



**LEGISLATIVE AMENDMENTS WITH REGARD
COVERT INVESTIGATIVE ACTIONS:
LEGAL ANALYSIS OF THE LEGISLATION AND PRACTICE**

2022

HUMAN RIGHTS CENTER



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1. General overview

On April 13, 2022, an initiative for amending the Criminal Procedure Code (CPC) was lodged with the Parliament of Georgia which despite the protest on the part of civil society, international institutions and the President of Georgia was adopted on September 6, 2022. The amendments concern the scope and duration of the covert investigative actions; they also alter the timeframes for notifying the persons about the covert investigative actions taken against them. In relation to certain crimes, it became possible to extend the timeframe for conducting covert investigative actions and notifying the persons concerned as many times as it is necessary for the security of the State, public order, and the effective functioning of the investigative body.

The changes were met with ambivalent reactions. The issue is sensitive due to the experience that Georgia has already gained during the two governments. In particular, since coming to power, Georgian Dream not only condemned the illegal covert surveillance carried out during the previous government, but also created a special commission¹ at the beginning of their rule and publicly destroyed some of the recordings. Nevertheless, the illegal surveillance of the public was not discontinued repeatedly becoming the subject of protests by the non-governmental sector. NGOs condemn the practice of illegal surveillance under the campaign “This Affects You: We are still Listened to”². Despite the doubts among the public, the ruling party considered the changes to the CPC as a required and necessary issue, while the opposition argued that there were no grounds justifying such an expansion of the scope of covert investigative activities³. During the legislative process, the amendments were negatively assessed by the non-governmental sector calling on the President of Georgia to use the right of veto⁴.

The President of Georgia, Salome Zurbashvili, vetoed the bill and presented her Substantiated Comments to the Parliament. The President assessed in negative terms the content of the draft law as well as the proceedings of hearing the draft law⁵. It should be noted that the Administration of the President also applied to the Venice Commission for the assessment of the draft law. According to the Urgent Opinion by the Commission, the draft law was adopted in a hasty procedure, and it requires further substantiations in terms of its necessity and proportionality⁶.

¹ The Special Commission was chaired by the Prime Minister of Georgia Irakli Garibashvili. At that time Garibashvili was the Minister of Internal Affairs.

² See HRC 2014 [Report](#) on Human Rights Situation, 2015, 9-10.

³ See Article by Interpressnews: [Shalva Shavgulidze: Secret Investigative Actions may be extended indefinitely against the Participants of the Protest Rallies](#) (28.04.2022)

⁴ See [Joint Statement](#) by NGOs (09.06.2022)

⁵ Submission by the President of Georgia – [justified Remarks](#) (23.06.2022), p. 2.

⁶ European Commission for Democracy Through Law (Venice Commission) – Urgent Opinion on the Draft Law on the Amendments to the Criminal Procedure Code Adopted by the Parliament of Georgia on June 7 2022, [CDL-PI\(2022\)028](#), Opinion no. 1092/2022 (2022) para. 64.

Despite the fact that CPC changes relating to covert investigative actions were negatively assessed both locally and internationally, on September 6, 2022, the Parliament overruled the President's veto⁷.

2. Amendments made to the CPC

Chapter XVI¹ of the CPC effective since 2014 governs the issues of covert investigative actions. When elaborating the changes in 2014, the Chairperson of the Parliament of Georgia applied to the Council of Europe for an opinion⁸.

According to the CPC, covert investigative actions shall be carried out only where they are necessary to achieve a legitimate goal in a democratic society and where the evidence essential to the investigation cannot be obtained through other means or this requires unreasonably great effort⁹. According to the new version of the Law, the changes in relation to the covert investigative actions can be categorized into three directions, in particular:

1. The number of offenses allowing the covert investigative actions were increased;

The current version of the Law provides for the scope of covert investigative actions to expand further to over 20 articles of the Criminal Code. The amendments made possible to add here offences such as: Drug-related offenses, offenses against the order of the governance, offenses against human rights and freedoms, offenses against public security and public order, also the offenses related to criminal world and terrorism, etc.

