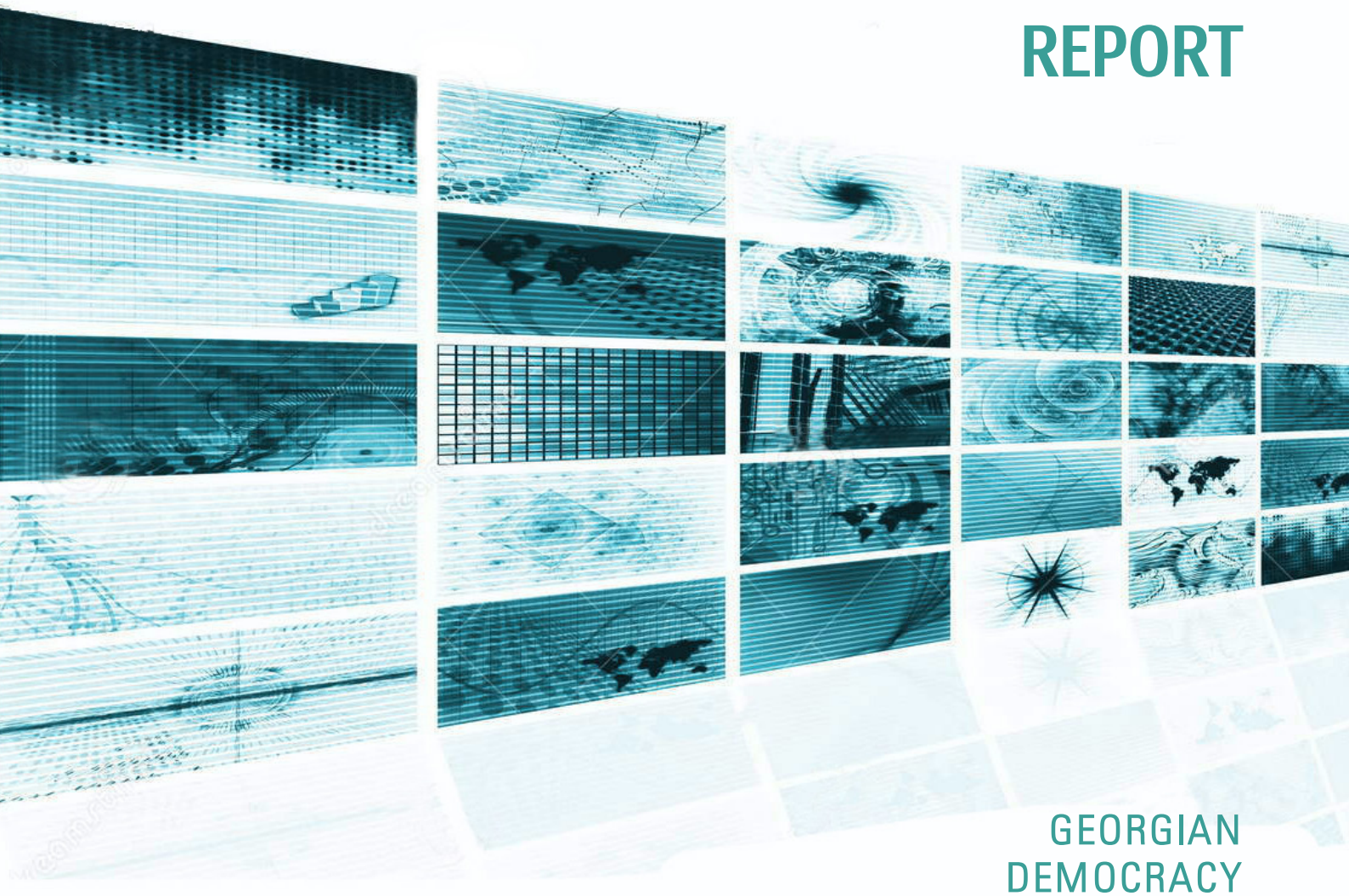
# FOUR YEARS OF "FREEDOM" FOR Media IN GEORGIA



## REPORT

GEORGIAN
DEMOCRACY
INITIATIVE

2016

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# TABLE OF CONTENTS

Our liberty cannot be guarded but by
the freedom of the press,
nor that be limited without danger of losing it.

THOMAS JEFFERSON

# INTRODUCION

The present report covers the issues of media freedom during the years 2012-2016 and examines all those issues, which were created during this period in this regard. The choice of these four years is not without its purpose, as they coincide with the four-year Parliamentary elections cycle in Georgia. Additionally, it must be considered, that a wealth of reports and research is available on the state of media freedom before the year 2012. Within this report, we evaluate the state of affairs in terms of media freedom after the Parliamentary elections of 2012. However, we must emphasize that other organizations have as well prepared reports on the subject. Unlike those documents, however, the present report is an attempt to review legal issues related to court procedures and factual circumstances, which will allow interested readers to arrive at a more complete understanding about the problems and challenges that still persist.

The present report does not intent to provide complete analysis of media landscape, but to focus on TV broadcasters solely. This narrowing down perspective is conditioned by the significant role they play and the contribution they make to public life. As the European Court of Human Rights observes it, "audiovisual media, such as radio and television, play an exceptionally important role in this regard. Due to the power to send messages using voice and image, these media assertthe power much stronger and instant than the print media."[1]

Freedom of media is a right protected by international conventions and the Constitution of Georgia. Article 24 of the Constitution guarantees the freedom of expression, which also included freedom of media, independent editorial policy of mass-media and freedom from censorship. The same article prohibits monopolization of mass information or the means of distribution of mass information. Given the afore-described, the State has the duty to take positive steps to ensure media pluralism, and at the same time, not interfere in media freedom and not influence this or that broadcaster, their editorial policy included. The European Court of Human Rights has reasoned, that in the field of audiovisual broadcasting, the state is tasked with the duty to "ensure, first, that the public has access through television and radio to impartial and accurate information and a range of opinion and comment, reflecting inter alia the diversity of political outlook within the country and, secondly, that journalists and other professionals working in the audiovisual media are not prevented from imparting this information and comment."[2]

Despite the afore-mentioned duties, the Government has tried, on multiple occasions during the reporting period, to bring this or that TV station under its influence and impact their editorial policy.

1 The decision of the European Court of Human Rights on 17.09.2016. Manole and others v. Moldova, Para. 97
2 The decision of the European Court of Human Rights on 17.09.2016. Manole and others v. Moldova, Para. 100

During the reporting period, events surrounding the Georgian Public Broadcaster (GPB) have attracted particular attention, which are described in detail and evaluated in the present report. These include: the inspection of the GPB by the Revenue Service and closure of talk-shows, which was explained by the GPB boss by their subjectivity and support for opposition political force. This decision has rightfully been linked by the NGOs to political motives. Furthermore, some outgoing GPB Board members have disseminated alarming information that they were subjected to threats and pressure, intended to force them to leave the Board. After the authorities failed to achieve this aim, the Parliament began to amend the Law on Broadcasting, and based on the changes, the entire membership of the GPB Board was suspended prior to expiration of their time (the members were elected by the previous Government of Georgia) and the new members were brought in.

Local and International society has been paying particular attention to the events surrounding Rustavi 2 (R2), a TV station especially critical of the Government of Georgia. It must be noted, that the authorities systematically criticize and have been criticizing the editorial policy of R2 and we have even seen information about the pressure that was applied on the employees of the Channel, including its Director General, Mr. Nika Gvaramia. The authoritative representatives of the governing coalition have been announcing that the R2 was going to be returned to "its rightful owners". In connection with this issues, it must be noted, that the changes adopted by the Parliament of Georgia in the Law on Broadcasting, which on the surface serves the noble aim of approximating it with the European Parliament and Council 2010/13/EU Directive, actually ignored the interests of the broadcasters, and for this reason the leading TV stations suffered economically (and among those, the R2 suffered most).

Launching of court trial related to the ownership of R2, brought the fight against televisions on a whole new level, which left the public with the impression that we they witnessed was not a legal dispute between two ordinary subjects, but a purposeful act of the Government against the TV station. The Georgian Democracy Initiative (GDI) has evaluated ongoing problematic issues with the trial:

- Unlawful and unsubstantiated rulings with regard to imposing sequesters on the R2 owned properties and appointment of temporary management;
- Unusual speed, with which the case was heard in the First and in the Second instance courts;
- The question of subjectivity of the First and the Second instance judges;
- Credibility of the evidences at the First instance court;
- The way decision was handed over to the necessary parties;
- The content of the First and Second instance court decisions, which contained grave, improper and against-the-established-practice interpretations of the Law.

Political motives that accompany ownership dispute at the courts is not only observed with regard to R2, but also with regard to another TV station – Maestro TV. This process was accompanied by mass abandoning of the job of Maestro journalists and the closure of several shows. Another confusion that attracted public's eye was related to Imedi TV station, where high ranking public-political shows were suspended and unexpected HR decisions announced.

In addition to these cases, the report reviews various instances of firing journalists from broadcasters, without due justification and on some occasions, unlawfully; the cases of interference in the editorial freedom, physical attacks against the journalists and other similar issues.

An important part of the report is dedicated to reviewing changes in the Georgian legislation, which may potentially affect media freedom. The analysis of recent legislative changes demonstrates, that the State frequently fails to consider negative effects of legislative amendments or ignores them purposefully, motivated by the desire to hurt certain broadcasters. We believe, that in making any legislative changes, the Legislator is mandated to taking into the account the interests of those persons, who will be affected by these changes.

In general, the will of the State to harmonize legislation to the EU legislation in advance and much earlier than required, merits positive assessment. However, these changes should not be carried out at the detriment of specific persons and at the price of damaging their interests, when there is no insurmountable aim/interest present that mandates to do so. It is unjustifiable, that the State is appealing on the idea of introducing more democratic procedures and at the same time, significantly damages the enjoyment of constitutionally guaranteed human rights and/or creates the threat of crisis, should they materialize, would render any rule, even if democratic, completely irrelevant.

The facts reflected in the report and the tendencies that were identified during the reporting period are analyzed in a complex manner, following chronology, existing contexts, and in consideration of the statements made by politicians and the representatives of the public. This allows the reader to have a holistic view on the state of media freedom in Georgia.

Complex observation of media environment illustrates the desire of the authorities to have complete or impactful influence on every leading TV station in Georgia. As the present reports makes it apparent, the closure of shows on the GPB, Imedi and Maestro and the suspension of working-legal relations with the employed journalists was directly or indirectly motivated by their non-loyal attitude towards the current government or their editorial policy was criticized by the authorities, while in the case of R2, the fight of the authorities to achieve sharp changes of its editorial policy is the most shining example, manifested in legal forms, of the Government's fight against the media owners.

The fact that the authorities are trying to influence this or that broadcaster, any such attempt, especially legal attack against them, is particularly dangerous in terms of state of freedom of expression in the Country. In sum, this poses threats to democratic processes in the Country and weakens healthy, competitive and pluralistic environment.

# 2.

# INFLUENCE OF THE LEGISLATIVE CHANGES ON MEDIA FREEDOM



## 2.1. INTRODUCTION

As it has been mentioned, the freedom of expression is a right protected under the Article 42 of the Constitution of Georgia. Within it, it presupposes the freedom of media to have independent information policy and not be subjected to any kind of censorship (Para 2, Art. 42).

According to the Constitutional Court of Georgia practice, the Georgian Constitution is influenced by the US Supreme Court practice, which establishes a very high standard for freedom of expression and protects any expression including the information or ideas, which are emotionally irritating or may be promoting unacceptable behavior.[3] According to the Court interpretation, limitation of the freedom of expression is only permissible, if it creates "direct, substantial and clear" threat of unlawful consequences.[4]

In addition to the Constitution of Georgia, norms, that regulate freedom of expression can be found in numerous legislative acts, among those, in the "Law of Georgia on Freedom of Speech and Expression", "Law of Georgia on Assembly and Manifestations", Crime Code of Georgia, etc. As for the media freedom itself, one of the most important documents in this regard is the "Law of Georgia on Broadcasting", which", which "according to the principles of freedom of speech and opinion and free entrepreneurship, defines the procedure for carrying out national regulatory duties and its functions in the field of broadcasting, regulates circumstances for the entrepreneurs in this field, the procedure and the rules for obtaining the right to broadcasting" (Law of Georgia on Broadcasting, Art. 1).

Within the last four years, several important amendments have been made with regard to regulating the field of broadcasting. Among those, the following are noteworthy: in accordance with the EU Parliament and Council 2010/13/EU, March 10, 2010 Directive, changes were made in the field of audiovisual media service. In this regard, it was problematic that the changes were made too fast, ignoring the interests of the leading broadcasters, due to which they suffered sizeable financial losses. Some members of the Georgian society took these changes as an act directed against the R2 Broadcasting Company, due to the fact that, the limitations imposed on the placement of advertisement had the biggest financial impact on R2. Furthermore, there were cases, when the Legislator, using the EU directives as the point of reference, tried to introduce such restrictive norms, which were not at all foreseen in the directives in question.

One more important issues, which is linked to the changes made to the Law on Broadcasting, relates to the new procedure of setting up the GPB Board. Despite the fact, that the new procedure has been, in general, received positively by the population, its implementation has shown serious problems, which brought the Public Broadcaster in an inevitable threat of crisis. Namely, one the one hand, the Parliament has in fact, terminated the authority of the outgoing Board, while it failed to appoint new Board members for a sizeable duration of time. Therefore, for almost one year, the GPB was left without the main management body.

[3] Decisison of the Constitutional Court of Georgia November 10, 2009 , # 1/3/421,422, II.Para.7;
[4] Decision of the Constitutional Court of Georgia April 18, 2011,#2/482,483,487,502, II.Para.104;

Furthermore, it must be noted, that the Constitutional Court of Georgia declared the annulation of the outgoing Board membership as unconstitutional. Despite this, the outgoing members of the Board still were not able to carry out the duties of the membership for the full period they were elected for. The Parliament "took into the consideration" the decision of the Court and to "compensate" the early termination of membership of the outgoing Board, it created a new body, monitoring council, which equipped the members of the old Board the right to supervise and give recommendations.

In totality, recent changes made in the legislation and their analysis shows, that the State often fails to take into the consideration the negative impact of these changes or is willing to deliberately ignore them. It is necessary, for the Legislator to take into account the interests of those person, which may potentially be affected by the adoption of the changes. Furthermore, it must positively be evaluated that the State is willing to approximate Georgian Law to the EU standards, however this cannot be done at the detriment of the interests of the specific persons, at their expense or motivated with the desire to hurt them when there is not insurmountable aim/ interest in acting so.

Furthermore, it is unjustified that the State has appealed to introducing the more democratic rules and has created the circumstances, which significantly damages the execution of human rights guaranteed by the Constitution and or created the threat of crisis, which, if they are materialized, make more democratic rules simply irrelevant.

