

# HATE SPEECH IN PUBLIC SERVICE

ANALYSIS OF THE RESPONSE MECHANISM  
TO VIOLATIONS OF ETHICAL NORMS

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GEORGIAN DEMOCRACY INITIATIVE

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# TABLE OF CONTENTS

- Introduction..... 5
  
- 1. Research Methodology and Statistics ..... 6**

  - 1.1. Research Implementation Process..... 6
  - 1.2. Analysis of the Legislative Framework ..... 6
  - 1.3. Legal Assessment of Cases Instituted Based on Statements ..... 7
  - 1.4. Statistical Information ..... 7

  
- 2. Analysis of the Legal Framework ..... 9**

  - 2.1. Freedom of Expression and the Scope of Its Limitation ..... 9
  - 2.2. Freedom of Expression and Public Service..... 11
  - 2.4. Conclusion..... 14

  
- 3. Examined Cases..... 15**

  - 3.1. The Case of Nugzar Khutsiberidze..... 15
  - 3.2. The Case of Naira Samsonidze ..... 16
  - 3.3. The Case of Maia Bobokhidze..... 18
  - 3.4. The Case of Guram Kobakhidze..... 19
  - 3.5. The Case of Ketino Kvitsiani..... 20
  - 3.6. The Case of David Madzgarashvili ..... 22
  - 3.7. The Case of Gogita Dautashvili and Others Employed in the Ministry of Internal Affairs..... 23
  - 3.8. The Case of Rusudan Nikachadze..... 24
  - 3.9. The Case of the Staff of the Ministry of Defence ..... 24
  - 3.10. Conclusions ..... 26

  
- Recommendations: ..... 27**



## INTRODUCTION

The use of hate speech in public spaces has long been an integral part of everyday life and, in this respect, it remains relevant. Moreover, it often becomes the subject of manipulation by the government and it serves as the basis for unjust restriction of the freedom of expression.

The pre-election period was distinguished by the use of hate speech when it became almost a trend to use texts containing xenophobic, homophobic or other hate speech, including building election campaigns on intolerance and encouraging direct or indirect incitement of hatred among different groups of the society. Hate speech is mostly used on social networks, which contain an abundance of hateful posts and comments. Among others, people employed in public service as well often contribute to sharing and disseminating such posts. The purpose of this research is not to conduct a general analysis of the use of hate speech in public spaces or highlight its trends. The research focuses on the use of hate speech by persons employed in the public sector; in particular, it contains an analysis of the responses to GDI's public statements regarding such incidents.

In particular, within the scope of the research, on the one hand, we have studied the legislative framework about the impermissibility of using hate

speech by persons employed in the public sector and, on the other hand, the efficiency of its application in practice.

In this regard, Government Resolution no. 200 is worth mentioning. It determines the rules of conduct for persons employed in public organisations, including the restriction on the use of hate speech. The Law of Georgia on Public Service is also an important document, which deals with the rules related to disciplinary proceedings.

Having discussed the legislative framework, the second part of the research analyses the cases of specific individuals, against whom we have filed applications requesting to initiate disciplinary proceedings. They were identified based on a pre-determined methodology and its purpose was to determine how an organisation responds and examines alleged disciplinary misconduct, reflected in the use of hate speech by its employees.

At the end of the research, the findings and relevant recommendations are made for the notice of particular organisations that have been established in the analysed cases.

Finally, the aim of the research, on the one hand, is to facilitate the identification of the use of hate

speech by persons employed in the public sector and, on the other hand, to identify the practical or legal needs for the improvement of the existing mechanism.

We would like to point out in express terms that we are against the introduction of a graver responsibility mechanism for the use of hate speech than

disciplinary responsibility. We believe that the best way to balance freedom of expression and the use of hate speech is to examine the latter within the frameworks of self-regulatory mechanisms. Introduction of civil, administrative or criminal responsibility would be particularly damaging and disproportionate in terms of guaranteeing freedom of expression in the country.

# 1. RESEARCH METHODOLOGY AND STATISTICS

## 1.1. Research Implementation Process

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The research includes analysis of the legislation regulating hate speech in the public sector and legal assessment of cases instituted based on our statements, in accordance with these regulations. The research was carried out from 1 September 2018 to 30 June 2019 and, within the scope of this report, we have examined public statements of persons employed in public agencies.

Since the identities of the persons employed in these agencies are not accessible public information, it was necessary, for research purposes, to find alternative ways to help us identify the instances of the use of hate speech by such individuals. For this purpose, we have studied the posts containing hate speech in social networks, which were actively shared and liked. Among the persons who shared and liked such posts, those were selected who had indicated various state agencies as their employ-

ers. At the same time, we have monitored information disseminated in media regarding the incidents of use of hate speech by different public officials. In each case, we were able to verify the authenticity of information regarding their employers by using publicly available sources and studied the activities carried out by them in social networks, e.g., liked pages, comments, shared posts and their contents, etc.

It is noteworthy that in most cases the agencies shared information with us about the steps taken against the respective persons, but there were cases where we had to make several calls and file applications with the respective agency (such as the Ministry of Defence of Georgia). At the same time, the ministries informed us whenever the person indicated in our statement was no longer employed in the relevant department.

## 1.2. Analysis of the Legislative Framework

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Within the scope of the research, we examined Government Resolution no. 200, which serves as a substantive basis for upholding ethics and lays down rules of conduct in public organisations, including regarding the restriction of the use of hate speech. At the same time, we examined the Law of Georgia on Public Service and the pro-

cedures outlined in connection with disciplinary proceedings against public officials in case of violation of ethical norms. The research also examines the constitutional and international standards of freedom of expression and the existing standards regarding the impermissibility of using hate speech.

### 1.3. Legal Assessment of Cases Instituted Based on Statements

After finalising the abovementioned process (which included examining particular persons' public activities in social networks and the preparation of applications against them), each case was individually analysed based on the information received from a relevant agency and factual circumstances. The research describes the statements and the process directed against them as well as the legal assessment of cases. Based on

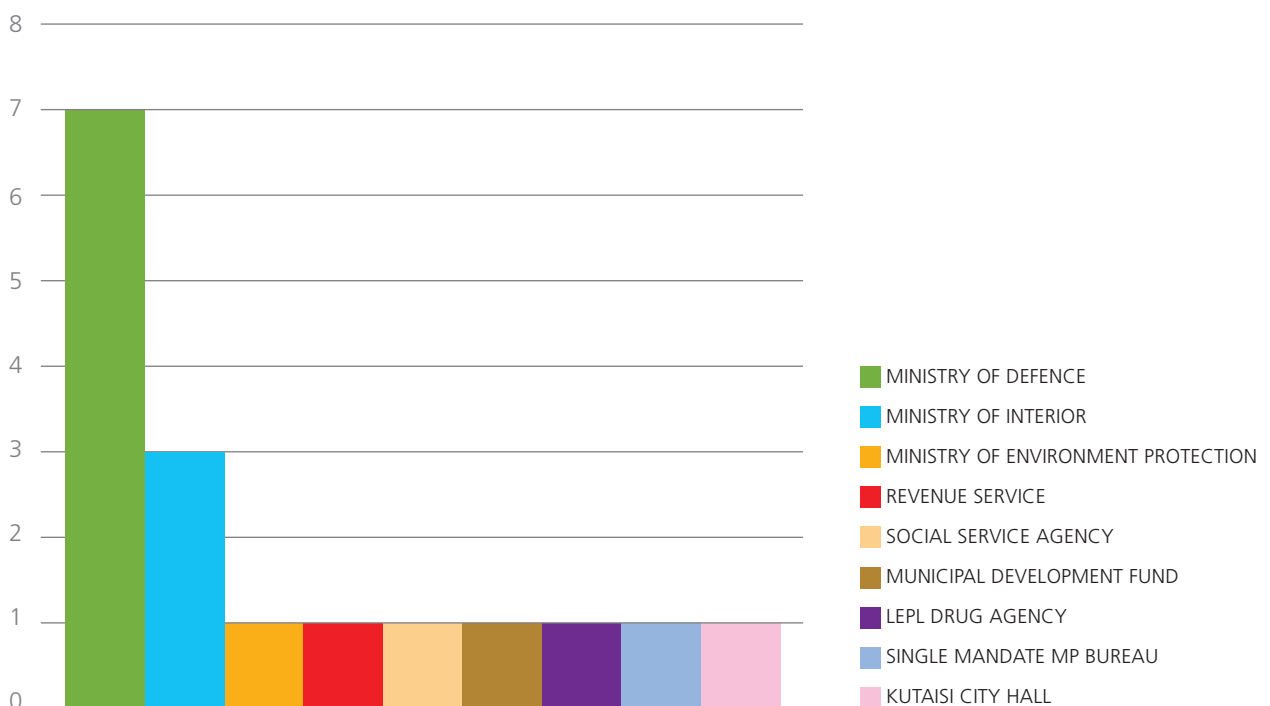
the responses received from the agencies, the existing shortcomings in the enforcement of the legislation and the attitude of the agencies towards the issue were analysed. Consequently, the cases referred to in this document include the description of the factual circumstances and the process as well as the shortcomings revealed in the process of the proceedings.

