



**Ivane Javakhishvili Tbilisi State University**  
**Faculty of Law**

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## Legal Grounds for Operative-Investigatory Activity and European Standards

*The article is related to non-procedural activity executed outside the criminal law proceeding, which plays significant role in identification and solution of crime. The article discusses legal nature of operative-investigatory activity, its role in the process of investigation, control mechanisms over operative-investigatory measures, problems of protection of privacy of personal life and European standards for executing operative-investigatory activity. Attention is accented on the risks and challenges existing in the process of execution of operative-investigatory activity, on the necessity to harmonize legislation regulating operative-investigatory activity with European standards and create solid legal guarantees for human rights protection.*

**Key words:** *Operative-investigatory activity, solution of a crime, investigation, protection of human rights, interference in the privacy of personal life, operative information, confidant, European standard.*

### 1. Introduction

In the process of investigating criminal law case two main directions are outlined – in the form of investigative/other procedural activities and operative-investigative measures.

Operative-investigatory activity is the unity of non-procedural measures conducted outside the criminal legal proceeding.

The aim of operative-investigative activity is protection of human rights and public security, which is attributed to legitimate constitutional aims.<sup>1</sup>

Similar to majority of European countries, in the acting Criminal Procedure Code of Georgia initially there was an attempt to merge operative-investigative measures and investigative activities. The mentioned measures were envisaged in the Criminal Procedure Code in the form of secret investigative activities. However, at last the legislator rejected such merger and before entrance into force amendments were introduced to take out secret investigative activities, and the law on operative-investigative activity remained in force.

By the amendments introduced to the Criminal Procedure Code in 2014, such measures included in the law on operative-investigative activity were moved into the scope of regulation of Criminal Procedure Code in the form of secret investigative activities, which in their content give more possibilities to restrict constitutional rights of person.

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\* Associate Professor, Doctor of Law, Ivane Javakhishvili Tbilisi State University, Faculty of Law.

<sup>1</sup> Decision of the Constitutional Court of Georgia from 24 October 2012 on the Case №1/2/519: “Georgia’s Yong Lawyers’ Association and Citizen of Georgia Tamar Chugoshvili Versus Parliament of Georgia”, II-10.

The purpose of putting some operative-investigative measures in the framework of legal procedure was “to ensure them with proper procedural guarantees, including with high quality judicial control and effective mechanism for appealing results”.<sup>2</sup>

In comparison to the legislation regulating operative-investigative activity, in the Criminal Procedure, protection of human rights is more guaranteed. Therefore, transposing secret investigative activities to Criminal Procedure Code represents a step forward.

Besides, as part of operative-investigative measures is still regulated under the law on operative-investigative activity, it is important to define – to what extent are the guarantees for protection of legality of operative-investigative activity envisaged in the acting legislation, whether human rights are protected, including privacy of personal life during executing of those measures, which are left outside the scope of regulation of the Civil Procedure law and whether acting regulations comply with the European standards.

## **2. The Role of Operative-Investigative Activity in the Process of Investigation**

### **2.1. The Essence and Legal Grounds of Operative-Investigative Activity**

“Operative-investigative activity resolves widescale problems by virtue of bodies conducting this activity and relates to the criminal procedure only in that part, which assists court, prosecution and investigative bodies in solving diverse types of crime and other unlawful actions, also in identification and exposure of persons committing crime”.<sup>3</sup>

The operative-investigative activity is system of measures executed with overt and covert methods within the competence of special services of state bodies defined under the law, and the aim of this system is to protect human rights and freedoms, rights of legal persons, public security from criminal and other unlawful infringement.<sup>4</sup> Protection of the named public interests is the obligation of legal state. The scope of public interest is defined in article 8 of the European Convention on Human rights, according to which interference in the right is admissible when it is necessary: for the national security in the democratic society, public safety, interests of country’s economic welfare, avoidance of disorder or crime, protection of health or moral, or other rights and freedoms.<sup>5</sup> Moreover, interference into the right must be legitimate, along with the public interest the necessity of protection of this interest must be present.

