avoid any intimidating effect and risk of control of or repercussions on voters. Along with this recommendation, there is a need to examine Georgian legislation and regulate the use of personal data in the election context from a comprehensive perspective, including transparency of digital campaign financing and third-party campaigning.**

## ALLEGATIONS OF ILLEGAL WIRETAPPING AND SURVEILLANCE

Illegal surveillance with audio-video recordings being made of politicians and journalists for blackmail as well as the ineffectiveness of investigation of such crimes is a systemic problem for Georgia. In 2020 audio recording and the content of the private communications of female opposition figure and journalist were disclosed.<sup>28</sup> However, this overview provides brief information on revelations that took place at the beginning of 2021.

<sup>27</sup> Page 28 of the Report available at: <https://www.osce.org/files/f/documents/1/4/480500.pdf>

<sup>28</sup> More information is available on pages 150-151 of the Public Defender 2020 report. Georgian version of the report is available at <https://www.ombudsman.ge/res/docs/2021040110573948397.pdf>



While the current government representatives constantly criticized the previous government for mass illegal surveillance, recent allegations<sup>29</sup> of secret surveillance on the female politician and opposition media owner raised significant concerns. An interview with an employee of the State Security Service was aired on Mtavari Channel on 21 March 2021. According to Mtavari Channel, the interview took place in 2019 and after the interview, the respondent was convicted for disclosing state secrets. Respondent also spoke about the destruction of the footage indicating police misconduct during the dispersal of the 20 June rally. The public Defender called for the rapid launch of the investigation, stressing that the victims of illegal surveillance are mainly women involved in public and political processes.<sup>30</sup> On 22 March, the Prosecutor's Office launched an investigation regarding the allegations of possible violations of the secrecy of private communication committed by abusing one's official position and the possible fact of exceeding official powers by certain public officials.<sup>31</sup>

The public Defender also commented about the court warrant on seizure at TV Pirveli, stressing that the warrant was unsubstantiated and contradicted Georgian legislation and European human rights law.<sup>32</sup> The court decision was made in relation to the Prosecutor's Office investigation into the unauthorized recording of and/or eavesdropping on a private conversation between the current Prime Minister, the head of the Special State Protection Service, and Bera Ivanishvili. The recording was obtained through the journalist's confidential sources and released by the TV company on 6 March 2021.<sup>33</sup>

The next day<sup>34</sup>, 17 NGOs made a statement emphasizing that although the record's authenticity needed to be established, they contained characteristics of crimes, as they indicated that young people, including minors, were persecuted and threatened because of their views expressed on social media. NGOs called on law enforcement agencies to take all necessary measures to increase the credibility of the investigation. They also stressed that high officials' alleged participation in criminal actions should be subject of legal and political responsibilities.<sup>35</sup> Despite this statement, the investigation was launched only into unauthorized recording of private conversations and illegal use and dissemination of information.

<sup>29</sup> More information is available at: <https://mtavari.tv/en/news/36858-secret-files-state-security-service-interview-man>

<sup>30</sup> Statement of Public Defender is available at: <https://bit.ly/2SrXWpf>

<sup>31</sup> IDFI statement and more information is available at: [https://idfi.ge/en/idfi\\_statement\\_on\\_personal\\_life\\_records](https://idfi.ge/en/idfi_statement_on_personal_life_records)

<sup>32</sup> Information is available at: <https://bit.ly/3fFMzCo>

<sup>33</sup> Information is available at: <https://www.facebook.com/tvpirveli/videos/2970638103150461/>

<sup>34</sup> Statement of NGOs is available at: <https://bit.ly/3vekLeN>

<sup>35</sup> Records indicated that young people, including minors, were persecuted and threatened because of their views expressed on social media.