## 2.2. CHANGES MADE TO THE LAW ON BROADCASTING WITH REGARDS TO AIRINGADVERTISEMENTS, TELESHOPPING AND SPONSORSHIP

### 2.2.1. Preconditions to making changes

On February 19, 2015 the Parliament of Georgia has amended the Law on Broadcasting. The draft law was initiated at the proposition of the National Regulatory Commission of Communications and sponsored by the Sectoral Economics and Economics Policy Committee of the Parliament. The Communications Commission 2014 Report, as well as, explanatory note attached to the draft law, the changes concern various types of advertisement and aims to regulate broadcasting market in Georgia and creating equal conditions for the market players, and harmonization of Georgian legislation in the field of broadcasting with the EU Audio Visual Service (AVMS) Directive.[5]

Cooperation in the field of audio-visual media is foreseen in the EU-Georgia Association Agreement (Chapter 18). Furthermore, XXXIII Addendum of the Agreement, Georgia must approximate, in predetermined dates, its Law with the EU Law and international legal instruments. Namely, March 10, 2010 EU Parliament and

[5] Explanatory note to the Draft Law on Ammendments on the Law Broadcasting<http://info.parliament.ge/file/1/BillReviewContent/54691? > ; 2014 Report, National Communications Regulatory Commission, 20.

Council Directive 2010/13/EU on "On coordinating specific acts foreseen by member states laws, regulations or administrative acts in the field of Audio-Visual Service" (Audio-Visual Media Services Directive).

The adopted changes have harmonized parts of the Georgian legal norms with the above described Directive. Among them was the Law on Broadcasting, in which the definitions of commercial advertisement and teleshopping were altered, a change was made to regulations on product placement in the shows and other related issues were regulated differently as well. Also, changes were made to sponsorship, advertisement break frequency in the air, etc.

It is noteworthy, that in the process of the legislative amendments, a heated discussion took place. Broadcasting companies express numerous concerns regarding the draft law, since the Law (especially, its first version) introduced extremely strict restrictions on the placement of advertisement and teleshopping as well as sponsorship, which has never been requested by the EU Directive in question.

### 2.2.2. Deficiencies in the draft law and comments taken into the consideration

#### *a) Placement of advertisement and teleshopping*

In the initial version of the draft Law on Broadcasting, it was planned that Paragraph $2^2$ would be added to Article 64, which regulated the frequency of ad-breaks to no more than 9 minutes (15% of the broadcasting hour) unless it was a dedicated advertisement or teleshopping channel. Broadcasters were not happy with this and expressed their concerns while the draft was being discussed, since such limitation is not the requirement of the EU Directive. Given this concern, the upper limit was raised to 20% of the broadcasting hour. Furthermore, according to the initial version, this restriction applied to any type of advertisement or teleshopping spot. However, final edition of the draft established exception, which stated that the restriction does not apply to statements made by the broadcaster itself or to products which are related to independent show or products that have direct link to the shows, are sponsorship statements and product/service placements (Article 64 (2) of the Law on Broadcasting). This exception is foreseen in the EU Directive Article 23(2) as well. It must also be considered, that the initial version of the draft, the 20% limitation was linked to the length of the broadcasting, while in the final version it was determined, that the amount of advertisement and teleshopping cannot exceed 20% of any broadcasting hour.

Additionally, the draft Law intended to introduce other restrictions as well. Namely, the intended changes to the Law, news edition could not be by advertisement or teleshopping more frequently than once in every 30 minutes. The broadcasters in this case also were concerned, that ad breaks would be rarified from 15 minutes to 30 minutes. It must be noted, that the draft Law was adopted without this amendment to it, however an additional Paragraph 32 was added to Article 76, a transitional provision, which stipulated, that until January 15, 2017 news broadcasting cannot be interrupted by ads or teleshopping no more frequently than once in every 15 minutes. After that date a 30-minute rule will be enacted.

### *b) Sponsorship*

The initial version of the draft Law prohibited mentioning sponsor in the announcement of the show that was fully or partially funded by the sponsor (Law on Broadcasting Article $68^2$). Furthermore, the draft intended, that a show fully or partially funded by a sponsor should only mention sponsor briefly and not more than 5% of the total time (Art. $68^2$). This provision was eliminated in the final version, however a transitional provision was added to the Law, which states that until January 15, 2016: "a show that is fully or partially funded by a sponsor as determined by Article 68 of this Law, referral to a sponsor in the independently produced show or own shows may not exceed 4 minutes of every broadcasting hour". EU Directive does not foresee introduction of limitation of sponsorship duration at all.

One of the concerns in the process of discussing the draft Law was that the sponsorship defining needed to be in harmony with the Directive. Namely, Article 67(3) of the Law stipulates, that: "when sponsorship takes place, it is prohibited to directly call for buying, delivering or using a product/service by directly and specifically indicating this product/service." According to the broadcasters, such formulation was inconsistent with the Directive and unlike the Directive, it gave an extremely broad margin of appreciation. Unlike the Law of Georgia on Broadcasting, the EU Directive prohibits such calls only through TV shows. Hence, similar calls and ads cannot be part of the program, which are funded by a sponsor, while the term used in the Georgian Law, "during the sponsorship" may also involve other issues, such as sponsorship announcement, sponsorship breaks, etc.[6]

The concerns expressed in connection with this norm were not taken into the consideration, however a transitional provision was added to the Law, that the National Communications Commission must established guiding principles on sponsorship until the January 15, 2016 and base it on the EU Directive 2010/13/EU and the EU member states' practices. The Commission has adopted this document;however, its guide fails to directly determine what the term 'during the sponsorship" means. Furthermore, all in all, various provisions of the regulation show, that the Commission applies this restriction (on referring to sponsors) both "the duration of the show" as well as "the announcement of the show".

### *c) Timeframe for the adoption and enactment of the Law*

One of the issues at the state of discussing the draft Law was the dates for its enactment, which in the opinion of broadcasting companies and NGOs, and the **Council of Europe Parliamentary Assembly, was forced and significantly disadvantaged broadcasters.** Namely, enactment of the major part of the Law was initially planned within 15 days of its adoption (the Law was adopted on February 19, 2015), however later it was enacted on April 01, 2015. At the request of the authors of the draft Law, a rapid hearing, was planned, but given the concerns of the broadcasters, it was enacted only two months after its initiation.

[6] Media Freedom 2015, Media Development Fund, 13; Maestro's comments regarding the draft Law.

Special accent was made by the broadcasters and the representatives of civil society, on the postponing of the 20% limitation rule until 2016, since it was imposing heavy financial strains to broadcasters. These concerns were ignored. Main body of the Law, including this norm, was enacted on April 01, 2015.

According to the XXXIII addendum to the EU Directive 2010/13/EU, its provisions should be enacted within three years of signing the Association Agreement, while Article 23 of the Directive, which regulates ad breaks in the broadcasting hour, within 5 years of signing the Agreement. Association Agreement entered into the force fully on July 01, 2016. Hence, clock started only ticking from this date on. Despite this, the changes were made to the Law much earlier, in 2015. As to why such a rush to enact these norms, the head of the Sectoral Economics and Economics Policy Committee, Zurab Tkemaladze stated, that „working on the issue started in 22011 and today, the Parliament is completing its work on this"

### 2.2.3. Evaluations

Parliamentary opposition, broadcasters and civil sector gave strongly negative assessment on the amendments made to the Law on Broadcasting. Rapid and forced changes were understood as campaigns directed against large broadcasters. In the opinion of Transparency International – Georgia, "looking at the discussion of the draft Law at the Parliament of Georgia, one is left with the impression, that the main goal for the MPs, is to impose restrictions on the largest players on media market". Parliamentary opposition believed that the changes were directly addressed to damaging largest and most popular TV station in the Country, Rustavi 2. In their assessment, the goal of the changes was to shut the Channel completely. Also, it must be taken into the consideration, that disputes related to the ownership of Rustavi 2 began in the Tbilisi City Court in August, 2015.

In the words, of Nika Gvaramia, Director General of Rustavi 2, the changes made in the Law contributed to GEL 5 Million deficit in R2's budget. Also, it was problematic that new commercial regulation changes were enacted in the middle of a financial year, while most of the ad contracts had already been signed for the total duration of the year.

Gogi Topadze, the representative of the Parliamentary Majority, stated, **„what is this Rustavi 2, which has been subjectively assessing events, is one sided and it is natural that there were some restrictions imposed on it".**

CoE Parliamentary Assembly stated: "it is alarming, that since the 2012 Parliamentary Elections in Georgia, questionable changes are made related to media ownership and the Law adopted, which aims to limit financial independence of private broadcasting, which will potentially impact their editorial independence as well. "[7]

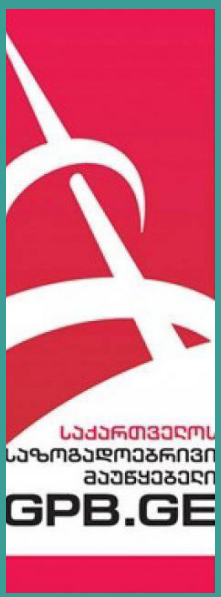
Hence, despite the fact that some concerns were taken into the consideration, all in all, the desire to adopt the Law as soon as possible, its immediate enactment, ignoring the major concerns with regards to the ad breaks, also the introduction of regulations that do not fall in line with the EU Directive, events ssurrounding Rustavi 2 as soon as the Law was introduced and evaluations of a broad spectrum of society leaves the impression, that apart from the stated goal to harmonize Georgian Legislation to the EU Directive, the covert aim of the Parliamentary Majority was to create financial problems to the Rustavi 2 Broadcasting Company.

[7] Protection of the safety of journalists and of media freedom in Europe, Resolution 2035 (2015), Parliamentary Assembly, para. 14 <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=21544&lang= >

# 3.

# THE PROCEDURE FOR ELECTING THE BOARD OF THE GEORGIAN PUBLIC BROADCASTER





## 3.1. CHANGES MADE TO THE LAW ON BROADCASTING
## CHANGES MADE TO THE LAW ON BROADCASTING ON THE RULES FOR SETTING UP GPB BOARD

One of the most important legislative changes, that was made to the laws that impacted media freedom, was the change of the procedure the GPB Board is appointed. In this regard, the Law on Broadcasting was amended in July and November 2013.

It must be noted, that with these changes, the number of Trustees – Members of the board was reduced to 9 from 15. The procedure for their elections was changes as well. The new procedure requires setting up of selection commission, composed of 9 members of civil society representatives and academics, that makes an open call for future trustees. Among the shortlisted candidates, the Public Defender chooses two candidates, three is chosen by the Parliament's majority, three by Parliament Minority and one by the High Council of Adjarian Autonomous Republic. The Board members are elected by the majority of MPs.[8] The previous procedure allowed the President of Georgia to make an open call for Trustees, and appointed by the President with the Parliament's consent.[9]

Early termination procedures, Board meeting procedures, election of the Chair and Deputy Chair rules were changes as well. The Board is not able to vote the Chair and Deputy Chair out early; Changes were made to the functions of the Board and to the responsibilities of the Board members and to the procedures of election the Director General and voting him/her out early. The amendments to the Law have provisioned for the establishment of LEPL Adjarian TV and Radio for Public Broadcasting, defined its structure, procedures for the election of its Board and Director, early termination rules and other important aspects.

These changes were vetoed by the then President Saakashvili. He had four main arguments, among them, he criticized the general procedure for the early termination of Trustee responsibilities and early termination procedure for the then active members of the Board. In the President's opinion those norms were to stay enacted, which established higher quorum for the Parliament to launch early termination procedures and decide on it. In his opinion, the draft Law introduced additional reporting duties to the Communications Regulatory Commission – a heavy administrative burden on the GPB.[10] One more criticism went to the new draft Law, which allowed the Parliament to vote No-Trust to the full composition of the Board, which was not provisioned for in the then enacted Law. In the words of the President's Press Speaker, „these provisions of the draft Law substantially reduce the independence of the GPB, its Board and its members from the authorities and introduces a risk that a member of the Board can be fired due to political reasons".

The Parliament ignored President's criticism, overcame the vetoed and finally, the Chair of the Parliament signed the Law, which it enacted immediately.

[8] Law on Broadcasting, Article 24(2), 25 and 26(1).

[9] Prior to July 12, 2013 version of the Law on Broadcsting, Article 26.

[10] According to the draft Law, the GPB must report to the Communications Commission before May 1, about the previous years actives, passives and investment.

## 3.2. CRISIS CREATED BY THE CHANGES AT THE GPB

Despite the fact that the new procedure of Board appointment was received positively, serious issues were identified during its implementation and for quite some time, it even contributed to crisis at the GPB.

### *a) GPB without the Board*

According to the transitional provision of the Law on Amendments in the Law on Broadcasting, "after this Law is enacted, before the new Board is elected, the acting Board is suspended to make any decision, save for recommendations. "[11] At the same time, per amendments, the newly elected Board will only assume responsibilities after the Parliament has elected at least 7 members.[12] Hence, we were faced with the situation when the old Board was suspended (their term expired on November 25, 2013) and on the other hand, for the new Board to begin operations, Parliament needed to elect at least 7 members. But, until the end of January 2014 the Parliament could not manage to appoint more than 4 members (3 were appointed on December 27, 2013 and one on January 24, 2014), while the remaining three were appointed on March 11, 2014.

Initially, these changes were supposed to enter into the force in July, 2013, however, the need to consider the comments of local and international organizations forced the Parliament to postpone the enactment of the new procedures. Finally, the new procedures were enacted on November 25, 2013. The outgoing Board membership was extended by 4 months but with reduced functions – they could only issue recommendations. During this period, the norm that provided for the election of 7 members and early termination of the old Board had been disputed at the Constitutional Court, which it had suspended and declared by the Court as unconstitutional on April 11, 2014.[13] To reflect on this, the Parliament adopted a new norm on May 02, 2014.

Hence, from July 25, 2013 to May 02, 2014 (almost one year) a legislative vacuum was created and the GPB was left without legally representative/functional Board and during this period the Broadcaster could not make strategic decisions, including the adoption of programmatic priorities, adoption of the new statue, of budget, etc. During this period, the Parliament failed to vote on the candidates the Minority had proposed. Next, on March, 2016 the Parliament has not made any public competition for the vacant member positions of the Board.[14]

### *b) Definition of the dates of authority based on the principle of sortation*

One more important problem, which arose as the result of early termination of old Board and non-election of the new one, is related with terms that are defined by draw. The amendment introduced a transitional provision that "the elected members of the Board will draw a lot, which will define the length of the term so

11 Law of Georgia on Amendments to the Law on Broadcasting, Article 2(7), November 20, 2013 edition.
12 Law of Georgia on Amendments to the Law on Broadcasting, Article 2(3), November 20, 2013 edition.
13 Remark: detailed discussion about this decision of the Constitutional Court will be offered below.
14 All vacancies were fully filled with a two year delay, in April, 2016.

that one third of the Board members will be in the office for 2 years, one third for 4 years, and one third for 6 years."[15] This norm ensured, that the requirement of the Article 24 of Law on Broadcasting was met, which stipulates, that: "one third of the Board membership is replaced, rotated once in every 2 years". Given the fact that the eligible composition of the Board was appointed in May, 2014 (7 out of 9), the procedure could not be enacted before that date. However, the 7 members of the Board voted on June 12, 2014, and decided not to hold the lot. They justified their action by the omission in the Law, which does not specify when this procedure must take place.[16] The Chair of the Board argued, that this would place the yet-to-be-elected members in an unequal position. Hence the procedure was postponed until all 9 members were elected.[17] The sortation did not take place until two years later, on February 25, 2016.