2. The timeframes of covert investigative actions were extended;

For carrying out the secret surveillance measures the court was issuing rulings valid for the period necessary to achieve the goals of the investigation but not more than a month. According to the old version, where the timeframe proved to be insufficient, it could be extended following a substantiated motion by the prosecutor with no more than 2 months, which could further be extended by additional three months following the motion by the Prosecutor General of Georgia. According to the current version, the above three stages were amended as follows: On the first stage, the ruling is valid for 90 days which can be extended by no more than 90 days following the substantiated motion by the superior prosecutor and finally extended by another 90 days maximum following the substantiated motion by the Prosecutor General or his/her deputy. Moreover, secret surveillance measures may be extended as many times as it would be found necessary provided the criminal investigation concerns the offenses under articles 108,109, 143-

⁷ The Law of Georgia on making Amendments to the Criminal Procedure Code of Georgia, [N1722-IX06-X03](#) (06.09.2022)

⁸ Opinion of the Directorate General Human Rights and Rule of Law Data Protection Unit on the Draft laws of Georgia relating to Surveillance Activities of Law Enforcement Authorities and National Security Agencies, DGI (2014)⁸ (2014)

⁹ The Criminal Procedure Code of Georgia, Article 143².

143², 144-144³, 223-224¹, 230-232, 234-235¹ and 255¹, 260(4-7), 261(4-8), 262 and 263, further, under chapters XXXVII-XXXVIII and XLVII of the Criminal Code¹⁰.

3. *The timeframe for informing the person against whom the secret surveillance measure is conducted has been changed.*

With regard the offenses under articles 108, 109, 143-143², 144-144³, 223-224¹, 230-232, 234-235¹ and 255¹, 260(4-7), 261(4-8), 262 and 263, further under chapters XXXVII-XXXVIII and XLVII, the Criminal Procedure Code allows for leaving the person uninformed about the secret surveillance measures as long as it would be necessary for the “state security, public order and efficient functioning of the investigative body¹¹”.

3. Veto of the President of Georgia

Under the Constitution of Georgia, the law passed by the Parliament shall within 10 days be submitted to the President of Georgia who shall within 2 weeks sign and publish it or return the bill to the Parliament along with justified remarks¹². The fifth President of Georgia used the right of veto for the first time and presented to the legislative body Justified Remarks on the amendments to the CPC relating the secret investigative activities. In general, the presidential veto may be due to inconsistency of the draft law with the Constitution or due to some other political reasons¹³. According to Salome Zurabishvili “this is a political veto rather than a legal one. There can be no law passed these days that further restricts human rights, when on the contrary we are asked to give more guarantees in this direction, to be more democratic, more European.”¹⁴

Vetoing on political grounds means that “there is no issue of inconsistency of the law or its certain provisions with the Constitution, however the President vetoes the bill and returns it to the Parliament for further hearings as he/she considers the bill to carry “wrong” public policy¹⁵. The fact that the President made the decision due to the situation existing in the country is evidenced by her other statements: “We know that we are still living in the country where as we enter a room and want to talk we are thinking to remove or not the cellphone. Then we somehow overcome this and say let the phone be here and let them listen. This is not a European life, this is no respect for human rights, this is another system, and we have to abandon the system. That is what I wanted to say by this veto.”¹⁶

¹⁰ *ibid*, Article 143³(12⁷(b))

¹¹ *ibid*, Article 143⁹(6).

¹² The Constitution of Georgia, Article 46 (1)(2)

¹³ Tamar Papashvili, *The Presidential Right to Veto: Dimensions and Context, Models of State Governance: The Constitutional Reality and Perspectives of Georgia*, Davit Batonishvili Law Institute (2016), p. 24.