The concerns have raised the formulation of the court warrant that authorized Prosecutors to retrieve the "the carrier of electronic data", "an envelope and/or other kinds of packaging" that contained it from TV Pirveli offices and in case of opposition to the implementation of this order "to apply the proportional measure of coercion." The warrant was appealed, but the judge of the Court of Appeal upheld the decision of the judge of the first instance court.<sup>36</sup> Prosecutor's Office stated<sup>37</sup> that the publicly spread information that they planned to enter the TV company by force was false and called upon TV Pirveli to cooperate and present the secret recordings and the device containing electronic information for establishing their authenticity. On 11 March, the Media Coalition urged international partners to pay special attention to this case stressing that the investigation's direction posed a danger on media once again to become a target of political retaliation<sup>38</sup>.

According to the attorney, later on, journalists - Nodar Meladze and Maka Chikhladze were interviewed before the judge. As questions were directed at identifying the source, journalists enjoyed the privilege of not disclosing the source based on article 50 of the criminal procedure code, which exempts journalists with regard to the information obtained in the course of professional activities from the obligation to transfer an item, document, substance or object that contains information essential to the case. Nevertheless, the attorney confirmed journalists' readiness to provide the original version of the audio recording if a legitimate and appropriate court warrant will be presented.

On 11 March, another investigation has been launched by MIA into an alleged murder plot targeting TV Nodar Meladze and Maka Chikhladze after Levan Mamaladze<sup>39</sup> told Imedi TV that Georgia's ex-President and ex-Justice Minister were plotting the murder of journalists "to cause unrests in the country."<sup>40</sup> MIA offered Meladze and Chikhladze protection under the state program, but according to the attorney, additional information about specific risks has not been provided. All above mentioned investigations involving journalists are in progress.

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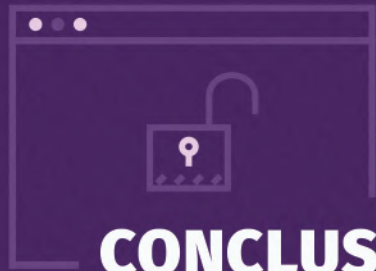
<sup>36</sup> The March 18 decision of the Judge of the Investigative Panel of the Tbilisi Court of Appeal is available at Facebook page of attorney Giorgi Mshvenieradze <https://www.facebook.com/photo?fbid=10223721067075853&set=pcb.10223721069075903>

<sup>37</sup> Statement is available at: <https://pog.gov.ge/en/news/si-1>

<sup>38</sup> Statement of the Media Advocacy Coalition - <https://www.qartia.ge/ka/siakhleebi/article/87269-2021-03-11-13-42-11>

<sup>39</sup> Governor of the Kvemo Kartli region in 1994-2003 who fled to Russia after being accused of extortion.

<sup>40</sup> More information is available at: <https://civil.ge/archives/405743>



**CONCLUSION**

# Conclusion

Privacy is still an area that requires continuing and intensified vigilance.<sup>41</sup> All allegations of illegal surveillance and blackmailing with information related to private life and intimate sphere should be timely and effectively investigated and prosecuted. According to the Public Defender 2020 report<sup>42</sup>, no criminal prosecution has been launched into the privacy infringement cases on which investigations were opened in 2015-2017. The Public Defender of Georgia continues to call on the Prosecutor's Office to ensure transparency, making it possible to assess investigations' effectiveness objectively.

Timely signing and ratification of the Convention 108+ and adoption of GDPR compliant PDP Law giving effect to the provision of Convention and ensuring the careful balance between human rights and interests at stake are seen as essential drivers of change - reinforcing effectiveness of data protection in public and private sectors, strengthening SIS's powers and implementing AA and HR strategy priorities.

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<sup>41</sup> Implementation of the national strategy for protection of human rights in Georgia 2014-2020, report is prepared by the independent human rights expert Maggie Nicholson and is available at: <https://bit.ly/3hYCyTg>

<sup>42</sup> Page 154 of the 2020 report available in Georgian at: <https://ombudsman.ge/res/docs/2021040110573948397.pdf>