Hence, during the entire period, due to the fact that the Parliament kept failing to appoint to candidates the Minority was proposing, the term expiration dates of the Board members have not been defined and it was unclear as to which two members were to expire their time after two years, which jeopardized the possibility of this rule even to be respected and furthermore, it may have rendered the Board ineligible, due to the fact that two seats remained vacant.

### 3.3. DECISION OF THE CONSTITUTIONAL COURT OF GEORGIA ON THE CASE OF EARLY TERMINATION OF THE AUTHORITY OF THE GPB BOARD MEMBERS

According to the transitional provision of the Law on Broadcasting, as soon at 7 members were elected, the Board should have become operational. This meant that acting Board membership expired early and they were going to be replaced with new members.

The norm was disputed the acting members of the GPB Board at the Constitutional Court and requested to invalidate them for violating Article 24 (freedom of expression), Article 29 (right to occupy public office) and Article 30 (right to labor) of the Constitution. In their opinion, the enactment of the new procedure would automatically terminate existing Board, which amounted to gross interference in the operations of the GPB, violation of its independence and attack on the constitutionally guaranteed rights.

The Court accepted the case for substantial hearing in the segment, which concerned the relationship of the disputed norm with Article 29 of the Constitution. Furthermore, before the final judgement was issued, it suspended the norm, while its April 11, 2014 decision declared the norm unconstitutional and explained: **„the new procedures, offered by the legislator, even if it is more pluralistic and effective, does not immediately give rise to the need to terminate early the responsibilities of the existing Board. This aim can be achieved**

[15] Law of Georgia on Amendments to the Law on Broadcasting, Article 2(1), November 20, 2013 edition.
[16] "The new model of the GPB Board and the management crisis that is to be expected", Media Development Fund, February 08, 2016, 5.
[17] LEPL Public Broadcaster Board meeting protocol #273, June 12, 2014.

**without early termination of the Board membership. Hence, the restriction imposed by the disputed norm does disproportionally limit the rights of the claimants guaranteed by Article 29 of the Constitution, and is hence, unconstitutional."**

## 3.4. EXECUTION OF THE DECISION OF THE CONSTITUTIONAL COURT OF GEORGIA

In parallel to hearing the case at the Constitutional Court, the new Board was elected following the new procedures enacted by legislative changes, while after the decision of the Court was issued, further amendments were made to the Law on Broadcasting on May 2, 2014.

According to these amendments, to ensure institutional knowledge transfer in the reform process at the GPB and to ensure internal control on the new Board, a temporary **body was created** – Monitoring Council for GPB. The members of the Council are awarded to Board members, who have been elected to the Board for the moment the new Board entered the office. The members of the Council are the same as the **members of the old Board**, until their term to the old Board had expired. This change allowed 7 members of the old Board to become the members of the Council.

According to explanatory note, "the goal of the draft Law is to ensure the Constitutional Court decision is enforces and is motivated by its decision:

a) to fil in the legislative gap that the Constitutional Court decision has created in the Law on Broadcasting;
b) to carry out GPB reform in a way, that a reasonable balance is maintained in this state budget funded TV, which requires fundamental changes, a high priority for public, and the constitutional rights of the citizens."

Hence, in the Parliament's opinion, creating this Council was a certain type of compensation, a replacement mechanism, which enabled the new procedure to enter into the force and also kept the offices of the old Board members to keep them in the management system.

The Monitoring Council recommends the Board and the Director General in terms of violations, financial misdemeanors and or when the rights of contractors are violated at the GPB; also, they are allowed to motion with the Parliament to vote no-confidence of the Board, if certain grounds are present. The Council may demand a joint meeting of the Council and the board and to hear a report and/or to hold a committee hearing in the Parliament about the problems identified at the GPB. Hence, all in all, the Council is limited to counselling and monitoring functions unlike the Board, which adopts strategic policy of the Broadcaster and makes specific decisions. Therefore, it remains unclear, to what degree did the Parliament meet the decision of the Constitutional Court and executed it: The Court emphasized on the stability of the Board membership, the principle of legal trustworthiness (legitimate expectation that one will be able to carry out duties for the period one was elected for) and that is why it reasoned that the disputed procedure was not proportional. It is true that the Court speaks about equal opportunities of the old and the new Boards, but not within the mechanism that the Parliament has offered to the old Board members, but the Court expects, that the members

will be able to resume their duties, which they are entitled to under Article 29 of the Constitution. However, the Parliament's solution significantly reduced their responsibilities by placing them in the Monitoring Council.

In summary, the early termination of the Board and a list of developments around this case have given rise a well-founded suspicion that political interest was behind in ousting the composition of the old Board, since they were elected by the previous Government. This was further fortified by the statements of the former Board members, who have alleged that the members of the Parliamentary Majority were applying pressure on them. According to them, the members of the Board were being threatened and demanded they leave the Board. In this period, two members have voluntarily left the Board. The Board members also spoke about criticism, that was expressed by the MPs from the Majority towards the work of the GPB and its editorial policy. In their assessment, the processes surrounding the GPB was part of a dedicated campaign launched by authorities to gain full control on the Broadcaster.

# 4.

# PUBLIC BROADCASTER

## 4.1. CLOSURE OF THE FIRST CAUCASIAN INFORMATION TV CHANNEL PIK AND FINANCIAL INSPECTION

After the 2012 Parliamentary Elections, the issue of reforming the GPB has become a priority, as the new Government was interested in replacing the Board and in general, the management of the Broadcaster, elected by the previous administration. Given the political background preceding the change of power in Georgia, in October 2012, the GPB has suspended contract with the First Caucasian Channel (PIK) signed in 2010. PIK was a third Russian language channel that existed to fill the information gap that existed, in the first place, in the Northern Caucasus. Before that, the only information that the population of the region received on Georgia, came from Russian TV channels and naturally, the attitude towards Georgia was hostile. In fact, the main aim of the PIK was to counter Russian propaganda machine, which takes place in Non-Georgian speaking population via Russian TV channels. Russian authorities have been often criticizing PIK and it was terms as Georgia's Anti-Russian propaganda and an attempt to introduce "extremis ideology in the Northern Caucasus."

After the suspension of the Contract with PIK, the Channel was shut down, and up to 400 journalists were left without jobs. The GPB declared, that one of the reasons the contract was suspended was the silent protest action that PIK staff have organized in the live open air. The GPB accused PIK of violating contract terms.

Several days after the elections, the outgoing Government of Georgia wrote down the GEL 20 Million that PIK owed. This was part of the financial amnesty. In November, 2012 the Revenue Service has begun inspecting the GPB for not paying GEL 5 Million. As the GPB manages public capital, this inspection was perceived by the public and has given rise to grounded suspicion, that the Government of Georgia was trying to impose control on the GPB.

The actions of the new Government were alarming from the very start. Change in the GPB management have from the start made many assume, that the TV Company would be subjected to influence from the political forces and would be controlled, which would jeopardize independent operations of free media and professional work of each journalist.

## 4.2. SUSPENSIONOF POLITICAL TALK-SHOWS

On September 1, 2013 four members of out of 13, including the Chair of the Board, had their term expired. Soon, the GPB has again, become the epicenter of political events and accusations.

On September 6, 2013 the Board has voted no-confidence to the Director General, Giorgi Baratashvili and removed him from the position. On April 18, 2013 before the new Director General has been appointed, First Deputy Director had been appointed as the acting Director General. The Board argued, that Baratashvili did not timely and exhaustively inform them about shows and budgetary issues, which was the reason for his ousting. 6 months prior to that, Baratashvili had been declared no-confidence from the Board, however he was then able to sue the GPB and be restored back to the Office.

Before his second ousting, the attention of the public turned to potential suspension of author's political talk-shows of Eka Kvesitadze and David Paitchadze. The management has announced the Kvesitadze's Accents and Paitchadze's Dialogue could potentially be shut down.

The representatives of the management declared, that the Broadcaster would continue cooperation with both journalists and they could both be able to have new shows come September. NGOs made a special statementon the issues. In their opinion, events surrounding the GPB were of political nature, which negatively affected the reputation of the Channel, given that independent media – the GPB must serve public and not to some political groupings, so that it is able to fairly conduct its aims.

Acting Director General, Tamaz Tkemaladze, who decided to shut down these two shows, declared that the decision came due to non-impartiality of Eka Kvesitadze and David Paitchadze and their support for the opposition political force. This has, once again, emphasized that the shows were shut downs due to political motives, despite the fact that there did not exist any research that would confirm that these two shows were biased politically. Tkemaladze also did not allow to Air political ads of UNM, which criticized the governing Georgian Dream coalition.

## 4.3. PRESSURE ON THE GPB BOARD MEMBERS

As it was mentioned above, in July 2013 the important events took place at the Parliament that has had impact on the GPB, when despite the resistance of the Parliamentary opposition, the Majority still voted for changes in the Law on Broadcasting regarding the new procedure to appoint its Board. This led to President's veto, which was later overcome.

On September 30, 2013 and on October 2, 2013 two members of the Board – Eka Mazmisvhvili and Avtandil Antidze left the Board. In the assessment of other members of the Board, these two were forced to abandon their positions.

The Chair of the Board, Emzar Goguadze declared, that the trustees were under pressure to resign. This was motivated by a desire to paralyze the Board and together with it, the work of the GPB. Goguadze has also declared, that he came under indirect pressure from the Adviser on Security Issues to the Director General of GPB – Irakli Tsibadze.

In Goguadze's words, Tsibadze was an employee of the Ministry of Internal Affairs and the secret representative of this body to the GPB, tasked with controlling the situation on the spot. It must be noted, that the representatives of MIA, the so called „Odeeri" are usually dispatched throughout various state bodies, as it has been widely discussed by Lasha Tugushi, Editor of Resonansi Newspaper in his meeting with the then PM of Georgia, Bidzina Ivanishvili publicly. Ivanishvili has publicly confirmed that the problem exists and has promised the public to solve this in the shortest period possible.

TI Georgia has addressed the MIA with the request to investigate the statement of the GPB Board and to remove own security officers ("Odeeri") from various bodies, however the MIA has termed the statement of TI Georgia as "not serious" which in fact meant the it did not plan on removing their security officers.

## 4.4. CLOSURE OF EKA MISHVELADZE AUTHOR'S SHOW

In September, 2015 The Channel 1 of the Georgian Public Broadcaster shut down Eka Mishveladze's Author's Show. According to Basa Janikashvili, an adviser to the Director General, the reason for closing the show was the family state of affairs of Mishveladze. Namely, her marriage to one of the leaders of Free Democrats, Alexi Petriashvili. The Adviser to the Director told the journalist at the public meeting, that according to the Broadcasters' Code, a journalist, which is married to a political leader, should feel inconvenient to lead a political talk show. The Law on Broadcasting, Article 23 stipulates, when a conflict of interest arises for the staff, a Trustee and the Director General of the GPB, however the Law does not foresee any kind of restriction for an employee in this regard.

Later, on February 10, 2016 Eka Mishveladze was entirely sacked from the GPB. The journalist has received a letter from the Director General, Giorgi Baratashvili, which mentioned that her entire show Pirveli Studio had been shut down, and the new show that she had produced was also not liked by the management of the Channel, since the topics, the project covered, were already broadly covered by a number of other shows on the same Channel.

On March 07, 2016 Mishveladze submitted an appealed to the Tbilisi City Court, in which she requested that the order used to fire her and the order that shut down her talk-show be annulled. She sought to be restored back at the work and compensation for damages incurred as a result of discriminatory treatment. The case is still open at the Court.

# 5.

# IMEDI TV COMPANY

## 5.1 SUSPENSION OF PUBLIC-POLITICAL SHOWS

On August 29, 2015 TV Company Imedi declared that public-political talk-shows would be temporarily suspended, namely, TV Shows Reaction and Imedis Kvira, which would not be renewed from the new season, since Imedi TV planned to alter the format of its shows. Therefore, the viewers would be offered new products from 2016. Imedi management did not elaborate further on this.

On August 31, 2015 Inga Grigolia, the anchor of these two shows wrote on her Facebook profile wall and linked the closure of these shows to political motives. In her words, the authorities did not want to keep her on the air in the pre-election period. "I have full right to think that, this is a political decision and here's why – there is not a private TV station in the world that will shut down a show that brings immense advertisement money and has extremely high rating. Furthermore, it does not shut down two shows like that. Two high ranking shows. This is how TV is. That is why I believe, that this is a political decision" – wrote Grigolia.

On the same day, a joint statement was issues by the producers of the shows and other journalists of Imedi. They protested the manner, in which the management had shut down these showsand based on this, expressed their suspicion, that the decision may have been of political nature. In the same period, some authorities were quite vocal in their dissatisfaction regarding these two shows.

The closure of these shows was preceded, on March 20, 2015 by a statement of Inga Grigolia, that the Georgian Dream Parliamentary Majority categorically demanded TV Show's authors that they must not cover the issue of public demonstration that the United National Movement had planned for March 21. In the same week, the anchor of Imedis Kvira TV Show, Eka Khoperia opined, that "for the Government, impartial Imedi is unacceptable". The management of Imedi categorically distanced itself from the position of the journalists and officially denied that the authorities were applying any kind of pressure.

Despite arguing otherwise, shutting down shows before the elections has given rise to suspicions in the NGO sector as well. Namely, Transparency International – Georgia, wrote, that the statement of Imedi Management did not adequately explain why public-political talk-shows were suspended: "especially intriguing is the circumstance, that staff was not informed about upcoming changes, which indicates that there were no internal consultations held on the subject. Making such crucial decisions in this manner and distributing the news through media not only publicly hurts the journalists working there and the independence of the working teams. It is this lack of clarity and questions unanswered, that society is suspicious if Imedi is independent from political influences" – TI Georgia wrote in their statement.

Former PM, Bidzina Ivanishvili has also commented on the issue. In his opinion, closure of shows on Imedi is an artificially exaggerated topic, while Inga Grigolia's position about the political nature of the decision – is her subjective opinion.

On August 31, 2015 a difference viewpoint was offered by the President of Georgia, Giorgi Margvelashvili. In his assessment, „this is alarming, when this tendency in media processes leaves us with questions."