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<sup>2</sup> See Explanatory Note for Draft Law on Introducing Amendments to Law on “Operative-investigative Activity”, <[http://www.sps.gov.ge/images/files/pdf/text\\_14206257815.pdf](http://www.sps.gov.ge/images/files/pdf/text_14206257815.pdf)> [21.12.2020].

<sup>3</sup> *Lekiashvili D.*, General Opinions on Procedural and Non-Procedural Activities, in the Collection: Actual Problems of Criminal Procedure and Criminal Law Policy, Tbilisi, 2012, 100 (in Georgian).

<sup>4</sup> Law of Georgia on Operative-Investigative activity, LHG, 14(21), 30/04/1999, article 1.

<sup>5</sup> Decision of the Constitutional Court of Georgia from 26 December 2007 on the Case №1/3/407: “Georgia’s Yong Lawyer’s Association and Citizen of Georgia Ekaterine Lomtadze Versus Parliament of Georgia”, II-8.

The operative-investigative activity foresees conspiracy... restricting constitutional rights and obligations of citizens... within the scope of legislation and, as a rule, control in order to reach state purposes and tasks.<sup>6</sup>

Comparing to other forms of restricting rights, operative-investigative measures are characterized with secret nature, the vast part of it is invisible to the public, and therefore cannot be controlled by the public. Considering this, comparing other occasions, there is a higher temptation and risk from the side of executive government to disproportionately interfere in the right.<sup>7</sup>

Operative-investigative activity is based on combining overt and covert methods, but it is strictly classified. Right to look through the data, documents and sources including information on such activity, with the established procedure, is given only to persons determined by the law, as well as in occasions prescribed by the law. The exception from this rule is classification of the data pointed out by the prosecutor with the purpose of using it as an evidence, in case if classification of such documents and materials does not infringe vitally important interests of country in the sphere of defence, economy, foreign relations, intelligence, state security and legal order.

In the literature there is a discussion on particular national character of operative-investigative activity, on its strategic importance and preventive nature.<sup>8</sup>

Combatting crime does not imply only planning repressive measures by the prosecutor (at his desk), but it is realized by operative bodies with execution of operative-investigative measures (in the street) having preventive character.<sup>9</sup>

While performing operative-investigative activity, acquired information is only documented in line with the law and this document itself is confidential. Hence it is prohibited to use operative-investigative data as an evidence in criminal procedure, if it is not checked by the rule prescribed in the procedural law.<sup>10</sup> Operative-investigative data is always characterized with high level of probability, therefore the procedural filter must exist, which will legally check this data in line with the rule prescribed under the law.<sup>11</sup>

The legal basis for operative-investigative activity along with the law on operative-investigative activity, are also institutional normative acts issued on particular issues by state bodies executing operative-investigative activity with the consent of General Prosecutor of Georgia. The mentioned acts are not public, moreover, they are classified as act including state secret and are not available, which reduces the reliability of execution process of operative-investigative measures.

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<sup>6</sup> *Buadze K.*, Predicting Operative-Investigative Information and State Control Mechanisms, Journ. "Justice and Law", №2, 2016, 139 (in Georgian).

<sup>7</sup> Decision of the Constitutional Court of Georgia from 29 February 2012 on the Case №2/1/484: "Georgia's Yong Lawyers' Association and Citizen of Georgia Tamar Khidasheli Versus Parliament of Georgia", II-20.

<sup>8</sup> See *Buadze K., Mzhavanadze O.*, Legal Grounds for Operative-Investigative Activity, Tbilisi, 2011, 17 (in Georgian).

<sup>9</sup> *Khodeli M.*, Secret Overhearing of Telephone Talk in the Criminal Procedure (According to Georgian and German Law), Tbilisi, 2019, 244., See citing: Kniesel, ZRP, 1987, 378 (in Georgian).

