



Human Rights in Georgia 2022

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Introduction

This report reviews the situation in terms of human rights protection in 2022 in Georgia. The main events and cases of this year are thematically reviewed in the document, demonstrating the extent to which the Georgian government fulfils its obligations in the fields of human rights and the rule of law.

Harassment and pressure on critical media and journalists continued in 2022 and became even more systematic. The criminal prosecution against Nika Gvaramia, the founder of TV company "Mtavari Arkhi" and the guilty verdicts passed by the courts of the first and second instance, were considered as directed against the freedom of the media and politically motivated. In addition, in 2022, the trend of claims directed against critical media under the defamation pretext became stronger and attained a nature of a campaign. 32 claims were lodged against critical media outlets. These claims were mainly launched by government officials or persons related to them. These are SLAPP (Strategic Lawsuits Against Civil Engagement) lawsuits and constitute punitive actions against the media as they aim to silence journalists and media organizations .

Along with SLAPP lawsuits, free functioning of media is hindered by the National Communications Commission of Georgia, which, like last year, continued its practice of sanctioning critical media under the pretext of qualifying audio-visual material as "political advertising." Against the background of this trend, it is also noteworthy that the Commission decided, contrary to its own practice and the relevant legislation, not to review the complaint regarding statements aired on Alt-Info and justifying Russian war crimes committed in Ukraine. The Commission entrusted this issue to "Alt-Info's" self-regulation mechanism. In light of these dubious decisions of the Commission, media freedom and freedom of expression are threatened by the expansion of the Commission's mandate under legislative amendments to the "Law on Broadcasting" already passed by the Parliament. The adopted law establishes, inter alia, the immediate entry into force of the Commission's decision, supervision by the Commission of the right of reply and hate speech regulation. GDI and other local civil organizations expressed harsh criticism, which was mostly shared by the experts of the Council of Europe. Finally, besides the problems at the administrative, judicial, and legislative level, physical and verbal attacks on journalists and media representatives have been alarming this year. This aggression has been fostered by discrediting and attacking statements by the authorities.

Like 2021, in 2022 the Code of Administrative Offences was still not reformed. Thus, the practice of administrative arrests of protesters by the law enforcement officers and imposition of administrative punishments by the courts continued based on the outdated code, which remains incompatible with human rights. Exemplary cases of this malpractice are described in the joint report of non-governmental organizations on the exercise of the right to assembly. These cases show the authorities are still trying to stifle protests and prevent the expression of critical positions by using law enforcement agencies, the judicial system, and deeply flawed, outdated Code of Administrative Offences. Along with the illegal and unjustified interference with freedom of assembly, the authorities equally failed to fulfil their positive obligation to

effectively investigate violations of this right and to punish those responsible. In particular, the investigation and adjudication of the violent events that took place on July 5, 2021 are not being properly conducted.

In 2022, the legislation regulating covert investigative operations was worsened. In April, the parliamentary majority sponsored the following changes in the Code of Criminal Procedure: extension of covert investigative activities to additional 27 types of crimes; extension of the term of covert investigative actions to up to 9 months; possibility to carry out covert investigative activities without a time limit and without notifying the subject of undercover investigative actions in case of 100 crimes. Preparation of the draft law without extensive consultation, insufficient justification of its content and the deterioration of the standard of human rights protections with these changes were strongly criticized by local non-governmental organizations. A similar assessment was given in the opinion of the Venice Commission. Despite the negative outcry, the Parliament still adopted the draft law in its original version. The adopted changes are especially alarming in light of the infamous "eavesdropping case" the investigation into which began after dissemination of information in September 2021 regarding an alleged illegal, massive practice of secret surveillance by the State Security Service. Several indicators confirm that the investigation is proceeding inefficiently, among others, the protracted process of granting the victim status to the alleged targets of this illegal wiretapping/surveillance and the delayed conduct of several investigative actions.

In terms of equality, the rights of the LGBTQ+ community are still problematic in 2022. The LGBTQI+ community is still unable to freely enjoy the freedom of expression and assembly in public space amid threats from hate groups and the government's homophobic rhetoric. These and other challenges facing the LGBTQI+ community are also not reflected in the 2022-2030 National Human Rights Strategy developed by the government. The strategy document does not mention the LGBTQI+ community at all. During the last stages of its preparation, the government did not properly cooperate with non-governmental organizations working on the needs of this community.

In 2022, unfortunately, the situation in terms of the independence of the judicial system did not improve. Instead of progressive steps, on December 30, 2021, the Parliament hastily adopted amendments to the Organic Law on Common Courts, which were assessed at the national and international level as threatening the independence of individual judges. Some judges and the Public Defender appealed the changes to the Constitutional Court, but the latter has not yet started consideration of these complaints. In addition, the control by the so called "Clan" of the judiciary and High Council of Justice remained problematic and was manifested in appointment of members of the "Clan" or persons closely related to them on the key positions within the judiciary and as members of the Council.

Given the alarmingly low level of judicial independence, it is unfortunately not surprising that in 2022, the practice of allegedly politically motivated adjudication continued. In this connection, the court decisions taken against the founders of critical TV broadcasters, Nika Gvaramia, Davit Kezerashvili and Avtandil Tsereteli (Father of founder TV Pirveli), have

been perceived as pressure on critical media. In 2022, the trials against Mikheil Saakashvili, considered politicized by several actors, also continued and Saakashvili's health deteriorated dramatically during his imprisonment. The proceedings against Iveri Melashvili and Natalia Ilichova also continued in the so-called "Cartographers Case," which is also widely believed to be politically motivated. In addition, signs of discriminatory staff purge could be observed in the significant personnel changes that took place in the cultural field in 2022.

In 2022, Georgia applied for the EU membership. Unlike Moldova and Ukraine, Georgia did not receive the status of a candidate for EU membership, but the recognition of the European perspective and a list of 12-point requirements to be fulfilled to get candidate status. With the argument of fulfilling these 12 prerequisites, the authorities have taken some, arguably insufficient steps. A judicial reform strategy and an action plan were developed, which, according to non-governmental organizations, do not respond to the actual challenges in the judicial system. The civil sector also criticized the "deoligarchization" bill, which currently does not apply to Bidzina Ivanishvili, who is considered a true oligarch in Georgia. The draft law on the establishment of the "Anti-corruption Bureau" was also negatively evaluated, as it does not correspond to the challenges related to corruption in Georgia.

And finally, as of March 2022, the State Inspector Service was abolished. In its place, two new bodies (Special Investigation and Personal Data Protection Services) were created. The legislative changes were adopted on December 30, 2021. The hasty abolition of the State Inspector Service without the involvement and consultation of the public has been criticized both locally and internationally. In addition, local non-governmental organizations and the Public Defender believe that the true purpose of the law was to influence this independent institution. The Public Defender also criticized the mandate of the newly created bodies. The Public Defender and the former state inspector applied to the Constitutional Court to demand the suspension of the legislative amendments and declaration of these changes as unconstitutional. However,, the Constitutional Court of Georgia did not suspend these amendments and only partially satisfied these lawsuits, after the changes had come into force. There are many questions regarding the enforceability of the decision of the Constitutional Court and this issues also discussed in the dissenting opinion of Judge Giorgi Kverenchkhiladze (in the same decision). This, an important body for protecting human rights - the State Inspector's Office - was abolished hastily, without proper and transparent discussion and evaluation of constitutionality of abolition. The constitutional control mechanism turned out to be ineffective in protecting rights and restoring violated rights.

In light of the aforesaid considerations, the quality of human rights protection and democracy continued to deteriorate in Georgia in 2022. The signs of authoritarianism are becoming harder and harder to ignore. This regressions is also indicated by Georgia's failure to secure the EU candidacy status, which largely depends on the quality of human rights protection and the high standard of democracy. Attention should also be paid to the anti-Western rhetoric and statements of some high-ranking officials, sometimes made in parallel with the consideration of the application for EU membership candidacy for Georgia. These statements did not really help Georgia's case in its application for the EU candidacy. These setbacks are especially alarming considering the growing global trend of autocracy opposing

democracy. In this context, the war waged by Russia in Ukraine and the resemblance between some statements of Georgian authorities and the Russian narratives are troubling. Especially alarming is the imitation of the separation of some members of the parliament from the Georgian dream and formation of these members into an openly anti-Western political movement "People's Power". Their public positioning is noteworthy, repeating in almost every direction the well-tested path that the Russian Federation went through under Putin's rule. Against the background of the change in the world security architecture, the processes taking place inside Georgia require special attention and efforts so that Georgia does not lose the opportunity to be a part of the safe, stable and economically strong Western world.

1. Freedom of Expression and Media

1.1. Lawsuits Launched under the Guise of Defamation

Critical statements made by the media have repeatedly been used as the basis/pretext for litigation. However, during the reporting period, the number of such litigations reached a record level and turned into an anti-media crusade. GDI started researching this issue after noticing this trend. An increased rate of defamation related lawsuits in court was recorded as early as 2021. However, the cases truly imploded in 2022: 32 defamation lawsuits were filed against critical media outlets in Georgia. Some of these have already been satisfied in the City Court, and the Appeals Court has upheld them.

It should be noted that the initiators of the aforesaid court disputes are usually government officials or persons related to them (most times, their close relatives or active supporters and donors of "Georgian Dream"). For example, TV Pirveli was sued by Irakli Kobakhidze's mother, Tamar Zaalishvili,¹ (It should be noted that on September 20, 2022, the Tbilisi City Court satisfied Tamar Zaalishvili's lawsuit and ordered TV Pirveli to pay moral damages in the amount of GEL 5555²) and his brother-in-law, Davit Patsatsia, who at the same time holds the position of Minister of Internally Displaced Persons of the Autonomous Republic of Abkhazia.

The aforesaid circumstances confirm the increased frequency of the abuse of the lawsuit mechanism and the so-called SLAPP (Strategic Lawsuits Against Civil Engagement) litigation. Such lawsuits should be viewed as a punitive measure against critical media, as they aim to silence journalists/media and illegally restrict freedom of speech and expression and result in media censorship through litigation. Going to court with SLAPP lawsuits is a common trend in other countries as well, which is why international actors have been planning several steps to limit the widespread application of this harmful practice.³

As it was pointed out, in Georgia, there have been several examples of attempts of influential persons to silence critical media through the courts. Several cases have been started by

¹ Irakli Kobakhidze's mother, Tamar Zaalishvili is suing TV Pirveli, available at: <https://bit.ly/3VySs7X> [Last accessed on 04.12.2022].

² Irakli Kobakhidze's other took TV Pirveli to court and won. Available at: <https://bit.ly/3P3njXP> [Last accessed on 04.12.2022].

³ Commission tackles abusive lawsuits against journalists and human rights defenders 'SLAPPs', Available at: <https://bit.ly/3F3WW0v> [Last accessed on 24.11.2022].

high-ranking officials and representatives of various state agencies arguing defamation. In these cases, the GDI provides legal help to media, civil organizations, and journalists. Currently, the organization is involved in 10 cases of this nature.