Inga Grigolia has continued to become the subject of pressure in the coming periods. On March 11, 2016 internet media spread the news, that a threatening message was distributed online which contained video which depicted moments from private life of the journalist. Responding to this, the journalist made a special statementon March 14, live on air. In her statement, Grigolia said that she did not plan to abandon her line of work and cave in to blackmailing, and that she would defend her own and other human rights till the end.

On March 25, 2016, a Georgian Dream MP, David Lortkipanidze, who was invited as a guest in her show, used the following phrase to greet the journalist on live Air: „Hello, Mrs. Inga-in-love". Later, in his interview with the Alia newspaper, Lortkipanidze stated, "I would not be surprised that some former or current high ranking officials will turn out to be the lover of certain people. From now on, I will be more keen to find out these things and I expect events to take interesting turn", This statement of the MP was perceived by Grigolia as an open threat towards her, which she discussed in details during here guest time at the GPB talk-show.

Next, Imedi TV was under spotlight once again, in April 4, 2016. Shalva Ramishvili, journalist on Imedi TV, announced on his Facebook wall that his working relations with the Imedi TV were suspended. According to him, he received a letter from the management, which informed him, that all contracts between him and Imedi were suspended. The letter did not elaborate on more details.

On April 7, 2016 Imedi TV released an official statement. In it, Imedi explains, that the Imedi has suspended contracts with the company, that was linked to Shalva Ramishvili. As for the television products, prepared by this company specifically for Imedi TV, the statement said that the Channel was going to keep these products and would continue working relations with the creative teams behind them.

Next day, a former employee of Imedi TV, Tatia Samkharadze distributed press-release, that she was the victim of sexual harassment and she was going to sue Shalva Ramishvili for harassing her. Ramishvili denied the allegation and started talking about real reasons he thought he was being fired from Imedi. In his words, scandal about Tatia Samkharadze was a pretext to get rid of him, while the real reason was that he had conflict with the management of Imedi TV. The conflict arose regarding the invitation of the Secretary of the High Council of Justice, Levan Murusidze onto his talk-show, Politics.

Namely, Director of Imedi TV, Giorgi Bakhatdze gave a list to Ramishvili, which listed those judges, that supported Murusidze. They were going to oppose Shalva Shavgulidze, an MP. Ramishvili declined to follow the order. Next, Giorgi Bakhtadze blackmailed Ramishvili to use secret recording material, that was made by Tatia Samkharadze. To prove this, Ramishvili published the private conversation he had with Bakhtadze over Viber. Respondent party has not contested the authenticity of the communication. Based on this communication, the Journalist Ethics Charter determined, that Bakhtadze had indeed violated Principle II of the Charter (a journalist may not be forced, while carrying out professional duties, to act or express in a manner, that goes against his/her beliefs) and pointed out, that **"it is clear, that Giorgi Bakhtadze has violated editorial independence of Shalva Ramishvili and has pressured him".**

The member of Free Democrats, Shalva Shavgulidze said, **„the Georgian dream forced Ramishvili to hold PR campaign for Levan Murusidze in his show, before they appointed him at the Council for the second term."**

According to June 23, 2016 Chronika News Edition on Imedi TV, the former chief of the News Service, Maia Tabagari was transferred to the position of the Consultant to the Director of Imedi TV, and she was being replaced by Nana Lezhava. According to Thea Sitchinava, news anchor of Chronika, she learned about this day, and that none of the employees in the news service expected this change. Therefore, a new list of questions arose, to which News Service staff did not have answers for. They distributed another statement, where they noted, that HR changes in the pre-election period would jeopardize the reputation of Imedi TV staff, trustworthiness and the level of freedom of expression at Imedi TV.

Although Imedi TV is a private TV company, it has made financially irrational choices – shutting down of popular shows, irrational shuffling around of key staff, which do not help to rule out that editorial independence is impacted. Gross interference in the editorial independence of journalists and pro-governmental censorship always give rise to a suspicion, that these decisions are not made to benefit the Imedi TV, but are based on political interests.

# 6.

## TV 25

On December 29, 2015 TV 25 Chief of News Service, Maia Merkviladze, who has been on the position for 8 years, has called a press conference to declared that the management of the TV was forcing her to take two-months paid leave. This, according to her, was to influence editorial policy of the Channel 25. According to her, she was insulted by her staff for a coverage she had aired, about the arrest of the father of this employee. Merkviladze declared, that the management of the Channel could not put a stop to this conflict, which caused the 5 O'clock News Edition not to be aired at all. She recounts,that next day, the owner of the Channel 25, Archil Verdzadze and the Director Ghia Surmanidze have offered her to take a 2- months paid leave, to which she disagreed and requested explication.

The founders of the TV Channel 25, on December 31 have decided to completely suspend broadcasting and announced reorganization. Channel 25 resumed broadcasting on January 11th, however on January 8th the Chief of News Service, Maia Merkviladze was fired, together with the producer of TV Show Dialogi, Irma Zoidze and she anchor of the same show, Jaba Ananidze. Nino Kheladze, another anchor of the Show has left the Channel in protest.

All four journalists have launched legal disputed. In their words, the fundamental principle of the freedom of media came under jeopardy – impartiality. On May 17, 2016 Batumi City Court has mandated Channel 25 management to restore these four journalists back to their positions and to compensate for the time lost fully. The Judge, in explaining the decision, has stressed that the party (TV Channel 25) could not present a single evidence what would prove lawfulness of firing these journalists, including in connection with the allegation that the fired journalists were guilty of promoting conflict situations, which deterred their editorial operations.

The Director of TV Channel 25, Ghia Surmanidze declared at one of the trials that, he was ready to compensate for the time lost, but he did not desire to see journalists restored back to their work positons. Before the Court had announced their decision, a public statement of the staff of TV Channel 25 was dissemination, in which they were asking the management not to let these four journalists come back to their positions.

# 7.

# RUSTAVI 2 BROADCASTING COMPANY CASE



## 7.1. INTRODUCTION

In 2012 the government of Georgia was changed. Rustavi 2 came under public scrutiny due to events that developed around it. Today, it remains the most popular TV channel in the country and is also most critical TV towards the Government of Georgia. After the change in the Government, highest ranking officials have been openly aggressive towards Rustavi 2. The authorities have assessed the Rustavi 2 case as the private dispute between the existing and the former owners of the Company, but the analysis of the events clearly demonstrates that the process have been politically managed and motivated.

In the fight against Rustavi 2 all three branches of the government were actively involved. The most apparent was the parallel fight the judiciary put up, most probably agreed with the Executive Branch, which was expressed in the seizure of the properties of Rustavi 2 and its owners, in the attempts to interfere in its editorial policy and in the attempt to have the management replaced, as well as, the decisions of the City and the Appellate Courts, which have awarded 100% share to K. Khalvashi and to LTD Panorama. It is especially noteworthy, that the forceful, rapid proceeding of the cases, when less complex civil cases require much more time.

The interest towards the Company intensified on November 04, 2012 since the Broadcasting company founders decided to appoint Nika Gvaramia as the Director General. Few weeks later, on November 19, Gvaramia was apprehended on the charges of financial machinations and falsification of documentation, however on November 14, 2013 the Tbilisi City Court found him innocent. On July 24, 2013 the Appellate Court has upheld the First Instance Court decision.

Civil sector has been, from the start, connecting events surrounding Rustavi 2 to improper interests of the authorities and evaluated it as the gross interference in the affairs of an independent media. NGOs have expressed their substantiated suspicion, that the events may have been triggered by political interests, further proven by the statements of the authorities themselves. About the seizure of the Rustavi 2 property, several NGOs have disseminated a joint statement, which focused on the legal faults of the court decisions. Public defender of Georgia and GYLA have assessed these decisions as unsubstantiated. The later, as well as ISFED and Transparency International Georgia, highlighted the fact, that Rustavi 2 is a popular TV Channel, critical to the Government, which renders this dispute not only legal, but political context as well.

## 7.2. STATEMENTS OF HIGH RANKING STATE OFFICIALS

The Broadcasting Company Rustavi 2 came under criticism even before the 2012 Elections from the then opposing (not the governing majority). The leader of the Georgian Dream, **Bidzina Ivanishvili** stated that the abandoning of Comedy Show by some of its actors, who moved to his son's GDS was tantamount to heroism: "I will say this without politics in mind, that the Georgian society understands how much pressure is applied on the employees of Rustavi 2, Imedi and Channel 1. I think these young people were courageous. This step can be evaluated as their fight for freedom – they want to be free from all pressure". On August 3, 2012 **Ivanishvili**

gave interview to Media Union Obieqtivi and said that "it is a coincidence that Kibar Khalvashi is the owner of Rustavi 2.

After the Elections, on November 22, **Bidzina Ivanishvili** stated, that, "one more electoral promise, restoration of justice in the Country has begun, as well as regulating relations with regard to media, however with the later process the authorities have not connection. **Ivanishvili** is saying, that he welcomes that Imedi was returned to its rightful owner, and not the process with regard to Rustavi 2 has begun. He also pointed out, that from his perspective, the real owners of Rustavi 2 are going to fight to have it returned to them."

On April 23, 2013 Prime-Minister **Bidzina Ivanishvili**, after this speech at the Council of Europe, spoke with journalists and declared – „Saakashvili must confess that Rustavi 2 belongs to him". On February 4, 2014 he held a press-conference, where he criticized Rustavi 2 and told Eliso Jariashvili, from Rustavi 2 that if he was in her place, he would not be proud of this fact. In Ivanishvili's opinion, high level of professionalism presupposes objectivity and when Rustavi 2 is proud of its professionalism, he can't agree with that. On February 15, 2015 ex PM **Bidzina Ivanishvili** stated,that he and his team have the ambition to alter agenda set by Rustavi 2 and their entrance in the media landscape will balance the existing situation. On September 1, 2014 **Bidzina Ivanishvili** gave an exclusive interview to Kviris Palitra newspaper, saying that "media must be improved". In his words, Rustavi 2 is agitating public for United National movement. On April 9, 2015 **Bidzina Ivanishvili** called Rustavi 2 by the name of „miserable" because the Channel criticized his cousin, businessman Ucha Mamatsashvili. In **Ivanishvili**'s words, Mamatsashvili is one of the leaders of the Co-Investment fund. On November 10, 2015 **Ivanishvili** stated, that developments around Rustavi 2, are of private dispute nature and declined his participation in them. On the same day, **Bidzina Ivanishvili** spoke with the journalists, that first, David Dvali and Jarji Akimidze claim that the TV was taken away from them, followed by similar demands from Khalvashi.

During the time he served as the PM, **Irakli Gharibashvili** was frequently quoted to criticize Rustavi 2. He was constantly trying to equate Rustavi 2 with the UNM and declared, that Rustavi 2, was part of the United National Movement's campaign. He could not hide his views regarding the Channel and on several occasions, did not even answer questions asked by the its journalists. The PM ruled out the involvement of the Government in the events surrounding R2 trial and stated, that this was a private dispute between the Ex-President Saakashvili and Khalvashi.

Also alarming was the comments made by **Kakha Kaladze**, Vice Premier-Minister and the Minister for Energy. He stated, that "hopefully, Rustavi 2 will be returned to its rightful owner, there will come a time for this". On May 11, 2014 **Kaladze** declared: "it is extremely bad, that Rustavi 2 still continues their shameful 9-year work, propaganda of garbage. This needs to be finished once and for all. And we promise our population, that this will inevitably be over with".

**Sozar Subari**, the Minister for Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia on the issue of forced sale of shares of Rustavi 2, where on the one hand, he declared,

that the fact that Khalvashi went to Court to reclaim his shares was a private dispute, however he immediately added that he remembered well, how former owners were forced, Kitsmarishvili included, to give up their shares and the same pressure was applied to K. Khalvashi.

To see how much interested the authorities are in the case of Rustavi 2 and how much involvement they have, we should not look at the statement of the Georgian Dream-Entrepreneurs Parliamentary Fraction Chair's statement. **Gogi Topadze**, its Chair at the Parliament stated on October 25, 2015, a day before the Rustavi 2 case was heard by the Court, that next day Rustavi 2 would cease to exist. IN his assessment, Rustavi 2, "is not an objective channel" and the current government is "fed up with this", "they found, a real owner has showed up and it is natural, they are demanding fair trial". On March 16, 2016 he did not even respond to the question of R2 journalists and threatened them "I suggest you are cautious. You may end up in prison".

In 2013, in the talk-show Archevani on Rustavi 2, the member of the Georgian Dream coalition and an MP, **Tina Khidasheli** declared that "Rustavi 2 was stolen". There, she argued, that Dvali was as much repressed, as other businessmen out there.

**Eka Beselia**, the Chair of the Parliament's Human Rights Committee, stated in her interview with Prime Time newspaper, that the old government is in control of Rustavi 2 – "if an investigation is carried out, you will see that this TV belongs to Saakashvili and how he got hold of it. I remember testimonies of K. Khalvashi, where he tells it how it was". Also, on November 7, 2015 **Eka Beselia** noted, that "we are the emancipators and we truly want, that you feel this freedom, to the scale and to the degree that you deserve it now, because any of you deserve that you are able to work in an independent environment.

## 7.3. VIOLATION OF THE INVIOLABLE RIGHT TO PRIVATE CORRESPONDENCE OF THE DIRECTOR GENERAL OF RUSTAVI 2 BROADCASTING COMPANY, NIKA GVARAMIA

On October 17, 2014 Director General of R2, Nika Gvaramia wrote on his Facebook wall, that his private Skype calls and email accounts were hacked (his personal communication with his friends were accessed) and that he had proof of it and was ready to cooperate with the investigation to defend his constitutional rights. GDI and MDF responded to this via statement. In the words of these NGOs, the information indicated that Article 159 of the Criminal Code may have been violated, which stipulates that violation of the right of private written communication, telephone conversation or other methods is punishable by law. The GDI and the MDF called on Prosecutor General's Office and to respective law-enforcement authorities to immediately launch investigation. We are unaware and no public information has been disseminated whether the investigation was launched by Prosecutor General's Office.

## 7.4. PRESSURE ON RUSTAVI 2 EMPLOYEES

On October 21, 2015 Nika Gvaramia made a special statement for the public. He spoke about the pressure and threats coming from the authorities. Namely, in his words, if he did not did not remove himself from the developments surrounding R2, "he should not have forgotten that he has family members. Also, he should have known, that the authorities are in the possession of videos, that depict his private life and also secret recordings of his conversation with M. Saakashvili". The Prosecutor's Office has launched an investigation. At the interrogation, Nika Gvaramia named Alex Akhvlediani, the Head of the Youth OlympicOrganizational Committee as the person who was used as the proxy by the authorities to communicate this message to Nika Gvaramia. After a week, on October 25, one of the Ukrainian web-sites have distributed the recordings of conversation between Gvaramia and Saakashvili, also, between Giga Bokeria and M. Saakashvili, which was the ground for launching an investigation by the State Security Service on under the article that concerns a conspiracy to usurp power, overthrow state authorities or violently replace constitutional order in the country. It is unknown, until today, whether the Prosecutor's Office has studies the lawfulness of the methods with which these recordings were made and at what stage the investigation is right now.