¹⁴ See Article of Radio Tavisupleba: [Salome Zurabishvili uses Veto for the First Time confronting the ‘Surveillance Law’](#) (22.06.2022)

¹⁵ Tamar Papashvili, *The Presidential Right to Veto: Dimensions and Context, Models of State Governance: The Constitutional Reality and Perspectives of Georgia*, Davit Batonishvili Law Institute (2016), p. 24.

¹⁶ See Article by Tabula - [The President: We are living in a country where as we want to talk we are considering to remove or not the cellphone](#) (02.09.2022)

Although the President named her veto as political, the mentioned changes contradict the Constitution and international human rights protection principles. The Justified Remarks submitted by the Administration of Salome Zurbashvili are divided into two main parts concerning both the content of the amendments and the process of adoption of the draft law. According to the President, the reasonable balance between the state interests and the rights enshrined in the Constitution of Georgia is impaired¹⁷. Further, the President emphasizes the fact that the process was not inclusive of local and international experts¹⁸. The Justified Remarks by the President read that as Georgia awaits the decision about EU membership, the mentioned legislative changes are a step backwards in the process of European integration¹⁹.

Such assessments by the President make it clear that the veto was not only of political character. Therefore, since the argument of “a political veto” was used to expose the weaknesses of the Justified Remarks²⁰, it would be more reasonable for the President not to name the veto as political especially on the background when the changes fail to meet the proportionality criteria and the legal safeguards available in the country are ineffective as proved number of times during the current processes in Georgia.

Following the request by the Administration of the President of Georgia, the Venice Commission issued Urgent Opinion with regard the amendments outlining the legal flaws in the assessed changes.

4. Opinion of the Venice Commission

The necessity and importance of covert investigative activities are of no doubt, however it is also known that the right of a person to privacy is restricted by such kind of investigative actions. In accordance with Article 15(1) of the Constitution of Georgia, private and family life of a person shall be inviolable. However, the right to privacy is not an absolute right²¹ and it may be restricted as provided by the same Constitution²². According to the Constitutional Court of Georgia, “the right to privacy may be restricted to achieve the legitimate goals necessary in the democratic State as provided for by the Constitution, provided, however, that the interference with the right for attaining the legitimate goals takes place through necessary and proportional means²³.” The Explanatory Note to the mentioned changes read that “due to the events occurring globally, many countries including Georgia face new challenges in terms of the issues of state and

¹⁷ Submission by the President of Georgia – [Justified Remarks](#) (23.06.2022), p. 5.

¹⁸ *Ibid*, p. 2.

¹⁹ *Ibid*, p. 3.

²⁰ See Article by Radio Tavisupleba: [The Presidential Veto is overruled as the Parliament finally enacts the Surveillance Law](#) (06.09.2022)

²¹ See HRC [Research](#) by Lazare Jibladze: *Some Facts of Large-Scale Illegal Covert Eavesdropping and Surveillance by the State Security Service: Legal Assessments* (2021)

²² Constitution of Georgia, Article 15 (1)

²³ Judgment №1/1/625,640 by the Constitutional Court of Georgia from April 14, 2016, II. Para. 29.

public security.”²⁴ The authors of the bill mention that the issues of hybrid warfare and cybersecurity are of particular concern. The above goals are in conformity with the European Convention of Human Rights according to which national security as it is necessary in a democratic society may be the reason for restricting the inviolability of the right to privacy²⁵. Furthermore, it is the duty of the State to combat such international crimes²⁶. However, there must be a fair balance achieved between the public interests of state security and private interests of the right to privacy²⁷.

On August 26, 2022, the Venice Commission published the Urgent Opinion on the amendments to the CPC. The Commission provides detailed reflections on each part of the draft law as outlined by the Explanatory Note. In the Urgent Opinion, the Venice Commission finds the reference in the Explanatory Note to the threats (fight with terrorism, hybrid warfare²⁸) is rather general failing to sufficiently explain the necessity of the specific amendments²⁹. Although the Venice Commission believes the threat of terrorism is real, it is rather vague why some other crimes are added to the list, for example, the crimes of “violation of human equality” (Article 124) or “racial discrimination” (Article 142¹) which appear to be quite broadly defined in the Criminal Code and cover a wide variety of scenarios³⁰.