1.1.1. Liluashvili's Claims Against Media

The decisions taken by Tbilisi City Court, and the Appeals Court regarding the lawsuit filed by the head of the State Security Service (hereinafter SSS), Grigol Liluashvili, against TV companies - Formula and Mtavari Arkhi - are especially threatening to infringe media freedom in Georgia.⁴

On April 29, 2022, the decision of the Tbilisi City Court (Judge Nana Shamatava) satisfied Grigol Liluashvili's claim and found that he was the victim of defamation. On November 30, 2022 Tbilisi Court of Appeals (judges Gotcha Jeiranashvili, Lasha Tavartkiladze and Otar Sichinava (chairperson)) upheld the April 29 decision.

The case concerns Grigol Liluashvili's claim against LLC Formula and LLC Mtavari Arkhi. Namely, he disputed those statements disseminated on TV Formula and on Mtavari Arkhi (TV Mtavari) that were made about the alleged patronage by the SSS and Grigol Leluashvili of the criminal schemes of the so-called "call centers."

During the trial, the defendant media representatives pointed out that in such cases, the court should pay special attention to the media's function of disseminating information of public interest. The purpose of broadcasted statements is also important - to expose the involvement of some state agencies in alleged criminal activities and to appeal to authorities to launch investigations. Thus, the media's statement was not directed against any specific person. In addition, the statements made by the journalists represented conclusions based on sufficient factual circumstances and for which it should not be permissible to impose civil liability.

The judge, regrettably sided with the plaintiff, rejected the reasoning put forward by the media representatives and found that the plaintiff's honor, dignity and business reputation were damaged by the statements made by the journalist.

LTD Formula is represented by the GDI. It should be noted that during the litigation, several other problems emerged⁵, including: accelerated proceedings, manipulative interpretation of national legislation and of the European Court jurisprudence, etc. Considering the tendency of government officials to file groundless lawsuits, this decision creates a dangerous precedent as there is now an expectation that freedom of speech and expression will remain the object of further litigation launched by officials.

The GDI will continue appealing and arguing the case in the higher instance court.

⁴ At the same time on the case another respondent was a politician Levan Khabeishvili, whose also lost the case.

⁵ The government fights critical media via courts. Available at: <https://bit.ly/3u3iRyG> , bit.ly/3H7mds8 [Last accessed on 24.11.2022].

1.1.2. Nino Tsilosani's Lawsuit Against Shota Digmelashvili

Nino Tsilosani, a member of the Parliament of Georgia, filed a defamation lawsuit against her in court and disputed the statements made by civil rights activist Shota Digmelashvili in the summer of 2019. The civil rights activist stated during the live broadcasting of the programme "Shame" the MP was acting as the so called "Krisha" ("patronage") for Sano LLC. Tsilosani argued that by spreading this information, her honor and dignity were infringed and demanded retraction.

On April 29, 2022, Zaal Maruashvili, Tbilisi City Court Civil Cases Collegiate Judge, satisfied Tsilosani's claim and established defamation against her.⁶

During the (first instance) trial, Mr. Digmelashvili, represented by the GDI, argued that in making these statements, he acted as a journalist, sharing information received from publicly available sources about the Georgian Dream MP's connection to Sano LLC which, According to the State Audit Office, received approximately GEL 2 million as an additional income from the budget, which was allocated to the homeless in Kutaisi. The defendant explained that his conclusions relied solely on information available in public sources, stressing that as a high-ranking government official, Nino Tsilosani was a subject to greater public scrutiny and had to tolerate such statements.

Regrettably, the court ignored the European Court judgments and the national case law. The judge failed to consider the dangers posed by adopting such a judgment. The judge agreed with the plaintiff, noting that for a neutral observer, the disputed statement would be perceived as a statement of fact which defamed Tsilosani's honor and dignity. In doing so, the judge created another dangerous precedent of groundless restriction of freedom of speech and expression in Georgia. Regrettably, on 7 December 2022, Tbilisi Appeal Court (Judges: Gocha Jeiranashvili (Chairman), Otar Sichinava and Lasha Tavartkiladze) upheld the decision and thus shared the same reasoning.

1.1.3. Kakha Kaladze Against the TV broadcaster "Pirveli" and its journalist Maya Mamulashvili

The mayor of Tbilisi, Kakha Kaladze, also sued the critical media.⁷ In his claim against TV Pirveli and journalist Maia Mamulashvili, the mayor of Tbilisi contested the statements made on the live broadcast regarding the purchase of municipal buses by Tbilisi City Hall at a much higher price than purchased by other countries and the alleged link between the purchase and the mayor of Tbilisi. Mr. Kaladze found these statements defamatory. Through the court, he demanded the defendants to pay moral damages in the amount of GEL 100,000.

The journalist made the (disputed) comment following an active public and media discussion about the circumstances that led to the purchase of buses by Tbilisi City Hall at a higher price

⁶ The government punished activists for critical views. Available at: <https://bit.ly/3iegWVt> [Last accessed on 24.11.2022].

⁷ Kaladze sues TV Pirveli and host Maia Mamulashvili. Available at: <https://bit.ly/3GKZxO9> [Last accessed on 24.11.2022].

than those purchased by other countries. In addition, the journalist's opinion was based on, inter alia, publicly disseminated information and official sources.⁸

Despite this, on November 30, 2022, the court rejected the defendant's arguments, satisfied Kakha Kaladze's claim and jointly ordered the defendants to pay moral damages in the amount of GEL 15,000. The GDI continues litigating the case in the higher instance court.

Claiming to have suffered from defamation, eleven other mayors (of Tskaltubo, Kutaisi, Kareli, Aspindza, Adigeni, Chiatura, Poti, Kvareli, Ninotsminda, Borjomi and Marneuli) filed lawsuits one after the other, this time, against the critical media outlet "Mtavari TV" and Nika Gvaramia. Each requested the same amount-GEL 55,555 for moral damages.⁹ This, clearly portrays the attempt by government officials to suppress critical opinion by causing the critical media financial problems.

Thus, not only the increased rate of lawsuits but the speed of court proceedings, upholding of these lawsuits in disregard of national and European standards and risks accompanying restriction of media freedom are alarming.

1.2. The Actions of The National Communications Commission of Georgia

1.2.1 The Concept of Political Advertising and the Sanctioning the Broadcasters for Placing "Political Advertisements"

Like the previous year,¹⁰ in the reporting period of 2022, the Georgian National Communications Commission (hereinafter GNCC or ComCom) was observed to have engaged in an alarming practice of declaring the audio-visual material aired by broadcasters as "political advertisement."

From this point of view, it is noteworthy that on August 23, 2022 the GNCC satisfied the application of the ruling party the Georgian Dream to declare three critical broadcasters—Formula, Mtavari Arkhi, and TV Pirveli—in breach of law for airing a video clip of the campaign called "Back to Home - Europe."¹¹ The GNCC issued a "warning" as a sanction against TV Pirveli and Formula and imposed a substantial penalty (GEL 118,700) on Mtavari Arkhi.¹²

The disputed video was aired by broadcasters as an announcement of the June 24 pro-Western and anti-Russian rally. According to the assessment of the Georgian Dream, also shared by the GNCC, the video had a pre-election/political content and served to incite

⁸ Maia Mamulashvili states that her statements on live air, regarding Kakha Kaladze, was based on publicly available information. Available at: <https://bit.ly/3gG0Inx> [Last accessed on 24.11.2022].

⁹ Head of State Security Service of Georgia, 11 Mayors and one inspector against journalists - what happens when officials sue media? Available at: <https://bit.ly/3OCFq6C> [Last accessed on 24.11.2022].

¹⁰ Georgia Democratic initiative, Human Rights in Georgia 2021, p. 13. Available at: <https://bit.ly/3VLeh3V> [Last accessed on 02.12.2022].

¹¹ Regarding the review of the complaint of the political union of citizens "Georgian Dream-Democratic Georgia vs TV Pirveli, Mtavari Arkhi and TV Formula. Available at: <https://bit.ly/3H2v8et> [Last accessed on 02.12.2022].

¹²ibid.

negative attitudes towards the Georgian Dream in the society to hinder its electoral performance in the future elections.

Unfortunately, the Communications Commission, as it has done in the past, did not consider the legally justified position of the broadcasters and the dangers attached to the illegal, unjustified restriction of media freedom. Neither did the Commission consider the fact that the video in question qualifies as social advertising. In addition, it is noteworthy that the Commission considered the issue which is not regulated by legislation. The Commission does not have the mandate to assess political advertising beyond/outside the pre-election period, since political advertising itself is limited to the pre-election period. As a result, the Commission overstepped its authority and gave itself the lawmaking function which belongs to the Parliament¹³

GDI represents TV Formula in this case. All three broadcasters have appealed the decision of the Communications Commission to the court, but as of this moment, no hearing has been scheduled.

1.2.2. Improper Exercise of Discretionary Power by the Commission in the Case of Idealization of War/War Crimes

On February 24, 2022, in parallel to the start of the war by the Russian Federation against the Republic of Ukraine, statements were made on the live of Alt-Info LLC and they morally and politically justified/positively evaluated the violation of the sovereignty of Ukraine and the war crimes committed there against the civilian population by Russian forces. According to Georgian law and the established practice of the GNCC, TV shows that justify criminal acts, positively evaluate, or idealize criminals, have a negative influence on the minors. The broadcaster is obliged not to air such programs, at least, in the period from 6 AM to 12 AM. And when this obligation is violated, the GNCC is required to hold such broadcaster legally liable.

The GDI Chairperson, Eduard Marikashvili submitted an application to the Georgian National Communications Commission regarding the aforesaid statements aired on Alt-Info TV, and requested that Alt-Info to be found in breach of law.¹⁴ The disputed statements justified criminal acts under articles 404-413 of the Criminal Code of Georgia. Based on the legally unsubstantiated reasoning, the GNCC did not accept Eduard Marikashvili's claim for consideration on merits. According to the Commission's assessment, the statements of Alt-Info are more than a justification of crime and represent war propaganda. And according to the legislation, banning war propaganda, does not fall under the jurisdiction of the Commission, but within the framework of self-regulation, set up by the broadcaster itself, in this case, "Alt-Info."

¹³ Communications Commission continues crusade against media freedoms. Available at: <https://bit.ly/3ERPtQM> [Last accessed on 02.12.2022].

¹⁴ "Alt-Info" justifies the crimes against humanity committed by Putin's Russia in Ukraine. Available at: <https://bit.ly/3VXqJhf> [Last accessed on 06.12.2022].

The legal argumentation developed by the Commission in this case contradicts the legal requirements, the rules on exercising discretionary powers, and the previous practice of the Commission. The Commission should have evaluated each disputed statement individually. The qualification of specific statements as "war propaganda" does not exclude their qualification as an idealization or justification of a crime, especially in light of the fact that the Commission's reasoning agrees with the appellant that the contested statements positively assessed war crimes. The Commission's decision has already been appealed in the Tbilisi City Court. Within the lawsuit, Eduard Marikashvili requests that the contested individual legal act issued by the Commission be declared invalid and Alt-Info LLC be found in breach of law.

