



SECRET SURVEILLANCE IN G E O R G I A

ANALYSIS OF THE LEGISLATION AND PRACTICE



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INTRODUCTION

The existence of strict guarantees for the protection of privacy is essential for the establishment of a free and democratic society. The constitutional right to privacy is an integral part of the concept of freedom. It envisages the right of a person to form and develop relations with others, determine his/her place in a democratic society, form opinions and develop connections with the outside world.¹

The right to privacy is not absolute. It can be restricted by law if it is necessary in a democratic society for ensuring national security and public safety or protecting the rights of others. The restrictions can only be imposed based on a court decision or without a court decision in the case of urgent necessity provided for by law (without a court decision).²

According to the European Convention on Human Rights, there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.³

Interference in the right of private communication conducted via phone or any other technical means constitutes the restriction of privacy. However, covert surveillance does not per se contradict the values of modern, democratic society. The interest of state security can on certain occasions require restricting civil liberties. In these cases, it is essential to have procedural safeguards and relevant control mechanisms necessary for preventing the abuse of power by the state.

The given study reviews the legal framework of covert investigative and intelligence activities, discusses existing gaps, international standards and assessments, and presents the trends identified based on the statistical analysis.

¹ Ketevan Eremadze, *Freedom Guardians in Search of the Freedom*, pg.163.

² Constitution of Georgia, Article 15, para. 2.

³ European Convention of Human Rights, Article 8.

MAIN FINDINGS

- Ensuring genuine independence of LEPL Operative-Technical Agency constitutes a significant challenge. Existing legislation still fails to set strict guarantees for the protection of privacy.
- The provision of the Law of Georgia on Counter-Intelligence Activities, according to which special services authorized to undertake intelligence activities are entitled to interfere in the private lives of individuals without court authorization, remains to be problematic.
- Based on the existing legislation, the Parliamentary Trust Group which exercises oversight in the area of state defense and security does not possess relevant mechanisms of control and supervision. The existing rules of overseeing the activities of Operative-Technical Agency are vague and do not allow for detailed oversight of its activities.
- According to the data, the total number of motions on wiretapping received by courts from 2016 until the end of the second quarter of 2020 equaled to 3 467. The trend of a rising number of motions has been observed in Tbilisi since 2016. In 2019 the number further increased by 1.6% compared to the previous year and reached the highest figure of 669.
- During 2019 a total of 7 084 motions on covert investigative measures were submitted at city and district courts of Georgia.
- The number of motions on covert investigative measures decreased by 26.3% in 2019 compared to the previous year. Based on the data of 2019 the percentage of granted motions slightly decreased as well. In 2018 the ratio of granted motions equaled to 95.7%, while in 2019 the figure fell to 94.6%.
- Based on the data of 2019 49% of all motions on covert investigative measures recorded in Georgia were submitted at Tbilisi City Court, which indicates that the majority of such motions are accumulated in Tbilisi compared to other city and district courts.
- During the last four years, the ratio of granted motions on wiretapping has been gradually decreasing: in 2017 the figure equaled to 91%, in 2018 – to 88% and in 2019 to 84%. Since 2017 the highest ratio of granted motions was recorded in the first two quarters of 2020 – 91%. However, the ratio of granted appeals can change multiple times until the end of the year.
- Compared to 2018 the number of motions on wiretapping reviewed by the courts decreased in 2019, however, the figure doubled compared to 2017.
- It is noteworthy that during 2019 the number of motions on wiretapping linked with

fraud increased by 50% compared to the previous year. In 2019, the number of motions linked with murder or intentional infliction of grave injury also increased. At the same time, the number of motions on wiretapping linked with robbery decreased by 61.4%, while the motions linked with the membership of the criminal underworld (thief in law) decreased by 36%.

- During the period from 2016 until the end of the second quarter of 2020 66.2% of all motions on wiretapping were recorded in Tbilisi, while the remaining 33.8% were spread across 23 city/district courts. The figures demonstrate that the majority of motions on wiretapping are accumulated at Tbilisi City Court.

LEGAL FRAMEWORK

The legal basis for limiting the right to privacy through covert measures are prescribed by the Criminal Procedure Code of Georgia and the Law on Counter-Intelligence Activities.

Regulations on Secret Investigative Measures

Secret investigative measures shall be carried out only if they are stipulated under the Criminal Procedure Code of Georgia and if they are necessary to achieve a legitimate goal in a democratic society, in particular, to ensure national or public security, to prevent riots or crime, to protect the country's economic interests and the rights and freedoms of others.⁴

The Criminal Procedure Code regulates the types of secret investigative measures, principles of their conduct, entities authorized to carry out the measures, the procedures of storing and processing obtained data, suspension and termination of investigative measures, the process of destroying obtained information and rules on providing subjects of investigative measures with relevant information.

The types of secret investigative measures are⁵:

- Secret wiretapping and recording;
- Retrieval and recording of information from a communications channel (by connecting to the communication facilities, computer networks, line communications and station devices), computer system (both directly and remotely) and installation of respective software in the computer system for this purpose;
- Real-time identification of geolocation;
- Monitoring of a postal and telegraphic transfer (except for a diplomatic post);
- Secret video recording and/or audio recording, photographing;
- Electronic surveillance through technical means the use of which does not cause harm to human life, health and the environment.

LEPL Operative-Technical Agency has the exclusive authority to conduct a number of secret investigative measures.⁶

⁴ Criminal procedure Code of Georgia, Article 143², para.2.

