



Statement of NGOs about Making the Information regarding Medical Condition of Former PM Ivane Merabishvili Public

The signatory organizations express concern about the [statement](#) made by the Special Penitentiary service on September 24, 2014, which grossly violates fundamental rights safeguarded by the Constitution of Georgia and the European Convention on Human Rights.

In a [report](#) aired by Rustavi 2 on September 23, 2018, attorney of Ivane Merabishvili talked about aggravation of the former Prime Minister's health and expressed suspicions that he may be deliberately poisoned. In response, the Special Penitentiary Service issued the above statement, listing not only the examinations that Ivane Merabishvili had undergone but also his diagnoses. According to Merabishvili's attorney, the Special Penitentiary Service released the information without Merabishvili's consent. The Penitentiary service cited high public interest and attempt to avoid political speculations as the reason for making confidential medical

information public.

According to the CPT standards, freedom to express consent and protection of confidential information are basic human rights. Protection of these rights is of utmost importance to create trust between a doctor and a patient, especially in places of deprivation of liberty, where a patient is unable to choose a doctor according to his/her own free will.

In Z. v. Finland, the European Court underlined that [] protection of personal data, not least medical data, is of fundamental importance to a person's enjoyment of his or her right to respect for private and family life as guaranteed by Article 8 of the Convention. Respecting the confidentiality of health data is a vital principle in the legal systems of all the Contracting Parties to the Convention. It is crucial not only to respect the sense of privacy of a patient but also to preserve his or her confidence in the medical profession and in the health services in general.”

For a violation of confidentiality of medical information not to cause breach of art.8 of the European Convention, the European Court considers whether disclosure of such information was allowed by the national legislation in certain, clearly defined cases; in particular, whether it pursued a legitimate aim that took precedence over the individual [] right to privacy and was necessary in a democratic society, which among other things, implies whether the same important goal could be achieved using less intrusive means.

By virtue of para.2 of art.41 of the Constitution of Georgia, [] the information existing on official papers pertaining to individual [] health, his/her finances or other private matters, shall not be accessible to any one without the consent of the individual in question except in the cases determined by law, when it is necessary for ensuring the state security or public safety, for the protection of health, rights and freedoms of others.”

Pursuant to para.3 of art.6 of the Law of Georgia on Protection of Personal Data, even when the legal basis for processing special category data exists, making the data publicly available and disclosing the data to a third party without the consent of the data subject is prohibited.

Based on art.21 of the Law of Georgia on Patient [] rights, [] patients may decide whether or not to allow anyone to receive information about their health

status. (...) A[] and based on art.27 [] care providers must be obligated to protect the confidentiality of information held by them about patients both during patients' lives and after the patient's deaths."

Art.28 of the law provides an exhaustive list of cases when disclosure of medical information may be allowed, however the list does not include the foregoing two reasons cited by the Penitentiary Service [] high public interest and avoidance of political speculations.

Therefore, with its action the Special Penitentiary Service violated against Ivane Merabishvili principles provided in the Georgian Constitution and legislation about protection of personal information including medical information, as well as in international standards, including the right to respect for private and family life provided in art.8 of the European Convention.

In light of the foregoing:

- **We urge the Personal Data Protection Inspector to study the issue of illegal disclosure of Ivane Merabishvili [] personal information and take adequate further actions;**
- **We urge the medical department of the Special Penitentiary Service to pay a particular attention to suspicions about worsening of Merabishvili [] health, to provide him with all appropriate examinations as soon as possible and ensure his adequate treatment.**

Signatory organizations:

Institute of Democracy and Safe Development (IDSD)

Georgian Young Lawyers' Association (GYLA)

Georgian Democratic Initiative (GDI)

Center for Rehabilitation of Victims of Torture "Empathy" (RCT/Empathy)

Rehabilitation Initiative for Vulnerable Groups (RIVG)

საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



Tolerance and Diversity Institute (TDI)

Human Rights Center

Article 42 of the Constitution