1.3. Attacks on Journalists and the Representatives of Media

There were several attacks on journalists and other media representatives in the reporting period. Aggression and physical or verbal attacks against journalists are promoted by the discrediting and violence-inciting statements made by various state representatives. To name an example, Irakli Kobakhidze's gave the following answer to a journalist of Mtavari Arkhi on July 25, 2022: "You are no longer a woman... you have lost the face of a woman... when you speak, wash your mouth... you have a mouth like Saakashvili. You took after your leader with everything. Your mouth look like a replica of Saakashvili."¹⁵ These kinds of statements, when coming from high-ranking politicians, clearly foster negative attitudes and aggression of society towards journalists.

The attack of March 17, 2022 on the Zugdidi based reporter of the TV company Mtavari Arkhi Emma Gogokhia and her camera operator is disturbing. According to the journalist, persons unknown to her physically assaulted her and beat her camera operator near the office of "Conservative Movement" (political party of "Alt-Info").¹⁶ The Special Investigation Service launched an investigation into the incident under the second part of Article 154 of the Criminal Code of Georgia (unlawful interference with the journalist's professional activities committed by using threat of violence or official position).¹⁷ The investigation resulted in the arrest of two individuals.¹⁸

On March 17, 2022, TV Formula crew was recording an interview in a café in Tbilisi. An individual in the café expressed aggression towards the journalists and then physically assaulted the camera crew. Two operators of Formula were beaten up and the journalist herself, Nano Chakvetadze, also suffered physical injuries.¹⁹ The Prosecutor's Office charged the perpetrator with Article 154, Part 2 of the Criminal Code of Georgia (unlawfully

¹⁵ Irakli Kobakhidze's answer to the question of Mtavari Arkhi. Available at: <https://bit.ly/3Vxgssd> [Last accessed on 02.12.2022].

¹⁶ Emma Gogokhia: My camera operator and I were attacked while working near the "Alt-Info" Party's office in Zugdidi. Available at: <https://bit.ly/3iDqjOI> [Last accessed on 02.12.2022].

¹⁷ Statement of the Special Investigation Service of March 18, 2022. Available at: <https://bit.ly/3ioCGOg> [Last accessed on 02.12.2022].

¹⁸ A member of the "Alt-Info" party was arrested on charges of attacking the journalists of Mtavari Arkhi. Available at: <https://bit.ly/3VQMizE> [Last accessed on 02.12.2022].

¹⁹ In Tbilisi, while recording an interview, the film crew of Formula TV was attacked. Available at: <https://bit.ly/3EZpqHJ> [Last accessed on 02.12.2022].

obstructing a journalist in their professional activities by threatening violence or by abusing power) and Article 156, Part 2, Sub-paragraph "a" (persecution committed using violence or threat of violence).²⁰

Another attack against journalists (Shotiko Sadaghashvili and Tornike Gelitashvili) of “TV Monitoring” took place when they were discharging their professional duties on July 5, 2022.²¹ According to the journalist, the perpetrators introduced themselves as the supporters of the party of violent and pro-Russian group Alt-Info, and criticized TV Monitoring for its pro-European editorial policy and impeded the journalists from doing their professional work.²² The Special Investigation Service launched an investigation into the incident under the first part of Article 154 of the Criminal Law Code of Georgia (unlawful interference with the journalist's professional activities).²³

Also significant is the incident in which the police themselves attacked the journalists. The police were called on the location following a kerfuffle that started in the Kaspi City Council on February 18, 2022.²⁴ The police officers who arrived at the scene took the opposition politicians and civil activists outside by using force, and injured the journalist of Formula TV, while the recording equipment of Mtavari TV was damaged.²⁵

Threats of violence against journalists are also not uncommon. For example, on May 10, 2022, Vika Bukia, the host of TV Pirveli published on her social media a written conversation/chat which shows that a person unknown to her threatened to take her life.²⁶ The investigation into the incident was launched by the Special Investigation Service under Article 154, Part 2 of the Criminal Law Code of Georgia (unlawful interference with the journalist's professional activities committed by using threat of violence or official position) and Article 157¹, Part 1 (unlawful obtaining, storage, use, dissemination of or otherwise making available secrets of personal life).²⁷

The cases described above demonstrate that representatives of the media are not given an opportunity to work in a free, safe environment. The public's negative attitude towards journalists and the attempts to attack them are instigated by the actions or inactions of the government. This instigation is manifested in the discrediting statements made by the

²⁰ The prosecutor's office filed charges against the attacker of "Formula" journalist and operators. Available at: <https://bit.ly/3iAonGm> [Last accessed on 02.12.2022].

²¹ Drunken members and supporters of the violent and pro-Russian "Alt-Info" party attacked the filming crew of TV Monitoring. available at: <https://bit.ly/3H7YkAW> [Last accessed on 02.12.2022].

²² The coalition responds to the attack on the TV Monitoring crew. Available at: <https://bit.ly/3umKL9a> [Last accessed on 02.12.2022].

²³ Statement of the Special Investigation Service of July 5, 2022. Available at: <https://bit.ly/3iwCk8o> [Last accessed on 02.12.2022].

²⁴ February 18, 2022 statements of the Journalistic Ethics Charter of Georgia. Available at: <https://bit.ly/3F23g7F> [Last accessed on 02.12.2022].

²⁵ Journalists were injured during the confrontation in Kaspi City Council. Available at: <https://bit.ly/3B1iKrl> [Last accessed on 02.12.2022].

²⁶TV Pirveli host Vika Bukia received death threats. Available at: <https://bit.ly/3VrrM96> [Last accessed on 02.12.2022].

²⁷ "Investigation initiated... I hope we will find out who is threatening me" - Vika Bukia discloses new details. Available at: <https://bit.ly/3EYwvVZ> [Last accessed on 02.12.2022].

government representatives against the critical media, and in the inappropriate response of the investigative agencies to the violent incidents that target the media.

1.4. Legislative Changes to the Law on Broadcasters

On September 7, 2020, Georgian Dream MPs sponsored legislative changes to the Law on Broadcasting.²⁸ According to the explanatory note, the purpose of the draft law is to fulfil the obligation established by the Association Agreement between Georgia and the European Union, namely to bring the “Law on Broadcasting” into compliance with the 2010/13/EU Euro Directive on audiovisual media services.²⁹ Among other norms, the draft law provides for the immediate entry into force of the decision of the GNCC supervision of the right of reply by GNCC and regulation of hate speech.³⁰

The draft law was criticized by GDI. According to GDI's assessment, when evaluating the draft law, one must consider the existing national context, namely the requirement to ensure a free, professional, pluralistic, and independent media environment as a prerequisite for receiving the EU candidacy status,³¹ and the deteriorating media environment in Georgia indicated in the reports of various international media rights organizations, such as Reporters Without Borders.³² In light of this context, GDI considers that the draft law goes beyond the objectives of the EU Audiovisual Media Services Directive, contradicts the aforesaid EU candidacy requirement, strengthens the repressive elements in the context of regulations in the media and imposes an unjustified burden on broadcasters. Namely, by introducing the immediate enforcement of GNCC's decisions, the draft law does not correspond to the finding of the Venice Commission on an essentially similar matter. The Commission's finding negatively assessed the non-suspension of the enforcement of the GNCC's legal act while they are being appealed.³³ The Venice Commission noted that a judicial challenge to the GNCC's act should result in an automatic suspension and, should a subsequent motion be filed, the court must consider whether immediate enforcement of the disputed act is still necessary.³⁴ Moreover, the legislative change that transfers the right of reply from the mechanism of self-regulation to the GNCC's authority is unjustified because the aforesaid Directive gives states the option of choosing between the mechanism of the right of reply and the denial of false facts with equivalent measures ("Or equivalent remedies").³⁵ After all, the

²⁸ See the draft law at: <https://parliament.ge/legislation/24615> [Last accessed on 19.11.2022].

²⁹ Explanatory card on the draft law of Georgia "On Broadcasting" regarding amendments to the law of Georgia, p. 1-3. Available at: <https://bit.ly/3TOzfxe> [Last accessed on 19.11.2022].

³⁰ Clauses 5, 24, 25 and 26 of Article 1 of the draft law on amendments to the Law of Georgia "On Broadcasting". Available at: <https://bit.ly/3EmHY4b> [Last accessed on 19.11.2022].

³¹ Report Card (memo): Georgia. Available at: <https://bit.ly/3tHgjpV> [Last accessed on 19.11.2022].

³² Reporters Without Borders, Georgia. Available at: <https://bit.ly/3hU4I9B> [Last accessed on 19.11.2022].

³³ Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the recent amendments to the Law on electronic communications and the Law on broadcasting, 2021, Strasbourg, § 69. Available at: <https://bit.ly/3UP6GKU> [Last accessed on 19.11.2022].

³⁴ *ibid.*

³⁵ Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (codified version), article 28. Available at: <https://bit.ly/3GqrM4F> [Last accessed on 19.11.2022].

current national legislation already gives a person proportionate means to protect their rights even when the broadcaster makes a negative decision regarding the denial of facts that was requested through this mechanism.³⁶ And finally, the draft law establishes the regulation of hate speech by the Commission, which is not a direct requirement of the aforementioned Directive. The Directive 2018/1808, which amended the Audiovisual Media Services Directive 2010/13/EU, explicitly states that self-regulation and co-regulation are encouraged.³⁷ According to the Directive 2018/1808, any measures taken by Member States based on Directive 2010/13/EU must respect freedom of expression and information and media pluralism,³⁸ while the national regulatory body must be functionally independent from the government and any other public or private institution and must discharge its powers impartially.³⁹ Contrary to this requirement, the draft law creates a risk of abuse of newly granted powers by ComCom in light of ComCom's past activities/decisions⁴⁰ and doubts regarding its independence.⁴¹ Besides GDI, the bill was also criticized by other civil organizations who are members of the Media Advocacy Coalition.⁴² GDI's assessments are shared in the initial opinion issued by the experts of the Council of Europe regarding the 3 main aspects of the amendments to the Law on Broadcasting. In particular, the experts of the Council of Europe agreed with the GDI's position that: the Directive does not necessarily require that the control of hate speech be delegated to a state regulatory body and an alternative mechanism is allowed; the right of reply should not be transferred to the exclusive regulation of the Commission; there is a need to maintain a stay of execution of Commission decisions under appeal (at least in cases that concern the imposition of certain/specific sanctions).⁴³

Despite the above criticism and the presentation of an alternative proposal agreed with the representatives from the field of media, the Parliament of Georgia still adopted the draft law.

³⁶ Regulation of defamation by the Law "On Freedom of Speech and Expression" and Article 18 of the Civil Code of Georgia.

³⁷DIRECTIVE (EU) 2018/1808 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities, introduction / preamble § 14. Available at: <https://bit.ly/2VQ7qlq> [Last accessed on 19.11.2022].

³⁸ *ibid.* Introduction/Preamble § 61.

³⁹DIRECTIVE 2010/13/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (codified version), article 30.

⁴⁰ The evaluation of ComCom's activities. Georgian Democracy Initiative, Freedom of Media in Georgia (Analysis of cases litigated by GDI between 2021 and January-May of 2022). Available at: <https://bit.ly/3GwEUFo> [Last accessed on 19.11.2022].