⁵ Criminal procedure Code of Georgia, Article 143¹.

⁶ Criminal procedure Code of Georgia, Article 3, para.32.

Secret investigative measures can only be carried out⁷ if an investigation is launched and/or criminal prosecution is conducted regarding an intentionally serious and/or particularly serious crime or any other crime defined by specific articles and chapters of the Criminal Code of Georgia.⁸ The extent (intensity) of a secret investigative measure shall be proportionate to the legitimate goal of such measure.⁹

A secret investigative measure shall be carried out under a court ruling.¹⁰ Secret investigative actions may, under a reasoned decree of a prosecutor, be carried out without a court ruling, in the case of urgent necessity, when delay may cause destruction of the facts important for the case (investigation), or make it impossible to obtain data.¹¹ Based on the place of an investigation a judge of a district (city) court renders a ruling regarding a prosecutor's reasoned motion,¹² except for the instances when a secret investigative action is conducted against a state political official, a judge and/or a person with immunity.¹³

Regulations on Counter-Intelligence Measures

Counter-intelligence measures which are carried out by special state entities defined by the legislation constitute yet another means of intervening in the right to privacy through covert activities.¹⁴

The main objective of counter-intelligence activities is to ensure state security by obtaining, analyzing and using information regarding intelligence and/or terrorist activities of special services, organizations, groups of people and individuals of foreign states; as well as detecting and preventing specific intelligence and/or terrorist activities and circumstances associated with the implementation of those activities.¹⁵

The above-described objectives distinguish from each other the covert investigative

⁷ Criminal procedure Code of Georgia, Article 143³.

⁸ See: Criminal Code of Georgia - Article 134, Article 139 para.2, Article 143 para.1, Article 143³ para.1, Article 180 para.1, Article 181 para.1, Article 186 para.2, Article 187 para.2, Article 198 para.1, Article 210 para.1, Article 253 para.1, Article 254 para. 1 and para.2, Article 255¹, Article 259⁴, Article 284, Article 285 para.1, Article 286, Article 287, Article 288 para.1 and para.2, Article 289, Article 290, Articles 292–302, Article 303 para. 1-3, Article 304 para.1, Article 305, Article 306, Article 306¹, Article 318 para.1, Article 322¹, chapter XXXIX, Article 344² para.1.

⁹ Criminal procedure Code of Georgia, Article 143², para. 5.

¹⁰ Criminal procedure Code of Georgia, Article 143³, para.1.

¹¹ Ibid, Article 143³, para.6.

¹² Ibid, Article 143³, para.1.

¹³ Ibid, Article 143³, para.17.

¹⁴ Law of Georgia on Counter-Intelligence Activates, Article 7 para.1, Article 9 para.2 and para.3.

¹⁵ Law of Georgia on Counter-Intelligence Activates, Article 3.

measures regulated by the Criminal Procedure Code and the special measures regulated by the Law on Counter-Intelligence Activities.

The special operative-technical measures of counter-intelligence are¹⁶:

- a Covert video and audio recording;
- b Covert filming and photography;
- c Use of television cameras and other types of electronic equipment;
- d Electronic surveillance;
- e Control of correspondence;
- f Strategic monitoring;
- g Individual monitoring.

The measures of electronic surveillance are¹⁷:

- a Secret wiretapping and recording;
 - b Retrieval and recording of information from a communications channel (by connecting to the communication facilities, computer networks, line communications and station devices), computer system (both directly and remotely) and installation of respective
 - c software in the computer system for this purpose;
- Real-time identification of geolocation.

Operational and technical measures are implemented within counter-intelligence activities and, generally, do not require a judicial order, except for electronic surveillance and control of correspondence which may only be carried out based on a judicial order.¹⁸ A special service may carry out electronic surveillance, aimed at obtaining counter-intelligence information, with the written consent of one of the parties of the electronic communications in question.¹⁹ Thus in this case the written consent is the only prerequisite of conducting electronic surveillance.

Based on the above-mentioned, it is obvious that certain provisions of the Law of Georgia on Counter-Intelligence Activities authorize special agencies to intervene in two crucial areas of private life – privacy of communication and personal space without a court order. Thus these regulations contradict the standards set by the Constitution of Georgia. Based on the same rationale in 2015 the “Human Rights Education and Monitoring Center (EMC)” filed an appeal at the Constitutional Court of Georgia claiming that the Law on Counter-Intelligence Activates (namely section 2 of Article 11 and section 1 one Article 15) was unconstitutional.²⁰ Unfortunately as of

¹⁶ Law of Georgia on Counter-Intelligence Activates, Article 9 para.2.

¹⁷ Ibid, Article 9 para.3.

¹⁸ Law of Georgia on Counter-Intelligence Activates, Article 11 and Article 9.

¹⁹ Law of Georgia on Counter-Intelligence Activates, Article 15 para.1.

²⁰ N(N)LE the Human Rights Education and Monitoring Center (EMC) and the citizens of Georgia Guram Imnadze and Sofiko Verdzeuli v. The Parliaments of Georgia, Constitutional Appeal N690, November 16th 2015, available (in Georgian) at: <https://www.constcourt.ge/ka/judicial-acts?legal=2044>, last visited on: 18.08.2020.

to-date the Constitutional Court has not rendered a decision on the case.

Based on the existing legislation information on counter-intelligence activities is classified. Relevant documents, case materials and other data constitute state secrecy.²¹ Thus the above-mentioned covert measures are carried-out without any supervision or control.

²¹ Ibid, Article 6 para 1.