### 1.4. Statistical Information

Within the framework of the research, from the examined persons, applications were prepared against 19 public officials. The information is provided according to the place of employment of

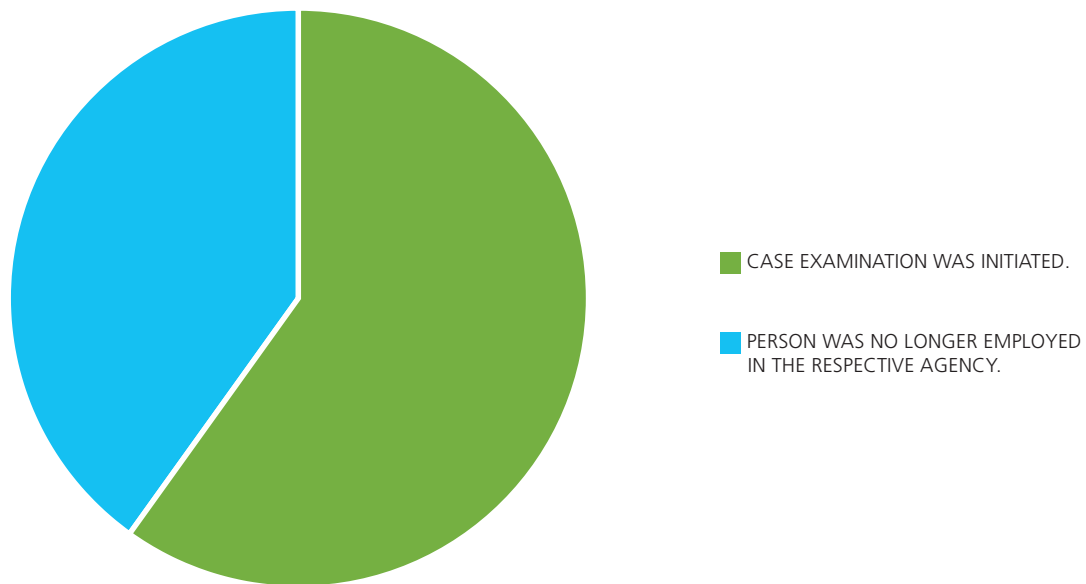
these persons, the answers received regarding the applications and the results of the disciplinary proceedings are given below.

**Table №1: Number of Applications According to the Indicated Place of Employment by Examined Persons:**



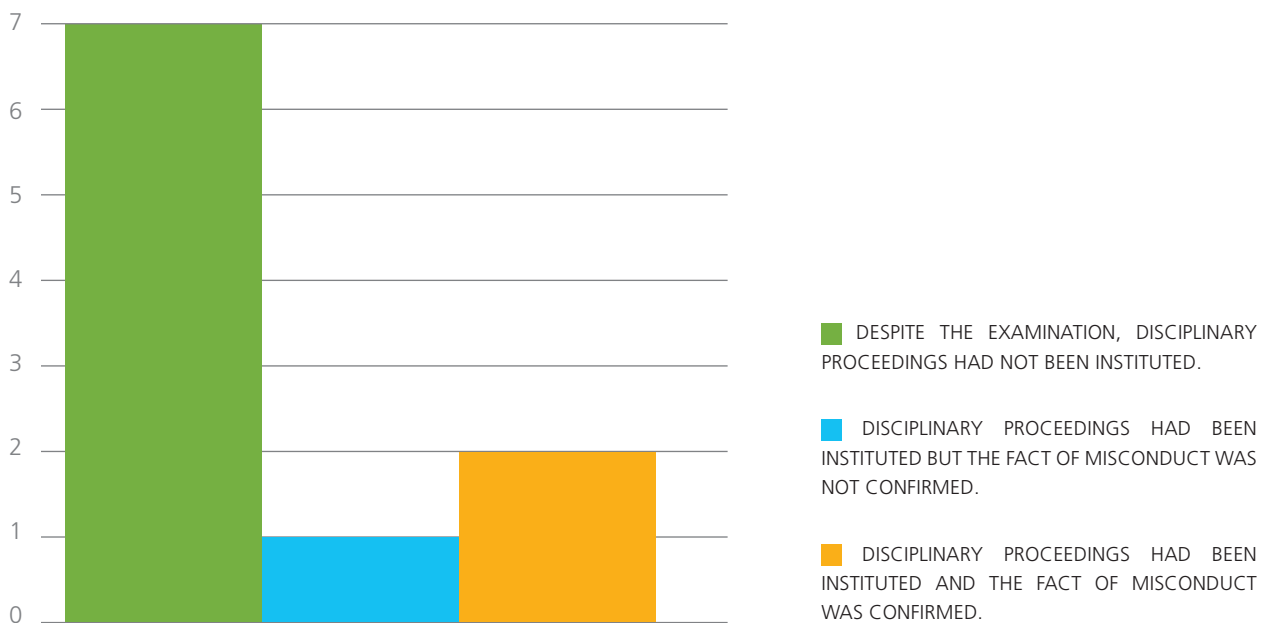
**Table №2: The Results of Application Consideration**

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**Table №3: The Course of the Examination and the Outcome of the Case**

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## 2. ANALYSIS OF THE LEGAL FRAMEWORK

### 2.1. Freedom of Expression and the Scope of Its Limitation

Freedom of expression, in the case law as well as in legal theory, is considered as a major achievement of the modern world and the basis of democracy. This has its own explanation. Over the centuries, people were persecuted for their different views, opinions or beliefs. They were burned at the stake and moved away from their communities. That is why legal theorists, philosophers and international/regional and national courts place particular emphasis on the necessity of realising this right and the threats in case of its unjust restriction. This opinion is also shared by the Constitutional Court of Georgia.

"Freedom of expression is the basis of a democratic society and without the proper exercise of this right, the realisation of other rights is virtually impossible (...) exactly the degree of the freedom of expression determines the degree of freedom and democracy of the country."<sup>1</sup> The Constitutional Court of Georgia notes, "Without it, the self-realisation of the individual is impossible. Freedom of expression is the essential part of a person's development and the progress of society as a whole; it creates the prospect of sharing democratic values within society."<sup>2</sup>

Freedom of expression is guaranteed by Article 17 (former Article 24) of the Constitution of Georgia and all people exercise this right. In particular, under Article 17 of the Constitution of Georgia, "Freedom of opinion and the expression of opinion shall be protected. No one shall be persecuted

because of his/her opinion or for expressing his/her opinion. Every person has the right to receive and impart information freely."<sup>3&4</sup>

Despite the importance of freedom of expression, it is not an absolute right and, according to the constitution, restriction of this right may be allowed only "in accordance with law, insofar as is necessary in a democratic society for ensuring national security, public safety or territorial integrity, for the protection of the rights of others, for the prevention of the disclosure of information recognized as confidential, or for ensuring the independence and impartiality of the judiciary."<sup>5</sup>

When we talk about freedom of expression and its restriction, it is important to determine at whom it is directed. It is commonly accepted that private individuals enjoy a higher degree of protection of freedom of expression than, for example, state officials. The higher a person's status and his/her impact on the formation of public opinion, the more is expected from him/her. This is due to the fact that public statements made by such persons, as a rule, are always at the centre of attention and have the ability to have an influence on society and the future behaviour of other people. Hence, making statements which promote hate speech or discrimination by politicians and other public officials is especially threatening. At the same time, it should be noted that political expression enjoys the highest degree of protection.

1 The decision of the Constitutional Court of Georgia (10 November 2009, no. 1/3/421,422) on the case Giorgi Kipiani and Avtandil Ungiadze v. The Parliament of Georgia, para 6.

2 The decision of the Constitutional Court of Georgia (30 September 2013, no. 1/6/561,568) on the case Iuri Vazagashvili v. The Parliament of Georgia, para. 39.

