



PUBLICATION OF RECORD OF REPRESENTATIVE OF OMBUDSMAN AND PRISONER BY MINISTRY OF JUSTICE VIOLATES LAW OF GEORGIA ON PERSONAL DATA PROTECTION

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On January 21, 2020 at the session of the Human Rights and Civil Integration Committee in the Parliament of Georgia where the Special Report of the Public Defender was discussed, Thea Tsulukiani, the Minister of Justice publicly showed a video recorded in the a cell of a convict in the penitentiary institution, which was subsequently posted on the official Facebook page of the Special Penitentiary Service.

In regards to the disseminated video-recording, the minister noted that the video shows the representative of the Public Defender drinking coffee made by the prisoner, as well as eating chocolate, smoking his cigarette and using the prisoner's toilet.

By storage and making the video publicly available violated the principles and foundations of the Law of Georgia on Personal Data Protection.

According to Article 4 (b) of this Law, personal data may be processed only for specific, clearly defined and legitimate purposes. No further processing of the data may be allowed for any other purpose incompatible with the original purpose. Such a purpose, in accordance with Article 54 (1) of the Imprisonment Code, is available only based on security and other lawful interests of convicted or other persons, to prevent suicide, self-injury, violence against convicted or other persons, damage to property, and to avert other crimes and offences.

Accordingly, making the record public on the committee hearing to respond to the recommendations set forth in the Public Defender's report cannot meet the purpose of the video surveillance provided by the Imprisonment Code. Accordingly, the data were not processed not for lawful purposes but they were used for political purposes.

Making the video public revealed that the Special Penitentiary Service also violated the terms of the recording of the surveillance record. According to the video recording, it was recorded on April 19, 2019, it was saved and made public nine months after it was recorded.

According to Article 4 (e) of the Law of Georgia on Personal Data Protection data may be kept only for the period necessary to achieve the purpose of data processing. After the purpose of data processing is achieved, the data must be locked, deleted or destroyed, or stored in a form that excludes identification of a person, unless otherwise determined by Law.

The terms for keeping records obtained through electronic surveillance in a

penitentiary establishment shall be defined by the Order N35 of the Minister of Corrections and Probation of May 19, 2015 "with the rule of visual and/or electronic surveillance and control, keeping, deleting and destroying records". According to Article 4 (1) of this rule, the director of the establishment shall decide on the surveillance and control of the establishment and issue an order if there are grounds provided by law. The order is issued until the relevant grounds are eliminated, but for no more than 3 months. According to Article 15 (2) of the same rule, the obtained record shall be kept for at least 120 hours, but according to paragraph 8 of the same article, the archived material shall be kept for a period not exceeding one month after the completion of processing of the case/proceedings or the elimination of other relevant circumstances for which the material has been archived.

Accordingly, the video recording was kept in violation of the statutory time limits and the principles of the Law on Personal Data Protection.

It is also noteworthy that the video recording shows the face of the representative of the Public Defender and makes it possible to identify him/her. According to Article 5 of the Law on Personal Data Protection data processing shall be admissible if there is a data subject's consent or data processing is provided for by Law. In this case, there is no basis for the processing of video-recording by this form prescribed the law and also there is no subject consent. Accordingly, we also lack the basics of personal data processing.

In view of the above mentioned, we believe that public display of this video recording and dissemination in the social network has violated the requirements of the Law on Personal Data Protection and we, therefore, call on:

- The Special Penitentiary Service to remove the video from the official Facebook page;
- State Inspector Service to study the above circumstances and to respond appropriately to possible facts of violations.