⁴¹Human Rights Committee, Concluding observations on the fifth periodic report of Georgia, 13 September 2022, CCPR/C/GE0/CO/5 § 43. Available at: <https://bit.ly/3V8xhZV> [Last seened on 19.11.2022]; US Department of State, Bureau of Democracy, Human Rights and Labor, Georgia 2021 Human Rights Report, page 35. Available at: <https://bit.ly/3geqEGN> [Last accessed on 19.11.2022].

⁴² Statement on amendments to the Law of Georgia on Broadcasting. Available at: <https://bit.ly/3unn8NJ> [Last accessed on 05.12.2022].

⁴³Eve Salomon and Sally Broughton Micova, Initial Expert Opinion: Three Key Aspects of the Amendments Package to the Law of Georgia on Broadcasting, Strasbourg, 25 November 2022, p . 7-12.

The only change in the final version was to defer the imposition of liability for violations related to the right of reply and hate speech to July 1, 2023.⁴⁴

2. Freedom of Assembly and Manifestation

2.1. The Practice of Administrative Detentions Directed Against the Protestors

As in 2021, in 2022, law enforcement officers continued the practice of administrative arrests of protesters, aimed at suppressing anti-government criticism. This practice is described and evaluated in a report written by the local non-governmental organizations, including GDI and prepared within the framework of the legal aid network created by a joint project to support Georgian civil rights activists.⁴⁵ In this subsection, several notable examples of the above mentioned practice are discussed.

"Movement for Georgia" had planned to hold a demonstration near the government's administration on February 22, 2022 and the information about the demonstration was made public in advance.⁴⁶ Thus, the information was available to the law enforcement agencies as well. In this case, it is alarming that the law enforcement officers arrested 8 activists before they even arrived at the place of the protest and before the protest was even started. In addition, the detainees were taken to detention centers in several cities outside of Tbilisi, although the scale of detention was not large and there were places available in the Tbilisi Detention Center ("Isolator"). This prevented the detainees to effectively enjoy their right to defence.⁴⁷

On February 26, 2022, near the Telavi Theater, Z. Kh. together with up to a dozen individuals was protesting Russia's invasion in Ukraine.⁴⁸ He was arrested by the police for minor hooliganism (swearing in the street) along with several others, due to which he was placed under administrative detention for 48 hours. The court relied only on the testimony of one police officer, based on which it recognized Z. Kh. as a lawbreaker. The court, despite the insufficient evidence, gave him a verbal warning.⁴⁹

On March 7, 2022, a pro-Ukraine demonstration was held on Rustaveli Avenue, near the Parliament building, organized by the civil movement Shame.⁵⁰ The participants of the demonstration were protesting the government's position towards Ukraine and were calling for the establishment of a visa regime with Russia, banning of Russian media transmission in Georgia and the closing of the sky for Russia.⁵¹ The rally moved from the parliament building

⁴⁴ see The bill presented at the second reading and the result of the vote: <https://bit.ly/3ulgr9b> and <https://bit.ly/3h0aHnP> [Last accessed on 05.12.2022].

⁴⁵ Social Justice Center, Activism, and the Right to Assembly - Analysis of Georgian Practice, 2022. Available at: <https://bit.ly/3TV1N8r> [Last accessed on 21.11.2022].

⁴⁶ *ibid.* p.15.

⁴⁷ *ibid.*

⁴⁸ *ibid.*, p.21.

⁴⁹ *ibid.*

⁵⁰ Four members of Shame Movement were arrested. Available at: <https://bit.ly/3TSK95h> [Last accessed on 21.11.2022].

⁵¹ *ibid.*

to the government administration, where the activists threw toilet papers as a sign of protest.⁵² The police carried out administrative arrests of 16 activists, and the court fined them with GEL 34,400 in total. Among them, 6 members of Shame Movement were fined GEL 15,800 in total.⁵³ According to the findings of non-governmental organizations, multiple rights of the detainees were violated in this case. Namely: the police officers arbitrarily detained the activists without proper evidence and grounds; the detainees were not given explanation about their rights; detention protocols used followed the same pattern (for all) and contained little information; the police illegally and unjustifiably used the maximum period of detention; the court ignored the minimum fair trial standards established by the European Court of Human Rights and the evidence examined in court should not have been sufficient to impose administrative fines on the activists.⁵⁴ According to the assessment of non-governmental organizations, "the persistence of such vicious practices by the law enforcement officers and the court shows the government's desire to limit the freedom of expression and assembly in Georgia by illegal arrests and imposing hefty fines; inflict a serious financial blow onto them, and undermine the motivation of the activists to engage in protest."⁵⁵

On May 6, 2022, the members of the "United National Movement" gathered in Batumi, in front of the Adjara Government building, set up tents, erected a stage and blocked a part of Mehmed Abashidze avenue.⁵⁶ The participants of the protest demanded that Mikheil Saakashvili be taken abroad for medical treatment and that the authorities cease his political persecution and inhumane treatment.⁵⁷ On May 7, around 02:00 PM, the police officers began removing tents and arresting the demonstrators by using force.⁵⁸ According to the statement issued by the Ministry of Internal Affairs, 25 individuals were arrested based on Articles 173 and 166 of the Code of Administrative Offenses.⁵⁹ From the video footage released by the media, it can be observed that on May 7, at the moment of the rally's breakup, several police officers appear to resort to a disproportionate force to detain single activists.⁶⁰ The footage⁶¹ also shows several instances where police forcefully arrest protesters simply because the

⁵² Activists arrested at the rally of solidarity with Ukraine were fined a total of 15,800 GEL. Available at: <https://bit.ly/3i32krX> [Last accessed on 21.11.2022].

⁵³ The government continues to use justice against activists for the purposes of justice repression, *ob.*: <https://bit.ly/3ERejSo> [Last accessed on 21.11.2022].

⁵⁴ *ibid.*

⁵⁵ *ibid.*

⁵⁶ Tents were set up at the ongoing rally demanding Saakashvili's transfer to Batumi for treatment, Available at: <https://bit.ly/3tLwySH> [Last accessed on 21.11.2022].

⁵⁷ *ibid.*

⁵⁸ The police took over the tents spread near the government house of Adjara despite the protests of the participants of the rally, Available at: <https://bit.ly/3Au3xi8> [Last accessed on 21.11.2022].

⁵⁹ The statement of the Ministry of Internal Affairs, Available at: <https://bit.ly/3XfnOlV> [Last accessed on 21.11.2022].

⁶⁰ The whereabouts of the persons arrested at the opposition rally in Batumi are unknown, Available at: <https://bit.ly/3GucxHX> [Last accessed on 21.11.2022].

⁶¹ In Batumi, near the government house of Adjara, the police arrested several citizens at the rally in support of Mikheil Saakashvili, Available at: <https://bit.ly/3VfFVFX> [Last accessed on 21.11.2022].

demonstrators asked them questions, or replied to them, and/or raised their voices.⁶² This violates the freedom of assembly and expression and aims to suppress the criticism of the government.

On September 1, 2022, the European Court of Human Rights upheld GDI's appeal in Irakli Kacharava's case.⁶³ The decision is about the mass arrests that occurred on November 18, 2019 at the rally held near the Parliament of Georgia. The Court found a violation of Articles 6 and 11 of the Convention by the state against the appellant. The Court ordered the government to pay him damages in the amount of EUR 1,600. The court pointed out all those systemic problems found in the legislative framework or practice and used by the authorities in Georgia for years to suppress peaceful assembly and demonstration.

The court pointed out that the charges against Mr. Kacharava were based only on the testimony of the police officers and were not supported by other evidence. Such a scenario put the applicant in a position where he was forced to prove his innocence to respond to the police officers' accusations. Since apart from the testimony of the police officers, the decisions of the national courts did not include any other evidence proving the applicant's guilt, the Court found that the first paragraph of Article 6 of the Convention was violated.

The Court also stipulated that the state failed to present sufficient and relevant grounds regarding the necessity and proportionality of arresting Irakli Kacharava and imposing a 4-day prison sentence on him, and as a result found a violation of Article 11 against the applicant.

These cases described above show that the authorities, using law enforcement agencies, the judicial system, and a deeply flawed, outdated Code of Administrative Offenses, continue its attempts of suppressing protests and preventing the expression of critical views.

2.2. Investigation of the Events That Took Place on July 5, 2021

Obligations arising from freedom of assembly include not only ensuring the free holding of peaceful assembly and protecting its participants, but also the effective investigation of violations of the right to assembly and the punishment of perpetrators.⁶⁴ Contrary to this obligation, the investigation of the violent events that took place on July 5, 2021 and the court proceedings related to these events are not being properly conducted. This is confirmed firstly by the fact that no criminal prosecution was launched against any of the organizers of the violence/violent gathering of July 5, despite the existence of sufficient evidence.⁶⁵

⁶² The police took over the tents spread near the government house of Adjara despite the protests of the participants of the rally, Available at: <https://bit.ly/3Oo5Fxz> [Last accessed on 21.11.2022]; Giorgi Kirtadze was arrested at a rally in support of Saakashvili in Batumi, Available at: <https://bit.ly/3AwUlcO> [Last accessed on 21.11.2022].

⁶³ Case of Makarashvili and Others v. Georgia (Applications Nos. 23158/20, 31365/20, 32525/20)

⁶⁴ Judgment of the European Court of Human Rights in the Case of Ouranio Toxo and others v. GREECE, Application no. 74989/01), §§ 37; UN Human Rights Committee, General comment no. 37 (2020) on the right of peaceful assembly (article 21), § 90, Available at: <https://bit.ly/3hUuu8d> [Last accessed on 21.11.2022].

⁶⁵ Social Justice Center. Activism and the Right to Assembly - Analysis of Georgian Practice, 2022, p. 22.

According to the Public Defender of Georgia, "publicly available evidence depicting the events of July 5, 2021 reached the standard required for indictment"⁶⁶ and sufficed to initiate criminal prosecutions for organizing group violence and for public incitement to violent acts.⁶⁷ The same position is voiced in the report of the Public Defender published on December 6, 2022.⁶⁸ However, the Prosecutor's Office did not agree with the Public Defender's proposal to prosecute the organizers.⁶⁹ The ineffectiveness of the investigation related to July 5, 2021 is also indicated by the fact that the prosecutor's office and subsequently the court did not grant the status of victim to the members of "Tbilisi Pride" and LGBTQI+ activists, although on July 5th they were persecuted on the ground of sexual orientation and their lives and health were threatened.⁷⁰ The verdicts issued by the court on the July 5th events are also problematic. On April 4, 2022, the Tbilisi City Court issued a verdict regarding the violence against journalists on July 5, 2021.⁷¹ Here, the court found the defendants guilty of the crimes provided for in Article 126, Section 1¹, Sub- Clause "C", Article 156, Section 2, Sub-Clauses "A" and "C", and Article 154, Section 2 of the Criminal Code, and therefore, the charge of participation in organized group violence was dropped and reclassified as violence committed by a group.⁷² The court sentenced them to imprisonment for 1 year and 3 months.⁷³ According to non-governmental organizations, the punishment used was not severe enough and did not correspond to the gravity of the crime committed.⁷⁴ In addition, the reclassification of participation in organized group violence prevented imposing accountability on the organizers of large-scale, homophobic violence against journalists and civil activists that took place on July 5, 2022, and sent an alarming message that the state condones the organization and participation in crime.⁷⁵ Similarly, according to GDI's assessment, the court's imposition of a GEL 5,000 penalty on the attackers on the Tbilisi Pride office was a part of the government's overall policy of refusing to adequately fight hate crimes and punish the perpetrators.⁷⁶ Moreover, according to the Public Defender's assessment, "decisions made on cases brought before the court are inconsistent and in specific cases - unjustified."⁷⁷

⁶⁶ Report of the Public Defender of Georgia on the state of protection of human rights and freedoms in Georgia 2021, p. 184, Available at: <https://bit.ly/3EkRbtQ> [Last accessed on 21.11.2022].