3 The Constitution of Georgia, Article 17.1, available at: <https://matsne.gov.ge/en/document/download/30346/35/en/pdf> (accessed 28.07.2019).

4 Ibid. Article 17.2.

5 Ibid. Article 17.5.

Taking the above into consideration, there are legal documents at international and regional level, which specifically indicate the special responsibility of the authorities, political organisations and public officials and call them “to refrain from statements, in particular to the media, which may reasonably be understood as hate speech, or as speech likely to produce the effect of legitimising, spreading or promoting racial hatred, xenophobia, anti-Semitism or other forms of discrimination or hatred based on intolerance. Such statements should be prohibited and publicly disavowed whenever they occur.”<sup>6</sup>

The same approach has been adopted by the Parliamentary Assembly of the Council of Europe: “Hate speech by certain political, religious and other civil society leaders, and hate speech in the media and on the Internet are also of particular concern. The Assembly stresses that it is the paramount duty of all public authorities not only to protect the rights enshrined in human rights instruments in a practical and effective manner, but also to refrain from speech likely to legitimize and fuel discrimination or hatred based on intolerance.”<sup>7</sup>

The United Nations Committee on the Elimination of Racial Discrimination also focuses on combating hate speech and all forms of discrimination in its 35th general recommendation. According to this general recommendation,<sup>8</sup> the role of politicians and other public opinion activists is especially high in terms of harmonisation of public processes, elimination of discriminatory actions and hate speech.

It is noteworthy that the European Commission for Combating Racism and Intolerance (ECRI), in its report regarding Georgia, considers discrimination and hate speech on religious, gender, racist or ethnic grounds as the most serious issue.<sup>9</sup> In the report, public officials and media organisations are presented as subjects with special responsibilities. According to the recommendations, the state should take concrete steps to adequately respond to the problem, including conducting awareness-raising campaigns together with the self-regulatory bodies of media outlets to prevent and eliminate hate speech. At the same time, the commission calls on political parties to maintain a strong position against racism and homo/transphobia.<sup>10</sup>

Although public officials often are not public figures, unlike other people, including those employed in private sector, they have a special obligation to observe ethical norms and fulfil their obligations impartially, on the basis of equality. It should also be reflected in the impermissibility of using hate speech. Such an approach is caused by the fact that they represent the state while carrying out their own activities. Every government agency has the constitutional obligation to be impartial, transparent and equally accessible to everyone. Unethical behaviour by public officials may put the neutrality of the organisation under question and encourage discriminatory practices against particular groups. These requirements may be extended beyond the performance of official duties by a public official.

It should also be taken into account that hate

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6 Council of Europe, Committee of Ministers, Recommendation No. R (97) 20, on Hate Speech, principle 2 (30 October 1997), available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680505d5b> (accessed 28.07.2019).

7 The Parliamentary Assembly of the Council of Europe, Resolution 1728 (2010) on Discrimination on the basis of sexual orientation and gender identity, para 7, available at: <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=17853&lang=en> (accessed 28.07.2019).

8 Committee on the Elimination of Racial Discrimination, General recommendation No. 35 on Combating racist hate speech (26 September 2013), available at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CERD%2fC%2fG-C%2f35&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CERD%2fC%2fG-C%2f35&Lang=en) (accessed 28.07.2019).

9 European Commission for Combating Racism and Intolerance (ECRI), Report on Georgia (fifth monitoring cycle), published on 1 March 2016, paras 25, 35, 93, 104-105, available at: <https://rm.coe.int/fourth-report-on-georgia/16808b5773> (accessed 28.07.2019).

10 Ibid. paras 42, 44.

speech does not have a universal definition in human rights law. This term is used to describe the negative and threatening attitude towards public peace. In 1997, the Committee of Ministers of the Council of Europe clarified hate speech as follows: "The term 'hate speech' shall be understood as covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin."<sup>11</sup>

Therefore, not every statement that contains some kind of hatred, disgust or negative attitude towards a specific group of people, organisation, etc., is hate speech. For example, in Georgian reality, the

representatives of government and other public officials frequently refer to particular political parties (especially the "United National Movement") or certain media outlets in a negative context or express hatred towards them, but such statements cannot be considered as hate speech.

Hate speech, as a rule, is directed at a group of historically oppressed people who are humiliated by referring to them with harsh expressions and this approach is based on stereotypical ideas towards them. The subcategories of hate speech are determined depending on which groups of people are concerned, for example, such as homophobic (fear for persons with different sexual orientation), xenophobic (fear of foreigners), Islamophobic (fear of Islam followers), sexist expressions, etc.

## 2.2. Freedom of Expression and Public Service

The Law of Georgia on Public Service does not regulate the freedom of expression of public officials but determines the principles that a public official should take into consideration during performing his/her duties. In particular, the Law of Georgia on Public Service determines a public official's duty of loyalty, which means that "public officials shall exercise official powers in compliance with the public service principles and public interests."<sup>12</sup> At one glance, the definition of loyalty is quite broad and does not include any kind of restriction or reference to the participation of a public official in a public discussion. It indicates to an obligation on performing all duties in good faith, which, in turn, implies neutrality and refraining from expressing any radical views, which might put the public official's duty of loyalty under question. It should be

noted that, under the Law on Public Service, the public official has an obligation of impartiality.<sup>13</sup>

Under Article 1 of the Law of Georgia on Public Service, the aim of the law is to establish a legal basis for the formation and functioning of a stable, unified public service in Georgia, determining the status of public officials and regulating public service management issues. The responsibility of the public official for disciplinary misconduct is among them.

It should be noted that the Law of Georgia on Public Service clarifies the meaning of public service. In particular, public service is the performance of public service in the organisations listed in the abovementioned law.<sup>14</sup> At the same time,

11 Council of Europe, Committee of Ministers, Recommendation No. R (97) 20, on Hate Speech, principle 1 (30 October 1997), available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680505d5b> (accessed 28.07.2019).

12 Law of Georgia on Public Service, Article 7, available at: <https://matsne.gov.ge/en/document/download/3031098/1/en/pdf> (accessed 28.07.2019).

13 Law of Georgia on Public Service, Article 12, available at: <https://matsne.gov.ge/en/document/download/3031098/1/en/pdf> (accessed 28.07.2019).

14 Ibid. Article 3.c.

under Article 3.d, a public official is a qualified public officer/public officer/officer; a person recruited on the basis of an agreement under public law or a person recruited on the basis of an employment agreement.

Chapter X of the same law determines the grounds and procedures for imposing disciplinary responsibility on public officials. It should be taken into consideration that the obligations and procedures set forth in this chapter are equally directed at public officials as well as the persons employed under an administrative contract<sup>15</sup> or employment contract.<sup>16</sup>

Disciplinary proceedings are intended to detect disciplinary misconduct promptly and fully and determine a disciplinary measure proportionate to the disciplinary misconduct.<sup>17</sup> It is based on the rule of law and the principle of lawful reservation. Under Article 85.1.c, disciplinary misconduct among others is “neglect and breach of ethical norms and the general rules of conduct that are intended to discredit an officer or a public organisation, irrespective of whether it is committed at or outside work.” Under Article 77.3 of the same law, “the obligation of officers to observe the general rules of ethics and conduct is determined by the Law of Georgia on Conflicts of Interest and Corruption in Public Service.” Under Article 135.5 of the latter law, “unless otherwise provided for by legislation, the general rules of ethics and conduct in public service are determined by a resolution of the Government of Georgia.”<sup>18</sup> The Government of Georgia adopted a resolution on general rules of ethics and behaviour in public organisations on 20 April 2017 (Resolution no. 200), aiming at creating an ethical environment in public organisations and establishing professional standards of public offi-

cial, ensuring the establishment of an impartial, objective and collegial public service and increasing public trust towards the public service.<sup>19</sup>

It is noteworthy that, under Article 2.1 of the abovementioned resolution, the rules of ethics and behaviour apply to public officials employed in a public organisation, except for the cases provided for in paragraph 4 of this article, which provides that the regulations on the conflicts of interest and presents set forth in Articles 9 and 10 of this rule do not apply to public officials employed under the labour agreement. Consequently, the rules adopted by the government's resolution shall apply to all types of public officials, including persons employed under the administrative agreement, exempt from the specific exception mentioned in Article 2.4.

