LCRM – Legal Resources Centre from Moldova

Societatea civila solicit? expertizarea interna?ional? a proiectului de lege „Big Brother”

paik · Friday, April 8th, 2016

Civil Society Organizations are deeply concerned about serious negative consequences for fundamental human rights, which could result following the adoption of the draft law promoted by the Ministry of Internal Affairs and adopted by the Government on 30 March, 2016. The draft law provides extremely broad rights to the law enforcement bodies for an extended list of criminal offenses, to the detriment of the principles governing the protection of private life and the freedom of expression. Moreover, the entire burden of implementing legislative amendments rests on service providers, without having in place an analysis of costs and efficiency of measures to be undertaken, which could translate into significantly increased costs for on-line and Internet services.

Signatory organisations are well aware of the importance of preventing child sexual abuse and terrorism related offenses and do not question the need to improve the legal framework in these fields. However, the draft law goes far beyond its declared objectives and gives room for abuse.Thus, the social risk degree for which special investigative measures are provided vary for different types of offences, this risk being the highest in cases of sexual abuse offences against children, terrorism and even cyber crimes in comparison with infringement of copyright and related rights. We believe that special investigative measures are to be separated by different types of offenses, including social risk degree they imply, it being much lower in case of offenses relating to copyright and related rights. The draft law establishes generalized rather than specific and targeted surveillance measures. It has an extremely broad applicability and does not establish guarantees for respect of human rights. The burden of implementation of the legislative amendments rests on service providers. There is no balance between interference with human rights and implementation costs, on the one side, and the effectiveness of such measures, on the other one. Additionally, some terms are not sufficiently accurate and create opportunities for abuse.

Civil Society Organizations are also concerned about other legislative initiatives related to intensifying the law enforcement bodies’ control over digital space and verifying candidates for public offices. Such proposals refer to amendment of Law no. 271 of 18 December 2008 on verification of public officials and candidates for public offices, introduction of the Security mandate and reforming of Intelligence and Security Service. These laws also aim to access and store data of candidates or public officials, as well as to provide some unjustifiable powers, outside a criminal investigation process.

In conclusion, being aware of (1) the major risks of violating the fundamental human rights in case

of adoption of the draft law in its current version, (2) the insufficient reasoning of the informative note, especially in so far as to the assessment of costs to implement the draft law, (3) the drawbacks of the draft law that could lead to authorities' abuses, and taking into account (4) the lack of society's confidence in the law enforcement bodies, (5) the undemocratic manner the Filip government was vested in, which, although there were many other more important outstanding issues, adopted this draft law rejected by two previous Governments, (6) as well as the complexity of the draft law and its potentially major implications for the society as a whole,

THE SIGNATORIES TO THIS APPEAL REQUEST THE PARLIAMENT TO:

1. send the draft law for expertise to the Venice Commission in order to verify its compliance with the European standards;
2. seek assistance from development partners for an analysis of the European best practices of implementing the Council of Europe Convention on Cybercrime (Budapest, 2001) and the Council of Europe Convention for the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote, 2007);
3. widely consult the draft law with the civil society and promote initiatives that meet international standards and conduct an analysis of costs necessary to implement the draft law;
4. adjust the draft law to create an efficient legal framework to prevent and fight crimes against minors and terrorism on the one hand, and exclude from the draft law the criminal offenses for which application of special investigative measures that can seriously affect private life or freedom of expression is not justified, on the other hand.

The Public Appeal can be downloaded here.

Signatory organizations:

1. Legal Resources Centre from Moldova (LRCM),
2. Amnesty International Moldova,
3. Centre for Independent Journalism from Moldova (CIJM),
4. RISE Moldova,
5. Resources Centre DIALOG-Pro,
6. BIOS Association,
7. Foundation for Advancement of Moldova,
8. Association of Independent Press (API),
9. The Union of People with Disabilities from the Republic of Moldova,
10. Transparency International – Moldova,
11. Association Promo-LEX,
12. Association for Efficient and Responsible Governance,
13. East-European Foundation,
14. Terra-1530,
15. Institute for Public Policy (IPP),
16. National Environment Center,
17. The Independent Journalism Center (CJI),
18. Women's Association for the Environment Protection and Sustainable Development,
19. The *Association of* Professional and Business *Women from Moldova*,
20. Resources Center "Tineri si Liberi",
21. Small Business Association,
22. Institute for European Policies and Reforms (IPRE),

23. Association for Participatory Democracy (ADEPT),
24. Institute for Penal Reform (IRP),
25. Human Rights Embassy,
26. National Youth Council of Moldova,
27. Ecological Movement Moldova,
28. EcoContact.

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