OVERSIGHT MECHANISMS OF THE STATE INSPECTOR SERVICE IN THE AREA OF SECRET INVESTIGATIVE MEASURES

One of the mandates of the State Inspector Service is overseeing the conduct of secret investigative actions and activities implemented in the central bank of electronic communication.

The Operative-Technical Agency has control over the central bank of electronic communication, which contains data of identifiable electronic communications obtained from the companies of electronic communication (namely, data contains information for identifying: users, source of communication, recipient, communication address, date, time and duration). The State Inspector has the mandate to access information on the activities carried out in the central bank and using the system of electronic oversight can determine whether there was relevant legal basis for conducting such activities.²²

The State Inspector Service is authorized to suspend ongoing secret wiretapping and recording if:

- No electronic copy of a court order granting permission to carry the covert investigative measure has been submitted;
- No hardcopy of a court order granting permission to carry the covert investigative measure has been submitted within the deadlines set by the legislation;
- No prosecutor's resolution has been submitted regarding the urgent necessity of carrying out covert investigative measure;
- No hardcopy of the prosecutor's resolution regarding the urgent necessity of carrying out covert investigative measure has been submitted within the deadlines set by the legislation;
- No details of the prosecutor's resolution have been submitted either as a hardcopy or through the electronic system and/or the summary of the resolution is vague or contains discrepancies;
- No details of the prosecutor's resolution submitted electronically do not match the hardcopy of the resolution.

During 2019 the State Inspector Service used its authority of suspending covert investigative measures in case of 98 rulings/resolutions.²³

²² 2019 Annual Report of the State Inspector Service, pg.93; Law of Georgia on the State Inspector Service, article 18 para. 6.

²³ 2019 Annual Report of the State Inspector Service, pg.94.

PARLIAMENTARY OVERSIGHT

The Trust Group composed of 5 MPs supervises secret activities and special programs in the defense and security sector, except for the measures relating to covert forms and methods of activity as prescribed by the legislation of Georgia.²⁴ A Trust Group is authorized to inspect the activities of the Operative-Technical Agency no more than twice per year.²⁵

Based on the amendments made to the Rules of Procedure of the Parliament of Georgia in 2018, members of the Trust Group are authorized to visit relevant authorities with the contest of the Chair of the Trust Group. During the visits, members of the Trust Group are authorized to interview employees of the relevant authority and get acquainted with information falling within the mandate of the Trust Group.²⁶ The relevant authorities are entitled to withhold information regarding ongoing cases and events in order to protect national/social security and state interests. Access to the information regarding covert activities and methods (including normative acts) is also limited.²⁷ These provisions contradict the recommendations of the Council of Europe (CoE) according to which in order to effectively carry out its functions the oversight body should have unlimited access to any type of information.²⁸

According to the regulations, the operative-technical agency submits a statistical and generalized report on the activities carried out to the Trust Group once a year, which, considering the incomplete access to information, fails to ensure the proper implementation of parliamentary control.

Based on the Rules of Procedure of the Parliament of Georgia the Operative-Technical Agency submits a report on the statistical and general analysis of conducted activities to the Trust Group once a year,²⁹ which taking into consideration limited access to information fails to ensure effective execution of parliamentary control. According to the existing legislation, the Trust Group is entitled to refer to the Agency with relevant recommendations aimed at improving its operation, while in the event of any signs of illegal activities identified in the process of oversight, the Trust Group can refer the case to law enforcement agencies.

The model of parliamentary control before the reform of 2018 was nearly the same

²⁴ Rules of Procedure of the Parliament of Georgia, Article 159 para.1.

²⁵ Rules of Procedure of the Parliament of Georgia, Article 159 para.12.

²⁶ Ibid, para.11.

²⁷ Ibid, para.3.

²⁸ See: Council of Europe, Democratic and effective oversight of national security services, 2015.

²⁹ Rules of Procedure of the Parliament of Georgia, Article 159 para.c9.

when it was only limited to general oversight.³⁰ Existing oversight regulations are vague and do not allow for a detailed inspection of the activities carried out by the Agency. The oversight mechanism should be thoroughly regulated by the legislation and should enable the authorized body to fully perform its legal mandate.

³⁰ See: IDFI, Regulating Secret Surveillance in Georgia (January-August, 2017), pg. 20, available at: <https://bit.ly/35zay2K> (last visited on 15.07.2020).

CONSTITUTIONAL COURT RULING OF APRIL 14TH, 2016 AND CHALLENGES OF EXISTING LEGAL FRAMEWORK

In April 2016, the Constitutional Court of Georgia ruled that the technical access of the State Security Service to telecommunication operator networks was unconstitutional since it allowed unlimited monitoring of communication and data collection.³¹

According to the Constitutional Court, interference in private life, due to its covert nature, carries the risk of abuse of power, which may have detrimental consequences for the entire democratic society. Interference with the right can only be justified if the legislation sets effective mechanisms against the abuse of power.

The court ruled that wiretapping of communication channels constituted a heavy interference within the right to privacy and endangered the foundations of a democratic society. Thus, such surveillance should only be conducted after the State succeeds to convince an objective third party - the court, that carrying out the activities is in the public interest and is necessary for avoiding serious threats.

The Court noted that effective oversight over the executive branch reduces the risks of arbitrary activities and is crucial for guaranteeing proper application of the law. Regulations provided by law and the existence of appropriate safeguards must exclude the possibility of interference within privacy beyond the constitutional guarantee. The Constitutional Court clarified that the system provided by law, should along with the rule of limiting the right based on a court order, rule out the possibility and exclude the temptation of interfering in the right in the way which would contradict the constitutional guarantees.