Under Article 11.3 of the resolution, the use of hate speech and/or making a discriminatory comment by public officials is incompatible with the general rules of ethics and behaviour. It is noteworthy that neither the resolution nor any other legal document indicates what is meant under hate speech. Thus, its explanation is entirely entrusted to the law enforcer, who is supposed to be guided by the explanations given in the international documents. At the same time, it is important to maintain religious neutrality by the public official. In particular, under Article 7.2 of the resolution, “a public official exercises his/her powers separately from personal religious affiliation and beliefs.” In case of direct access and communication to other public officials, colleagues and citizens during exercising his/her official powers, in the absence of direct necessity, he/she should refrain from public statements of religious nature and should not demonstrate his/her religious be-

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15 Ibid. Article 80.3.

16 Ibid. Article 84.2.

17 Ibid. Article 86.

18 Law of Georgia on Conflicts of Interest and Corruption in Public Service, Article 135.5, available at: <http://csb.gov.ge/uploads/745748.pdf> (accessed 28.07.2019).

19 Resolution of the Government of Georgia no. 200 (2017), Article 1, available only in the Georgian language at: <http://csb.gov.ge/uploads/3258.pdf> (accessed 28.07.2019).

liefs, practices or views. Under paragraph 4 of the same article, "while performing official duties, a public official shall refrain from such actions, which may be perceived as a means of carrying out the interests of a specific religious doctrine, community or unity."

Thus, even though the Law of Georgia on Public Service does not determine which ethical norms should be followed by a public official and whether there are any limitations for his/her right to freedom of expression, the Law of Georgia on Conflict of Interest and Corruption in Public Service, in conjunction with Resolution no. 200 of the Government of Georgia, creates a national framework, on the basis of which the obligation of public officials to observe the ethical norms (including impermissibility of the use of hate speech), on the one hand, and, on the other hand, disciplinary responsibility for the violation of this obligation are determined, procedures of which have already been determined in the Law of Georgia on Public Service.

One important circumstance that has to be taken into consideration is that the Law of Georgia on Public Service, which entered into force on 11 November 2015, does not apply to the legal entities of public law (LEPL) and accordingly to the individuals employed in them during the transition period (until 31 December 2019). However, it is noteworthy that such a reservation is not envisaged by Resolution no. 200 of the Government of Georgia, which

indicates that the state employees employed in the LEPLs also have to adhere to the ethical norms determined by the resolution. Therefore, until 31 December 2019, disciplinary proceedings against them for the violation of ethical norms shall be carried out in accordance with the normative acts regulating these issues (such as internal instructions and other documents). This is confirmed by the special comments made for this resolution, which was published by the German International Cooperation Society (GIZ) in cooperation with the Civil Service Bureau. The comments of the resolution indicate that "for the purposes of the general rules of ethics and behaviour, the public official includes a broader circle of subjects than it is envisaged by the Law of Georgia on Public Service". For the purposes of general rules of ethics and behaviour, the definition of a "public official" as envisaged by the Law of Georgia on Public Service and the Law of Georgia on Conflict of Interest and Corruption in Public Service is taken.<sup>20</sup>

Thus, the government's resolution uses the same wording for the explanation of the term "public official" as it is used in the Law of Georgia on Public Service, which, among others, includes persons employed in the LEPLs. However, this does not mean that the provision of the transitional regulations of the Law of Georgia on Public Service should also be extended to the resolution, which states that the law does not apply to the LEPLs.

### 2.3. Use of Hate Speech as a Basis for Disciplinary Responsibility and Appropriate Procedures

The Law of Georgia on Public Service determines three grounds for initiating disciplinary responsibility: (a) an application of an officer or a former officer for the institution of disciplinary proceedings; (b) the existence of a reasonable suspicion of alleged disciplinary misconduct; and (c) the results of a statutory audit, inspection and/or monitoring

conducted in the public organisation.

The first ground directly indicates the initiator of disciplinary proceedings whereas the second and third grounds reflect the concrete factual circumstances - the existence of reasoned suspicion or the results of the monitoring - but does not indi-

<sup>20</sup> Resolution no. 200 of the Government of Georgia on "Definition of General Rules of Ethics and Behaviour in Public Service", comments, German International Cooperation Society. (GIZ), Tbilisi 2018,11, available only in the Georgian language at: <http://csb.gov.ge/uploads/2018giz-ge-sajaro-samsax-etikis-wesebis-komm.pdf> (accessed 28.07.2019)

cate the applicant in these circumstances.

In general, such an inconsistent approach causes too much confusion. The ambiguity of the law, on the other hand, leaves a gap and the possibility of any person to inform the relevant authorities about the violation of ethical norms or, in case of revealing any other disciplinary misconduct committed by a public official, thus becoming the initiator of disciplinary proceedings.

Under the law, “if there are any of the grounds, the head of the respective public institution or another duly authorised person shall issue an order to initiate disciplinary proceedings and disciplinary proceedings shall be instituted within one month after the detection of disciplinary misconduct.”<sup>21</sup> Disciplinary proceedings in a public organisation shall be conducted by a structural unit responsible for conducting official inspections of the public agency.<sup>22</sup> If a public organisation does not have a structural unit or if disciplinary proceedings are conducted against an employee of that structural unit, the head of a public organisation or another duly authorised person may set up an independent commission for disciplinary proceedings.<sup>23</sup> Information on the institution of disciplinary proceedings shall be sent to the person who has allegedly committed the disciplinary misconduct<sup>24</sup>, who should submit a written explanation before

the unit conducting disciplinary proceedings within the set time-limit.<sup>25</sup> On the other hand, the unit conducting disciplinary proceedings (hereinafter referred to as “Unit”) shall inform the person who has allegedly committed disciplinary misconduct of his/her rights, obligations, the procedure of disciplinary proceedings and present to him/her case materials. Also, the Unit shall involve in the disciplinary proceedings any person who possesses information on the disciplinary misconduct.<sup>26</sup> A person, who has allegedly committed disciplinary misconduct, shall have the right to use the assistance of a defence lawyer, present evidence and appeal the decision imposing a disciplinary measure as determined by law.<sup>27</sup> The right to appeal arises from the moment of receiving the Unit’s conclusion.

In case of finding disciplinary misconduct, disciplinary measures can be as follows: warning, reprimand, deduction of 10 to 50 per cent of salary for a period of one to six months and dismissal. If the expected result of disciplinary proceedings is dismissal as a disciplinary measure, the unit conducting the disciplinary proceedings shall hold an oral hearing with the participation of the person who has allegedly committed the disciplinary misconduct, except when he/she refuses to participate in the oral hearing.<sup>28</sup>

### 2.4. Conclusion

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Thus, according to the existing standards, persons employed in public organisations have a greater obligation while enjoying the freedom of expression imposed on them, which includes the

duty to observe ethical norms and, among others, the impermissibility of using hate speech. The existing legislative framework, since the adoption of Resolution no. 200 of the Government of

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21 Law of Georgia on Public Service. Articles 88, 89, available at: <https://matsne.gov.ge/en/document/download/3031098/1/en/pdf> (accessed 28.07.2019)

22 Ibid. Article 89.1.

23 Ibid. Article 89.3.

24 Ibid. Article 91.1.

25 Ibid. Article 91.2.

26 Ibid. Article 91.5.

27 Ibid. Article 92.

28 Ibid. Article 91.6.

Georgia, in conjunction with the Law of Georgia on Public Service, creates sufficient grounds for the restriction of the use of hate speech in public service. It is also noteworthy that, before the adoption of the resolution, there was no unified standard of the code of ethics and each agen-

cy regulated this issue with internal documents. Most of them did not include any provisions prohibiting expressions including hate speech and encouraging discrimination. More details on this issue are discussed in the report prepared by the Georgian Democracy Initiative.<sup>29</sup>

## 3. EXAMINED CASES

### 3.1. The Case of Nugzar Khutsiberidze

#### Factual Circumstances

Nugzar Khutsiberidze – Deputy Head of Supervision Service of the Primary Structural Unit of Kutaisi City Hall.

On 11 November 2018, Nugzar Khutsiberidze shared a post on Facebook containing hate speech, reflecting the confrontation between Nika Gvaramia and law-enforcement authorities. The post was accompanied by a homophobic comment: "Look at this poof! To have him as a prosecutor general, he would execute any order, that's how it would be! In general, Shevardnadze also had too many faggots around him and in the government."

The term "faggot" referred to in the text is a word used in an insulting context, which is homophobic, and is used by radical groups to discredit sexual minorities. Consequently, the statement of similar content posted by Nugzar Khutsiberidze gave us the ground to address Kutaisi City Hall and to inform them about the alleged disciplinary misconduct committed by Nugzar Khutsiberidze.