<sup>10</sup> *Mepharishvili G.*, Life and Law, T. II, Tbilisi, 2008, 52 (in Georgian).

<sup>11</sup> *Ibid*, 66-67.

## **2.2. Role of Operative-Investigative Activity in the Process of Investigation**

Operative-investigative activity plays significant role in combatting crime, identification of crime and its resolution. Operative-investigative activity may be performed after initiation of investigation, as well as before investigation is commenced. Information acquired through this measure may be the basis for initiating investigation. Results of operative-investigative activity may be used for preparation or execution of different investigative and procedural activities after starting investigation, with the purpose to plan and perform other measures for avoiding, preventing and solving crime.

National, as well as international experience points that using only public and overt methods against crime is less effective. Solving some types of crime is impossible without confidential cooperation with operative-investigative bodies. This mostly relates to precluding and avoiding latent serious and exceptionally serious crime. Receiving, fixing and properly using operative information mostly is the result of intelligence/confidential work of confidant. Hence, it is quite natural that particular attention is given to the aspect of participation of confidant in operative-investigative activity.<sup>12</sup>

“Secret collaborator is not forbidden to acquire information important for criminal case through secret video or audio recording, or filming and photo shooting, and using other technical means, if the judge issues permission as prescribed under the law. Obtained data may be admitted as an evidence in criminal case, if requirements determined under the law for its obtaining are preserved”.<sup>13</sup>

The European Court of Human Rights outlined necessity of using secret agents, informants and secret methods in combatting organized crime and corruption, and underlined: in order to avoid threat of encouragement from police, it is crucial to put usage of such technical methods into particular framework. Of course, “Convention does not prohibit relying on such sources in pre-investigation stage, as anonym informants, when the character of crime gives such possibility”. However, “another issue is using such sources for convicting person by the court discussing the case and it is admissible only when there are adequate and sufficient means for protection from abuse of the authority. Besides, there must exist clear and predictable procedures for issuing permission – for conducting investigative measures in question and providing their control”. Moreover, “it is possible to approve usage of secret agents with the condition, that it will be subject to clear restrictions and protection guarantees, however, public interest cannot justify usage of evidence obtained in result of encouragement from police. In other case, defendant will be under threat that he/she will lose chance for fair trial from the beginning”.<sup>14</sup>

In practice, using operative activity in parallel with investigation can be explained with the fact that operative work is more flexible and effective comparing to investigation, as it requires different,

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<sup>12</sup> *Semidjen P. V., Petlitski S. V.*, About the Essence of Social Protection for Persons Collaborating on Confidential Basis with Bodies Conducting Operative-Investigative Activity. In Collection: Actual Questions on Operative-Investigative Activity, Minsk, 2017, 115.

<sup>13</sup> *Tumanishvili G.*, Criminal Procedure, Review of General Part, Tbilisi, 2014, 279-280 (in Georgian).

<sup>14</sup> *Ramanauskas v. Lithuania*, [2008], ECHR §53-54.

lower standard for conduct, comparing to procedural activities.<sup>15</sup> Based on primary factual material obtained as a result of operative-investigative activity, an investigation may start, investigative versions may be built up and a plan of investigation composed.

Information obtained through operative way may become ground for prosecutor's motion before the court for receiving ruling for conducting investigative activities restricting constitutional human rights. For justifying a motion police officer's report is used, as well as his/her questioning minutes without declassifying confidant's name.

The practice shows that operative-investigative activity is "especially important for combatting drug related and organized crime, as in sphere of these crimes providing information from third persons, making statement or it's occasional determination is rare".<sup>16</sup> With regard to many other crimes, especially commencing investigation on facts of drug purchase and storage and conducting initial investigative activity – personal search is mostly carried out base on operative information. As a rule, court admits as one of the evidences a testimony of police officer questioned as a witness, who names information received from operative officer, confidant as a basis for starting investigation.