According to media, the representative of the State Security Service attempted to recruit an employee of R2. Namely, on December 8, 2015 R2 broadcast an information, that the representatives of the Security Service tried to recruit, in exchange of money, an employee of the Company and tried to extort information from this person. The drive of the Financial Director of R2, Kakha Kublashvili was stopped by operative vehicle. The law-enforcement representatives, dressed as civilians, presented themselves as the representatives of the State Security Service. They were demanding cooperation. They were interested how much Kublashvili was receiving as a salary and if he agreed, they offered to offer better terms. Based on this information distribute through media, Kublashvili was asked for interview at the Ministry of Internal Affairs, however the Prosecution has failed to update public whether any progress was made by the investigation.

## 7.5. EROSI KITSMARISHVILI

On July 15, 2014 one of the founders of Rustavi 2, was found dead in the underground parking lot of the apartment building where he lived, on Kiphshidze Str., in his own car. He had wound in his head, inflicted by a hot weapon. The investigation was launched under Article 115 (driving someone to suicide). On the same day, the President of Georgia has requested, swift investigation: "This brutal murder needs to be solved". Not only President, but members of Georgian society assessed this as a murder. However, the Prosecutor's Office has, from the very start, qualified it as a suicide under Article 115 of the Criminal Code of Georgia.

On December 2012, at the Prime Time Press Club, Erosi Kitsmarishvili has organized press-conference, where he stated, that "when Ivanishvili talks about Rustavi 2, he needs to look into my eyes." In August, 2013 Kitsmarishvili gave an interview to Sarke magazine and further elaborated, that the judiciary would not be able to complete the dispute surrounding Rustavi 2 without his involvement: "to briefly sum up, if Dvali and Akimidze

are right, then I'm right too and if K. Khalvashi is right, then I have the right to make demands too, but it is incompatible in the nature that both, the Dvali-Akimidze duo and Khalvashi could be right at the same time. With great interest, I'm waiting to see how they are going to combine these two topics, since in both scenarios, I remain "alive". Without me, the court won't be able to resolve this issue."

A day before his death, in his final interview, which he gave to Prime-Time Newspaper, Kitsmarishvili commented on Khakha Kaladze's statement, and declared, that, he would continue fighting for Rustavi 2 and Maestro. He also declared, that *"with regard to Rustavi 2, I can say it without irony and directly, that if any decision is going to be made, this will be a classical political decision, not a lawful one."*

These statements and his unexpected death have left the public puzzled. The family does not agree that he has committed suicide. According to the Prosecutor's Office, Kitsmarishvili had financial problems, which drove him to suicide. However, according to publicly available information, he was quite wealthy, which significantly exceeded to his financial liabilities. This further increases suspicions towards trustworthiness of the investigation.

In Phikria Chikhradze's words, one of the leaders of the New Rights, she met with him, on several occasions, who was worried about the developments surrounding Rustavi 2 and was saying, that "now they are trying everything, to remove me from this case, I'm like a bone in their throats". K. Khalvashi appealed to the City Court one year after the death of Kitsmarishvili, on August 4, 2015. The statement of the brother of Kitsmarishvili says, that "after his death, his brother's personal Facebook profile was broken into. Despite numerous requests, the investigators did not care to look into his computer or his Facebook account."

## 7.6. LEGAL ASSESSMENT

### 7.6.1. Suit against theRustavi 2

On August 4, 2015, businessman Kibar Khalvashi and LTD Panorama (Director: K. Khalvashi) applied to the Tbilisi City Court against the existing and former owners of the Broadcasting Company Rustavi 2. The appeal had three major demands: recognition of copyright, compensation of damages and annulment of sales contract.

The main part of the appeal concerned the request to annul the contracts made between Khalvashi and LTD GeoCement on 26.12.2005 and 17.11.2006; LTD Panorama (Director: Khalvashi) and LTD Geo-Trans on 17.11.2006 on the sale of shares of Rustavi 2.

Khalvashi sought to be recognized as the author of the logo of Rustavi 2 and copyright to the following shows: Fore Boyard, Last Hero and Geo Bar. Furthermore, he demanded that Rustavi 2 was fined USD 500.000 and its acting owners, GEL 18.367.868 in compensation of damages.

The applicant claimed, that the deals were immoral, since they were made by application of force and the property they owned were disowned without their will. Additionally, in their opinion, the value of the shares indicating in the sales contract did not correspond to its actual market value.

### 7.6.2. Seizeure of the Rustavi 2 shares and of the property of their bona fide owners

After Khalvashi and LTD Panorama had sold their shares, the company has been sold on numerous occasions. By the moment the appeal was submitted to the Court, the Registry data showed, that Giorgi Karamanishvili owned 18% of the shares, Levan Karamanishvili 22%, LTD TV Company Georgia 51% (Partners – Giorgi Karamanishvili 51%, Levan Karamanishvili 49%) and the heir of Giorgi Gegeshidze, Nino Nizharadze – 9%.

Judge Tamaz Urtmelidze issues freezing order on September 30, 2015 and ordered seizure under legal process on the entire property of Rustavi 2. September 30, 2015 Order for additional seizure under legal process, the properties of the owners of Rustavi 2 – the shares of brothers Karamanishvili and the shares of LTD Georgia were frozen as well. The shareholders of the company were banned from taking on responsibilities on behalf of the company, they could not reorganize, introduce changes to the statute and dispose of property that belongs to the organization.

### 7.6.3. Key decisions

On November 03, 2015 the Tbilisi City Court has partially satisfied applicant Khalvashi and LTD Panorama and annulled TV Company Rustavi 2 related sales contracts. The Court annulled registration of bona fide buyer shares at the Registry and allocated 60% of Rustavi 2 to Khalvashi and 40% to LTD Panorama.

After two days, on November 05, Judge Urtmelidze, to ensure the execution of the Order, appointed temporary management to Rustavi 2. We have evaluated this acts as the direct and forceful interference in the work of an independent media company. The unlawful nature of the decision was once again, illustrated in his November 12 decision as well, in which he has changed his own decision, at the request of the appealing party and has annulled the status of temporary manager of David Dvali.

After the Constitutional Court has suspended disputed norms, which were the basis for Urtmelidze's decision, the Appellate Court annulled completely the orders of the First Instance Court on appointing temporary management to Rustavi 2 and on seizing the property of LTD Georgia. However, on June 10, 2016, the Appellate Court has decided to keep the decision of the First Instance and after announcing this decision, it itself initiated to hand over the decision to the applicant on the 12th day. On July 12, 2016 LTD Tele company Georgia and Giorgi and Levan Karamanishvili have appealed the decision of theAppellate Court via cassation.

We believe, that the City and the AppellateCourts trialed Rustavi 2 case with substantial violations of the Law and legal principles. The quality and quantity of the violations have substantially limited the right to fair trial

of the party and has given rise to substantiated suspicion, that the Government is using the Court to fight with independent media.

## 7.7. THE FIRST INSTANCE

### 7.7.1. Specific cases of the violation of the procedural legislation

*a) The issues of the judge bias*

Suspicions with the impartiality of Judge Tamaz Urtmelidze have been further aggravated from circumstances of developments surrounding his mother, Mdinara Giorgobiani. Media reported, that Giorgobiani has possiblycommitted a crime and she was under investigation. On January 7, 2014 an incident took place, in which M. Giorgobiani may have intentionally, with less fatal consequences have wounded her son-in-law.

This gave a rise to a substantial suspicion in the public, that threatened to launch criminal prosecution against her, T. Urtmelidze was under duress. This was further supported by the timeline that case against her was reopen when Rustavi 2 case trial was going on. The law enforcement authorities have reopened the case after it had initially been investigated and it went parallel with Rustavi 2 case, when the son-in-law in question was now awarded the status of the victim. Awarding this status briefly preceded the decision Judge Urtmelidze issues on seizing the property of LTD Tele company Georgia.

As a result, the lawyers of the TV Company, using this and other arguments, have requested recusal of Judge Urtmelidze. Among other arguments was listed the actions of his wife, who was using extremely derogatory words with regard to the management of Rustavi 2. However, the judge has interpreted the law and has used the suspicious argumentation, that: 1) a mother is not the member of the immediate family according to the Georgian Legislation; and 2) the statements of his wife had not been agreed with him, request for his self-recusal was not satisfied and he continued to hear the case.

We believe, that there were sufficient arguments presented for self-recusal. The events surrounding his mother clearly gave rise to public opinion, that hiss will was affected by the actions of the authorities. Urtmelidze has not tried to deny the act itself. However, he focused on the list that the Law lists are the immediate members of the family and where mother is not mentioned; This way, he tried to shrug off the suspicion, that he wasn't impartial and neutral. The same legal act does in fact state that a parent is a close relative,[18] therefore the reasoning of the Judge that demands for his self-recusal were unsubstantiated and unlawful, since threats to restrict freedom to a close relative may be viewed as other circumstance, foreseen by civil procedural legislation, which may give rise to suspicions about the impartiality of a judge.[19]

[18] Article 4(b) of the Law on Interest Conflict and Corruption in the Public Service. Matsne #982, 11/11/1997.
[19] Article 31(d) of the Civil Procedure Code of Georgia. Matsne #1106, 31/12/1997.

Impartiality and objectivity of a judge is one of the core elements of the right to fair trial. It determines significantly the fairness of the entire process and hence, whether the decision made will be fair and objective. Article 42(1) of the Constitution of Georgia and Article 6(1) of the European Convention of Human Rights are considered as the norms, that ensure that courts that hear a case are independent and impartial and this, among others, is part of the right to fair trial.

According to the ECHR practice, shared by the Constitutional Court of Georgia, impartiality of a judge is evaluated by both, subjective and objective scrutiny. "Subjective scrutiny reflects the personal beliefs, attitudes of a judge towards a case. In general, it is believed, that a judge is impartial, unless the opposite is proven i.e. specific evidences must be presented, which prove that a judge was not acting impartially, against the interests of the applicant, e.g. showed unfriendly attitude towards him/her and based on his/her own interests, chose to preside over the case. Objective test, on the other hand, must show, that independent of the actions of a judge, there are facts, which may give rise to suspicions, that he/she may not be impartial. Here, external signs of subjectivity may be important as well. Objective impartiality need to be established based on the assumption of the applicant that the judge may not be impartial. This is important, but not decisive factor. What is important, is that how can this suspicion be objectively proven.[20] Here, we must note, that subjective and objective scrutiny are not strictly divided, since the actions of a judge may render not only an objective observer that objectively suspicions are justified (objective scrutiny) but that his may also be related to his/her personal believes (subjective scrutiny)".[21]

According to the Constitutional Court approach, the judge is only liable if there is a substantiated suspicion, that due to various reasons, a judge cannot act impartially. In this case, he/she should self-recuse from such case, since in this case, how the public views the specific court composition is very important. If citizens do not believe the judges are fair, the judges in question should self-recuse following the established procedures.[22]

Hence, combining these factual circumstances and legal assessment, we believe, that there were enough grounds present for Urtmelidze's removal from the case.

### 7.7.2. Unlawful and unsubstantiated court rulings

*November 5 ruling of the court*

Given how the court trials went on, the Rustavi 2 lawyers did not rule out the possibility, thatthe First Instance Judge would rule against them. They expected the immediate executive order as well. In such cases, the damage inflicted to Rustavi 2 made it irrelevant to try to enjoy the right to fair trial. The assumption of the party was further fortified by a general note, that accompanies the Civil Procedure Code on the bases of immediate execution.

20 Decision of the Constitutional Court of Georgia. December 15, 2006. II.Ch.3;
21 Micallef v Malta, (App. 17056/06), 15 October 2009 [GC], ECHR 2009, § 95,101.
22 See citation. Decision of the Constitutional Court of Georgia. December 15, 2006 #1/3/393,397Citizens of Georgia – V. Maisurashvili and D. Mebonia V. Parliament II.Ch.3

The Constitutional Court shared the view of Rustavi 2 lawyers about the ambiguous nature of the dispute norm and before issuing the final decision, has suspended it.

*a) Temporary managers*

The fears of the representatives of Rustavi 2 about the intentions of the intentions of Judge Urtmelidze were proven true by 05.11.2015. Judge Urtmelidze, ignoring the substance of the Constitutional Court decision, has suspended the responsibilities of the R2 representatives and management and appointed former shareholder of R2, David Dvali, as the temporary manager of the TV Company and the former management representative of the competitor, Revaz Sakevarishvili. In its decision, the Judge reasoned, that the temporary managers were neutral persons and would ensure proper functioning of the Company. However, his argumentation about the neutrality of the temporary managers was always wrong.

One of the temporary managers, co-founder of Rustavi 2, David Dvali is singlehandedly interested with the results of the case. Dvali was able to strike a **deal** with Khalvashi. According to Khalvashi, he was ready, after he would win the case in the final instance, to hand to Dvali half of his shares.

This statement was one of the grounds for the Court to change its own decision on the appointment of temporary management. On November 12, Judge Urtmelidze, based on the appeal of the owners of R2, partially changed his own **Order**. The part of the order where it appointed David Dvali was annulled. Nika Gvaramia and Kakha Damenia were restored in their responsibilities as the Executive and Financial Directors, until the final decision on the case is made.

On the second day of Urtmelidze changing his own Order, on November 13, the Constitutional Court has suspended the normative content of the norm, which Judge Urtmelidze used to appoint temporary management in Rustavi 2. Namely, until final decision is made, the Constitutional Court has suspended the norm, which foresees seizure under legal process of the properties of a legal person –to appoint temporary management, representation for organizations that work in the field of mass communications, print or electronic media.

Following this, on November 27, 2015 the Appellate Court has completely, **annulled** Judge Urtmelidze's Order on the appointment of temporary management to Rustavi 2.

*b) Interference in the editorial policy of an independent media*

It was particularly alarming, dangerous and unprecedented, that a court interfered in the editorial policy of an independent media by way of establishing how it should be formed. Urtmelidze, in his November 5, 2015 Order notes, that *"when an information is communicated on the issues of importance to the public, an objective and fair reporting method must be applied. In the period, that the respondent was managing the Company, Objectivity was questionable. Ignoring these aims, will result, in jeopardizing the major functions of a media in*

*a democratic society."* It is apparent, that this reasoning goes well beyond the dispute on property ownership and indicates, that the Court was intent to interfere coarsely in the work of an independent media.

Establishing the margins of responsibilities of temporary managers is another example of interference in the editorial policy. They were given the right to manger HR, including, the internal structural reorganization and ability to optimize and determine the network schedule. Furthermore, temporary managers were allowed to represent R2 with every institution and body, which limited the right of the legal representatives of R2 to appeal to the upper courts the decision of the First Instance Court.