With regard to the duration of covert investigative measures, the Urgent Opinion reads that the measures may be extended as many times as it will be necessary irrespective the signs of terrorism are evident or not in the offense³¹. As for the obligation to inform the person concerned, the Commission observes that there must be an independent body to address complaints to and the remedy must be available and effective³². Assessing the legal remedies (including the challenges in terms of efficiency of the judicial control, and the facts of alleged dissemination of video footages depicting private lives) available in Georgia in a separate chapter, the Venice Commission considers the amendments not justified³³. Concerning the draft law preparation process, the Commission indicated that the process was non-inclusive and the most important two controlling authorities - the Public Defender and Personal Data Protection Service were not involved³⁴.

²⁴ [Explanatory Note](#) to the Draft Law of Georgia on Amendments to the Code of Criminal Procedure.

²⁵ Article 8 of the ECHR (1950).

²⁶ Jaba Usenashvili, The Problem of Exercising the Right to Private Life during the Criminal Intelligence Activities under the Control of the Court, Tbilisi Ivane Javakhishvili State University, Journal of Law, N2 (2012), p. 86-87.

²⁷ Judgment №1/1/477 by the Constitutional Court from December 22, 2011, II. Para. 48.

²⁸ [Explanatory Note](#) to the Draft Law of Georgia on Amendments to the Code of Criminal Procedure. P. 1.

²⁹ European Commission for Democracy Through Law (Venice Commission) – Urgent Opinion on the Draft Law on the Amendments to the Criminal Procedure Code Adopted by the Parliament of Georgia on June 7 2022, [CDL-PI\(2022\)028](#), Opinion no. 1092/2022 (2022) para. 34.

³⁰ *Ibid*, para. 45.

³¹ *Ibid*, para. 50.

³² *Ibid*, para. 53.

³³ *Ibid*, para. 55-62.

³⁴ *Ibid*, para. 39.

It should also be noted the UN Human Rights Committee also reacted to the above amendments and the Concluding Observations of the Committee read that there are no effective legal safeguards available in Georgia to protect the right to privacy from interference and the Committee regrets about the changes to the CPC³⁵.

5. Is the restriction of private life lawful in such a manner?

As noted, the changes in relation to the covert investigative actions can be categorized into three main parts. Consequently, the problematic issues relating to the changes can also be divided in three:

1. *The number of offenses for which covert investigative actions may be conducted were increased;*

Although the Criminal Procedure Code stipulates in detail the procedure for carrying out covert investigative actions, some questions remain of the reason for adding certain articles to the list. The Venice Commission also elaborated on the issue. For example, the scope of covert investigative actions added Article 226 envisaging organisation of group actions violating public order or active participation in such groups. It is noteworthy that there remain challenges in Georgia in terms of the freedom of assemblies and demonstrations. Among them is a flawed practice of arresting protesters on the grounds of disobeying the lawful order of law enforcement officers³⁶. Whereas the offense under Article 226 of the Criminal Code is expressed in evident disobedience to the lawful order of a representative of authorities (police officer, prosecution officer etc.)³⁷. The explicit disobedience may also be expressed in the call by the organizers of the protest not to follow particular orders of the authorities and/or not leave particular location³⁸.

Therefore, it is entirely probable and possible that when initiating the investigation under the mentioned article, covert investigative actions would be extended to the representatives of the civil sector or the opposition and their supporters organizing the protests. Furthermore, on such grounds any person may become a target of covert investigative measures and consequently due to the general and broad character of the norm, the individual right to privacy may be restricted disproportionately.

2. *The timeframes of covert investigative actions were extended;*

³⁵ United Nations, Human Rights Committee, Concluding observations on the fifth periodic report of Georgia, [CCPR/C/GEO/CO/5](#) (13 September 2022) para. 39.

³⁶ HRC 2021 [Report](#) on Human Rights Situation, 2022, p. 18.