According to the reply issued by Kutaisi City Hall on 10 December 2018 (letter no. 30198/01) to the application submitted by us on 4 December 2018,

investigation on the alleged disciplinary misconduct committed by the Deputy Head of Supervision Service of the Primary Structural Unit of Kutaisi City Hall was instituted with the supervision of the internal audit department of the Secondary Structural Unit of Kutaisi City Hall.

Nugzar Khutsiberidze, who was interviewed by the internal audit on 7 December 2018, explained in his report that an unauthorised interference occurred with his Facebook page and probably someone other than him had posted the disputed post along with several other statements containing obscene words. In addition, the report signed by Nugzar Khutsiberidze states that he categorically dissociates from any kind of discriminatory or homophobic attitude. It is noteworthy that Nugzar Khutsiberidze stated that he deleted those posts. In addition to the explanation, Kutaisi City Hall discussed the authenticity of the screenshot presented by us together with our statement and pointed out that the authenticity of the picture could not be established.

For this reason and the explanation made by Nugzar Khutsiberidze, Kutaisi City Hall found that the incident of disciplinary misconduct was not estab-

29 "Using Hate Speech by Public Authorities/ State Officials and the Issues of Disciplinary Punishment". Georgian Democracy Initiative, 2016, available at: <https://gdi.ge/uploads/other/0/345.pdf> (accessed 28.07.2019).

lished. The City Hall finally stated that there was no ground for initiating disciplinary proceedings.

### Legal Assessment

The fact that the application sent by us was followed by the timely response from Kutaisi City Hall has to be considered positively. However, according to the provided information, several shortcomings were identified in the actions of the corresponding office of the City Hall:

1. In accordance with the Law of Georgia on Public Service, when the relevant agency begins the investigation of alleged disciplinary misconduct, it is already disciplinary proceedings. In this case, it is established that the internal audit started the proceeding, within the framework of which the explanation was taken from Nugzar Khutsiberidze. Nevertheless, the City Hall called the conducted procedures “enquiry” and found that there was no basis for instituting disciplinary proceedings. However, it simultaneously concluded that Nugzar Khutsiberidze had not committed disciplinary misconduct. Thus, it is likely that in this case, due to the failure to establish disciplinary misconduct, there is no need for determining relevant response/sanctions. But at the same time, the provided information does not indicate whether the order of commencement of disciplinary proceedings has been issued, which is the basis for initiating disciplinary proceedings in accordance with the law. Consequently, the purpose of the inquiry conducted by the Internal Audit might have been to determine a reasonable suspicion about the alleged disciplinary misconduct rather than finding the

incident of disciplinary misconduct.

2. The Internal Audit Department evaluated the authenticity of the screenshot and because of its failure to determine the screenshot’s authenticity, the incident of disciplinary misconduct could not be proved. Such an approach contradicts disciplinary proceedings. The evidence presented by us must have been the basis for the relevant unit of the City Hall to initiate the investigation, within the framework of which the unit itself should have collected and evaluated the relevant evidence. The law does not recognise the involvement of a third party in the process, within which, only the evidence presented by the person notifying the fact of alleged disciplinary misconduct would be assessed. Contrary to that, Article 90 of the Law on Public Service determines the power of the relevant authorities to collect and study evidence related to disciplinary misconduct.
3. The description of facts by Nugzar Khutsiberidze in his report that an unauthorised third person made posts in his name on his Facebook page is unlikely to be true. Nugzar Khutsiberidze is an active user of Facebook and shares posts with different content, some of which includes intolerant ideas and opinions. Moreover, he used hate speech after the investigation of his case as well. The conclusion that a particular action was not committed by this person significantly reduces the chances that the shared posts in the social network are subject to evaluation and control. Because, in such cases, there will always be a similar argument from respective persons, which is a simple way to avoid responsibility.

### 3.2. The Case of Naira Samsonidze

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#### Factual Circumstances

Naira Samsonidze is an employee of the office of Giorgi Kopadze, a Member of the Parliament,



elected from no. 44 Majoritarian Electoral District (Dmanisi District).

In January 2019, Naira Samsonidze shared a number of posts on her Facebook, aimed at discrediting certain groups of society. On 29 January 2019, GDI sent an application (no. 1-1354 / 19) to Givi Mikanadze, the Head of the Parliament Staff and requested for the investigation of the alleged disciplinary misconduct by Naira Samsonidze.

On 2 January 2019, Naira Samsonidze shared a photo of Stalin, with the following caption: "The ghost that frightens the 'arse lickers' liberal faggots ...". The term "faggot" referred to in the text is a word used in an insulting context, which is homophobic, and is used by radical groups of society to discredit sexual minorities. Sharing of similar content by Naira Samsonidze means that she shares the content of the text/photo.

In addition to the homophobic text, on 23 January, Naira Samsonidze shared the text, breaching religious neutrality, with the following content: "Georgians...!! Let's demand the declaration of Orthodox Christianity as the state religion and indicating nationality in the passport. Share if you agree."

It was not the first time Naira Samsonidze shared posts with similar content. She had been repeatedly posting texts with similar content in 2018. Each of these posts was discussed in our statement and screenshots were attached, confirming the fact that she was sharing them. With the letter of 6 March 2019 of the Parliament of Georgia, we were informed by that the Disciplinary Commission, established in the Parliament of Georgia, conducted disciplinary proceedings and found that Naira Samsonidze committed disciplinary misconduct, in particular, the misconduct determined by Article 85.1.c of the Law of Georgia on Public Service,

viz., "ignoring and violating ethical norms and the general rules of conduct that are intended to discredit an officer or a public organisation, irrespective of whether it is committed at or outside work." On the basis of the commission's conclusion, based on Order no. 2 /968/19 of 5 March 2019 of the Head of the staff of the Parliament of Georgia, under the disciplinary responsibility measure envisaged by Article 96.1.a of the Law of Georgia on Public Service, a warning was given to Naira Samsonidze.

Despite the warning given, on 16 April 2019, Naira Samsonidze shared another text with homophobic content. The shared photo was accompanied by a text where sexual minorities were referred to as "poofs", "faggots" and "sodomist formations". In addition to the terms considered as hate speech, the purpose of the post was to intimidate the LGBT + community and show that the majority of the people living in Georgia will never accept the "gay festival" in Georgia. GDI has once again sent the statement to the Parliament of Georgia regarding this fact but we have not received any information regarding the implemented actions at this stage.

### Legal Assessment

Unfortunately, the Office of the Parliament has not provided us with the documents related to the implementation of disciplinary proceedings, which is why we are unable to analyse the case properly. However, according to the provided information, the inconsistency of the law or its incorrect interpretation is not clear. As regards the recurrence of disciplinary offenses by Naira Samsonidze, because Naira Samsonidze has used aggressive statements containing hate speech, not for the first time, for which she had already been given a warning as a disciplinary responsibility for preventing her from expressing an aggressive attitude towards various communities and groups, we consider that it is appropriate to use more severe punishment. The

punishment can be a reprimand, deduction of 10 to 50 per cent of salary for a period of one to six months or dismissal from the office. While discussing this, it is important to take into consideration Article 85.3.f of the Law of Georgia on Public Service, which states, that “disciplinary misconduct is considered serious if a person who has committed disciplinary misconduct before, engages in disciplinary misconduct again.” Under Article 97, “when imposing a disciplinary measure on an officer, among others, the following shall be taken into account: whether the disciplinary misconduct

has been committed by negligence or intentionally and whether a disciplinary measure has already been applied to the person who has committed the disciplinary misconduct.” In the given case, the fact is that the warning was not enough to prevent the repetition of the action. It would be important that the disciplinary commission had continued monitoring Naira Samsonidze’s actions after issuing a warning to her. However, as at this stage, the Parliament of Georgia has not provided us with any information. It is unknown what actions did the commission implement and what they did not.

### 3.3. The Case of Maia Bobokhidze

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#### Factual Circumstances

On 14 May 2019, GDI had filed an application with the (former) Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia - David Sergeenko, due to the alleged disciplinary violation committed by Maia Bobokhidze, who had indicated the abovementioned ministry as the place of employment.

On 18 April 2019, Maia Bobokhidze shared a photo on Facebook, with a caption in which sexual minorities were referred to as “poofs”, “faggots” and “sodomist formations”. The shared text contained hate speech and, from its content the attitude of Maia Bobokhidze towards sexual minorities was clear. On 20 May, the ministry informed us that Maia Bobokhidze was employed in the Legal Entity of Public Law (LEPL) Drug Agency and the rules set by the Law of Georgia on Public Service regarding public officials could not be applied to her. In order to corroborate its position, the ministry referred to Article 1261 of the Law of Georgia on Public Service, under which, during the transitional period (until 31 January 2019) the provisions set by this law do not apply (except Article 34 [6], 35, 36, 39 and 43) to LEPLs (except for cultural, educational, scientific, research, sports, religious and

membership-based LEPLs).

