



GYLA highlights problematic aspects of the legislative package prepared by the Ministry of Internal Affairs

On March 7, 2016, the Committee for Protection of Human Rights and Civic Integration discussed proposed amendments to the Law of Georgia on Road Traffic and related legislative acts, prepared by the Ministry of Internal Affairs of Georgia and initiated by the Government of Georgia. The legislative package introduces the so-called “remote patrolling”, which entails placement/installment of automatic photo equipment (a radar) or video equipment, without any warning sign, on police vehicles that bear or do not bear any identifying marks. Although it was expected that in view of parliamentary discussions and findings of the Inspector for Protection of Personal Data, the legislative package would be substantially improved, no such work has been undertaken so far. Therefore, we believe it is important to present our views to public and the legislature about the problematic issues associated with the initiative drafted

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by the MIA.

First, right to privacy is a broad notion that encompasses many issues, including in private as well as in public domain. Although unlike private space, there is a much less expectation that confidentiality will be protected in a public field, it does not mean that fields protected by the right to privacy should be completely disregarded. In its decision delivered in case of *Peck v The United Kingdom* (2003) (Application no.44647/98.para.58), the European Court of Human Rights stated: “private life considerations may arise however once any systematic or permanent record comes into existence of such material from the public domain.” This statement confirms that private life considerations may arise in any situation, notwithstanding a concrete place, and the scope of its application is extendable both to private and public domains.

Because of the legal nature and importance of the field protected by the right to privacy, the Constitution of Georgia foresees a very high standard for its protection by allowing interference in right to privacy based on court’s warrant only or in an event of an urgent necessity.^[1] Invisible methods of interference are subject to especially powerful legal safeguards because their invisibility poses higher risk for abuse or excessive use of power. ^[2]

Remote patrolling contained by the legislative package is essentially a type of secret interference in the field protected by the right to privacy, because an individual concerned is not aware of when, how and under what circumstances he or she is subjected to photo and video surveillance by law enforcement authorities. Notably, to achieve an important legitimate goal of investigation of crime, criminal prosecution and administration of justice, Georgian legislation allows interference in private life by means of secret investigative measures; however, a number of measures foreseen by the Criminal Procedure Code ensure prevention of abuse of power. Introducing measures similar to existing secret investigative measures with the aim of ensuring traffic safety and eliminating administrative offences, which results in interference in private life of an individual without court’s warrant, is far beyond any logical reasoning. Proposed regulations and its explanatory note do not provide sufficient evidence to substantiate necessity to exercise additional authority, which begs the question of whether the same goal can be achieved by less restrictive mechanisms used by the state bodies.

In addition, the legislative package contradicts the Law of Georgia on Protection of Personal Data – its general provisions and concrete rules about video surveillance. What happens after capturing a possible crime on photo/video is especially interesting – this allows for further (different) use of material obtained for the purpose of ensuring traffic safety, which entails processing of data in violation of principles foreseen by the Law on Protection of Personal Data.

Inclusion of photo/video material as evidence in a criminal case file is also ambiguous. Criminal procedural legislation expressly stipulates that an investigative action that restricts personal life must be carried on the basis of a motion of a party and under a court's warrant. Therefore, when the material has already been obtained by law enforcement authorities under applicable legislation (for traffic safety purposes), which investigative action in particular will be used to obtain photo/video footage as evidence and how will the obligation to obtain court's warrant on the basis of a motion of a party be fulfilled?

In light of the foregoing, we believe that the proposed new regulations contradict the Constitution of Georgia and the law of Georgia on Protection of Personal Data and therefore, should not be adopted without further improvement and revision. We believe that issues raised hereby will be taken into account by the author of the draft law and the legislature, and will result in additional consultations to achieve a consensus around the issue of public importance.

[1] February 28, 2012 decision of the Constitutional Court of Georgia #2/1/484 II.o.17;

[2] December 26, 2007 decision of the Constitutional Court of Georgia #1/3/407, II.o.9.;