⁶⁷ *ibid.*

⁶⁸ Inspection results regarding the July 5 case, Public Defender of Georgia bit.ly/3W0gYia

⁶⁹ *ibid.* p. 185.

⁷⁰ Social Justice Center. Activism and assembly by right Usage - Georgian practice Analysis, 2022, p. 23.

⁷¹ GDI and HRC urge the Prosecutor's Office to appeal the verdict, Available at: <https://bit.ly/3i335Bj> [Last accessed on 21.11.2022]; Judge Nino Chakhnashvili of the Tbilisi City Court's Criminal Law Board's judgment of April 4, 2022 in case N1/4458-21.

⁷² *ibid.*

⁷³ *ibid.*

⁷⁴ GDI and HRC urge the Prosecutor's Office to appeal the verdict, Available at: <https://bit.ly/3i335Bj> [Last accessed on 21.11.2022].

⁷⁵ *ibid.*

⁷⁶ The court imposed a fine of 5,000 GEL on the attackers of the "Tbilisi Pride" office, Available at: <https://bit.ly/3XepM5z> [Last accessed on 21.11.2022].

⁷⁷ Inspection results regarding the July 5 case, Public Defender of Georgia. Available at: bit.ly/3W0gYia

3. Right to Privacy, Personal Space and Inviolability of Communication

3.1. Deterioration of Criminal Procedural Legislation

In April 2022, the parliamentary majority introduced a bill to amend the Criminal Procedure Code of Georgia.⁷⁸ The bill envisaged the following amendments: the extension of the scope of covert investigative actions to an additional 27 crimes; increase in the duration of covert investigative activities up to 9 months; possibility to carry out covert investigative activities without a time limit and without notifying the subject of undercover investigative actions in case of 100 crimes.⁷⁹

NGOs strongly criticized the law. In their position, the proposed amendments clearly deteriorated the standard of human rights protection during covert investigative activities, and made the legislative reform implemented in 2014 pointless. These 2014 amendments were positively evaluated and were based on the recommendations of the General Directorate for Human Rights and the Rule of Law of the Council of Europe.⁸⁰ According to non-governmental organizations, the need to develop and adopt changes was not substantiated in the explanatory note of the draft law, and the amendment was prepared without consultation with working groups, experts, civil society or international organizations.⁸¹ A similar line of criticism is presented in the opinion of the Venice Commission. According to the Venice Commission, the explanatory note of the draft law does not explain the need for changes and does not analyze the effectiveness and shortcomings of the (then) legal framework for covert investigative actions.⁸² In the opinion of the Venice Commission, the lack of public involvement in developing the draft law is regrettable and a negative development.⁸³ The Venice Commission criticized the additional extension of covert investigative actions to some crimes and the extension of the period of covert investigative actions, as well as the non-notification of the subject/target of said actions especially considering the circumstance that effective control mechanisms were absent from the draft.⁸⁴

It should be noted that the President of Georgia vetoed the bill.⁸⁵ The Parliament of Georgia overcame the veto and adopted the draft law in its original version,⁸⁶ despite the criticism expressed at the international and national level. After the adoption of the draft law, the EU Ambassador Carl Hartzell made the following comment: "these changes significantly limit

⁷⁸ Legislation regulating surreptitious surveillance is getting worse, Available at: <https://bit.ly/3UWfh5b> [Last accessed on 21.11.2022].

⁷⁹ The legislation regulating hidden surveillance is getting even worse. Available at: <https://bit.ly/3UWfh5b> [Last accessed on 21.11.2022].

⁸⁰ *ibid.*

⁸¹ *ibid.*

⁸² Venice Commission, Urgent Opinion on the Draft Law on the Amendment to the Criminal Procedure Code adopted by the Parliament of Georgia on 7 June 2022, Strasbourg, 25 October 2022, Opinion no. 1092/2022, §§ 34, 36, Available at: <https://bit.ly/3TTj1TN> [Last accessed on 21.11.2022].

⁸³ *ibid.* § 39.

⁸⁴ *ibid.* §§ 45, 50, 54.

⁸⁵ Parliament overcame the President's veto and approved the wiretapping law. Available at: <https://bit.ly/3t7LIGZ> [Last accessed on 21.11.2022].

⁸⁶ *ibid.*

the inviolability of the personal life of Georgians. This leaves them without protection from an unjustified intrusion into their personal life and without sufficient guarantees of personal data protection."⁸⁷

The amendments adopted by the Parliament of Georgia are all the more so alarming because on September 13, 2021, various media disseminated information that the alleged large-scale surveillance of clerics, politicians, lawyers, journalists, representatives of the diplomatic corps, activists and others persons by the State Security Service was taking place.⁸⁸ Thus, interference with the right to private life remains an acute problem in Georgia.

3.2. The Investigation of the So - Called " Eavesdropping Case "

As mentioned previously, in September 2021, information was leaked about an alleged illegal and large-scale secret surveillance by the State Security Service. The authenticity of the leaked communication has been confirmed by several persons.⁸⁹ The Prosecutor's Office started the investigation under the 1st, 2nd and 4th ("subsection "a") parts of Article 158 of the Criminal Code.⁹⁰ In terms of the ineffectiveness of the investigation, it should be noted that initially, neither the Prosecutor's Office, nor the court granted victim status to those, who were the subjects/targets of the alleged illegal secret eavesdropping/ surveillance, despite their appeals. Also, initially, the victims of the secret eavesdropping/ surveillance were not interviewed by the prosecutor's office and information about the progress of the investigation, the conduct of necessary investigative actions, the interviews with the responsible officials of the State Security Service, the relevant examinations and other actions necessary for the identification and punishment of criminals remained unknown.⁹¹ the Public Defender of Georgia stated that "there have been many cases of illegal wiretapping and surveillance, but [she] cannot recall the cases of effective investigation and the names of those people who were punished for these systemic crimes" .⁹² Moreover, the targets of wiretapping were granted victim status in Georgia only after they applied to the European Court of Human Rights.⁹³ There are still several gaps in the investigation's course. According to the assessment of the Social Justice Center, it can be seen from the case materials, for example, that: within the scope of the investigation, high-ranking officials of the State Security Service

⁸⁷ Commentary of the Ambassador of the European Union, Carl Hartzel, regarding the amendments to the Code of Criminal Procedure. Available at: <https://bit.ly/3UVRt1c> [Last accessed on 21.11.2022].

⁸⁸ Democratic Initiative of Georgia, Human Rights in Georgia 2021, p. 18, Available at: <https://bit.ly/3Gv3re5> [Last accessed on 21.11.2022]

⁸⁹ The Prosecutor's Office's investigation of the so-called Hearings is not being conducted effectively. Available at: <https://bit.ly/3VcamwP> [Last accessed on 21.11.2022].

⁹⁰ *ibid.*

⁹¹ *there*

⁹² We have not seen an effective investigation and punished persons in any similar case - Lomjaria at the hearings. Available at: <https://bit.ly/3hmkuUR> [Last accessed on 21.11.2022].

⁹³ The ombudsman asks the European Court to consider the "eavesdropping case" as a priority. Available at: <https://bit.ly/3gXs5tt> [Last accessed on 05.12.2022]; Radio Liberty journalists were recognized as victims of the State Security Service of Georgia files case, Available at: <https://bit.ly/3P8DrHB> [Last accessed on 05.12.2022].

were not interviewed, and the interviews with the rest of the employees were flawed and superficial; Several investigative activities were carried out late, etc.⁹⁴

It should be noted that regarding the so-called "eavesdropping case," GDI defends the legal interests of over 40 victims /journalists before the European Court of Human Rights. GDI represents them in the ongoing criminal proceedings at the national level, during which several indicators of inefficiency were observed by our team, such as: the public's lack of information about the investigation, refusal to the Public Defender's request to access the case materials, incomplete access to case materials given to the victims and their legal representatives, etc.

4. Equality

4.1. Situation of LGBTQ+ Community's Rights

4.1.1. Pride Week 2022

In the period from June 28 to July 2, 2022, the Pride Week was organized by "Tbilisi Pride," within the framework of which a screening of a Georgian queer film, a regional conference and a Pride festival were held. Before the events, representatives of "Tbilisi Pride" actively coordinated and held meetings with the Ministry of Internal Affairs, providing information about their plans.⁹⁵ The Interior Ministry said ahead of the Pride Week that it would take all appropriate measures to ensure security for the Pride Week and to protect expression and assembly, while calling on anti-Pride groups to respect the law.⁹⁶

Indeed, compared to 2021, this year's Pride Week was held in a safer environment and with fewer obstacles. Representatives of the international community in Georgia assessed this year's week as a step forward to protect the rights of the LGBTQI+ community.⁹⁷ Despite the progress, the relative success of Pride Week 2022 does not reflect the full picture of the safety and legal situation of the LGBTQI+ community and is largely related to the above events being held indoors. Tbilisi Pride deliberately chose a closed/indoors format instead of a public space, specifically referring to the hard experience of 2021 and the inappropriate reaction of the authorities, saying that "this year we do not have any space and opportunity to hold a march for dignity. We remain the only group that is deprived of the right to assemble and demonstrate."⁹⁸ From the position of Tbilisi Pride, it can be read that the community members do not expect the government to properly protect their freedom of assembly and

⁹⁴ After getting acquainted with the case materials, we evaluate the ongoing investigation of the State Security Service of Georgia meetings, Available at: <https://bit.ly/3VU6Kj8> [Last accessed on 12.05.2022].

⁹⁵ Tbilisi Pride Week is coming back, Available at: <https://bit.ly/3V9vG5U> [Last accessed on 21.11.2021]; The statement of the Ministry of Internal Affairs of Georgia, Available at: <https://bit.ly/3EgWM4p> [Last accessed on 21.11.2021].

⁹⁶ The statement of the Ministry of Internal Affairs of Georgia, Available at: <https://bit.ly/3EgWM4p> [Last accessed on 21.11.2021].

⁹⁷ Pride Week is a step forward, which should lead to further strengthening of human rights protection in Georgia, Available at: <https://bit.ly/3V3H7MA> [Last accessed on 21.11.2021].