³⁷ Mzia Lekveishvili, Nona Todua, Gocha Mamulashvili, Private Part of Criminal Law (Book I), fourth edition, Meridiani (2011), p. 545.

³⁸ *Ibid*, p. 546.

Under the CPC, the secret investigative actions are conducted as sanctioned by a ruling of a judge³⁹. According to the statistics provided by the Supreme Court, 3849 matters related to covert investigative measures were heard by general courts and in 3497 cases the permission was granted⁴⁰. Moreover, in 2021, 1055 out of 1207 motions were granted on the matter of covert telephone conversation eavesdropping and recording, from which 29 motions were granted in part and 123 were rejected⁴¹. Mostly, the covert measures were conducted for the following articles of the Criminal Code: Membership of the 'criminal underworld' or 'being a thief in law' (Article 223¹) - 154 motions granted; fraud (Article 180) - 132 motions granted; Intentional infliction of serious harm to health (Article 117) - 86 motions granted. As the statistics show, we can assume that the motions are granted in most cases. Despite a judge deciding to initiate or extend the covert investigative actions, one has to take into account that due to the sensitivity of the issue the needs of state security are not hard to prove.

3. The timeframe for informing the person against whom the secret surveillance measure is conducted has been changed.

For the target person of the covert investigative actions, notification is a very significant legal safeguard. After the person is informed about the actions conducted against him/her, the person may lodge a complaint and verify the legality of the covert actions. As for the timeframes for informing the person concerned, the authors of the draft law are skeptical about the timing provided by the previous version of the Code (the information should have been provided within 24 months to the person against whom the secret investigative actions were carried out) stating that "in such a short time" the notification may endanger the effectiveness of the investigative body and substantially damage state security and public order⁴². The European Court of Human Rights agrees to the position that the person concerned may not be informed for some time because it may in turn hinder the efficiency of the investigation⁴³. All the same, there must be appropriate safeguards available in the country in order not to infringe a fair balance between private and public interests. Even with regard to terrorism, even though the countries have some discretion to decide what will be the best steps to resolve the issue, this discretion is not unlimited and does not envisage all kinds of actions⁴⁴. Consequently, it is vital to have sufficient and effective guarantees that would provide individuals with a strong sense of anonymity⁴⁵. Hence, the argument that the ECtHR does not consider the notification to be necessity may not be

³⁹ Criminal Procedure Code of Georgia, Article 143 143⁶(1)

⁴⁰ Supreme Court of Georgia, [Register of Covert Investigative Actions, 2021 Data by City/District Courts](#) (2021)

⁴¹ Supreme Court of Georgia, [The Supreme Court of Georgia under OGP Action Plan obligations publishes information about the number of motions heard on the issues of telephone conversations covert eavesdropping and recording according to the courts and subsumptions](#) (2021)

⁴² [Explanatory Note](#) to the Draft Law of Georgia on Amendments to the Code of Criminal Procedure. P. 3.

⁴³ Roman Zakharov v. Russia, no. [47143/06](#) (ECtHR, 4 December 2015) para. 287.

⁴⁴ Klass and Others v. Germany, no. [5029/71](#) (ECtHR, 6 September 1978) para. 49.

⁴⁵ Judgment №1/1/625,640 by the Constitutional Court of Georgia from April 14, 2016, II. Para. 27.

interpreted in a broad sense. In contrast to this, there should be legal safeguards available in the country protecting the right to inviolability of private life.