The Constitutional Court also noted that the State Security Service has the professional interest to collect as much information as possible, as this significantly simplifies the process of crime investigation and contributes to effective crime prevention. Therefore, the high risk is interlinked with the nature and functions of law enforcement and security services. In particular, when a state entity is responsible for a successful crime investigation, it is natural that it will be interested to obtain as much information as possible. Therefore, direct and continuous access of such state entities to the data stored at communication companies and to the process of the electronic communication itself, contains unlimited risks of illegal and unjustified interference in the right, with the argument of conducting an effective investigation. At the same time, the risk of abuse of power increases if access to personal information is not balanced by relevant and

³¹ Ruling of the Constitutional Court of Georgia, April 14th 2016, case N1/1/625,640, available (in Georgian) on: <https://www.constcourt.ge/ka/judicial-acts?legal=2299>, last visited on: 18.08.2020.

sufficient control mechanisms. Under the circumstances when relevant state authorities are professionally interested in preventing the activities posing risks to the public and state security and taking into consideration that the methods of secret surveillance are constantly developing, the accumulation of unlimited technical capacities into the hands of an interested body, constitutes a particularly invasive mechanism of psychological influence on individuals, due to the increased risks of intervening in their personal lives.

On March 22nd, 2017, the Parliament of Georgia adopted legislative amendments, which introduced new regulations of organizing technical infrastructure for conducting secret electronic surveillance. The legislative amendments were heavily criticized by a number of non-governmental organizations.³² The legislative changes failed to ensure the genuine independence of the newly created Operative-Technical Agency from the State Security Service. The president vetoed the amendments, however, the Parliament did not share the criticism.³³ According to the members of the campaign, This Affects You Too, existing legislation regulating secret surveillance activities fails to protect the right to privacy, the Constitution of Georgia is still being violated and the adoption of the legislative amendments in the proposed way constituted an unfortunate case of disregarding the decision of the Constitutional Court of Georgia dated April 14th, 2016.³⁴ Up to 300 citizens, the Public Defender of Georgia and political parties have filed an appeal against the new regulations at the Constitutional Court of Georgia.³⁵

Existing challenges in terms of the right to privacy are also discussed in various international assessments. Freedom House Report of 2020 notes that in recent years, multiple public figures—including opposition and ruling party politicians—have been subjected to intimidation through the threatened or actual release of surreptitiously recorded video materials, contributing to an atmosphere that deters free expression on political topics.³⁶

In recent years, many public figures, including members of the opposition and politicians of the ruling party, have been the target of the threats to leaking secret video recordings depicting private lives, which restricts freedom of expression on political topics. Freedom House Report of 2019 expressed concerns noting that various security-related laws empower state agencies to conduct surveillance and data collection without adequate independent oversight. There are also questions regarding the

³² IDFI, Monitoring Results of the Constitutional Court Hearing on Secrete Surveillance, available (in Georgian) on: <https://bit.ly/399AH7N> (last visited on 15.07.2020)

³³ Ibid.

³⁴ Announcement of the movement This Concerns You too, available (in Georgian) at: <https://bit.ly/30eifa8> (last visited on 15.07.2020).

³⁵ IDFI, Monitoring Results of the Constitutional Court Hearing on Secrete Surveillance, available (in Georgian) on: <https://bit.ly/399AH7N> (last visited on 15.07.2020).

³⁶ Georgia Country Report 2020, Freedom House, available at: <https://bit.ly/2ZGJSd3> (last visited on 14.07.2020).

compatibility of the existing legislation with the Constitutional Court ruling on state surveillance practices.³⁷ The report of 2018 questions the independence and oversight mechanisms of LEPL Operative-Technical Agency.³⁸

U.S. Department of State Country Report 2019 discusses the cases of intervening in the right to privacy, including the release of secretly recorded videotapes of private life. The report also refers to the criticism expressed by regional and international organizations regarding the neutrality of the Operative-Technical Agency and its independence from the State Security Service.³⁹ According to the U.S. Department of State Report surveillance legislation introduced in 2017 continues to attract criticism for allowing excessive access to user data.

Thus ensuring genuine independence of the Operative-Technical Agency functioning under the State Security Services remains to be problematic. Existing regulations still fail to meet the standards set by the Constitutional Court of Georgia.

³⁷ Georgia Country Report 2019, Freedom House, available at: <https://bit.ly/3jbp5Ww> (last visited on 14.07.2020).

³⁸ Georgia Country Report 2018, Freedom House, available at: <https://bit.ly/2OyBUfw> (last visited on 14.07.2020).

³⁹ U.S. Department of State Country Report 2019, available at: <https://bit.ly/2Wt9Dvc> (last visited on 14.07.2020).