⁹⁸ Tbilisi Pride Week is coming back, Available at: <https://bit.ly/3V9vG5U> [Last accessed on 21.11.2021].

expression in public space. Therefore, the full enjoyment of these fundamental rights is still an unattainable goal. In addition, Pride Week did not pass without resistance and risks, even under the conditions of a closed/indoors format. In particular, the representative of Alt-Info, Koka Morgoshia, said about the Pride festival that "it is clear that the Georgian people, including us, as a part of the Georgian people and the political force representing the largest part of this people, will not allow this."⁹⁹ Indeed, representatives of Alt Info and other opponents of Pride came to Mtatsminda Park, on the way to the area where the Pride festival was to be held.¹⁰⁰ According to the statement of the Ministry of Internal Affairs, "on July 1st of the current year, opponents of Tbilisi Pride gathered and paralyzed the access roads to the festival site, artificially obstructing traffic."¹⁰¹ They did not obey the instructions of the police to clear the road and therefore the police arrested 26 persons based on Articles 173 and 166 of the Code of Administrative Offenses.¹⁰² Finally, besides the above statement of Alt Info, the rhetoric encouraging homophobia by the government leader, Prime Minister Irakli Gharibashvili, is noteworthy. Instead of assigning responsibility to the organizers and participants of the hate groups for the violent events of July 5, 2021, Irakli Gharibashvili made the following statement on June 22, 2022: "We know very well who was the organizer of this - the director of the "Elgebete" organization, and the shame movement, it is one organism. Saakashvili and the National Movement are behind them. They were organized and encouraged, as if they were to hold a march of dignity or something, it is a direct provocation, a direct anti-national, anti-state provocation."¹⁰³ This statement contradicts the call of the Committee of Ministers of the Council of Europe to the authorities to show a strong political will to fight against hate crimes and to protect the freedom of assembly by expressing zero tolerance against discrimination, hate speech and violence against the LGBTQ+ community at the highest level.¹⁰⁴

4.2.2. National Human Rights Strategy 2022-2030

On September 5, 2022, the Government of Georgia approved the Human Rights Protection Strategy for 2022-2030.¹⁰⁵ The third priority of the strategy is to "reflect constitutional guarantees of equality in state policy and implement them in practice and enjoy human rights

⁹⁹ "We will not allow this" - Morgoshia threatens the announced Pride festival. Available at: <https://bit.ly/3EdXX4y> [Last accessed on 21.11.2021].

¹⁰⁰ The leaders of pro-Russian Alt-Info, Zura Makharadze and Irakli Martynenko, were allegedly arrested, Available at: <https://formulanews.ge/News/73608> [Last accessed on 21.11.2021].

¹⁰¹ The statement of the Ministry of Internal Affairs. Available at: <https://bit.ly/3giuCxO> [Last accessed on 21.11.2021].

¹⁰² *ibid.*

¹⁰³ Gharibashvili encouraged violence on July 5, and even today he accuses activists of provocation. Available at: <https://bit.ly/3EFV3a6> [Last accessed on 21.11.2021]; Speaking about the July 5 violence, Gharibashvili accuses Tbilisi Pride and shame of "provocation." Available at: <https://bit.ly/3XeTDLe> [Last accessed on 21.11.2021].

¹⁰⁴ Decision of the Committee of Ministers of the Council of Europe CM/Del/Dec(2021)1419/H46-14, 1419th meeting (DH), 30 November- 2 December 2021 - H46-14 Identoba and Others group v. Georgia (Application No. 73235/12), Available at: <https://bit.ly/3V3G9Ax> [Last accessed on 21.11.2021].

¹⁰⁵ The government approved the 2nd national strategy for the protection of human rights. Available at: <https://bit.ly/3tGcYap> [Last accessed on 21.11.2021].

and freedoms without discrimination."¹⁰⁶ Within this priority, separate subsections are devoted to the rights of various vulnerable groups, but the LGBTQI+ community is not among these groups. In addition, the LGBTQI+ community is not only not singled out within the aforesaid priority, but it is not mentioned in the strategy at all.¹⁰⁷ Non-governmental (community) organizations criticized the neglect of the LGBTQ+ community in the strategy.¹⁰⁸ They also negatively evaluated the format of working on the strategy. In particular, according to the representative of the Equality Movement, after the change in the government administration, communication was cut off, and the organization was no longer invited to take part in the work process, they did not receive the working version of the strategy from the Government Administration and were not invited to the presentation of the document.¹⁰⁹ Similarly, the Women's Initiatives Support Group did not receive the strategy directly from the government, and obtained it through their own efforts, from a partner organization, and the cooperation was limited to adding comments to the document.¹¹⁰

It should be noted that GDI also wanted to be actively involved in developing the strategy, and even two years ago, when the initial draft of the strategy was being developed, GDI repeatedly expressed feedback and recommendation regarding the reflection of the needs of the LGBTQI+ community in the strategy. As for the ongoing process in 2022, although GDI received the strategy document late, it still addressed the government with the same remarks and recommendations. Unfortunately the government did not take into account their opinions, despite the many efforts of the civil sector and international partnerships.

Such an approach to the development of the strategy and neglecting the (needs) of the LGBTQI+ community in the strategy itself show the government's attitude that it does not want to recognize the equality of the LGBTQI+ community at the policy level and take care of solving the challenges faced by the community.

At the end of 2022, the strategy was under consideration in the Parliament.

5. Right to Fair Trial and Justice

5.1. Amendments to the Organic Law of Georgia On Common Courts

On December 30, 2021, the Parliament of Georgia, in the pre-New Year period, in an extraordinary session, and without holding public engagement and consultations, adopted legislative amendments to the Organic Law of Georgia on Common Courts in an expedited manner.¹¹¹ The draft law introduced new regulations pertaining to the following important issues:

1. Secondment of the judge to another court;

¹⁰⁶ National Human Rights Protection Strategy of Georgia for the years 2022-2030. Available at: <https://bit.ly/3hNX1fH> [Last accessed on 21.11.2021].

¹⁰⁷

¹⁰⁸ *ibid.*

¹⁰⁹ *ibid.*

¹¹⁰ *ibid.*

¹¹¹ The draft law adopted by the Parliament in the third reading - <https://bit.ly/3GA1woD> [Last accessed on 22.11.2022].

2. Reduction of the quorum for decision-making by the High Council of Justice in case of disciplinary proceedings;
3. Cancellation of the ban on electing the same person twice in a row to the position of the members of the High Council of Justice;
4. A new regulation on removal of a judge from a case.

The package of changes presented by the legislative majority was negatively received by civil organizations,¹¹² international actors,¹¹³ and several judges themselves.¹¹⁴ All of them spoke about the threats the adopted bill posed to the independence of individual judges and, on the contrary, strengthened the so called “clan rule” within the system. The changes decisively weakened the guarantees of individual judges and made them more vulnerable to the power of the High Council of Justice.

On January 13, 2022, part of the civil society called¹¹⁵ on the President of Georgia, to veto the proposed changes and return them to the Parliament with motivated remarks by using the powers granted by the Constitution,. The Presidential Administration issued a statement on the same day¹¹⁶ that the President signed the bill and the changes, heavily criticized both locally and internationally, came into force.

Some judges,¹¹⁷ who from the beginning negatively assessed the proposed changes, and the Public Defender appealed to the Constitutional¹¹⁸ Court of Georgia and demanded that the changes made to the law through a hasty and non-transparent procedure be recognized as unconstitutional. Their position was supported by the opinion of the Venice Commission, published on June 20,¹¹⁹ in which the Commission "regretted" that the adoption of the changes "was carried out with excessive haste, lacked transparency in terms of motives and objectives, and the process took place without inclusive and effective consultation". The consideration of these lawsuits submitted to the Constitutional Court has yet to begin.

5.2. Judicial Reform and the Supreme Council of Justice

¹¹² The coalition "On Common Courts" responds to the review of amendments to the organic law in an accelerated manner. Available at: <https://bit.ly/3UTLKck> [Last accessed on 22.11.2022].

¹¹³ Venice Commission, Opinion on the December 2021 Amendments to the Organic Law on Common Courts, Strasbourg, 20 June 2022, Opinion No. 1077 / 2022. Available at: <https://bit.ly/3Ve21c2> [Last accessed on 22.11.2022].

¹¹⁴ Some judges address the Parliament of Georgia with an open letter and requests clarifications about the changes initiated in the Law "On General Courts." Available at: <https://bit.ly/3V18Ltz> [Last accessed on 22.11.2022].

¹¹⁵ Appeal to the President to veto the legislative amendment adopted in the organic law "On Common Courts." Available at: <https://bit.ly/3EsnAi9> [Last accessed on 22.11.2022].

¹¹⁶ Statement of the President of Georgia. Available at: <https://bit.ly/3Xpl3sT> [Last accessed on 22.11.2022].

¹¹⁷ Judges are appealing the controversial law on general courts to the Constitutional Court. Available at: <https://bit.ly/3OxCYhR> [Last accessed on 22.11.2022].

¹¹⁸ The Public Defender of Georgia appealed to the Constitutional Court and demanded that the provisions of the Organic Law "On Common Courts" be declared unconstitutional. Available at: <https://bit.ly/3Vkxcm5> [Last accessed on 22.11.2022].

¹¹⁹ Venice Commission, Opinion on the December 2021 Amendments to the Organic Law on Common Courts, Strasbourg, 20 June 2022, Opinion No. 1077 / 2022, ob.: <https://bit.ly/3Ve21c2> [Last accessed on 22.11.2022].

In 2022, there was still a host of challenges in terms of the activities of the High Council of Justice. In June 2022, several civil organizations spoke about the attempt by the High Council of Justice to re-appoint Mikheil Chinchaladze to the position of the chairperson of the Tbilisi Court of Appeal for a new term and called on the judges not to support decisions strengthening the so called “clan” rule.¹²⁰ According to the organizations that signed the statement, given the background of growing criticism of the judicial system at the local and international levels, the High Council of Justice was trying to keep the “clan” rule in the judicial system and hide it from the public.¹²¹ Despite the appeal, the Council still went ahead with the decision to appoint Mikheil Chinchaladze as the chairperson of the Tbilisi Court of Appeal for a second, 5-year term.¹²²

This decision was not the only one that gave rise to critical views towards the Council in the society. In June, another statement was issued by the civil society, which responded to the ineffective activity of the High Council of Justice and the practice of untimely performance of the duties assigned to the body by the law.¹²³ In particular, the statement discussed the recent increase in the postponement of scheduled sessions by the Council for unknown reasons. Among the problems, the formulation of the agenda of the sessions in a generic form and their non-publication within the period established by the law were also named as concerns. In addition, from the point of view of the proper functioning of the Council, it is an important challenge that the Parliament of Georgia still has 5 non-judge members to appoint since June 2021. The most important constitutional body of the judicial branch operates with an incomplete quorum—with only 10 members. It was under these conditions that the Council decided on the appointment of members of the influential “clan” group in the system and judges close to them to administrative positions, including: on the appointment of Irakli Bondarenko as the chairperson of the Kutaisi Court of Appeals,¹²⁴ and on the appointment of Vasil Mshvenieradze as the head of the Civil Affairs Chamber of the Tbilisi City Court.¹²⁵ So far, the Council has only one non-judge member appointed by the president, which further strengthens the corporatism of the Council .

