



This Affects You Too Campaign responds to the Prime Minister

Civil society organizations campaigning against illegal surveillance would like to respond to the allegations voiced by the Prime Minister on 20 November 2014.

Mr. Prime Minister,

The creation of a free environment where each and every citizen can express their dissenting opinions is essential for the development of a democratic state. The head of state must be knowledgeable and able to persuade the public about his opinion using strong evidence-based arguments. We believe that your aggressive attitude and unsubstantiated allegations only prove your inability to accept a dissenting opinion, what contradicts the idea of building a state with high democratic standards.

We would also like to respond to specific allegations made in the statement:

1. "State secrets and national security are very sensitive issues which everyone should be very careful about. As a Prime Minister, I am obligated to solve this issue together with the team and the majority with great caution."

The non-governmental organizations have repeatedly noted that the legislative amendments on the topic of the covert surveillance proposed by us and the Parliament □ Legal Affairs Committee envisage a creation of a balanced system which will not only ensure the security of citizens but also protect human rights. Most of these amendments have already been passed by the Parliament. It is unclear why the Prime Minister chooses to focus solely on the state security issues and ignores human

rights, a principle of paramount importance to any democracy, which includes the protection of personal data. The EU and other democratic nations have already chosen a similar well-balanced system. It is regrettable that such a balance cannot be achieved under the current Georgian government whose main focus is put on strengthening state security services. Public safety cannot exist in a country where citizen's rights are not protected.

2. "We do not have the right to conduct experiments since this issue has become a subject of great discussion and speculation. The situation is very simple. The world * democratic, civilized world uses two ways of dealing with the covert surveillance. In the first case the so-called [] to surveillance is held by the mobile operators. In the second case [] by the Ministry of Internal Affairs while having an external control."

We believe that the model proposed by the Prime Minister is an experiment, since nowhere else in the world, the personal data protection inspector is directly engaged in the process of gathering covert surveillance (instead of ensuring data protection). We would like to point out that the non-governmental organizations initially proposed a [] key [] system, where the so-called [] would be held by the mobile operators who would in turn be monitored by an effective monitoring system. This proposal was based on the findings of the international experts invited by the Parliament. The experts repeatedly emphasized the inadmissibility of the law enforcement and security agencies who have constant access to data held by communication companies, without having the obligation to present the court decision to them.

Here is an extract from the expert's report:

"All laws which allow the state entities and representatives to have access to the electronic communication without the operator [] direct control and the obligation to notify them need to be abolished."

The need to solve this problem is also highlighted in the reports issued by Thomas Hammarberg and many international organizations which investigated the human rights situation in Georgia.

3. "As for the Georgian reality, [the key], of course, cannot and will not stay within the mobile operators. I strongly oppose to this, since first, mobile operators are themselves strongly against it and second, foreign states

stand behind these companies"; "We do not have the right to pass our country's state secrets to foreign states. It is a criminal offense."

With his statement the Prime Minister has directly accused Georgia-based mobile communication operators of the possible cooperation with the foreign special services. We do not consider such statements appropriate. The same kind of logic can be used against other companies when saying that they pose potential threat to the Georgian state just by holding strategically important sites in the country. As for transferring our private data to mobile operators - they already hold this data (phone number, location, communication with other users, etc.) and can easily engage in covert surveillance if they are willing to do so. The state must oblige the operators to protect the personal information of their own customers since they are paid by these customers for their services.

As for the protection of the state secrets □ the covert surveillance is never performed without informing the mobile operator in the EU. And this does not mean that the EU countries are less concerned about protecting their confidential information than Georgia.

4. "We are left with the other option practiced in civilized countries - the □□□□ must be held by the Ministry of Internal Affairs under the control of an effective mechanism. This option has been developed by the Beselia-Sesiashvili-Popkhadze and is the optimal solution. As a leader of the coalition, I support this option and call on lawmakers to act more responsibly when dealing with this issue."

We would like to ask the Prime Minister to name a single country that practices the Beselia-Sesiashvili-Popkhadze model. There is no country in the world where the personal data protection inspector is directly engaged in the process of gathering covert surveillance. The inspector is only responsible for the data protection.

5. □□□□ does not concern only our government, the government has no need to possess the keys; this serves the interests of our national security, our state, and strengthens our country."