For instance, in one of the criminal cases (№1-532-18) operative officer G.V., questioned as a witness, showed that "he received information in the unit that defendant should have flown from Turkey to Tbilisi and he would have narcotic substance personally or hidden in the body." Analogous testimony was made in court by other operative officers.<sup>17</sup>

It is noteworthy that law does not foresee checking source of operative information on any stage of legal procedure. This information is not subject to prosecution control and there is no judicial control carried out as well. Moreover, operative information does not represent an evidence. It is only a ground for initiating investigation. The evidence is a testimony of operative officer, who received this information. The reliability of mentioned testimony is problematic, which in most cases depends on the content of information and correlation of other evidences collected on the case with the said testimony.

It is important that according to article 8 paragraph 1 subparagraph "b" of the law on operative-investigative activity, the operative-investigative measure may be conducted when a crime is committed, which must be investigated, but there are no signs of crime or any other unlawful action, that would be sufficient for initiating investigation.

The mentioned provision contradicts with the requirement of article 100 of the Criminal Procedure Code, according to which investigation must be started upon receipt of application/notice about crime. The procedural law does not oblige investigation bodies to study/check facts mentioned in the application through operative-investigative measures before commencing investigation, and therefore, does not consider operative-investigative activity as a prerequisite for starting investigation,

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<sup>15</sup> *Gvasalia T.*, Operative Activity in Law-Enforcement Bodies, Human Rights Education and Monitoring Center (EMC), 2019, 34, <[https://emc.org.ge/uploads/products/pdf/GEO\\_WEB\\_1576492182.pdf](https://emc.org.ge/uploads/products/pdf/GEO_WEB_1576492182.pdf)> [21.12.2020] (in Georgian).

<sup>16</sup> *Laliashvili T.*, Criminal Procedure of Georgia, General Part, Tbilisi, 2015, 45 (in Georgian).

<sup>17</sup> Research of Unit for National Judicial Practice and Generalization of the Supreme Court of Georgia on Illegal Purchase-Storage of Narcotic Substances, January-June, 2018, 5 (in Georgian).

because investigators/prosecutors are obliged to initiate investigation upon receiving information. Consequently, the law on operative-investigative activity must comply with Criminal Procedure Code and respective norms must be specified/refined.

It is noteworthy that some operative measures envisaged under the law at the same time are prescribed in Criminal Procedure Code, as investigative action (for instance questioning), as well as by the law on police (for instance identification of person). Despite the purpose, it is necessary to differentiate investigative, preventive or operative character of the mentioned actions and to determine their functional conferment issue for avoiding parallelism.

### **3. Control Mechanisms on Operative-Investigative Measures**

“Vast part of operative-investigative activity remains invisible for society, which excludes possibility of public control over it.”<sup>18</sup>

For having good system of control and supervision over operative activity, firstly the nature of operative activity itself must be determined clearly.<sup>19</sup>

There is an institutional control, judicial control and procuratorial supervision over operative-investigative activity.

Within the framework of institutional control leaders of bodies performing operative-investigative activity are personally responsible for organization and legality of execution of operative-investigative measures.<sup>20</sup> Institutional control is carried out on every stage of operative-investigatory measure entirely, starting from process of receiving information, ending with its realization and result – with prevention or solution of case, or arrest of wanted persons, etc.<sup>21</sup>

Procuratorial supervision implies control over precise and uniform application of the law during execution of operative-investigative measures, as well as control over legality of decisions made in the process of performing operative-investigative measures. However, data on those persons who confidentially assist or were assisting operative-investigative bodies, collaborate or were collaborating with them, also methods for obtaining information of operative-investigative character, tactics and organization is not subject to Procuratorial supervision.<sup>22</sup> Right to operatively process the case, to look through secret materials of cases on operative-investigative register is attained only to persons envisaged under article 25 paragraph 5 of the organic law on “Prosecutor’s office”.<sup>23</sup> Operative-investigative activity which does not require approval from prosecutor, is not subject to procuratorial

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<sup>18</sup> Decision of the Constitutional Court of Georgia from 26 December 2007 on the Case №1/3/407: “Georgia’s Yong Lawyer’s Association and Citizen of Georgia Ekaterine Lomtadze Versus Parliament of Georgia”, II-13.