Besarion Alavidze, a former judge of the Supreme and Appeal Courts, spoke of the presence of the clan's influences in the system. In June 2022, with an open letter published on the social network, he called out Bidzina Ivanishvili and asked him to "tell the members of the

¹²⁰ The statement of the signatory organizations. Available at: <https://bit.ly/3TQQZYV> [Last accessed on 22.11.2022].

¹²¹ *ibid.*

¹²² Decree N1/60 of the Supreme Council of Justice of Georgia of June 27, 2022 M. Regarding the appointment of Chinchaladze as the chairperson of the Tbilisi Court of Appeal. Available at: <https://bit.ly/3V8Px5y> [Last accessed on 22.11.2022].

¹²³ Civil society calls for accountability and transparency of the Supreme Council of Justice. Available at: <https://bit.ly/3GA8CJN> [Last accessed on 22.11.2022].

¹²⁴ Decree N1/69 of July 18, 2022 of the Supreme Council of Justice of Georgia on the appointment of Irakli Bondarenko as the chairperson of the Court of Appeal of Kutaisi. Available at: <https://bit.ly/3gpd2lB> [Last accessed on 22.11.2022].

¹²⁵ Decree N1/71 of the Supreme Council of Justice of Georgia of July 18, 2022 on the appointment of Vasil Mshvenieradze as the head of the Civil Affairs Board of the Tbilisi City Court. Available at: <https://bit.ly/3UXwxqD> [Last accessed on 22.11.2022].

court's Clan amicably to leave the system and go home."¹²⁶ In subsequent statements, the former judge repeatedly mentioned the "Clan rule " in the judicial system. In a letter published on November 7, 2022 on the social network, Besarion Alavidze also spoke about the crimes committed against him. Besarion Alavidze was not the only judge who left the system and spoke about the problems of Georgian justice. The former judge, Ana Ghelekva, who is now emigrated, left the system when the so-called Clan shunned her. According to judge Ghelekva, her term as a judge was not extended because she did not support the candidacy of judge Levan Tevzadze, who, according to her, was a protégé of the then secretary of the Council, Levan Murusidze.¹²⁷

The Coalition for Independent and Transparent Justice spoke about the increase of the Clan's influence in the judicial system in October 2022, when the absolute majority of the 279 judges present at the XXXI Conference of Georgian Judges supported the election of Levan Murusidze and Dimitri Gvritishvili as members of the High Council of Justice. None of them asked what were the reasons for the departure of the old members of the Council, or what were the newly elected ones planning to achieve.¹²⁸ It is significant that member positions in the Council suddenly became vacant after the former members Gocha Abuseridze and Giorgi Goginashvili left and resigned. It should be noted that Abuseridze became a member of the Disciplinary Chamber of the Supreme Court on October 17, which is incompatible with membership of the Council of Justice according to the current legislation. However, it is still unknown to the public what was the reason for Giorgi Goginashvili, a former member of the Council, to leave his post early when he was elected as a member of the Council of Justice on October 31, 2021.

Per Coalition's assessment, the return of old members to the Supreme Council of Justice further reduced the possibilities of systemic reform of the judiciary and further harms the already damaged trust in the courts. The appointments to important positions in the judicial system through such processes contradicted the spirit of the 12-point recommendations of the European Commission. It clearly showed that instead of the systemic reform of the High Council of Justice, informal influences, and concentration of power in this body are further strengthened.¹²⁹

6. Politically Motivated Practice and Cases

6.1. The Case of Nika Gvaramia

In 2019, the Prosecutor's Office of Georgia started an investigation against Nika Gvaramia, the former Director General of the Broadcasting Company Rustavi 2 and the founder of the

¹²⁶ Open letter of the former judge to Bidzina Ivanishvili. Available at: <https://bit.ly/3tPZj0u> [Last accessed on 22.11.2022].

¹²⁷ Former judge: due to opposition to the Clan, my term as a judge was not extended. Available at: <https://bit.ly/3GyFxy6> [Last accessed on 22.11.2022].

¹²⁸ The coalition responds to the XXXI conference of judges. Available at: <https://bit.ly/3Ayboey> [Last accessed on 22.11.2022].

¹²⁹ *ibid.* September 6, 2019 briefing at the General Prosecutor's Office. Available at: <https://bit.ly/3heOZw0> [Last accessed on 08.11.2022]; the so-called court issued a verdict on the "Rustavi 2" case. Available at: <https://bit.ly/3UkYrfU> [Last accessed on 08.11.2022]

TV company Mtavari Arkhi. Gvaramia was accused of: embezzlement of property rights belonging to Rustavi 2 on a large scale by using his official position and in a premeditated group action, commercial bribery, production of fake official documents and legalization of illegal income.¹³⁰

On May 16, 2022, the Tbilisi City Court found Nika Gvaramia guilty of an abuse of authority in two episodes of the case (Article 220 of the Criminal Code of Georgia), in one episode ordered him to pay a fine (in the amount of 50,000 GEL) and in the other - imprisonment and finally, he was sentenced to imprisonment for 3 years and 6 months.¹³¹ In particular, in the so-called Commercials episode, according to the verdict, Nika Gvaramia committed an act damaging the enterprise, TV Rustavi 2 by changing the terms of the contract related to the sale of advertising in 2015, when he was managing the company, so that the company would not receive more income."¹³² And the so-called Car Episode refers to the sale of Rustavi 2 TV commercials at a price lower than the market price for 3 months. In exchange, Nika Gvaramia's wife would be given a car from the advertising company.¹³³

On November 2, 2022, the Tbilisi Court of Appeal issued a guilty verdict against Nika Gvaramia and found him guilty of an abuse of power in two episodes of the case.¹³⁴ Unlike the verdict of the court of first instance, the appeals court aggravated Gvaramia's sentence in one episode - instead of a fine, he was sentenced to imprisonment for 3 years and 6 months, and in the end, because of the rule of absorption of sentences, the prison sentence remained the same.¹³⁵

The proceedings against Nika Gvaramia received a great deal of reactions from both local and international actors. Even before the verdict of the first instance court, the Public Defender and non-governmental organizations pointed out the baselessness of charges levied

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¹³¹ The court issued a verdict on the so-called "Rustavi 2" case. Available at: <https://bit.ly/3UkYrfU> [Last accessed on 08.11.2022]; The judge sentenced Nika Gvaramia to prison. Available at: <https://www.radiotavisupleba.ge/a/31852346.html> [Last accessed on 08.11.2022]

¹³² The results of the public defender's examination regarding the verdict of Nika Gvaramia. Available at: <https://bit.ly/3WKqW8p> [Last accessed on 08.11.2022]

¹³³ *ibid.*

¹³⁴ The Court of Appeal left Nika Gvaramia in prison in a politically motivated case. Available at: <https://bit.ly/3NREESX> [Last accessed on 08.11.2022]

¹³⁵ *ibid.*

against Gvaramia.¹³⁶ They also strongly criticized the verdicts against Gvaramia.¹³⁷ In particular, according to the non-governmental organizations, the decisions of the courts were an example of pressure on the media and were aimed at disrupting the activities of a critical TV broadcaster.¹³⁸ According to the Public Defender's assessment, "the verdict of the Appeals Court against Nika Gvaramia is not substantiated. It is a case of imposing criminal liability for corporate actions, and the political motive in the case outweighs the interest of justice."¹³⁹ Based on the decisions of the First and Second Instance courts, study of case materials, public statements made by government officials and analysis of the media environment in the country, the Public Defender found that there was a violation of Article 18 of the European Convention, i.e., the case has a political motive.¹⁴⁰

The proceedings against Nika Gvaramia were also criticized by representatives of the international community.¹⁴¹ According to the US Embassy, the decision of the city court questioned Georgia's commitment to the rule of law.¹⁴² And according to the European parliamentarians, the judgment handed down without reliable evidence showed the deterioration of the rule of law in Georgia.¹⁴³ The director of Amnesty International in Eastern Europe and Central Asia called the decision a politically motivated persecution.¹⁴⁴ After the verdict of the appeals court, the US Embassy stated that "the current imprisonment of Nika Gvaramia puts at risk the obvious choice of the Georgian people and the declared

¹³⁶ Amicus Curiae submitted by the public defender. Available at: <https://bit.ly/3GA19dq> [Last accessed on 22.11.2022]; Human Rights Center, legal assessment of the ongoing criminal case against Nika Gvaramia. Available at: <https://bit.ly/3VhLCml> [Last accessed on 22.11.2022]; Transparency International - Georgia, assessment of the criminal case against Nika Gvaramia. Available at: <https://bit.ly/3tRzv4h> [Last accessed on 22.11.2022].

¹³⁷ The results of the public defender's examination regarding the verdict of Nika Gvaramia. Available at: <https://bit.ly/3WKqW8p> [Last accessed on 08.11.2022]; The public defender responds to the verdict of the Tbilisi Court of Appeal against Nika Gvaramia. Available at: <https://bit.ly/3UhVMUw> [Last accessed on 08.11.2022]; Statement of public organizations about the imprisonment of Nika Gvaramia. Available at: <https://bit.ly/3NLN1Q1> [Last accessed on 08.11.2022]; The coalition responds to the decision made in the case of Nika Gvaramia. Available at: <https://bit.ly/3DPT0yD> [Last accessed on 08.11.2022]; According to GYLA, the verdict in Nika Gvaramia's case is unjustified. Available at: <https://bit.ly/3WCaSWi> [Last accessed on 08.11.2022]; 5 reasons why Nika Gvaramia's sentence is unjustified. Available at: <https://bit.ly/3UIS2RI> [Last accessed on 08.11.2022].

¹³⁸ The Coalition responds to the decision made in the case of Nika Gvaramia. Available at: <https://bit.ly/3DPT0yD> [Last accessed on 08.11.2022]; The Court of Appeals left Nika Gvaramia in prison in a politically motivated case. Available at: <https://bit.ly/3NREESX> [Last accessed on 08.11.2022].

¹³⁹ According to the Public Defender's assessment, political motivation is confirmed in Nika Gvaramia's criminal case. Available at: <https://bit.ly/3UHxWRs> [Last accessed on 08.12.2022].

¹⁴⁰ *ibid.*

¹⁴¹ British Embassy: We are disappointed by the arrest of Nika Gvaramia, Available at: <https://bit.ly/3DOxr1q> [Last accessed on 08.11.2022]; "The decision raises questions" – on the arrest of the French ambassador Gvaramia. Available at: <https://bit.ly/3zXVutB> [Last accessed on 08.11.2022]; Poland is concerned about Nika Gvaramia's verdict - Polish Foreign Minister. Available at: <https://bit.ly/3UzIL8s> [Last accessed on 08.11.2022]

¹⁴² US Embassy on Gvaramia: Georgia's commitment to the rule of law is questioned. Available at: <https://bit.ly/3htDwsQ> [Last accessed on 08.11.2022].

¹⁴³ MEPs: the unjustified sentence against Gvaramia echoes the practice of intimidation. Available at: <https://bit.ly/3hq29GI> [Last accessed on 08.11.2022].