Ability to carry independent editorial policy is a key element of media freedom and defending it is of constitutional importance. Any attempt of authorities to dictate broadcaster as to what kind of editorial policy it should carry out, is a coarse interference in the right guaranteed by Article 24 of the Constitution of Georgia and Article 10 of the European Convention of Human Rights. According to the ECHR, the state is bound in the field of audio-visual broadcasting, to first "ensure, that the public has access, with the help of TV and Radio, to impartial and accurate information, as well as, to the multiplicity of views and comments, which reflects, inter alia, the plurality of political views in the country and on the other hand, that journalists and other professionals, who work in the audio-visual media, are free of interference to disseminate these views and visions."[23] Clearly, this duty is equally applied to every branch of the government, however the judiciary having shown initiative to dictate how a specific media should direct its editorial policy, is particularly alarming, given the fact, that judiciary branch, based on the principle of division of powers, unlike the two other branches of the government, is apolitical branch, whose major aim must be to protect constitutional freedoms and control the remaining two branches.

### *c) Lawfulness and substantiation of the court ruling*

Article 521 of the Civil Procedure Code is imperative in defining that, if "a court determines certain procedure and dates for the immediate execution of a court order, or adopts measures to ensure the execution of the order, this must be indicated in the decision". Therefore, after the conclusive decision was adopted, the reasoning Judge Urtmelidze about the remedies to ensure the execution of the decisions are in direct conflict with the requirements of the Law.

Furthermore, the Order was not substantiated in the section where its necessity was argued. Before the decision was adopted, the order of the Judge on the provisional remedies had been entered into the force and together with other remedies, the properties of R2 and LTD Tele company Georgia had been seized under the legal process, while the responsibilities of the existing management were suspended. All of this precluded them from attempts to reduce the finances and the properties of the Company. Therefore, it is unclear as to what legal aim did Judge Urtmelidze's Order on satisfying the judgement served.

[23] ECHR decision of September 17, 2009: Manole and others v. Moldova, Para. 100

*d) Court ruling regarding the seizure of the property of the LTD "Georgia TV Company"*

After the complete seizure of assets of R2, Urtmelidze's September 30, 2015 Order for additional provision of remedies (within the frames of the demand by the acting owners of the TV Company that sought compensation for damages) has seized the properties of brothers Karamanishvili – the owners of R2 and the shares of the LTD Tele company Georgia. The owners of the Channel were prohibited from taking on responsibilities on behalf of the Channel and to manage the properties that belong to it.

T. Urtmelidze did not satisfy the demand of Khalvashi to force the acting owners of the Company to compensate damages to him, however despite this, he kept the provisional remedies in place, in the form of freezing the properties of the owners.

Despite the non-substantiation of the Order, both the First Instance and the Appellate Courts have grossly violated the deadlines set for hearing appeals on the Orders. Namely, Urtmelidze has forwarded the appeal to the Appellate Court in 48 days as opposed to 5 days the Law mandated him to do so. The Appellate Court, violated the 2-month limit imposed by the Law. However, finally after the Constitutional Court ordered the suspension of the norms, served as the basis of Urtmelidze's decisions, his Order was suspended for being unlawful and unsubstantiated and was annulled **completely**.

*e) Accelerated hearing of the case*

Despite the tendency, that as a rule, civil cases are usually stretched over time in the City Court, sometimes for years, Rustavi 2 case was heard in record short time, 3 months. This has, once again, confirmed the assumption that the Court was keen on finishing the case as soon as possible. As a rule, trials usually exceed legally allowed deadlines and this is explained by the caseload, but somehow Judge Urtmelidze was still able to issue conclusive decision, from the date of initial application, on such as complex and sensitive issue.

*f) Evidence Credibility*

In addition to the sales contract later declared null and void, the Court only based its decision on the Levan Samkharauli Legal Expert Bureau conclusion, which has been contested by the legal representatives of Rustavi 2 on numerous occasions. In their view, the expertise could not objectively establish the actual value of Rustavi 2 based on the documents, whose origin, content and form was not clear.

The same reasoning was given in the conclusion written by the Georgian branch of Grant Thornton Akhvlediani, Georgian representative and partner company of the well-established auditing company, Grant Thornton. In their findings, which unlike the First Instance, the Appellate Court admitted as an evidence, the company has studies the expert conclusion of Samkharauli Bureau and has noted, that the report on the valuation of Rustavi 2, issues by Samkarauli experts was prepared in violation of IVS evaluation method, which could result in material faults during the evaluation of the company share values. Also, in the conclusion, we read, that the

information given to the evaluator, according to IVS, cannot be counted as enough and relevant – to carry out evaluation (of the market value of the shares of the Company).

Based on the afore-mentioned, there is a substantial suspicion about the trustworthiness of Judge T. Urtmelidze's assessment of the evidences presented to him.

### *g) violation of substantive law*

- *Immoral deal (disproportionality of the price)*

Baes on the Civil Code Article 54, the First Instance annulled sales contracts of Rustavi 2 without prejudice. The Court has pointed out, that the level of disproportion between the value of the contract and the price established by the expertise rendered the deal immoral.

Striking a private sales deal, which allows the subjects of the law to enter in and regulate legal relations between each other, is a fundamental right protected by the Constitution of Georgia and is private, legal part of a fundamental right – universal right to be able to act own will.

Urtmelidze's interpretation of Article 54 ignores the free will demonstrated by the persons and the legal consequences of their actions, solely because the price was disproportionate to the real price that may have existed in the moment of signing the deal and hence why, it violates public order and moral norms.

The Court, in its decision, justified the suspicion of the representatives of Rustavi 2, that legal certainty of Article 54 posed threats and too broad a margin of application of the Article was given to the judges. The Constitutional Court of Georgia is in the process of hearing on this issue, which we will discuss in details below.

We believe, that recognizing a deal as immoral and incompatible with moral norms only because the price is disproportionate, while one the one hand, we are confronted with the Civil Law principle of the expression of the free will of the parties, and on the other hand, there is no legal definition of moral and moral norms, this violates Article 21 of the Constitution, which protects the right to property and the principle of lawful statehood, namely, the substantive part of it – the restriction imposed for it to be reasonable. Therefore, based on these constitutional principles, we find it unjustifiable that human rights are restricted only because public is imposing moral postulates. In hearing any case, the judge should start with the constitutional rights of the parties, while the final decision cannot be dictated by existing moral dogmas.

- *Limitation period of the request*

Due to lack of evidences, the Court did not establish that K. Khalvashi had been a victim of violence, however noted that, "the lower the level of subjective components i.e. when we do not know, it is not clear, what the persons thought at the moment of signing the deal, the conclusions must be based on objective grounds". Urtmelidze arrived at this conclusion only based on the disproportionality of the sale price.

Khalvashi went to the Court on August 4, 2015. He was pointing out, that during 2005-2006, he sold his shares in Rustavi 2 under duress, coming from high ranking officials, including the President of Georgia. Article 89 of the Civil Code stipulates that forced deal may be contested after one year of the fact takes place. Hence, even if we start the 2012 government change as the end of the fact of duress, 2015 is still beyond the limitation period.

Therefore, a substantiated suspicion arises, that the Court, ignoring the duress component, which could not be evidenced, avoided itself entering in the legal dead-end and did not even discuss the limitation period that had been expired. Should it had address the issue, this would constitute a non-conditional ground for the inadmissibility of the request.

As for the immoral deal, based on the disproportionate price, we believe that the First Instance and later, Appellate Court have interpreted Article 54 too broadly and at the detriment of human rights.

- *The bona fide purchaser of the property*

The First Instance Court has grossly violated the rights of bona fide buyers. Namely, in order to avoid application of the principle of trustworthiness and completeness of the Registry data, foreseen for in the Article 312 of the Civil Code, it intentionally miss-interpreted the norm. The Judge ignored the content of the norm and noted, that this presumption did not apply to the shares of an organization which is registered in the Public Registry, since it is not directly pointed out so in the norm itself.

Civil legislation, also, the Law of Georgia on Public Registry unequivocally stipulates, that the Public Registry is not only the unity of data about real estate, as Judge Urtmelidze claims it to be so, but it is also the unity of registries on address and tangible and non-tangible goods, and the rights and on entrepreneurs and non-entrepreneurs (noncommercial) legal persons.

Based on the reasoning, the presumption of completeness and trustworthiness of Registry data must without doubt, be applied to the shares of the company in question.

The above described presumption means that a purchaser registered in the Registry is a bona fide purchaser, with the exception of two cases, namely if a claim is submitted to a court contrary to what Registry has on records or the purchaser knew, that the Registry data is faulty. Furthermore, the generalization guide of the Supreme Court notes, that "a purchaser cannot be held responsible for knowing circumstances, which exceed (go beyond) his/her abilities. In evaluating bona fide purchases, it is important that the purchaser is able to understand it and not the interest to these facts. In other words, what is the subject of evaluation is the knowledge of the facts and not the intentional learning about them."[24] It must be also pointed out, that the First Instance Court has not established any of the exceptions provisioned in the law.

[24] See, pp. 95-96. http://supremecourt.ge/files/upload-file/pdf/rekomend.pdf [last checked on 24.09.16].

This latest circumstance renders entire discussion about the lawfulness of Urtmelidze's decision completely irrelevant. The Judge was responsible for guiding himself with the regulatory norms about the trustworthiness of Registry data, in deciding on the disputed issue (Articles 185 and 312 of the Civil Code) and should have decided in favor of bona fide purchaser, which means that, bona fide purchaser retains the property in any scenario, while the owner has the right to request compensation from the adverse transfer.

In his decision, Urtmelidze explains, that the specific norm of the Civil Code refers to trustworthiness and accurateness on only real estate on which data is maintained in the Public Registry. We believe that such interpretation of the norm by the Judge is directed at restricting human rights and singlehandedly violates the principle of norm interpretation.

Even if legislation did not give specific instructions on the application of the norm, the Court must interpret it in favor of human rights. The similar principle is in motion at the ECHR, when the European Convention is applied, at which point the Court focuses on the aims of the Convention and its objects. In interpreting the contracts, in the ECHR's opinion, must take place via the most adequate/relevant manner, in order to achieve the aims of the contract and realize its objectives (Wemhoff v. Germany). Georgia, as the party signatory to the Convention, is bound to interpret its legislation in harmony with this approach. This is based on the so called "interpretation principles". (Jensen, The European Convention on Human Rights in Scandinavian Law: A Case Law Study, 1992, 110)

### *h) The application of the wrong norm and the wrong interpretation of the norm by the judge*

The First Instance Court, with regard to shares of the Company did not apply regulatory norms that refer to Registry data on real estate (Civil Code, Art. 185) but instead, applied a wrong article, norms that regulate the purchase of portable property (Civil Code, Art. 187).

The Cassation Court explains, that in the case of portable goods, the examinable area whether the purchaser is a bona fide purchase is much broader than in the case of real estate. This could be the motive behind the application of Art. 187. Improper application of the norms allowed Urtmelidze to evaluate the bona fide nature of the purchase with a much lower standard and thus arrive, at the desired decision.

Even then, however Urtmelidze wrongfully applied the norm that regulates portable property purchase. Namely, in his decision the Judge points out, that the person, who purchased (a portable property) the ownership right, must prove he/she is a bona fide purchaser.

In the legal literature, there is a view established, that a person, who disputes the fact that a purchase on a portable property was not moral, must prove that the purchaser did wrong. The bona fide nature of the purchaser is a default assumption. Therefore, Judge Urtmelidze's reasoning, that the purchasers of the shares of Rustavi 2 shares were tasked with arguing that they, as the purchasers of a "portable property" (a share) were acting in good will, while Khalvashi did not present any evidence to prove them wrong.

According to Article 187, a bona fide purchaser cannot become an owner of an object, if that object was lost by an owner, or was stolen, or was otherwise disowned by him, against his will, and/or the purchaser received it for free.

Urtmelidze, in his decision explains, that the property was disowned by the owners against their will. Hence, they could request its return from the latest owners of the shares.

It is absolutely uncertain and mutually contradictory as to on what evidences did the Judge ground his judgement in arriving to this conclusion; especially, when the introduction to the judgement itself rules out the fact that Khalvashi was under duress and that the property was sold by him against his will.

## 7.8. THE APPELLATE COURT

### 7.8.1. Ineligible composition of the court

A suspicion about the responsibilities of judges who heard the Rustavi 2 case was born when the boards of Appellate Court were replaced. Until the case was assigned to the board, composed of JudgesNazgaidze, Gujabidze, Kavelashvili, several boards were changed. This circumstance gave ground for suspicion that the board was artificially shuffled with the aim to complete the case in the way that would benefit the authorities and the applicant.

The application and the provision of remedies Orders were heard by the board composed of Judges Nata Nazgaidze, Giorgi Goderdzishvili and Ketevan Meskhishvili. As a result, the 05 November Order was fully, while the seizure of assets Order was partially annulled, and Rustavi 2 was restored in their right to rent its properties for maximum up to 3 months.

As the respondents explain it, the established practice of the Appellate Court illustrates, that the case is substantially hear by the board of the Appellate Court, who has initially checked the evidences and the lawfulness of the Order, but as it turned out, the substantial hearing was assigned to another board. Namely, to the board composed of Judges Lili Tkemaladze, Khatuna Arevadze and Vano Tsiklauri. This board sent a letter to R2, that the case belonged to the exceptionally complex category and they would need 5 months to review it. Unexpectedly, the Appellate Court has informed R2, that the board had been altered once again and finally, it was assigned to the board, composed of Judges Natia Gujabidze, Shorena Kavelashvili, a former prosecutor, and to the Chair of the Board, Nata Nazgaidze.

Fears that Judges Gujabidze and Kavelashvili were not impartial were fortified by events surrounding these persons. Namely, Director of R2, Nika Gvaramia has disseminated information, that Judge Gujabidze may have been violating law. Turns out, the Judge was renting an apartment in Tbilisi, from her own mother and at the expense of the state. Also, another information was made available, that the then President of the Supreme

Court had requested that the case be transferred to the Prosecution, however the newly elected members of the Council did not support this motion and in the end, the case was not even forwarded to the Disciplinary Committee of the Judges.

According to the official information published on the website of the High Council of Justice of Georgia, Judge Gujabidze received compensation to rent apartment in Tbilisi for several years. The was further confirmed by her mother, who as noted, that she was receiving rent money not from her own daughter, but from the state budget. Until now, according to official declaration, Natia Gujabidze does not own an apartment. Despite this, according to the Secretary of the Justice Council, Levan Murusidze, Gujabidze has volunteered not to receive rent support anymore. Murusidze did not deny, that the Council heard on her case, but it did not find any legal or disciplinary violations.

The Justice Council, in their official statement, have confirmed that Natia Gujabidze has never been subjected to disciplinary measures and the Council has never forwarded her case to prosecution and with the proposition to open criminal case against her. However, the Council was unable to deny the accurateness of the information about Gujabidze and did not answer whether they discussed the lawfulness of Gujabidze's acts, who spent budgetary resources on the rent.