<sup>19</sup> *Gvasalia T.*, Operative Activity in Law-Enforcement Bodies, Human Rights Education and Monitoring Center (EMC), 2019, 79, <[https://emc.org.ge/uploads/products/pdf/GEO\\_WEB\\_1576492182.pdf](https://emc.org.ge/uploads/products/pdf/GEO_WEB_1576492182.pdf)> [21.12.2020] (in Georgian).

<sup>20</sup> See Law of Georgia on Operative-Investigative activity, LHG, 14(21), 30/04/1999, article 19.

<sup>21</sup> *Elenskii V. I.*, Grounds of Methodology of Theory on Operative-Investigative Activity, Monography, M., 2001, 204.

<sup>22</sup> Law of Georgia on Operative-Investigative activity, LHG, 14(21), 30/04/1999, article 21.

<sup>23</sup> Organic Law of Georgia on Prosecutor’s Office, LHG, 3794-IS, 30/11/2018, article 25, paragraph 5.

supervision. Hence, we may conclude that control over legality of execution of operative-investigative measures is carried out by prosecutor's office, but it is not clear what is included in the mentioned supervision and what is the scope of its performance, as far as the law does not indicate distinct and precise methods for carrying out supervision. Therefore, such supervision is not effective and sufficient. According to definition of European Law, it is necessary to issue permission for operative-investigative measures and supervision over them must be clear and predictable.<sup>24</sup>

Judicial control over operative-investigative activity is performed in accordance with the rules prescribed in the law on operative-investigative activity and criminal procedure code of Georgia. In the process of investigation court issues permission for executing investigative activities that restrict constitutional human rights, but judicial control is not covering all operative-investigative measures. The court permission is needed for body conducting operative-investigative activity while searching for missing person, while searching for accused or convicted person for presenting him/her to relevant state bodies, if he/she avoids executing imposed coercive actions or serving sentenced penalty, while searching for assets lost as a result of crime, in case of requesting data identifying electronic communication from electronic communication company or legal entity of public law - operative-technical agency of Georgia in accordance with article 136 of the Civil Procedure Code of Georgia.<sup>25</sup> Moreover, the mentioned authorized body shall address legal entity of public law – Operative-technical agency of Georgia, in accordance with chapter XVI<sup>1</sup> of the Civil Procedure Code of Georgia, for carrying our activity of determining geolocation of mobile communication equipment in real time. Obtaining data identifying electronic communication towards judge, may be also carried out by ruling of the Supreme Court of Georgia based on the motivated motion from the General Prosecutor of Georgia.<sup>26</sup>

As we see, paragraph 3 of article 7 of the law on operative-investigative activity is a blanket norm and includes indication on regulating this issue by procedure code. Besides that, determining geolocation in real time is envisaged under the criminal procedure code as secret investigative activity. Moreover, procedural legislation regulates obtaining identifying data of electronic communication for the purpose of investigation. Such regulation of judicial control over operative-investigative measures shows that despite implemented reform, the problem of differentiating operative and investigative activities is still on the agenda.

It is noteworthy that conducting other operative-investigative measures, the list of which is quite comprehensive,<sup>27</sup> does not require court permission under the law.

In order to exclude arbitrariness, disproportionate and improper interference into the protected sphere, while conducting operative-investigative measures, exclude non legitimate restriction of human rights, and ensure reliability of the information obtained through this activity and use this information in legal proceedings, it is necessary to enforce control mechanisms, including on those operative-investigative measures, which are carried out without court ruling. It is necessary to exercise

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<sup>24</sup> Case of Khudobin v. Russia, [2006] ECHR №59696/00, 135.

<sup>25</sup> Law of Georgia on Operative-Investigative activity, LHG, 14(21), 30/04/1999, article 7, paragraph 3.