COUNCIL OF EUROPE RECOMMENDATIONS

Oversight of security services is fundamental to ensuring that these institutions both contribute to the protection of the population they serve (including their human rights) and respect the rule of law and human rights in undertaking this task.⁴⁰

According to the recommendation of CoE it is crucial that the body responsible for overseeing security services has access to all information, regardless of its level of classification. Access to information by oversight body should be enshrined in law and supported by recourse to investigative powers and tools which ensure such access.⁴¹

Security services should be placed under a duty to be open and co-operative with their oversight bodies. Equally, oversight bodies have a responsibility to exercise their powers strictly for the purposes for which they are conferred by law.⁴²

It is important that access to information by oversight bodies is not restricted by a third party, having the mandate to restrict the access of the oversight body to the information held by security services. Moreover, access to information by oversight bodies should extend to all relevant information held by security services including information provided by the third parties.⁴³

External oversight bodies, including parliamentary oversight committees/bodies, should be authorized by law to hire independent specialists with relevant experience in the area of information and communications technology who can enable the oversight bodies to better comprehend and evaluate surveillance systems.⁴⁴

It is particularly important that all institutions responsible for the oversight of security services have the necessary human and financial resources to exercise their mandates.⁴⁵ The adequacy of such resources should be kept under review and consideration should be given as to whether increases in security service budgets are necessary.⁴⁶

According to CoE independent oversight institutions are often best placed to conduct detailed day-to-day oversight of the legality of security services.⁴⁷

⁴⁰ Council of Europe, Democratic and Effective Oversight of National Security Services, 2015, pg.17, available at: <https://rm.coe.int/1680487770> (last visited on 15.07.2020).

⁴¹ Ibid, pg.13.

⁴² Ibid.

⁴³ Ibid, pg.14.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Ibid, pg.8.

Parliamentary control over security services is one of the most widespread means of oversight which is implemented in numerous European countries with individual variations. Access to classified information by parliamentary oversight committees/bodies is an essential feature of effective oversight.⁴⁸ National legislation should enshrine comprehensive mechanisms for monitoring the activities of security services. Checks should be conducted periodically as well as on ad hoc basis in case of such necessity⁴⁹. According to CoE it is important to ensure that all aspects and phases of the collection, processing, storage, sharing, minimization and deletion of personal data by security services should be subject to oversight by at least one institution that is external to the security services and the executive.⁵⁰

Reviewing and evaluating the effectiveness of oversight bodies themselves is also crucial.⁵¹ In this regard, CoE recommends that external bodies should be responsible by law to publish periodic reports informing the wider public on their activities.⁵²

⁴⁸ Ibid, pg.7.

⁴⁹ Ibid, pg.9.

⁵⁰ Ibid.

⁵¹ Ibid, pg.10.

⁵² Ibid.

STATISTICS OF SECRET INVESTIGATIVE MEASURES

The statistical information presented in the study is based on the data proactively published on the website of the Supreme Court of Georgia on an annual and quarterly basis. With the aim of obtaining comprehensive data, IDFI referred to the Operative-Technical Agency in writing and requested statistical information on operative-technical activities carried out based on the Law on Counter-Intelligence Activities from 2019 including the first two quarters of 2020. However, the Agency did not respond to the freedom of information (FOI) request.

Motions on secret wiretapping and recording heard by the courts during 2016-2020

City	2016	2017	2018	2019	2020 I & II Quarters	Sum
<i>Tbilisi</i>	299	387	658	669	283	2296
<i>Kutaisi</i>	19	48	92	59	24	242
<i>Rustavi</i>	13	13	65	78	31	200
<i>Batumi</i>	22	23	28	46	16	135
<i>Gori</i>	9	20	24	25	17	95
<i>Telavi</i>	4	17	19	24	10	74
<i>Bolnisi</i>	5	6	26	24	10	71
<i>Akhaltsikhe</i>	6	3	33	14	4	60
<i>Mtskheta</i>	2	8	21	15	13	59
<i>Zugdidi</i>	6	5	0	22	22	55
<i>Ozurgeti</i>	1	1	11	7	11	31
<i>Gurjaani</i>	2	2	8	14	3	29
<i>Tetritskaro</i>	6	1	7	4	1	19
<i>Senaki</i>	4	2	5	1	3	15
<i>Akhalkalaki</i>	0	0	2	12	0	14
<i>Signagi</i>	0	1	5	0	6	12
<i>Samtredia</i>	0	2	1	7	1	11

<i>Khashuri</i>	0	2	4	3	1	10
<i>Zestaponi</i>	1	3	1	3	2	10
<i>Tsalenjikha</i>	0	0	2	5	0	7
<i>Khelvachauri</i>	2	0	3	1	0	6
<i>Poti</i>	0	0	2	2	2	6
<i>Sachkhere</i>	0	4	0	0	1	5
<i>Mestia</i>	0	0	0	2	3	5

According to the data, the number of motions on secret wiretapping and recording heard by the courts from 2016 including the first two quarters of 2020 equaled to 3 467. The trend of a rising number of motions has been observed in Tbilisi since 2016. In 2019 the number further increased by 1.6% compared to the previous year and reached the highest figure of 669. During the period from 2016 until the end of the second quarter of 2020 66.2% of all motions on wiretapping were recorded in Tbilisi, while the remaining 33.8% were spread across 23 city/district courts, out of which the highest numbers of motions were recorded at Kutaisi, Rustavi and Batumi City Courts. The figures clearly demonstrate that the majority of motions on secret wiretapping and recording are accumulated at Tbilisi City Court

Motions by the articles of the Criminal Code of Georgia

<i>Article of the Criminal Code of Georgia</i>	<i>2017</i>	<i>2018</i>	<i>2019</i>	<i>2020 I & II Quarters</i>	<i>Sum</i>
<i>Article 223¹. Membership of the criminal underworld; thief in law</i>	11	184	118	66	379
<i>Article 180. Fraud</i>	89	94	141	36	360
<i>Article 338. Bribe-taking</i>	65	76	56	25	222
<i>Article 181. Extortion</i>	69	83	37	21	210
<i>Article 260. Illegal manufacturing, production, purchase, storage, transportation, transfer or sale of drugs, their analogues, precursors or new psychoactive substances</i>	15	86	66	36	203