We find the position of the Council as insufficiently credible. The fact that the Council failed to address the Prosecutor's Office and did not impose disciplinary measure against the Judge, cannot exclude the possibility that she may have violated the laws.

The representatives of Rustavi 2 have declared their mistrust to the Judge Shorena Kavelashvili as well. According to the official information posted on the web-site of the High Council of Justice, Judge Kavelashvili belongs to the chamber that hears criminal cases. The documentation sent to Rustavi 2 by the Council, Kavelashvili has passed exams for judges in the field of criminal justice on June 18, 2005.

The organic law on General Courts, Article 23 stipulates, that specific chambers hear cases at the Appellate Court, made up of judges that specialize in various sub-fields of Law. The Article 23(4) establishes an exception to the general rule: "when it is needed, to avoid delays in carrying out justice, the Chair of the Appellate Court may ask a judge from another chamber to participate in hearing a case in other chamber or in investigation board." Hence the fact that a judge from another chamber, specialized in criminal justice hears a civil law case is not singlehandedly a violation of the law or that the board is ineligible. However, the Appellate Court was not able to explain, as to what kind of delays in carrying out justice met in this specific case and how did criminal justice judge end up in the board that hears Rustavi 2 case, which further aggravates suspicion that the judge may be ineligible.

We believe, that in both cases, the First Instance and the Appellate Court board, there were enough grounds for the recusal of the judges. In the case of Judge Gujabidze, there was an assumption, that she was under pressure from the authorities, which could have resulted in tainting her image, launch of disciplinary action

and or threat to launch criminal investigation into her case. As for Shorena Kavelashvili, there was not prof presented that a judge specialized in the criminal justice was needed to hear a particularly complex civil case (the complexity was outlined in the Appellate Board's letter to R2). And as for Judge Urtmelidze, it is a fact that his hearing of R2 case coincided with the Prosecution reopening a case against his mother, a case that had been shelved for two years. This further fortified fears that the judges were not impartial.

ECHR practice dictates, that in evaluating the impartiality of judges, how things appear externally – how society perceives it, is also very important. Not only should a judge be impartial when hearing acase, but she/he should appear to be so in the eyes of an objective observer. "Justice must not only be carried out, but it should also appear that it has been carried out as well." (Micallef vs. Malta, Wettstein vs. Switzerland, Meznaric vs. Croatia).

### 7.8.2. Accelerated hearing of the case

Both the First Instance and the Appellate Courts have heard Rustavi 2 case with an extreme speed. After the Appellate boards have refused to satisfy claims to recuse the entire board or at least, some members of it, the case was heard in forced manner.

The Court tried to appoint trial dates in the shortest possible duration from each other. E.g. the May 30 seating was renewed on May 31, 10 AM. It is particularly important, that the board was well informed that the legal representative of LTD Tele company Georgia was called on other processes on May 31st. The Court explained also made clear that they were busy in their schedule as well. Despite this, the Appellate Court postponed several other processes and without anyone expecting it, decided to renew hearing on May 31st.

Assumingly, to ensure that the case was heard as soon as possible, the Board expelled Nika Gvaramia from the hearing room. Next hearing, set for June 3rd, the board refused to reason why they still would not satisfy the motion of the R2 legal representatives to allow Gvaramia back to attend the hearing. Judge Nata Nazgaidze has explained, that Gvaramia did not address the Court before the process began to regain his right to attend the hearings. Nevertheless, the Civil Procedure Code does not specify as to when an expelled person must appeal to regain the right to join the process. The motion can be initiated by a party, and R2 lawyers represented the party at the trial.

At the same hearing, the Chair of the Board has declared that the motion was serving the purpose to delay the proceeding and guided herself with the processual legislation to equip herself with the discretion and did not allow the legal representatives of R2 to motion for recusal of Judge Gujabidze. For the ensuing protest, Judge Nazgaidze first fined the lawyers, then made the remaining legal counsels of R2, Dimitri Sadzaglishvili and Tamta Muradasvhili to leave the courtroom.

Despite the fact, that the claimant party, Rustavi 2 Broadcasting Company was no longer present at the hearing the board continued hearing the case. This action amounts to violation of the processual legislation,

which stipulates that after the Chair of the board has ordered a party representative to be expelled from the courtroom, case must be adjourned with the exception of cases, when several representatives were on the case from the onset. Despite the fact that every representative of the party was expelled, the Court argued that continuation of the trial was still possible, since the applicant party was done in stating their positions and in the remaining time of the trial, the Court only intended to hear the position of the respondent party that did not concern the party that left the process. Despite this, the respondent could not avoid making statements that related to R2. Hence, we believe, that R2 was left without the right to defense and an unlawful act of the Court resulted in the violation of the right to fair trial.

It is particularly important, that another circumstances have appeared on the June 7 hearing. Unexpectedly, the representative of Khalvashi presented waiver of the total action where it concerned the copyright dispute. Given the fact, that at the Appellate Court hearing, Rustavi 2 was respondent only in this segment of the claim and it was not a claimant within the First Instance decision, the Appellate Court board was not completely free to deny motion for allowing the representatives of Rustavi 2 at the trial. The Court completed the proceedings without the attendance of the representatives of Rustavi 2 at the trials.

The act of the representative of K. Khalvashi, in the part of the action where he canceled his request for copyright, once again, finally confirmed the suspicion, that this part of the action was from the very start beyond his sphere of interests and that this was a method to bring the case to Tamaz Urtmelidze, the only judge at the First Instance Court, who is specialized on copyright and adjacent right disputes.

After this, the Chair of the board has named the reason that the procedure may have been prolonged and annulled every motion of the claimant party, heard the position of the respondent party and within the frames of reduced process, went to render a decision, while its June 10 decision, upheld the First Instance Court Judgement.

#### 7.8.3. Handing the decision

That the Board of the Appeal Court and in general, the Judiciary was invested in hearing the case in a rapid manner, was proven by the fact that the Appellate Court itself handed over the decision to the applicant. This is unprecedented. The Court, within 12 days of announcing the decision, prepared the 70- page long judgement and upon own initiative, handed it over to the applicant, thus limiting its time to prepare its position better and to appeal the judgement within 18 days allowed by the Law.

We believe, that the Appellate Court pretended it was interested in swift and effective justice and effectively limited the right of the party to make decision, within the dates allowed for by the Law, to enjoy the processual dates, thus speeding up the enactment of counting down of clock to appeal the decision via cassation and hence, the trial of the case.

In the text of the judgement, the Court based its arguments on the requirements of the Civil Procedure legislation and noted, that the party, willing to appeal the judgement, must appear at the Court no earlier than 20 days and

no later than 30 days of the date the announcement of the judgement, and receive the text of the judgement. These dates allow the party willing to appeal the decision to plan and defend its positions as he/she sees it fit. On the other hand, imposition of the 30-day maximum limit is viewed as a restricting measure to make sure a party is not acting arbitrarily and dishonestly, and thus stretching the trial forever.

#### 7.8.4. Violation of the substantive law

The Appellate Court, having shared the First Instance evaluations, did not alter the decision, made by Judge Urtmelidze with multiple violations of the Law.

The Appellate Court repeats the opinion of the First Instance on the amoral nature of the contract, expiration of the appeal and on other aspects. However, the opinion of the Appellate Court on the issue of bona fide buyers merits a separate paragraph.

The Appellate Court, unlike Judge Urtmelidze, could not reject the fact that the registry data with regard to shares of the entity and the application of the presumption of the completeness. However, different reasoning was adopted that helped it to reach a conclusion, that the owners of Rustavi 2 are not bona fide buyers. The Court bases this judgement on the case of exception to the rule that Registry data is never faulty, unless the buyer is well aware in advance that the entitlement is defective.

The Appellate Court found, that acting owners did know that the share they purchased came with defective entitlement. Namely, they knew that K. Khalvashi and LTD Panorama parted with their shares against their own will. The Court, in arriving to this judgement, based its opinion only on the contracts of the sale of shares. According to the Court, the Rustavi 2 shareholders sold their shares in a very short amount of time, represented companies or persons that had close ties to each other, in some cases the property was transferred for free, which the Court believes proved that the current owners are not bona fide buyers.

We believe, that sole analysis of company shares ownership transfers, without adequate representation of specific evidences by Mr. Khalvashi, which undeniably demonstrate the non-bona fide nature of the buyers of the property, is in contradiction with the requirements on the burden of proof of bona fide sale. According to the practice, established by the Supreme Court[25], "the law permits for the presumption, that the Public Registry is fault free, which means that, for a third person, the Registry data is accurate, unless their faultiness is proven. Hence, the Public Registry, on the one hand, has the function of the civil circulation guarantee, and on the other hand, it is in full consensus with the trust and bona fide principles established in the civil circulation".

[25] http://www.supremecourt.ge/files/upload-file/pdf/n61-mnishvnelovani-ganmarteba.pdf;

## 7.9. ADMISSIBILITY OF THE CASSATION APPEAL

As it was above mentioned already, LTDTele companyGeorgia, Giorgi and Levan Karamanishvili have repealed the decision of the Appellate Court on July 12, 2016.

Article 391 of the Civil Procedure Code of Georgia establishes several preconditions for the admissibility of cassation appeals regarding the property and non-property related disputes. Namely, the cassation appeal can be admissible, if among others, (a) the case is important for the development of the law and for establishing uniform court practice, (b) the decision of the Appellate Court differs from the existing practice of the Supreme Court on this category of cases, (c) the Appellate Court heard the case with significant processual violations, which could substantially impact the result of the cases. Furthermore, in the non-property related disputes, the cassation appeal is admissible on the cases that concern freedom of speech and expression.

Declaring a sales contract immoral and hence, void, based solely and only on the disproportionality of the price is unprecedented in either the practice of either instances of the Georgian judiciary system. Furthermore, as it has been already mentioned, the Appellate Court had already heard the case with significant processual violations. The Supreme Court of Georgia 09.09.2016 Order admitted the cassation appeal on Rustavi 2 case. At the same time, in the Order it was noted, that the Supreme Court will adjudicate on the case without oral hearing. Formally, this is not a violation of a Law, however, public hearing of the case would increase public trust towards the Court[26].

## 7.10. CONSTITUTIONAL COURT OF GEORGIA HEARING OF THE CLAIM OF RUSTAVI 2

It is particularly alarming, that the events, surrounding the Constitutional Court of Georgia have affected the hearing of Rustavi 2 case. Namely, the campaign that has been directed against the Court and orchestrated by the Government of Georgia, legislative changes adopted, which were harshly criticized by the Venice Commission and by local NGOs, as well as, the facts of pressuring the Judges of the Court, which are justifiably linked to the Rustavi 2 case. On October 30, 2015 Rustavi 2 submitted three constitutional claims to the Court. Among those, one of the claims concerned a note in Article 54 of the Civil Code: “an agreement is void and null, which violates legally established procedures and restrictions, comes in contradiction with the public order or moral norms” and Article 55 of the same Code.

Legislative changes made by the Parliament with regard to the Constitutional Court have been criticized by the Venice Commission and by NGOs. These changes were termed as dangerous for fundamental values, necessary for a democratic state, which are aimed at paralyzing Constitutional Court and minimizing its crucial role.

[26] Seehttp://www.supremecourt.ge/files/upload-file/other/rustavi2-sarezolucio.PDF [Last checked on 23.09.2016]

NGOs, in describing the deficiencies of the change, did not rule out the possibility that the chamber made up of 4 judges would come under pressure to properly fulfill their duties. Namely, according to the changes, each member of the chamber, who disagrees with the majority opinion, is allowed to request the case to be heard by the Plenary. Giving such rights to a judge was seen as danger to the ability of the chamber to decide swiftly and effectively.

The events that took place after the changes were adopted, have shown that negative expectations in the society were not groundless. In few days after the amendments entered into the force, on June 08, 2016, Judge Merab Turava, who was the member of the Chamber that heard Rustavi 2 case and was elected as the Constitutional Court member by the Parliament, during this administration, has guided himself with the new law and requested that R2 case was heard by Plenum. It must be noted, that during this moment, the trial had been over and the Judges were in the consultation to adopt final judgement. The Plenum has satisfied the request of Judge Turava and despite the opposing views of four Judges, including the President of the Supreme Court, the case was moved to Plenum on June 15, 2016.

The positions of the three judges, that belong to the same chamber and did not agree with Judge Turava to hand the case over to the Plenum merits attention as well. In their dissenting opinion, the Judges have pointed out, that not only did the decision to hand over the case to the Plenum, as requested by the Judge Turava, jeopardize the efficiency of Constitutional Justice and the possibility of proper functioning of the Constitutional Court, but it also did not rule out the threat that the Constitutional Court may have itself violated the demands of the Constitution and having made decision that violates constitutional rights. Handing over the case to the Plenum has resulted in delaying the adoption of the decision on the Rustavi 2 case, since the Plenum had to go back and hear the case all over again.

The Judges of the Constitutional Court pointed out, in their dissenting opinion, that "in the circumstances, when the Constitutional Court Chamber has substantially researched the Constitutional Claim #679 (Rustavi 2 case), is not in the consultation room and is about to complete its work on the decision, petition of one Judge to renew hearing of the case at the Plenum jeopardizes the opportunity to effectively carry out the mandate the Constitutional Court has been trusted with, unequivocally delays trial and adoption of a decision".

It must be noted, that the Plenum, at the motion of Judge Turava, began hearing Rustavi 2 caseon June 16, 2016 and completed it on June 18th, however decision has not been announced up until now. It must be also considered, that on September 30, 2016 four members of the Court will have their terms expired, while the new members, when they are appointed (unless decision is announced before that) will have to hear the case anew.

# 8.

# CALCULATING RATINGS AND THE ADVERTISEMENT MARKET

Ratings are crucially important for TVs to attract advertisement, which determines their financial stability. TVMR, a company that measures TV ratings since January 01, 2005 in Georgia. The company only works in this field and only measures TV audiences and markets. It works through installing "people meters" on TVs installed in households throughout Georgia.

On February 24, 2014 the Revenue Service began financial inspection of TVMR and demanded handing over the data on the households, where the people meters were installed.

On March 09, 2014 Transparency International Georgia, ISFED and Media Development Foundation called on the Ministry of Finances, to accept TVMR proposition to alternative inspections and conduct the inspection at the office. The demand of the Revenue Service to TVMR to share data on the families who have installed the people meters carries the risk that in the future, the data the company provides cannot be trusted anymore. "If any interested party, including the Government, will know exactly where these devices are installed, there will be a danger, that they will try to manipulate the families, who participate in the research, to alter the results of the research data" – reads the statement of the three NGOs.