When hearing the changes to the CPC, it was noted that the control function will be effectively implemented by the national courts and the Personal Data Protection Service. Indeed, the covert investigative actions may be carried out only when sanctioned by a court ruling, further, one of the main directions of Personal Data Protection Service is to control the activities of secret investigative measures and those carried out in the central bank for the data serving as identifying means for electronic communication⁴⁶. Unfortunately, due to the problems existing in general courts of Georgia⁴⁷, we can hardly talk about effective safeguards available there. In addition to judicial control, the CPC provides the Personal Data Protection Service⁴⁸ to supervise the secret investigative activities being authorised to inspect any processor of personal data and/or authorized bodies based on its own initiative or based on a petition by the person concerned⁴⁹. However, the scope of supervision by the Personal Data Protection Service does not include the secret investigative actions relating to processing the data concerning state secrets with the purposes of state security, defense, intelligence, and counterintelligence⁵⁰. Noteworthy, the Venice Commission drew attention on the lack of involvement of the Personal Data Protection Service and that of the Public Defender as one of the shortcomings of the bill discussion process⁵¹. Stemming from the above, Georgian legislation really envisages certain mechanisms for protection, but how effective these mechanisms are should be assessed in practice on the background of current events.

6. Effective legal mechanisms

On September 13, 2021, the secret files were leaked in Georgia allegedly from the State Security Service⁵². The materials released from the State Security Service were related to the clergy, as well as representatives of civil society and diplomatic corps, journalists, attorneys, etc. The State Security Service shortly announced that they would actively cooperate with the Prosecutor's Office to answer all the questions. The Prosecutor's Office launched an investigation into Article 158 (1)(2)(4) of the Criminal Code of Georgia envisaging unauthorized recording or eavesdropping of a private conversation, as well as the illegal use of the recording of private

⁴⁶ Article 3(b) of Order №01 of the Head of Personal Data Protection Service approving the regulations of the Personal Data Protection Service (2022)

⁴⁷ See HRC 2021 [Report](#) on Human Rights Situation, 2022, p. 10-12.

⁴⁸ Criminal Procedure Code of Georgia, Article 143 143⁴(2)

⁴⁹ The Law of Georgia on Personal Data Protection, Article 40¹³ (1)

⁵⁰ European Commission for Democracy Through Law (Venice Commission) – Urgent Opinion on the Draft Law on the Amendments to the Criminal Procedure Code Adopted by the Parliament of Georgia on June 7 2022, [CDL-PI\(2022\)028](#), Opinion no. 1092/2022 (2022) para. 27

⁵¹ *Ibid*, para. 39.

⁵² See HRC [Research](#) by Lazare Jibladze: *Some Facts of Large-Scale Illegal Covert Eavesdropping and Surveillance by the State Security Service: Legal Assessments* (2021)

communication, that of the information and computer data obtained through technical means⁵³. Due to the high public interest, the Public Defender addressed the Prosecutor General of Georgia to allow the Public Defender study in an exceptional manner the case files of the initiated investigation, but the request was rejected⁵⁴.

It is noteworthy that on the matter of released files, HRC provides legal aid to journalists Ana Cheishvili and Khvicha Vashakmadze, as well as to lawyers Giorgi Pantsulaia, Mia Zoidze and Mikheil Ramishvili. Attorneys Giorgi Pantsulaia, Mia Zoidze and Mikheil Ramishvili are associated with high-profile cases such as the Cyanide case, Tamar Bachaliashvili's case, etc.

Lawyers of HRC made great efforts to have the above persons obtain the status of victims in this case. More specifically, after the information about the illegal eavesdropping was spread, the lawyers of HRC repeatedly requested the status of victims for the persons served by HRC and the last victim obtaining the status in October 2022 was Mikheil Ramishvili. As for Giorgi Pantsulaia and Mia Zoidze, on July 8, 2022, they were recognized as victims in the case of illegal recording or eavesdropping of a private conversation, as well as illegal use of the recording of private communication, and that of the information or computer data obtained through technical means.