<i>Article 260. Illegal manufacturing, production, purchase, storage, transportation, transfer or sale of drugs, their analogues, precursors or new psychoactive substances</i>	15	86	66	36	203
<i>Article 108. Murder</i>	19	58	68	31	176
<i>Article 210. Manufacturing, sale or use of forged credit cards or charge cards</i>	32	51	48	19	150
<i>Article 177. Theft</i>	19	47	45	17	128
<i>Article 182. Appropriation or embezzlement</i>	22	44	42	12	120
<i>Article 117. Intentional infliction of grave injury</i>	8	20	35	40	103
<i>Article 179. Aggravated robbery</i>	27	44	17	3	91
<i>Article 109. Murder under aggravating circumstances</i>	6	22	24	14	66
<i>Article 194. Legalization of illegal income (money laundering)</i>	11	13	21	13	58
<i>Article 236. Illegal purchase, storage, carrying, manufacturing, transportation, forwarding or sale of firearms</i>	1	17	19	17	54
<i>Article 212. Manufacturing or sale of forged money or securities</i>	21	11	11	9	52
<i>Article 218. Tax evasion</i>	10	4	22	7	43
<i>Article 143. Unlawful imprisonment</i>	6	15	14	4	39

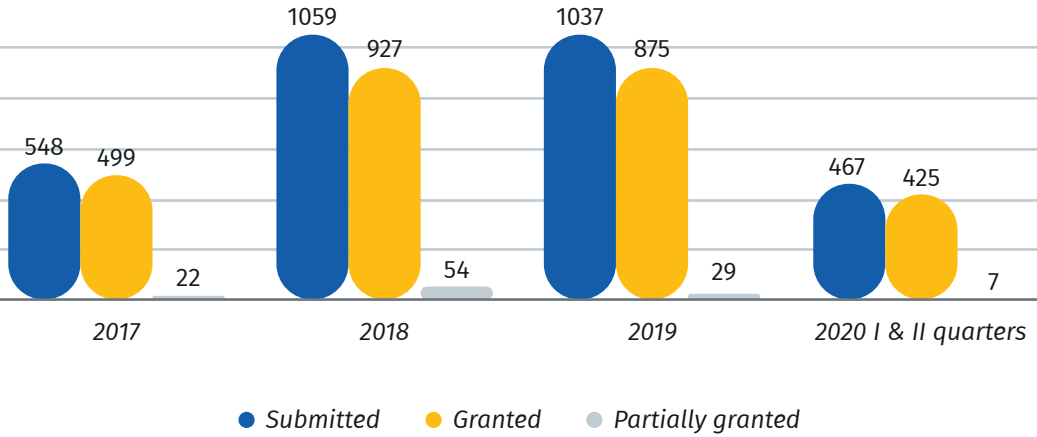
<i>Article 339. Bribe-giving</i>	3	10	17	4	34
<i>Article 221. Commercial bribery</i>	4	11	15	3	33
<i>Article 187. Damage or destruction of property</i>	12	14	4	2	32
<i>Article 332. Abuse of official powers</i>	0	0	20	9	29
<i>Article 372. Exertion of influence on a witness, victim, expert or interpreter</i>	6	14	6	2	28
<i>Article 200. Release, storage, sale or transportation of excisable goods without excise stamps</i>	8	8	5	4	25
<i>Article 214. Breach of the procedure related to the movement of goods across the customs border of Georgia</i>	8	3	7	2	20
<i>Article 315. Conspiracy or rebellion intended to change the constitutional order of Georgia through violence</i>	0	0	19	0	19
<i>Article 254. Making available an area or dwelling place for prostitution</i>	1	7	11	0	19
<i>Article 143¹. Human trafficking</i>	8	1	7	0	16
<i>Article 262. Illegal import or export of drugs, their analogues, precursors or new psychoactive substances to/from Georgia or their international transportation by transit</i>	2	4	8	1	15
<i>Article 178. Robbery</i>	1	7	5	2	15

<i>Article 144. Taking hostages</i>	0	4	9	0	13
<i>Article 223. Creation or management of illegal formations, or joining and participation in such formations, and/or implementation of other activities in favor of illegal formations</i>	0	0	12	1	13
<i>Article 185. Damage of property by deception</i>	3	0	5	3	11
<i>Article 328. Joining a foreign terrorist organization or a terrorist organization controlled by a foreign state or supporting this organization in terrorist activities</i>	3	1	1	0	5

Most of the motions on secret wiretapping and recording are linked with 7 crimes enshrined in the Criminal Code of Georgia, namely: Membership of the criminal underworld (thief in law) foreseen by Article 223; Fraud foreseen by Article 180; Bribe-taking – Article 338; Extortions – Article 181; Illegal manufacturing, production, purchase, storage, transportation, transfer or sale of drugs, their analogs, precursors or new psychoactive substances – Article 260; Murder – Article 108; and manufacturing, sale or use of forged credit cards or charge cards – Article 210.