It is noteworthy that we received an additional letter from the LEPL Drug Agency. The letter indicated, like the letter of the ministry, that the legislative provisions of disciplinary proceedings do not apply to them. However, in parallel to this, they stated that the agency had examined the issue and on 7 May 2019 had obtained an explanation from Maia Bobokhidze, where she explained that she made the post on her Facebook page in order to read it during free time. She had neither commented on the post nor liked it; moreover, she has not read the text. Otherwise, it would be unacceptable for her to use the form used by the author of the post.

#### Legal Assessment

The Law of Georgia on Public Service determines the procedures for imposing disciplinary responsibility, in particular, when the proceedings start, how they are conducted, who enforces it and what are the final results. In its essence, the tenth chapter does not fall under the general rules of ethics, though it settles purely procedural issues. On the other hand, the reservation specified in Article 1261 is directly related to the Law of Georgia on

Public Service, which means that, before 31 December 2019, regulatory norms of procedural issues envisaged by the law cannot be applied to the Drug Agency. In contrast to this, no similar reservation has been made in Resolution no. 200 of the Government of Georgia and it applies to all types of public organisations, including the LEPLs. Article 3.a.b of the resolution also indicates the same, which determines the concepts of a public official and public organisation. In the latter, it considers the organisation indicated in Article 3.j of the Law of Georgia on Public Service, according to which “a public agency is an agency established with funds from the state budget, from the budget of an autonomous republic or the budget of a local self-government unit and funded from the relevant budget, also an organisation accountable to/controlled by such agency, and any other legal entity under public law, provided that such legal entity is an organisation that employs public officials and is authorised to spend allocations under the programmes/sub-programme determined by

the budgets of the relevant level.”

Considering the above mentioned, the LEPL Drug Agency is a public organisation for the purposes of the resolution, which means that the ethical and behavioural requirements set out in the resolution should apply to employers employed in the Agency.

As regards to the procedure, according to which the protection of ethical norms by the person employed in the agency should be examined, it depends on the regulatory documents concerning disciplinary misconduct. The abovementioned is confirmed by the disciplinary proceedings carried out by the LEPL the Revenue Service operating under the Ministry of Finance of Georgia - in the case of Davit Madzgarashvili (see below).

However, the fact that, despite the agency’s position, they started to examine the issue and sought an explanation from Maia Bobokhidze should be assessed positively.

### 3.4. The Case of Guram Kobakhidze

#### Factual Circumstances

On 14 May 2019, GDI filed applications with the Ministry of Regional Development and Infrastructure of Georgia and the Head of the LEPL Municipal Development Fund of Georgia on the alleged disciplinary misconduct committed by Guram Kobakhidze, an employee of the LEPL Municipal Development Fund of Georgia.

On 17 April 2019, Guram Kobakhidze shared on his Facebook page a photo with a caption in which sexual minorities were referred to as “poofs”, “faggots” and “sodomist formations”. Consequently, as in the previous cases, hate speech was also used in this case.

On 17 May, the Ministry of Regional Development and Infrastructure of Georgia sent us a letter, according to which the letter had sent by us was for-

warded to the LEPL Municipal Development Fund for initiating disciplinary proceedings against Guram Kobakhidze.

On 14 June 2019, the LEPL Municipal Development Fund informed us that proceedings had been completed with regard to the abovementioned incident. The meeting minute no. 1 of 29 May 2019 of the Disciplinary Responsibilities Commission of the LEPL Municipal Development Fund of Georgia was attached to the letter. At the latter session, they examined our application against Guram Kobakhidze, the LEPL’s Construction Supervision Engineer and discussed the fact of alleged disciplinary misconduct committed by him. The commission, which consisted of four members, invited Guram Kobakhidze to the session. The minutes of the meeting stated that the commission tried to find the mentioned post on Guram Kobakhidze’s Facebook page but failed.

Nevertheless, the commission continued to discuss the alleged misconduct. It is strange that Guram Kobakhidze himself does not deny sharing the post with that content concerned and only indicates that he did not violate anything but claimed that we (GDI), with our application, violated his freedom of expression and confidentiality of personal information. The commission also became acquainted with the explanatory note. However, it eventually came to the conclusion that Guram Kobakhidze did not violate the ethical norms and that the published post was within his right to freedom of expression. The commission relied on two main arguments: (1) The controversial post itself was not written by Guram Kobakhidze. He only shared it, which does not automatically mean that he agrees with the text and the image in the post.; and (2) In the commission's view, the shared post, does not put the impartial exercise of his official authority under question and this has been repeatedly confirmed during many years of his work at the LEPL.

Finally, the commission notes that there are insufficient grounds to consider Guram Kobakhidze's conduct as disciplinary misconduct. However, at the same time, the commission recommends Guram Kobakhidze and other staff members to get acquainted with the ethical norms enshrined in Resolution no. 200 of the Government of Georgia in order to avoid violating the code of conduct.

### Legal Assessment

First of all, the fact that our application was followed by the relevant response has to be assessed positively. While the provisions of the Law of Geor-

gia on Public Service do not apply to the LEPLs, the fact that only the rules of conduct of civil officials established in Resolution no. 200 of the Government of Georgia were considered as sufficient grounds for initiating the disciplinary proceedings has also to be assessed positively.

However, it should be borne in mind that the commission's decision significantly differs from the other cases we have examined, in which disciplinary misconduct was established. For example, in the cases of Naira Samsonidze and Davit Madzgarashvili, the fact that they shared rather than created posts containing hate speech was not a matter to be taken into consideration while establishing disciplinary misconduct. However, under the resolution of the government, the breach of ethical norms does not provide any additional reason to believe that such conduct must necessarily put under question the impartiality and exercise of that person's official duties. Accordingly, in the present case, the commission's failure to establish the fact of disciplinary misconduct on these grounds is unlikely to be compatible with legislative regulation. However, even if we follow the logic of the commission (which says that sharing a post by Guram Kobakhidze does not automatically mean sharing its content), it is likely that it would have asked Guram Kobakhidze to explain the matter and find out whether he agrees with the content of the post. From the materials provided, in particular, this issue is not clarified either from the minutes of the commission's session or from Guram Kobakhidze's explanatory note.

### 3.5. The Case of Ketino Kvitsiani

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#### Factual Circumstances

On 16 April 2019, Ketino Kvitsiani shared a video on her social page, accompanied by the text: "Dirty LGBT wing represented by Anna Subeliani,

who has desecrated the 9 April memorial, asks Beso Chubinidze, a veteran of Abkhazia war, what he has done for the public? ... Uneducated crowd,

who do not know to respect genuinely decent people, this herd confirms every day why there is no place for them in Georgia". The text referred to sexual minorities as "dirty" and "uneducated", which aims at humiliating this group.

In addition to the 16 April post, on 23 April, Ketino Kvitsiani also shared a photo on her page, accompanied by a text describing sexual minorities as "poofs", "faggots" and "sodomist creatures". Ketino Kvitsiani shared similar content with abusive posts regarding sexual minorities on 29 April and 9 May as well.

Ketino Kvitsiani indicated the LEPL Social Service Agency as her place of employment. Therefore, our statement was sent to the Director of the Social Service Agency. The statement referred to the incident of violation of ethical norms and alleged disciplinary misconduct committed by Ketino Kvitsiani.

On 29 May 2019, the Social Service Agency informed us that the case of Ketino Kvitsiani, an employee of the Telavi District Division of the Social Service Agency, was going to be investigated by the Internal Audit Service of the Social Service Agency within the scope of its statutory powers. In a later letter, the agency reported that the relevant structural unit of the agency had studied the respective case files, examined explanations and photos and, based on the analysis, found that there were insufficient grounds for initiating disciplinary proceedings against Ketino Kvitsiani.

The agency has focused on the fact that Kvitsiani herself is not the author of the posts shared by her. Hence, her action should be seen not as a form of expression that promotes and encourages discrimination against sexual minorities but as a constitutional right to freely access and disseminate information. According to the agency, Ketino Kvitsiani's action should not be considered to be indirect discrimination envisaged under the Law of

Georgia on the Elimination of All Forms of Discrimination. At the same time, in their opinion, the Law of Georgia on Public Service cannot be applied to the agency staff, which in turn precludes the application of ethical norms envisaged by Government Resolution no. 200. Finally, the agency concludes that there is no basis for initiating disciplinary proceedings. However, at the end of the letter, it is indicated that the agency condemns and does not share the expression of offensive and/or hate speech by any form of.