<sup>26</sup> Ibid, article 7, paragraph 3<sup>1</sup>.

<sup>27</sup> Ibid, article 7, paragraph 2.



judicial control through presenting result of conducted activities to the court and checking their legality.

#### **4. Protecting Privacy to Personal Life During Conduct of Operative-Investigative Activity and European Standards**

In the democratic society, interference into the right may be justified only if legislation will ensure effective mechanisms for protection from abuse of power. The state with puts its citizens at a risk of secret control, must not have unlimited authorities.<sup>28</sup>

Information obtained through operative-investigative activity mostly entails data on personal life. If it is not related to criminal activity, these data shall not be publicized or used for any purpose. As storage of such information is forbidden, it must be destroyed immediately, and in case of requesting from electronic communication company or operative-investigative agency data identifying electronic communication under article 136 of the Criminal Procedure Code of Georgia, it must be destroyed immediately after 6 months from the end of operative-investigative measure.

As operative-investigative activity is based on conspiracy principle, data describing this activity represents a state secret. Therefore, there is a criminal responsibility envisaged for its dissemination. In such case the subject of crime is a person, who was confided with data describing operative-investigative activity. Also, a person, who got familiar with these data in relation to work or other obligations. Besides that, despite the time passed, it is inadmissible to disclose the secret employee who conducted operative-investigative activity or the source of received information, except in cases prescribed by the law.

The law on operative-investigative activity does not foresee right to inform person on interference into his/her personal life, which directly contradicts with the standard approved by European Court of Human Rights. In the case *Klass and others v. Federal Republic of Germany*,<sup>29</sup> the European Court declared that state is obliged to post factum give person a relevant information. A person must know that he/she is subject to operative-investigative measure. The European Court has established infringement of article 8 of the Convention, it also has stressed the necessity to inform person in many other cases as well.<sup>30</sup>

It is extremely noteworthy that the object of secret control may be other persons as well, when contacting by diverse ways those, who are subject to operative-investigative measure.

The law foresees right to appeal, in particular, if person considers that operative-investigative measure conducted towards him/her resulted in unlawful restriction of his/her rights and freedoms, he/she may challenge legality of the named measure in respective superior state institution, at Prosecutor's office or court (if after appeal the conducted operative-investigative activity is declared

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<sup>28</sup> Decision of the Constitutional Court of Georgia from 26 December 2007 on the Case №1/3/407: "Georgia's Yong Lawyer's Association and Citizen of Georgia Ekaterine Lomtadze Versus Parliament of Georgia", II-9.

<sup>29</sup> *Klass and Others v. Federal Republic of Germany*, [1978], ECHR 1978, (Ser. A.).

<sup>30</sup> See *Weber and Saravia v. Germany*, [2006], ECHR №54934/00, 135; *Shimovolos v. Russia*, [2011], ECHR №30194/09, 68.

illegal, the information obtained in line with Criminal Procedure Code of Georgia, will be announced as inadmissible evidence), but is it practically impossible to realize this right for simple reasons, that person who is/was subject to operative-investigative measure will not be informed about that. Comparing to secret investigative activities, person does not and may not know that he was subject to operative-investigative measure, which represents a shortcoming of legislation.

In majority of European Countries secret investigative measures which entail secret investigative activities, as well as operative-investigative measure, may be conducted only in case of serious crime, comparing to Georgia, where it is possible to conduct secret investigative activities in case of less serious crime as well, and conduct of operative-investigative measure is not restricted by the category of the crime. Besides, operative-investigative measures mostly are conducted without decision, permission, control or supervision of authorized body. Only in some exceptions it is necessary to have court ruling.<sup>31</sup> As for the assignment of prosecutor/investigator to conduct operative-investigative measure – the law does not stress out justification/argumentation of such assignment. Moreover, while conducting operative-investigative measures, comparing to secret investigative activities, there is no necessity of having evidence of justified assumption standard with regard to commitment of crime by a person. Such measures mainly are conducted based on doubt, assumption. According to European standards secret investigative measures/special investigative methods may be used only in cases when there is sufficient ground for the doubt about committing of serious crime.<sup>32</sup>