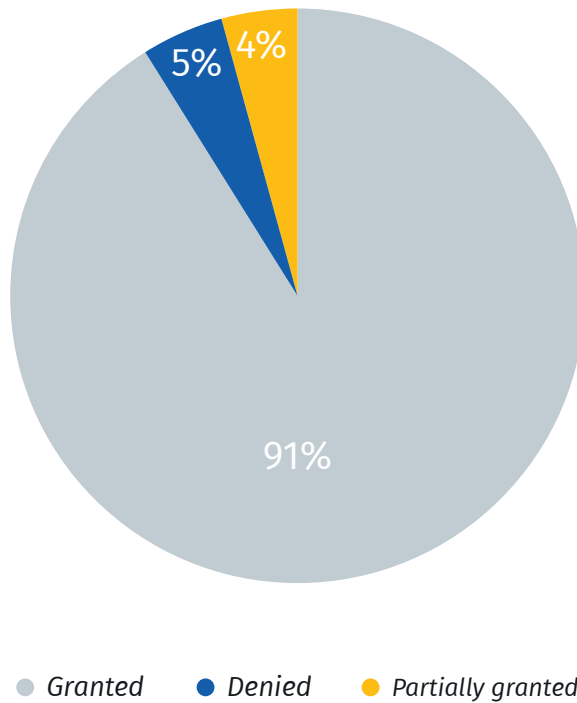
It is noteworthy that the number of motions on wiretapping linked with fraud increased by 50% in 2019 compared to the previous year. In 2019, the number of motions linked with murder or intentional infliction of grave injury also increased. At the same time, the number of motions on wiretapping linked with robbery decreased by 61.4%, while the motions linked with the membership of the criminal underworld (thief in law) decreased by 36%.

Motions on Secret Wiretapping and Recording Heard by the Courts

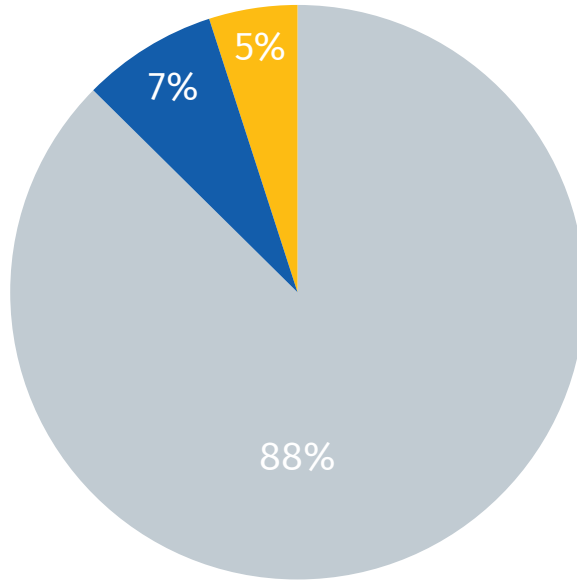


Compared to 2018 the number of motions on secret wiretapping and recording reviewed by the courts decreased in 2019, however, the figure almost doubled compared to 2017.