Unfortunately, even after July 8, 2022, i.e., after Mia Zoidze and Giorgi Pantsulaia had been recognized as victims, HRC several times requested the case files in writing, including on July 18, 2022, and September 12, 2022, but the Prosecutor's Office never responded to the petitions. Moreover, Tbilisi Prosecutor's Office adopted a decree to classify the case files and not to issue them to the party leaving the party with only possibility to study the case files within the premises of the Prosecutor's office. The above decree was handed over to the lawyers of HRC on October 18, 2022. It is interesting why the lawyers of HRC received the decree dated September 15, 2022, only on October 18, 2022. Further, the decree by Tbilisi Prosecutor's Office is disputable in terms of allowing studying the case files only within the premises of the prosecution authority. As noted, the persons were recognized as victims. Under Article 57 (1)(h) of the CPC, the victim has the right to receive information on the investigation and study the case files provided this does not contradict the interests of the investigation. The Constitutional Court of Georgia provides interpretation regarding the issue of what receipt of information means, according to the Court this does not mean to familiarize oneself with the files on-site because reading the written information, especially in the presence of others, viva voce familiarization or visual inspection of the documents, even when there are extracts allowed cannot provide full enjoyment of the right⁵⁵.

⁵³ [Statement](#) by the Prosecutor's Office of Georgia (18.09.2022)

⁵⁴ The [Report](#) of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, (2021) p. 123

⁵⁵ Judgment №1/3/1312 by the Constitutional Court of Georgia from December 18, 2020, II. Para. 10

The decree by Tbilisi Prosecutor's Office reads that allowing only on-site familiarization with the files is determined by the purpose of protecting the personal data of third persons. Undoubtedly, the personal data of third parties must be protected as this approach coincides with the case law of the Constitutional Court⁵⁶. However, another significant point is made by the judgment of the Constitutional Court holding the normative content of Article 57(1)(h) of the CRC, excluding the possibility of the victim to be informed on the progress of the investigation and review the materials of the criminal case in the form of copies, unconstitutional. . The simple reference to the needs of protection of third persons' personal data represents a blanket restriction, as the Prosecutor's Office is capable to provide in separate files the cases of the persons that are protected by HRC and in this manner provide the files to the lawyers without disclosing the personal data of third parties. Such a blanket approach makes the investigation process non-transparent and creates even more questions about the effectiveness of the investigation.

The interviews with lawyers Giorgi Pantsulaia and Mia Zoidze in Tbilisi Prosecutor's Office revealed that the recordings related to them does not concern only their private lives but grossly interfere with their activities as lawyers including other than private communication. Regarding the above issue, lawyers of HRC petitioned to Tbilisi Prosecutor's Office to add Article 364 of the Criminal Code to the subsumption of the investigation for all three lawyers' cases meaning the special article envisaging interference with administration of justice, conducting investigation, or organizing defence, however, unfortunately, the subsumption has not changed yet.

Further facts also raise questions. In particular, before the victim's status was granted to the above persons, the lawyers of HRC applied to the State Inspector's Office to inquire about the legality of the surveillance against the persons. The legal successor of the State Inspector's Office is the Personal Data Protection Service⁵⁷. Therefore, the State Inspector's Office, as the body responsible for the oversight of secret investigative actions, was obliged to study the issue. When the files were released, that time State Inspector made a public statement calling on the investigative bodies to investigate all alleged cases of covert eavesdropping⁵⁸. Nevertheless, unfortunately, the Inspector's Office has not examined the legality of the actions conducted against Mia Zoidze and Giorgi Pantsulaia, as the State Inspector's Office responding to the letter sent by HRC lawyers informed Mia Zoidze that no evidence was identified proving the fact of illegal actions. Consequently, it is unclear how the persons could obtain the status of victim when the State Inspector's Office could not identify evidence in the case. All this indicates a rather ineffective fulfillment of the obligations by the State Inspector's Office with such practice unfortunately being carried on also in the case of the legal successor of the State Inspector. In particular, in the

⁵⁶ *ibid*, para. 49

⁵⁷ See HRC [Research](#) by Lazare Jibladze, *Liquidation of State Inspector's Service in the Name of Reorganization: Legal Assessment* (2022)

⁵⁸ See Article by Radio Tavisupleba - [The State Inspector's Office demands Investigation into the Cases of Covert Eavesdropping](#) (13.09.2021)

report of the Personal Data Protection Service, we find the activities carried⁵⁹ out by them in connection with covert investigative actions, still, however, at this stage, their involvement is not evident in the case of the files released on September 13, 2021, and neither in the process of hearing the changes to the CPC.