### Legal Assessment

The fact that the agency started the inquiry based on our application has to be assessed positively. It should also be assessed positively that the agency, on its own initiative, has examined the compliance of Ketino Kvitsiani's actions with the so-called Anti-Discrimination Law. However, the provided information reveals several gaps and uncertainties:

4. As mentioned above in the case of Maia Bobokhidze, the fact that the provisions of the Law on Public Service do not apply to the persons employed in LEPLs does not automatically imply the same in regard to the code of conduct envisaged by Government Resolution no. 200. No such reservation is provided under the resolution. Accordingly, the agency's conclusion in this regard is unlikely to be based on a correct interpretation of the legislation;
5. It is commendable that the agency, on its own initiative, decided to evaluate Ketino Kvitsiani's action under the Law of Georgia on the Elimination of All Forms of Discrimination. However, the fact is that it misunderstands the notion of indirect discrimination. In this case, it would be relevant if the agency relied on Article 5.2 of the Anti-Discrimination Law, which states that any act aimed at coercing, instigating or encouraging a third party to commit discrimination shall be prohibited. Dissemination of statements con-

taining hate speech may be seen as a form of incitement to discriminate, although it may not be a form of indirect discrimination as such as indirect discrimination is a form of neutral law/action/practice that puts any group in unfavourable circumstances. Hate speech is distinguished not by neutral but by offensive, degrading texts or tones.

6. The agency's understanding of freedom of expression is also incorrect. The agency has separated the right to receive and freely share information and a form of expression that promotes and incites discrimination against sexual minorities. This kind of separation is incorrect because the use of an offensive form of expression can be done exactly through disseminating information. In this case, the agency reasons incorrectly, when it does not consider the dis-

semination of information (sharing someone's post) as a form of expression, which may also be subject to restriction if its content contains hate speech. Therefore, it is not reasoned why sharing a post containing hate speech should not be regarded as a form of expression that is unethical or inciting discrimination.

7. As in the case of Nugzar Khutsiberidze, it is unclear why the agency does not refer to its actions (examining the circumstances of the case, taking explanations) as disciplinary proceedings. It instead argues that there was no ground for initiating disciplinary proceedings. In this case, the actions undertaken by the agency have in fact proved not that there was no basis for initiating the procedure in general but that Ketino Kvitsiani had not committed disciplinary misconduct.

### 3.6. The Case of David Madzgarashvili

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#### Factual Circumstances

GDI also examined the incident of alleged disciplinary misconduct committed by an employee of the Georgian Revenue Service. The application regarding the incident of alleged disciplinary misconduct committed by Davit Madzgarashvili was sent to the Revenue Service on 20 May 2019.

On 2 May and 14 May 2019, David Madzgarashvili had shared a photo with the text on his social network: "The faggots' pride will not take place in Georgia!!! Anyone who agrees, share this to reach out to our deaf government!!" The shared photo was accompanied by the text: "Georgian Dream!!! Consider this as a referendum, eight thousand two hundred shares on only one post, I'm proud of you my mates!!! Faggots' pride will not take place in Georgia!!!". The word "faggot" that is used in the shared text is hate speech and does not fall within the scope of ethical norms. At the same time, the entire content of the post is aimed at bullying

and humiliating the LGBT+ community. Although the text does not belong to David Madzgarashvili, sharing a similar post by him already indicates that he also shares the view expressed in it. That is why we addressed the Revenue Service with the request to initiate disciplinary proceedings against him.

In its letter of 24 June, the Agency informed us that the Department of Professional Ethics and Monitoring of the Revenue Service had investigated the fact and established disciplinary misconduct committed by David Madzgarashvili, an employee at Telavi Service Centre of the Revenue Service.

As a measure of disciplinary responsibility, a "verbal warning" was imposed on him pursuant to Article 17.7 of the Internal Regulation, approved by order no. 4134 of the Head of the Revenue Service on 18 July 2014. It is noteworthy that, in addition to responding to this particular fact, the Revenue Service also informed us that, in order to avoid such cases, the employees of all structural units

of the Revenue Service were once again informed through email about their obligations while exercising their official duties, viz., to be guided by the principle of equality, to refrain from publishing and/or engaging in statements containing hate and/or discriminatory speeches.

### Legal Assessment

In this case, too, it should be assessed positively that, unlike the LEPL Drug Agency, the Revenue

Service did not refuse to respond due to the wording of the Law of Georgia on Public Service and, based on internal regulations, established the fact of disciplinary misconduct. At the same time, the precautionary measure and the notification sent to the employees regarding the impermissibility of making statements containing hate speech by the Revenue Service should also be assessed positively. Unfortunately, the provided information does not allow us to examine and assess otherwise the legal aspects of the decision taken.

## 3.7. The Case of Gogita Dautashvili and Others Employed in the Ministry of Internal Affairs

### Factual Circumstances

On 7 April 2019, Gogita Dautashvili shared a post on the social network that featured the events of 17 May 2013. The picture has the following comment: "They will not make us extinct!! I am Georgian", and more detailed text: "Let the filthy and immoral know that they have to fear God's slaves, and if they decide to blaspheme our God, they should look around and should be trembling at seeing a shadow, they should be so afraid of Christians... Fight to the death to defend the truth. Don't tell me indifferently that it is not up to you to correct the immoral; don't tell me we have nothing to do with them, because this is satanic inhumanity. Even one passionate person is enough to fix the whole city. The deaths and the spiritual fall of many are the results of our carelessness, not our weakness." The text showed the author's homophobic attitude and by sharing the post, Gogita Dautashvili also shared the content of the text. In addition to this post, Gogita Dautashvili also shared texts of similar content on 11 April.

According to the letter sent to us by Giorgi Pkhaladze, the Head of the General Inspection Division of the Ministry of Internal Affairs, Gogita Dautashvili no longer works at the ministry. He was dismissed from the system by order no. 2140361 of

the Minister of Internal Affairs on 3 September 2018; therefore, the ethical norms for the public official could not apply to him.

Gogita Dautashvili and two more persons - Joni Papiashvili and Gocha Gvalishvili - indicated the Ministry of Internal Affairs of Georgia as a place of employment on their Facebook pages. Both of them shared posts containing hate speech on the social network. The post shared by Gocha Gvalishvili was of a homophobic nature.

On 17 April 2019, Joni Papiashvili shared a text describing sexual minorities as "poofs", "faggots" and "sodomist formations". On the same day, he shared a text of xenophobic nature: "Giving Georgian surnames to non-Georgians should be prohibited. One should be born Georgian in order to use a Georgian surname. Do you agree??" And on 20 April, he shared a text of xenophobic nature, where the author of the text demanded to forbid "foreigners" from entering hotels, bars, restaurants and shops.

As Giorgi Pkhaladze, the Head of the Disciplinary Prosecution Unit, informed us Papiashvili has not been employed in the Ministry of Internal Affairs, and Gocha Gvalishvili had been dismissed from his position (although the date of dismissal was not indicated).

### Legal Assessment

Due to the fact that none of the mentioned individuals was employed in the Ministry of Internal

Affairs at that time, GDI is unable to discuss the existing practice of disciplinary proceedings in the ministry. However, their prompt response to our application should be assessed positively.

### 3.8. The Case of Rusudan Nikachadze

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#### Factual Circumstances

On 11 April 2019, Rusudan Nikachadze, who had indicated the Ministry of Environment Protection and Agriculture of Georgia as a place of employment, shared a post on the social network that featured the events happened on 17 May 2013. The picture had the following text: "Let the filthy and immoral know that they have to fear God's slaves, and if they decide to blaspheme our God, they should look around and should be trembling at seeing a shadow, they should so afraid of Christians... Fight to the death to defend the truth. Don't tell me indifferently that it is not up to you to correct the immoral; don't tell me we have nothing to do with them, because this is satanic inhumanity. Even one passionate person is enough to fix the whole city. The deaths and the spiritual fall of many are only the faults of our carelessness, not our weakness. Saint John Chrysostom."

Rusudan Nikachadze also shared texts of similar content on 13, 14, 16 and 19 April: "Stop Dirty LGBT Propaganda"; "In the land of the Virgin Mary, everyone should be aware that no gay parade should take place."

