



# Presentation of the Constitutional Complaint

April 8, 2015

# Subject of the Constitutional Complaint

- Respective provisions of the Criminal Procedure Code of Georgia, Georgian Law on Personal Data Protection and Georgian Law on Electronic Communications which refer to:
  1. Direct access to telecommunication servers by the Ministry of Interior of Georgia;
  2. Unlimited power of copying data banks by the Ministry of Interior of Georgia through having direct access to telecommunication servers and its retention;

## Respective Provisions of the Constitution

- **Art 20** of the Constitution of Georgia, which guarantees inviolability of private life, working place, correspondence and communication;
- **Art 16** of the Constitution of Georgia, which guarantees the right to personal development;
- **Art 41, Par 2** of the Constitution of Georgia, which gives right to every citizen of Georgia to have the right of access to information as determined by law, as well as to official documents about him/her stored in state institutions, unless they contain state, professional, or commercial secrets.

## Direct Access to Telecommunication Servers

The Complaint includes **three alternative grounds** of the constitutionality of direct access to telecommunication servers by the Ministry of Internal Affairs of Georgia

## Alternative #1

1. Generally, direct access to telecommunication servers by the Ministry of Internal Affairs of Georgia (and Generally by the Executive Branch) contradicts Art 20 of the Constitution of Georgia.
2. There are less restrictive means for limiting the right, which also give possibility of achieving respective legitimate goals (Two key system by the involvement of private communication companies; Taking the power of cover surveillance from the Ministry of Interior of Georgia to other state institution).

## Alternative #2

- Current model on direct access to telecommunications servers contradicts Art 20 of the Constitution:
  1. Dualistic functions and the role of the Personal Data Protection Inspector;
  2. Creation and implementation of respective program interface by the Ministry of Interior;
  3. **Direct Access to telecommunication channels are not included in the two-stage electronic system (Only telephone communication is covered by this);**

## Alternative #3

- **Current Model on Direct Access to telecommunication contradicts Art 16 of the Constitution of Georgia:**

### Chilling effect argument

**(People will refrain from communicating via technical equipment, when they know that Ministry of Internal Affairs has direct access to communication servers)**

Thank you for your attention