On March 18, 2014 the Revenue Service distributed a statement which states, that the company did not provide them with the list of families where people meters are installed, that is why they were imposing a financial sanction foreseen by respective laws. The same statement says, that the Revenue Service was referring to the December 31, 2010 order of the Finance Minister (#994-Order) according to which, assets that have mate-rial-productive values, must be accounted for at the location where they physically are located.

On March 20, 2014 TVMR temporarily suspended its work and listed the following, as the reason for suspension of the work: late night interrogations, constant present of 5 to 7 persons (investigators) in the office, moral pressure on the staff and "simply unbearable working conditions". According to media, TVMR was able to quickly resume its operations.

On March 25, 2014 the Company made further explanations for the media, which states, that "the Company did not hand over to Revenue Service confidential information and it only had one reason: it has duty, per research methodology, and per its agreement with its clients (TV stations, Advertisement companies) that it will not publicize the information about families participating in the research and will not disclose it to third parties, while should this take place, the Company will be held responsible to immediately replacing families participating in the research. If the Revenue Services gets a hold of all the families at once, the company will be forced to come up with a completely different list, which will make it to conduct a preliminary basis research with ten times more families, than the actual number of participants (i.e. with 3750 families) and then, randomly select participant families out of them. Following this procedure is mandatory to ensure that the research is trustworthy and in line with international standards. This is a serious financial and temporal resource and will stop the company from resuming its operations for at least 5-6 months".

Part III of Article 255 of the Tax Code stipulates: "the procedures of the tax control procedures should not interrupt the regular tempo of the person's normal operations within reasonable limits and must not result in suspension of their operations" – a requirement that was violated as a result of the actions of the Revenue Service.

Furthermore, the Revenue Services has motioned for handing over of the confidential data on three occasions from TVMR, but the courts did not satisfy any of the motions.

Since 2016, a new company has entered the market of measuring TV audiences – LTD Tri Media Intelligence, which is officially licenses methodology from Kantar Media, an international company. The new playerregis-tered in the Public Registry on October 31, 2014 and in the same month, it has made public statement that it will operate under the Kanda Media license name in Georgia.

TVMR distributed a statement on its website on 01 August, 2016, regarding the tender that was announced by the National Communications Commission of Georgia on July 18, 2016. According to the release, the Tender #SPA160020389 two companies participated: TVMR Georgia and Tri Media Intelligence, who has offered to provided its services during the required 6 months for only GEL 1000, including VAT. According to the tender conditions, an approximate price of GEL 28500 was offered to conduct a research of 10 local broadcasters during 6 months. According to the Company, GEL 1000 is unimaginably below the costs that are required to conduct commercially appealing projects and it requires much bigger resources and the person, who will conduct these services for GEL 1000, which are to measure audiences for local regional broadcasters, clearly has other interests, perhaps political, charity, etc.

The above-described fact has further enhanced views in the society that efforts were underway to redistribute advertisement market for broadcasters. TVMR Georgia contractor companies stated, that given the small size of Georgia, one company was more than enough to fully absorb market needs. It must be noted, that TVMR Georgia representatives have evaluated the emergence of another measurement company as the governmental effort to artificially manipulate the situation. It must also be noted, that the similar scenario took place in Armenia, where ratings were measured by one company and the emergence of the competitor has resulted in eliminating the previous actor from the market altogether.

We believe, that the events surrounding TVMR Georgia must be evaluated as attempts to redistribute TV advertisement market. Furthermore, we cannot rule out, that this isrelated to pressure the authorities are applying on Rustavi 2. Namely, as the Director General of Rustavi 2, Nika Gvaramia has state it, this was a campaign, directed against broadcasters, who have income based on advertisements and TVMR inspections served the purpose to stop the stream of revenues to these companies.

As Nika Gvaramia has explained it, the TVMR Georgia, had they disclosed the list of families, would force them to replace the locations where the devices are installed, which is a lengthy process. During this period, if the

ratings are not calculated, would half the budget of Rustavi 2, since ads mostly depend on the ratings of TV shows.

TVMR case was also covered by the US State Department 2014 Annual Report.

# 9.

# MAESTRO TV COMPANY

The events, surrounding Maestro TV have attracted the attention of civil society on several occasions. The independent editorial policy of the Maestro TV has become the subject of the criticism coming from authorities and the governing party. The owners of Maestro had been replaced and its editorial policy has been altered, shows were canceled, several journalists have left it in protest, while the rest was fired by the management. These events have civil society suspecting that the Government was interfering in the editorial policy of an independent, free and critical media.

## 9.1. VAKHO SANAIA'S REPORTING

On May 18, 2014 Vakho Sanaia's author show, "Vakho Sanaia's Report" shows several clips, which covered unfulfilled promises the Georgian Dream Government has made to the public, the nepotism that existed within both, the previous and the current Governments. The videos covered the streets of Tbilisi, were interviews were recorded with respondents, who were unhappy with the Georgian Dream government.

On May 20, 2014 the Press Office of the Government of Georgia started criticizing Maestro TV and its journalists and accused them in being subjective and spreading lies. The statement of the Georgian Dream party also criticized both the journalist and the entire Maestro TV. According to the same statement, Maestro TV was beginning to join those media outlets, which used the media presence to distribute wrongful information.

On September 22, 2014 Bidzina Ivanishvili gave interview to the Kviris Palitra Newspaper and assessed the work of TV channels in Georgia. He noted, that the Georgian Public Broadcaster, Maestro and Imedi did not show enough independence and they repeated the topics that Rustavi 2 was raising up.

On September 28, 2014 Vakho Sanaia has left Maestro TV on his decision, and according to Radio 1, this was due to the conflict he had with the Director of Maestro, Baia Gadabadze. Baia Gadabadze spoke with Netgazeti and confirmed she has disagreement with Vakho Sanaia, however, she did not elaborate on more details. Vak-ho Sanaia himself refrained from commenting on the issue himself and has not named the real reason he left Maestro until several months have had passed, when he posted a status on his Facebook wall.

According after one his shows were aired, which described the facts of nepotism and the electoral promises, Maia Gadabadze, Director General of Maestro has met with him and told him that his shows may potentially have created problems for Maestro, as it would mean a standoff between the Government and the Channel.

Hence, the chronology of the described facts and the statements of the parties leaves the impression on what types of interests were actually behind the events surrounding Maestro TV and that the real reason why Vakho Sanaia had left and why his show was cancelled, was the video coverage he had aired.

## 9.2. ABANDONING OF MAESTRO TV BY THE JOURNALISTS

On October 28, 2014 the anchors of the talk-show, Subjective Opinion, have left Maestro TV. According to the show producer, Irakli Absandze, the decision was made by Diana Trapaidze after her meeting with Kote

Gogelia, the husband of one of the owners of Maestro, Maka Asatiani, who is a Russian businessman. Teona Gegelia wrote on her Facebook wall, that she was unhappy with incompetent manager.

On December 22, 2014 several journalists have left Maestro TV, including Nino Zhizhilashvili, deputy Director of Maestro TV and the staff of Maestro's news service. Nino Zhizhilashvili stated, that the reason for leaving was her incompatibility with Kote Gogelia on editorial policy. The was about Gogelia's vision, that the TV must become more ideological and "Pro-Georgian", which in the opinion of the journalists, actually meant that he wanted them to be more "Pro-Russian". Also, the issue of dispute was that Koka Kandiashvili, the Public Re-lations adviser to the Georgian Government Administration, had started interfering in Maestro's work and he was planning to run his show on Maestro in the future.

## 9.3. CHANGE OF THE MANAGEMENT IN THE MAESTRO TV COMPANY

Founders of Maestro and its management entered into a dispute in 2015 regarding financial and ownership issues.

On September 18, 2015 the Director of Maestro Studio, Eter (Baia) Gadabadze appealed to a court to launch bankruptcy procedures with regard to Maestro Studio.

On September 22, the owner of 25% stock, Giorgi (Ghia) Gachechiladze organized a press-conference to declare, that he did not agree with the appeal on bankruptcy and requested management to be handed over him, as he believed, the bankruptcy procedures were launched purposefully to actually render Maestro bankrupt, which he attributed to another shareholder, Maka Asatiani, who demanded payback of the credit she had landed to Maestro TV.

According to media, on February 01, 2016, 25% shareholder, Giorgi Gachechiladze, purchased, 30% shares from other shareholders (Giorgi Ebralidze and Levan Chikvaidze) and hence became the owner of 55% of maestro shares. The remaining shares were divided between Mamuka Ghlonti (15%), Ekaterine Akobia (5%) and Maka Asatiani (25%).

Next day, the acting Director, Maia Gadabadze made a statement, calling the new distribution of the shares politically motivated, and expressed here suspicions, that there was something off in the fact that the shares of the company that owned USD 50 Million for only few Million Dollars. According to here, the actual buyer of the shares was the unofficial owner of TV Imedi, Irakli Rukhadze and she could not see any other motive, but the desire to own the station in the pre-election period.

On February 04, 2016 partners of the Maestro ousted Maia Gadabadze and appointed Levan Gachechiladze, the brother of Giorgi Gachechiladze as the new Director of the Maestro TV.

The suspicion, that the authorities were behind the process rose in connection to the fact, that two days prior to the partner meeting, the Prime-Minister of Georgia and Giorgi Gachechiladze have met at the Administration of the Government building. The PM confirmed that he had the meeting with Giorgi Gachechiladze, but he ruled out that it was about Maestro TV.

Maia Gadabadze went to Public Registry on February 09, 2016 To claim, that changes in Maestro management were suspended, until the court had decided on her February 05 appeal to the court on provisional remedies and if demands for change in the management were presented to the Registry, they should decline to start processing it. The request was not honored.

The situation intensified even more in Maestro when after March 07, 2016 the Public Registry office registered Levan Gachechiladze as the new Director of Maestro. Per request of Maia Gadabadze, more security was introduced around Maestro TV. According to her statement, Levan Gachechiladze would not be allowed to manage the TV from the building, that belonged to Maka Asatiani. Levan Gachechiladze's legal representative, Nanuka Chkuaseli stated, that while the building itself did not belong to Maestro TV, the LTD Maestro had rented the property from LTD M-Investment, which lawfully enables him the right to access the property, and since Levan Gachechiladze had already been appointed as the Director of Maestro, there did not exist any legal provision, that prohibited him from entering the property.

In response to this claim, Maia Gadabadze has made a document public, which showed that the lease agreement had already been expired, since Maestro Studio could not pay rent. The document was dated by December 08, 2015 and it notes, that M-Investment does not want to renew lease agreement with the Maestro Studio after December 31, 2015. The document also speaks about the debt, that Maestro Studio has accrued: it owed GEL 255.90 to M-Investment.

## 9.4. CLOSURE OF THE SHOWS "BUSINESS MORNING" AND THE "BUSINESS CONTACT", AND "ANALYTICS"

Levan Gachechiladze had promised the journalists uninterrupted air, immunity to staff and non-interference in their work.

Despite the promise, on May 30, 2016 Giorgi Isakadze was fired, the person who had created three shows: Business Morning, Business Contact and Analytics.

Maestro also suspended contract with 4 journalists, who have, together with Giorgi Isakadze, participated in the evening talk-show Archevani on Rustavi 2 and spoke about events that took place at Maestro TV. After that, on June 02, 2016 the three above-mentioned shows were completely removed from the schedule. Also, by the decision of the Director of the LTD Studio Maestro, contracts were temporarily suspended with the 32 staff members of the Business Contact and the Business Week.

These processes were evaluated as politically motivated by NGOs. According to them, Maestro case is similar to Rustavi 2 case. NGOs stated, that developments surrounding Maestro TV further enhance suspicions, that there are efforts underway to gain influence on the media in the pre-election period.

Prime-Minister and other representatives of the Government have reacted to the news and have declared that both, Maestro and Rustavi 2 cases represent nothing, but a private dispute between the owners and they ruled out the role of the Government in managing these processes.

According to the US Ambassador, Ian C. Kelly, for the Unite States it is important, that media sector is free and independent in Georgia, especially during the pre-election period. Ambassador Kelly explains, that this is the context they view events developing around Maestro TV.

# 10.

# TABULA BROADCASTING COMPANY

## 10.1 ATTACK ON THE TABULA JOURNALISTS

On January 12, 2016 in Tbilisi, on the Kote Abkhazi Str., in the restaurant Chashnagiri, three actual (Irakli Kiknavelidze, Levan Sutidze and Nino Matcharashvili) and one former (Avto Koridze) journalists were attacked. According to Kiknavelidze, the motive for the attack was "that Tabula insults the Georgian Church", and due to this, the journalists were physically and verbally abused, while the property of the restaurant was damaged.

The law enforcement began investigation on the same day, based on Article 125 of the Criminal Code (beating).

Statements were made by politicians regarding the case, including the Deputy Chair of the Parliament, Giorgi Baramidze who noted, that attackers must be held fully responsible and regretted, that these violent types of persons present themselves as the defenders of faith. The Chair of the Parliament, David Usupashvili expressed his hope that the law enforcement bodies would react adequately and denounced attack on the journalists and physically abusing them. According to the Chairman, attacks on the journalists for carrying out their professional duties is a serious problem and cases like these should not be taking place in a democratic society.

Public Defender, Ucha Nanuashvili has focused particularly on the freedom of expression. According to him, free and independent media has special role in building democracy and there should not be a feeling in the public and crime goes unpunished, since this is what enables a next crime to take place.

Different position was expressed on the motives of the attack by Vice-Chair of the Parliament, Manana Kobakhidze. According to her, there was no interference in the professional work of the journalists, since the victims did not engage in the work at the moment of the attack and the investigation was right to apply Article 125 of the Criminal Code (beating).

NGOs expressed their concern regarding the incident. They focused on the legal qualification of the incident by the law-enforcement. According to them, in the description of the crime circumstances, it had to be reflected that hate-motivated signs were present (Art. $53^1$ of the Criminal Code). They also responded to the Vice-Chair statement and noted, that the attackers themselves have said that they were motivated by Tabula's work, which is exactly what makes it a crime directed against journalists for their work and is an interference in the freedom of expression of the victims. Insufficient reaction of the authorities would have chilling effect on the freedom of expression in Georgia.

On January 15, the Ministry of Internal Affairs press-release said, that four persons who have been involved in the attack against the journalists have been identified. According to February 02, 2016 information, the inves-tigation had initially applied assumed the incident was a "beating", but later, the Prosecutor's Office changed the qualification and accused the three out of the four participants – Tornike Tutberidze, Demetre Laphanash-vili and Shalva Gagnidze – of violating Para. 2, Art. 156 of the Criminal Code. The norm concerns persecuting

someone for their opinion, expression, conscience, faith, believe or religion, and/or for their political, public, professional, religious or scientific work, and with the use of violence or threat of violence.

The Prosecution requested bail of GEL 5000, however the judge satisfied the claim partially and determined the bails in the amount of GEL 2500 for Tornike Tutberidze, GEL 3000 for Demetre Laphanashvili and GEL 2000 for Shalva Gagnidze.

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