



## Campaign This Affects You Too responds to the provisional judgment of the Constitutional Court

Campaign This Affects You Too responds to the provisional judgment (protocol statement) of the Constitutional Court of Georgia dated of December 29, 2017 on the case [The Public Defender of Georgia, citizens of Georgia Avtandil Baramidze, Givi Mitaishvili, Nugzar Solomonidze and others \(the total of 326 constitutional lawsuits\) vs the Parliament of Georgia](#)".

We would like to remind the society that 326 citizens of Georgia lodged a lawsuit with the Constitutional Court of Georgia on April 6, 2017, asking to rule unconstitutional the legislation regulating secret eavesdropping, as, according to the applicants, it contradicts the [judgment](#) rendered by the Court itself on April 14, 2016. Later on, the Ombudsman [Office of Georgia](#) also filed a lawsuit with the Court. Moreover, for the first time in the history of independent Georgia, the Presidential Administration of Georgia presented an amicus curiae position that in turn, coincided with the applicants' position.

საქართველოს ახალგაზრდა იურისტთა ასოციაცია  
GEORGIAN YOUNG LAWYERS' ASSOCIATION



Unfortunately, with the decision dated of December 29, 2017, the Court did not uphold the applicants' claim, stating that appealed regulations establish qualitatively different reality and therefore do not contradict the decision that the court made a year earlier.

It is noteworthy that the court accepted the abovementioned lawsuits for the hearing on the merits not because it is planning to overrule (change) its practice but because it did not establish any contradiction between the appealed legislation and its decision of April 14, 2016.

We believe that, for a modern rule-of-law state, it is particularly important that the law and the court practice are consistent, unambiguous and clear. The judgment made by the Court and the precedent law that it establishes should to be clear and understandable for the public and their essence should not be changed when the composition of the Court is changed.

Obviously, the campaign This Affects You Too does not agree with the evaluation of the six members of the Court that the norms regulating secret eavesdropping are qualitatively different from the legal framework that has already been ruled as unconstitutional by the Court itself.

The Court's reasoning with regard to obtaining internet communication in real time is particularly unclear for us. We believe that at least in this part the legislation remains unchanged and only the circumstance that the authority of Personal Data Protection Inspector (with regard to inspection) that existed before was formally included within the law, does not change the status quo as, according to the Constitutional Court's own standard, *We would be dealing with substantial similarity not only when a norm word for word repeats the essence of a norm that was ruled unconstitutional but also when a rule contained by a disputed norm will have substantially similar legal outcome* ."

# საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



Therefore, it is important that the Court fully realizes its responsibility in the process of ongoing legal proceedings and when evaluating the constitutionality of the appealed regulations, analyses all the threats, risks or negative influences that such legislation may cause to everyday life of ordinary citizens as well to any public person, including to professional activities of judges themselves and the reputation of the Constitutional Court as an institution and the degree of confidence towards it.

We hope that in the format of hearing on the merits, we will be able to convince the court that the current legislation is as ineffective, flawed and contradictory to the Constitution as the regulations that existed as of April 14, 2016.

And lastly, despite the fact that the issue of violation of the right to private life is not a matter evaluated solely by the national courts and it is possible to use international mechanism of protection of human rights, the role of the national courts and the judgments they render in this process, are particularly important.

In order to enhance the citizens' trust in the judiciary, the Constitutional Court should be able to make decisions that are important for the protection of human rights and to defend the decisions it has already made. The abovementioned is important not only to establish proper standards of human rights protection but also to protect the reputation of the Court itself so that the legislative body would not have to pass regulations overruling the Court's decisions every time.