The Prime Minister, apparently, understands strengthening the national security as

reinforcing total control over the security services and citizens. We believe that a strong state rests on a balanced system of institutions in which the actions of all the institutions are defined by the legislation, something that rules out informal governance. A strong state implies strong democratic institutions that serve primarily to protect every single citizen, inter alia from illegal actions of the state. In a strong state media and civil sector are respected and, most importantly, divergent opinions are confronted only with well-reasoned arguments.

Hereby we would also like to remind the Prime Minister that in order to strengthen and protect our country it is necessary to investigate thousands of cases of recordings created under the UNM government which violate the right to privacy. Unfortunately, no one has been indicted for those violations so far.

6. [] can name one country which operates within the so called [] keys principle [] with one key being in the hands of the judiciary, as suggested by the civil sector, and the other one held by the mobile operators. This would be a disaster, that is why it is strongly criticized by all patriotic and nationally-minded people."

We would like to remind the Prime Minister that the work on the legislative amendments has been underway for more than a year and a considerable amount of this work, including the analysis of international practices, has been carried out by the civil society organizations. Importantly, while conducting the analysis of international practices, the European experts were invited by the Parliament to take part in that process. The model proposed by us bases exactly on the international best practices. The model has been successfully implemented in a number of European countries and implies entrusting the so-called [] to the mobile operators. We did not and do not believe that placing the []A in the hands of the mobile operators may pose any catastrophe, especially since the given approach was assessed acceptable by such European countries as: Austria, Belgium, Estonia, Ireland, Germany, Spain, Iceland, Italy, Denmark, England, Luxembourg, Netherlands, Portugal, Finland, Sweden, Czech Republic and others. We believe that the pertinent decisions in these countries were taken by the governments which comprise patriotic and nationally-minded people who are driven by a sound understanding of the importance of the human rights, good governance and Western orientation.

7. "This has been planned by the UNM using their own CSOs."

The above allegation which links the model proposed by the CSOs to the "National Movement" is defamatory. The idea behind our model is to, once and for all, change the system created and operated by various governments in Georgia over the past 20 years. This change was also a part of the present government's pre-election platform. Unfortunately, the model proposed by Beselia-Sesiashvili-Popkhadze in addition to numerous statements made by the Prime Minister are leading to the assumption that the government is reluctant to reject the pernicious practice of illegal wiretapping. We would also like to remind the public that we refused the UNM to register our model as a legislative initiative since it run the risk that the initiative could be discussed at the parliamentary session. Subsequently, the statement made by the Prime Minister is utterly unjustified.

8. [REDACTED] main goal is to paralyze the MIA, they are fighting against the state institutions, and we are perfectly aware of who is interested in fighting against the state institutions."

It is discouraging to hear the Prime Minister repeatedly use expressions, which are inappropriate to his position, when addressing the civil society organizations. It will be really hard to reassure our European partners that the insulting and compromising expressions addressed at media, non-governmental organizations and political opponents are the achievements of the democracy in Georgia and are not politically motivated.

Mr. Prime Minister, the CSOs involved in "It Affects You" campaign are not fighting against the country's institutions, including the police. In contrary, all of our monitoring reports, statements, concepts proposed to the government, services, capacity building trainings for civil servants, activities directed at ensuring free elections, free media and helping build civil society testify that we are driven by the interest of protecting the democratic institutions and human rights.

We have to face the fact that although governments change, problems unfortunately stay. Therefore, we have to keep our agenda focused on the above priorities.

საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



The above issues are especially relevant today, when Georgia is so close to become a full-fledged member of the European family, the goal set centuries ago. We, therefore, cannot stay indifferent when personal data protection and privacy are not guaranteed, or when the rights to business, and political and social activities are not free from unjustified interference by the state, including illegal wire-tapping.

The aim of the civil society organizations is not to fight with the state institutions but to strengthen them. Democracy cannot exist where there is only one strong state institution in the face of the law enforcement agency.

The very discussion of the law on secret surveillance, which is underway since May 2013, has been initiated by the non-governmental sector. A large part of our legislative proposals has been endorsed by the Parliament and turned into laws. Throughout this time, we have repeatedly asked the Prime Minister to meet us and listen to our opinions but our requests have never been satisfied. It seems he prefers this method of communication with the public sector which, in our opinion, is not how a democratic state should function. of secret investigative actions.