Purposes of operative-investigative measures and secret investigative activities are identical, which points to necessity of establishing high standard towards operative activity in terms of protecting human rights. In particular, operative-investigative activity may be conducted: for ensuring national security or public safety, for avoiding disorder or crime, for protecting interests of economic welfare of country or rights and freedoms of other people. Moreover, operative-investigative activity is conducted only in the case, when its conduct is envisaged under the law and it is necessary for reaching abovementioned legitimate aims in the democratic society. Data obtained through this activity must be proportionate to legitimate aim of operative-investigative measure.<sup>33</sup>

It must be said that mechanisms for implementing these aims, in comparison to secret investigative activities, are not outlined in the law. The rule, procedure, grounds and conditions of conducting these measures are not distinctly, clearly and comprehensively/sufficiently regulated under the law.

European Court of Human Rights has determined minimal standards for using operative-investigative activities. In particular, precise circle of crimes, which may be subject to operative-investigative measures, timeframes for mentioned measures, procedure of checking, using and storing obtained information, using cautionary measures in case when data are connected to other persons.<sup>34</sup>

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<sup>31</sup> See Law of Georgia on Operative-Investigative activity, LHG, 14(21), 30/04/1999, article 7, paragraph 3, 3<sup>1</sup>.

<sup>32</sup> Council of Europe, Committee of Ministers, Recommendation CM/Rec(2017)6 of the Committee of Ministers to Member States on “Special Investigation Techniques” in Relation to Serious Crimes Including Acts of Terrorism 5/07/2017.

<sup>33</sup> See Law of Georgia on Operative-Investigative activity, LHG, 14(21), 30/04/1999, article 2.

<sup>34</sup> Iordachi and Others v. Moldova, [2009] ECHR №25198/02, §95.

With regard to the monitoring of lawful conduct of operative-investigative activities, European Court defines that showing results of conducted activities to the court represents ground for checking legality of conduct of these activities. It may be stated that named standards are not incorporated into the Georgian legislation.

Conduct of operative-investigative activities subjected to judicial control is not limited under acting legislation, which is in compliance with European Court standards. Such activities must be limited by categories of crime, or by particular composition of crimes, as it is in many countries, for instance in Germany it is mainly extended to crimes against state, as well as to organized crime and some other crimes listed in the law. In France they are limited by types and size of penalties.<sup>35</sup>

In general, category of crimes must be taken into account during conduct of operative-investigative activities, as it is also determined by norms regulating secret investigative activities. The minimal evidential standard of executing operative-investigative activity must be established, also the circle of subjects must be determined, against whom it can be conducted. Besides that, post factum judicial control must be carried out of every type of operative-investigative measure. As for the operative-investigative measures to be conducted by the permission of court, from the interests of investigation person who is subject to operative-investigative measure, does not participate in judicial procedure. Hence, they lack protection means, which must be balanced with mechanisms of notifying and appealing conducted measures.

## **5. Conclusion**

Operative-investigative activity plays significant role in identifying and solving, as well as preventing crime. Moreover, as these measures are mainly conducted secretly, conspiratorially, there is a threat of arbitrariness from authorized persons and high risk of unlawful restriction of human rights. Hence, it is necessary to approximate operative-investigative activity regulations with European Standards, enforcing mechanisms for protecting legality of the named activity, existence of solid legal guarantees and clear provisions in the legislation, which will reduce to minimum the possibility of illegal restriction of human rights and make process of operative-investigative activity more distinctive and predictable.

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<sup>35</sup> See *Usenashvili J.*, Problem of Realization of Right to Privacy of Personal Life During Conduct of Operative-Investigative Measures Subject to Judicial Control, "Law Journal", №2, 2012, 95-96 (in Georgian).

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