As Rusudan Nikachadze had indicated the Ministry of Environment Protection and Agriculture of Georgia as the place of employment, we filed the application with the mentioned ministry.

According to the letter of 7 May (no. 4570/01) of the Ministry of Environment and Agriculture of Georgia, Rusudan Nikachadze was dismissed from her position on the basis of Order no. 47 of the Minister of Environmental Protection of Georgia on 27 April 2011. Therefore, the Ministry was not entitled to initiate disciplinary proceedings against her.

#### Legal Assessment

Due to the fact that Rusudan Nikachadze is no longer employed in the Ministry of Environment Protection and Agriculture of Georgia, GDI is unable to discuss the existing practice of disciplinary proceedings in the ministry. However, the prompt response and the fact that she is no longer employed in the ministry should be assessed positively.

### 3.9. The Case of the Staff of the Ministry of Defence

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#### Factual Circumstances

During the research period, the incidents of sharing posts containing hate speech by people who had indicated the Ministry of Defence as their place of employment were observed frequently. The applications were prepared regarding each person independently and sent to the Ministry of Defence

for further response. GDI addressed the Ministry of Defence regarding the following individuals: Kakha Gviniashvili, Koba Natsvlshvili, David (Dato) Chkhentiani, Ia Nakhutsvrishvili, Koba Kopaleishvili, Baadur Zoidze and Zviad Khubashvili.

On 12 April 2019, Ia Nakhutsvrishvili shared the post, which reads as follows: "I have sad news for



you poofs! There will be hundreds of thousands of Georgians on Rustaveli Avenue doing the March of Honour!!! Since Prime Minister Bakhtadze declared in the Council of Europe in Strasbourg, "we will protect LGBT people from all marginalised groups in accordance with anti-discrimination law", faggots cry with joy – that they would have a super gay festival on 17 May and 18 June in Tbilisi!!! I have sad news for you poofs! With the effort of the nation, on 17 May and 18 June, hundreds of thousands of young Georgians, women and men will come out for a peaceful demonstration on Rustaveli Avenue and will show the whole world that the Georgian nation will never mix the freedom of its homeland with the freedom of the arse! With the help of God and the glory of the Lord! Share it!" On 25 April, she shared the photos of gay parade containing the following texts: "Europe is coming on 17 May. Don't be European". On the same day, she shared the article posted on qartuliazri.reporttiori.ge, containing the statement of Sandro Bregadze: "Gay parade will not take place! Only one parade – the parade of armed forces will be conducted in Georgia!"

On 7 May, Koba Kopaleishvili shared the video aimed at demonstrating the aggression existed in the society towards the LGBT+ community. According to the author of the post, aggression against sexual minorities is natural given the fact that the state of sexual minorities themselves is a mental disorder and nothing more. Therefore, propaganda by the LGBT community causes natural aggression. Koba Kopaleishvili also shared a photo depicting a girl in a black t-shirt with the caption: "In Georgia, a man will never be called a wife."

On 17 and 18 May, Baadur Zoidze shared texts with similar content: "The faggots' pride will not take place in Georgia!!! Anyone who agrees, share this to reach out to our deaf government !!". On the same day, he had shared the photo with the text, where the representatives of the LGBT community were referred to "poofs", "faggots" and

"sodomist formations". On 18 April 2019, Baadur Zoidze also shared the text: "Everyone, who opposes faggots' parade in Georgia, loves their homeland and the Lord!!! Share if you agree !!!". Besides that, Baadur Zoidze shared the following text on his social page (on 21 April and 4 May): "Georgians! Listen up! Do not let foreigners into hotels, bars, restaurants and shops and make them sod off from Georgia quickly." On 5 May, shared the post with the following text: "Who wishes to start the public movement – Georgian land for Georgians! Say it."

On 11 May 2019, Zviad Khubashvili shared a photo in the social network, featuring a youth holding posters with the following text: "A man will never be called a wife", "Don't be camp and you won't be beaten!!!" Afterwards, on 14 May, he shared a photo with a homophobic text. On 14 April, Zviad Khubashvili shared a second photo with the accompanying text: "Georgia Without Faggots!!!"

Kakha Ghviniashvili, Koba Natsvlshvili and Dato Chkhentiani also shared texts with homophobic content. According to the Ministry of Defence of Georgia, three persons – Kakha Gviniashvili, Koba Natsvlshvili and Dato Chkhentiani - were no longer employed in the Ministry of Defence of Georgia; therefore, disciplinary proceedings against them could not be instituted.

As regards other four people (Ia Nakhutsvrishvili, Koba Kopaleishvili, Baadur Zoidze, Zviad Khubashvili), the ministry clarified that the Inspection General of the Ministry of Defence started an enquiry regarding their actions and found that these employees do not use the social network registered in their names; thus, disciplinary misconduct could not be established.

### Legal Assessment

Unfortunately, unlike other agencies, we have had to make numerous calls and send letters

to the Ministry of Defence in order to receive answers to our statements. Finally, the ministry had provided us with the information after some delay. As regards the information on the above-mentioned four persons employed in the ministry, it is unclear as to what they meant when they mentioned that these persons do not use Facebook profiles registered in their names, whether

these accounts are fake or they are used by other persons with their consent. If these profiles are fake, it is interesting to see if the authorities were looked into the origin and purpose of these accounts. Based on the final information provided, GDI is unable to assess the Ministry of Defence's practice of conducting disciplinary proceedings for violating ethical standards.

### 3.10. Conclusions

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Based on the examined cases, we conclude that:

8. While the Law of Georgia on Public Service does not apply to LEPLs until 31 January 2019, Government Resolution no. 200 concerning upholding ethical standards does not make a similar reservation. However, according to the agencies' interpretation, the resolution does not apply to them either. Accordingly, they have not been examining violations of the ethical norms envisaged by the resolution. It is likely that they are also unaware of the comments elaborated specially for the resolution;
9. Although neither the Law of Georgia on Public Service nor any other statutory acts set out procedures for who can apply to a public agency and request the institution of disciplinary proceedings against a particular person, the majority of the agencies responded to our application and examined the cases, which should be assessed positively;
10. The main part of the disciplinary proceedings consisted of the explanation from the alleged offender, which, together with our application, was the basic information according to which the Disciplinary Misconduct Commission established the actual circumstances of the case. They have never obtained any additional information;
11. The term "institution of disciplinary proceedings" and "establishment of disciplinary misconduct" are confused by some agencies at the terminological level. Some of them have begun to examine the cases and have implemented some measures (which are already disciplinary proceedings in substance), but concluded that there was no basis for initiating disciplinary proceedings when the conclusion should have been that no disciplinary misconduct had been established;
12. In cases where disciplinary misconduct was established, the authorities/persons authorised to impose disciplinary sanctions used the mildest form of sanction, i.e., warning;
13. According to the information provided by public agencies, apart from establishing of disciplinary misconduct, there is no indication that any preventive measures were applied;
14. Incorrect perception and the lack of information regarding the issues of freedom of expression and discrimination are obvious; moreover, the absence of the definition of "hate speech" in legal acts makes it difficult for public agencies to identify it; and
15. The posts with homophobic and xenophobic contents (among the statements containing hate speech) were most actively posted in social network by public officials.

## RECOMMENDATIONS

To the Civil Service Bureau:

1. Ensure elaboration of special guidelines on standards of freedom of expression and prohibition of discrimination in the public sector, including, among others, defining what might be considered as hate speech;
2. Ensure informing public officials and structural units conducting disciplinary proceedings on a permanent basis about ethical norms set forth by Government Resolution no. 200 and the book of comments developed especially for the resolution; and
3. Ensure that meetings and training sessions are conducted on a permanent basis in public agencies that would be aimed at better communicating the ethics and rules of conduct set forth by the Government's Resolution no. 200;

To Public Agencies:

1. Ensure periodical monitoring over upholding ethical norms by the persons employed in the organisation;
2. Conduct periodic monitoring to prevent a person imposed with disciplinary responsibility from repeating the same misconduct; and
3. Apart from taking individual measures against specific persons, take preventive measures (for instance, at the minimum, reminding about the importance of adhering to ethical standards) to reduce the use of hate speech in organisations in the future.

To the Government of Georgia:

1. Amend resolution no. 200 of the Government of Georgia and define "hate speech" based on the definition given by the Committee of Ministers of the Council of Europe, according to which, "The term 'hate speech' shall be understood as covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin."



# HATE SPEECH IN PUBLIC SERVICE

ANALYSIS OF THE RESPONSE MECHANISM  
TO VIOLATIONS OF ETHICAL NORMS



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