Motions on Secret Wiretapping and Recording Heard by the Courts in 2017

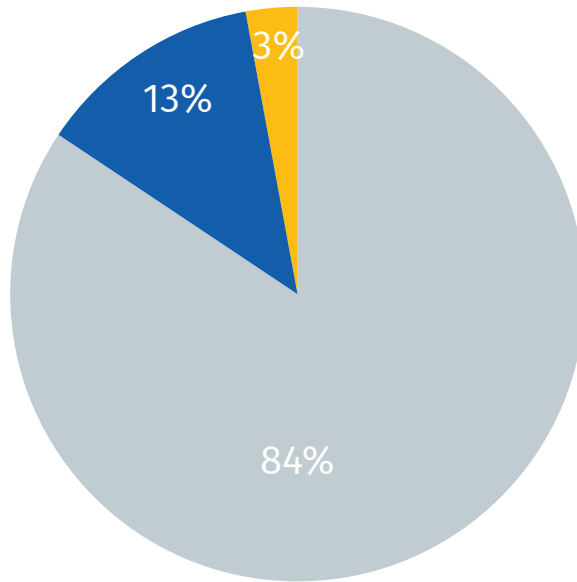


Motions on Secret Wiretapping and Recording Heard by the Courts in 2018



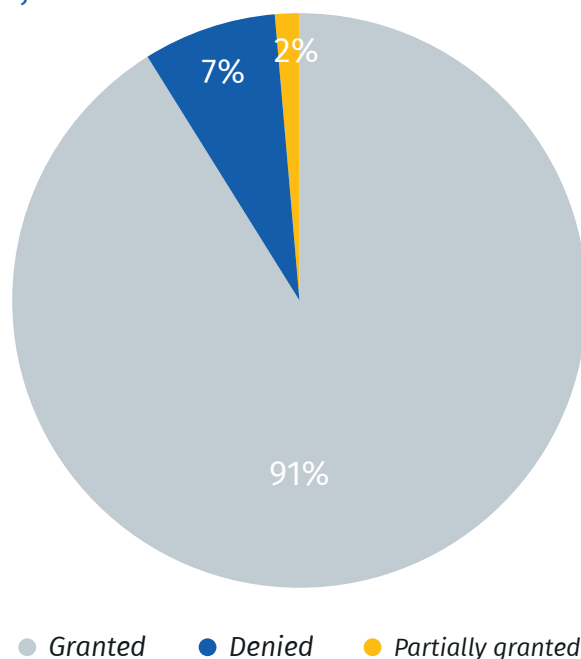
● Granted ● Denied ● Partially granted

Motions on Secret Wiretapping and Recording Heard by the Courts in 2019



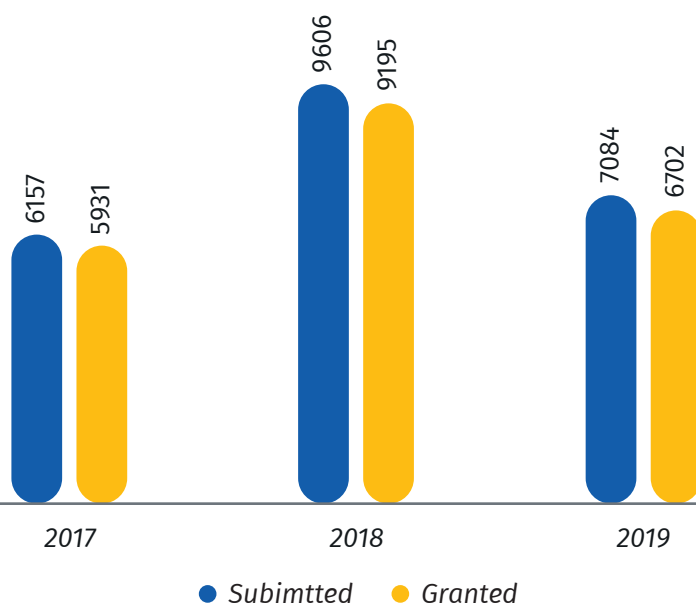
● Granted ● Denied ● Partially granted

Motions on Secret Wiretapping and Recording Heard by the Courts during the I and II quarters of 2020



During the last four years the ratio of granted motions on secret wiretapping and recording has been gradually decreasing: in 2017 the figure equaled to 91%, in 2018 – to 88% and in 2019 to 84%. Since 2017 the highest ratio of grated motions was recorded in the first two quarters of 2020 – 91%. However, the picture can change multiple times until the end of the year.

Statistics on the Motions Regarding Secret Investigative Measures



In 2019 the number of motions on covert investigative measures decreased by 26.3% compared to the previous year. Based on the data of 2019 the percentage of granted motions slightly decreased as well. In 2018 the ratio of granted motions equaled to 95.7%, while in 2019 the figure fell to 94.6%. The highest ratio of granted motions was recorded in 2017, when 96.3% of the motions on secret wiretapping and recording were granted by the courts.

Data on secret investigative measures in 2019 by city/district courts

<i>Court</i>	<i>Submitted</i>	<i>Granted</i>
<i>Tbilisi</i>	3470	3275
<i>Rustavi</i>	476	446
<i>Gori</i>	428	423
<i>Batumi</i>	418	389
<i>Kutaisi</i>	404	396
<i>Zugdidi</i>	349	319
<i>Telavi</i>	256	235
<i>Akhaltzikhe</i>	224	221
<i>Mtskheta</i>	169	168
<i>Poti</i>	157	157
<i>Gurjaani</i>	95	89
<i>Senaki</i>	90	74
<i>Bolnisi</i>	79	77
<i>Khashuri</i>	62	62
<i>Ozurgeti</i>	58	57
<i>Sachkhere</i>	51	51
<i>Mestia</i>	49	46
<i>Khelvachauri</i>	44	44
<i>Samtredia</i>	39	31
<i>Akhalkalaki</i>	37	36
<i>Zestaponi</i>	36	27
<i>Tsalenjikha</i>	36	34
<i>Signagi</i>	27	20
<i>Tsageri</i>	16	16
<i>Tetritskaro</i>	8	3
<i>Ambrolauri</i>	3	3
<i>Chkhorotsku</i>	2	2
<i>Martvili</i>	1	1

During 2019 a total of 7 084 motions on covert investigative measures were submitted at city and district courts of Georgia. Based on the data of 2019 49% of all motions on

covert investigative measures recorded in Georgia were submitted at Tbilisi City Court, which indicates that the majority of such motions are accumulated in Tbilisi compared to other city and district courts.

CONCLUSION

Respecting personal autonomy and minimizing interference in the private and family lives of individuals is vital for establishing a free, democratic society. The main purpose of the right to privacy is to protect individuals from arbitrary interference by the state on their personal and family lives.⁵³

The state has a positive obligation to protect the human rights of those under its jurisdiction. Consequently, crime prevention and the protection of state security are integral parts of state functions. However, in performing these functions the risk of arbitrary interference in personal freedoms and abuse of power is particularly high. The wider the mandate, higher the level of its ambiguity and lower the oversight over the body, the higher the risk. To prevent arbitrary interference in personal freedoms and circumvent abuse of power the conduct of secret investigative measures should be subjected to unbiased oversight and control.

As for the practice of secret investigative measures, statistical analysis indicates that the trend of the rising number of motions submitted at the courts changed in 2019 and the number of motions decreased compared to the previous year. However, the figures of 2019 are still considerably higher than the numbers reported in 2017. As for the motions on secret wiretapping and recording, during the last four years, the ratio of granted motions have been slowly and gradually decreasing. A different picture is demonstrated by the data from the first 6 months of 2020, when the ratio of accepted motions was considerably high (91%). However, the picture can significantly change until the end of the year.

Under the current regulations, there is little trust that in the conduct of secret investigative measures state interference in private life would be proportional to its legitimate aim. Lack of trust towards the government is dwelling from its reluctance to address the challenges, which are being highlighted by various international as well as domestic organizations.

⁵³ Ruling of the Constitutional Court of Georgia, February 29th 2012, case N2/1/484, Georgian Young Lawyers Association and the Citizen of Georgia Tamar Khidasheli v. The Parliament of Georgia, II, 15.

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