Moreover, the Parliament of Georgia also has some mechanisms of supervision. All the same, the Public Defender's report reads that in connection with such a controversial issue, when the facts of massive surveillance were released, the Parliament of Georgia failed to utilize the supervision mechanisms, and neither did the Parliament consider the possibility to set up a temporary investigative commission⁶⁰. Significantly, September 13, 2021, was not the first or last instance of releasing secret files. The Public Defender petitioned the ECtHR requesting to hear the applications against Georgia regarding private life and secret investigative actions in a priority manner⁶¹.

Although the investigation has been going on for more than a year, there are no tangible facts identified in the cases relating to illegal surveillance. No individual approach is evident with regard to recognizing persons as victims. The processes are even more politicized speaking of the fact that the group of persons were jointly and automatically recognized as victims. The additional political flavor was added to the case after charges were brought against former deputy head of the State Security Service, Ioseb Gogashvili, with the charges included acts in ultra vires, illegal obtaining, storage, dissemination of personal data by means of using official power, and illegal acquisition/storage of a firearm⁶². Later, the charges were aggravated and the former deputy head of SSS was accused of deliberately disclosing state secrets and infringing the secrecy of private life⁶³.

The principle of impartiality and independence of judiciary demands that all persons who have committed offense are brought to justice, but on the other hand, it is necessary to ascertain whether Gogashvili was acting autonomously, and how he managed to collect the files outside the system he was representing. HRC believes that court proceedings against Ioseb Gogashvili should be conducted without any political bias in order to protect the right of Ioseb Gogashvili to a fair trial. The fact that the former deputy head of the State Security Service is charged with

⁵⁹ Personal data Protection Service, [Statistics](#) for 6 months of 2022

⁶⁰The [Report](#) of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia (2021). P. 123

⁶¹ See Article by Interpressnews: [Ombudsman - I ask the European Court of Human Rights to hear applications sent from Georgia regarding personal life and secret surveillance in a priority manner](#) (20.09.2022)

⁶² [Statement](#) of the Prosecutor's Office of Georgia: The Prosecutor's Office brought charges against Ioseb Gogashvili, former deputy head of the State Security Service (17.07.2022)

⁶³ See Article by Formula - [Gogashvili's Charges have been aggravated](#) . (11.10.2022)

illegal acquisition, storage, and distribution of personal data, and with interference with privacy creates a great sense of insecurity indicating to the inefficiency of national legal safeguards.

HRC has filed an application to the European Court of Human Rights. The case concerns the lawfulness of covert investigative actions when covert surveillance against a juvenile was conducted without a judge's ruling. The application refers to the ineffective investigation into the offense as well as to the negligent attitude on the part of state institutions contributing eventually to the imposition of heavy sentences to minor defendants. The ECtHR accepted the application. The above case once again confirms that covert investigative actions were conducted in violations even before the CPC was amended and the situation would not improve with new amendments.

7. Conclusions

Despite the threats from terrorism are evident, the amendments introduced to the CPC regarding covert investigative actions jeopardize the right to privacy in the country. The changes disproportionately restrict human rights in different directions, which cannot be balanced with other legal mechanisms available in the country.

On the background of significant facts of violation of the right to privacy occurring in Georgia, covert investigative actions envisaged by the CPC further expand the scope for such wrongful acts minimizing the possibility of verifying the legality of the covert investigative actions. Consequently, since even under the operation of the CPC version 2014 the facts of infringement of privacy occurred, whereas the amendments from 2022 already authorize investigative authorities to unlawfully restrict the right to privacy leaving little chances for making the perpetrators liable.

Stemming from the above mentioned, such expansion of the scope of the covert investigative actions cannot provide a fair balance between private and public interests in Georgia because the State could not yet show the effectiveness of safeguards against the infringement already for the cases from 2021, which contradicts the case-law of the Georgian Constitutional Court and that of the European Court of Human Rights.