¹⁴⁴ Amnesty International: Nika Gvaramia's sentence is politically motivated suppression of a different voice, Available at: <https://bit.ly/3EcvbCG> [Last accessed on 08.11.2022].

goal of the leaders of Georgia - a safer, democratic, European future."¹⁴⁵ And the press-speaker of the External Action Service of the European Commission noted that "questions were raised regarding this case, including by the Public Defender."¹⁴⁶

The statements of the judge of the first instance examining the case, the judicial system, and other representatives of the government regarding the proceedings against Nika Gvaramia and the above criticism were also published. In particular, shortly after the decision of the judge of the first instance, it became known that judge Chkhikvadze would not go to the United States on an exchange study visit funded by the US government, and the judge himself did not comment on this.¹⁴⁷ After the US Embassy removed Nika Gvaramia judge Lasha Chkhikvadze from the program planned in the USA, the other five Georgian judges taking part in the same program did not go to the states.¹⁴⁸ A few months after the decision was issued, Judge Chkhikvadze's statement was spread through the media, where he said that the US Embassy had requested an explanation on the case.¹⁴⁹ In the same statement, the judge accused MEP Michael Gahler of putting pressure on the judicial system.¹⁵⁰

In response to the judge, Ambassador Degnan told the media the same day that any suggestion that the US was interfering in the judicial process was untrue.¹⁵¹ Politicians also responded to the issue. According to the chairperson of the Georgian Dream, Irakli Kobakhidze, he did not hear a denial of the widespread accusations from the American Embassy, which was "very thought-provoking and very disturbing" for him.¹⁵² Former members of the High Council of Justice of Georgia also issued a statement, which literally repeated the spirit of Irakli Kobakhidze's statement. The statement read - "The addressee of the accusation (the Ambassador) practically ignored it, which leads to even more questions."¹⁵³

The criticism of Georgia's western partners continued parallel to the consideration of Nika Gvaramia's case in the higher instance courts. Levan Murusidze, who returned as a member of the High Council of Justice, told the media that "the slander and attacks against the court

¹⁴⁵ US Embassy: Gvaramia's imprisonment puts European future choices at risk. Available at: <https://bit.ly/3DNWtxS> [Last accessed on 08.11.2022].

¹⁴⁶ Georgia: Statement of the press-speaker of the External Action Service of the European Commission regarding the judgment of the Tbilisi Court of Appeals in the case of Mr. Gvaramia. Available at: <https://bit.ly/3UjQxE8> [Last accessed on 08.11.2022].

¹⁴⁷ Judge Lasha Chkhikvadze: The embassy should make an explanation. Available at: <https://bit.ly/3GEh3Ue> [Last accessed on 22.11.2022].

¹⁴⁸ After the removal of Chkhikvadze from the program, the other 5 judges did not go to the USA either. Available at: <https://bit.ly/3XqbDT0> [Last accessed on 22.11.2022].

¹⁴⁹ Judge Lasha Chkhikvadze - MEP Galer's statement is a direct pressure on my colleagues who must consider Nika Gvaramia's case in the higher instance and who are already under open pressure. Available at: <https://bit.ly/3U0E4Uq> [Last accessed on 22.11.2022].

¹⁵⁰ *ibid.*

¹⁵¹ Degnan: Any suggestion that the US interfered in the judicial process is not true. Available at: <https://bit.ly/3TWjWmj> [Last accessed on 22.11.2022].

¹⁵² Kobakhidze on Chkhikvadze: we did not hear a denial of the accusation from the ambassador, which is thought-provoking. Available at: <https://bit.ly/3EQjMbR> [Last accessed on 22.11.2022].

¹⁵³ Former members of the Supreme Council of Justice of Georgia issue a statement. Available at: <https://bit.ly/3EuZqU8> [Last accessed on 22.11.2022].

should end once and for all."¹⁵⁴ Ambassador Degnan also responded to Murusidze's statement and according to her assessment, the programs and the opportunities given to Georgian judges through these [US] programs greatly benefited them.¹⁵⁵

The sentences passed against Nika Gvaramia show the politicized justice in the country, the extreme deterioration of freedom of expression and media. The criminal case against Nika Gvaramia and the verdicts issued are especially alarming considering the prerequisite for obtaining the status of a candidate for EU membership. One of the 12 requirements of the European Commission is to strengthen efforts to ensure a free, professional, pluralistic, and independent media environment and conduct proceedings against media owners with the highest legal standards.¹⁵⁶ In contrast, Gvaramia's case is seen as an attack on media independence, as well as the most serious politically motivated litigation.

6.2. The Case of Mikheil Saakashvili

Alarming information about the deteriorating state of health of the Third President of Georgia, Mikheil Saakashvili - who is in custody in a medical facility - was disseminated many times in 2022.

The conclusion no. 7 of December 6, 2022 of the group of specialists/experts established by the Public Defender's Office on the results of monitoring Mikheil Saakashvili's medical condition is noteworthy.¹⁵⁷ The visits of the members of the expert group to the "Vivamed" clinic were carried out on December 4 and 5, 2022.¹⁵⁸ According to their findings, Mikheil Saakashvili's "condition after the last assessment (27.04.2022) has sharply deteriorated and is assessed as serious."¹⁵⁹ According to the expert opinion in the same document, although the patient underwent all laboratory and instrumental research and treatment available in Georgia, in several multi-specialty clinics, the patient's condition is rapidly deteriorating and to prevent the expected irreversible deterioration of health, timely and substantial measures should be taken.

Forensic medical examination was carried out by the Empathy Center, which took place from June 1 to November 28, 2022.¹⁶⁰ According to their expert report, Mikheil Saakashvili has up to 10 basal diagnoses, Saakashvili's imprisonment is unacceptable and is incompatible with international standards of imprisonment because of his health condition.¹⁶¹

¹⁵⁴ "The slander and attacks against the court should end." Murusidze. Available at: <https://bit.ly/3XnKNuE> [Last accessed on 22.11.2022].

¹⁵⁵ According to my information, these trainings brought great benefits to the judges - Degnan's answer to Murusidze. Available at: <https://bit.ly/3Ayz5n5> [Last accessed on 22.11.2022].

¹⁵⁶ Opinion on the EU membership application by Georgia. Available at: <https://bit.ly/3hllkkW> [Last accessed on 08.11.2022]

¹⁵⁷ The conclusion #7 of the group of specialists/experts created by the Public Defender on the results of the monitoring of the medical condition of Mikheil Saakashvili. Available at: <https://bit.ly/3Y71WZH> [Last accessed on 08.12.2022].

¹⁵⁸ *ibid.*

¹⁵⁹ *ibid.*

¹⁶⁰ Empathy: Saakashvili has up to 10 key diagnoses, which makes imprisonment incompatible. Available at: <https://bit.ly/3VQsBYT> [Last accessed on 05.12.2022].

¹⁶¹ *ibid.*

Local non-governmental organizations also responded to the Third President's health condition: "the question of further treatment should be decided not by political expediency, but only by considering the standards of human life and health protection."¹⁶² Saakashvili's health condition is also being monitored by Georgia Western allies.¹⁶³

It should be noted that the government has a positive obligation to protect human life and health. This obligation applies particularly strongly to those who are in prison and under the effective control of the state. The government bears full responsibility for Mikheil Saakashvili's health condition. Along with the responsibility, the government and all its branches must be guided solely by the interests of protecting the right to life and to health when considering Mikheil Saakashvili's health condition.

The justice carried out against Mikheil Saakashvili, including the cases in which Mikheil Saakashvili has been sentenced today, was assessed by GDI as politically biased as early as in 2015.¹⁶⁴

6.3. The case of Davit Kezerashvili and Formula TV

On September 7, 2021, the Supreme Court of Georgia found Davit Kezerashvili - the former Minister of Defense and the founder of Formula TV Company - guilty of the so-called Training Case. The lower courts had issued an acquittal verdict in the case.¹⁶⁵ Davit Kezerashvili was accused of embezzlement of state funds.¹⁶⁶ After the decision of the Supreme Court, in September 2021, the Ministry of Defence of Georgia filed a civil lawsuit in court against Kezerashvili and Alexander Ninua, the then head of the State Procurement Department (during the tenure of Defence Minister Kezerashvili), and demanded compensation of 5,060,000 euros for damages caused by criminal acts.¹⁶⁷ On March 29, 2022, the Tbilisi City Court ordered Kezerashvili and Ninua to pay damages in the amount of 5,060,000 euros to the Ministry of Defence.¹⁶⁸ The review of the civil dispute continues in the Court of Appeals.¹⁶⁹

There are serious doubts about the partiality and political overtones of both criminal and civil lawsuits against Davit Kezerashvili. Several circumstances give credibility to these doubts,

¹⁶² Statement regarding Mikheil Saakashvili's further treatment. Available at: <https://bit.ly/3iC0AGa> [last accessed on 08.12.2022].

¹⁶³ EU Ambassador: We are closely monitoring Saakashvili's health. Available at: <https://formulanews.ge/News/81267> [Last accessed on 05.12.2022]; Degnan: We will continue to monitor Saakashvili's health. Available at: <https://bit.ly/3UtC7A5> [Last accessed on 05.12.2022].

¹⁶⁴ For evaluations: Democratic Initiative of Georgia, Politically Biased Justice in Georgia 2015. Available at: <https://gdi.ge/uploads/other/0/720.pdf> [Last accessed on 05.12.2022].

¹⁶⁵ The court ordered compensation of €5,060,000 for Kezerashvili and the Ministry of Defense of Ninua. Available at: <https://bit.ly/3Y1j431> [Last accessed on 05.12.2022].

¹⁶⁶ Ibid.; Davit Kezerashvili has not been convicted of any case. Available at: <https://bit.ly/3Uwr0Xc> [Last accessed on 05.12.2022].

¹⁶⁷ The Ministry of Defense is suing Davit Kezerashvili and Alexander Ninua, Available at: <https://bit.ly/3uquzne> [Last accessed on 05.12.2022].

¹⁶⁸ The court ordered compensation of €5,060,000 for Kezerashvili and the Ministry of Defense of Ninua. Available at: <https://bit.ly/3Y1j431> [Last accessed on 05.12.2022].

¹⁶⁹ The consideration of Kezerashvili's case will begin on December 6. Available at: <https://formulanews.ge/News/79773> [Last accessed on 05.12.2022].

including: the resumption of proceedings in the Supreme Court in the case against Kezerashvili, started 6 years ago, just one month before the 2021 elections.¹⁷⁰ And before resuming the case, Prime Minister Irakli Gharibashvili's statement: "As soon as I left [my previous Prime Ministerial tenure], you have acquitted him. Now, it seems like they will take care of him."¹⁷¹ The management of the TV company Formula itself linked this renewed interest in the case to the critical editorial policy of the Broadcaster.¹⁷² According to the Public Defender, she found it problematic that the Supreme Court's guilty verdict was published without its reasoning part.¹⁷³ As for the civil dispute against Kezerashvili, the Coalition for Media Advocacy stated that the dispute was aimed at pressuring Formula as a critical TV broadcaster.¹⁷⁴ Similarly, according to the Charter of Journalistic Ethics, a civil lawsuit "may hinder the activities of a media organization, known for its critical views of the government."¹⁷⁵

In light of the aforesaid considerations, to protect the freedom of expression in the country and, therefore, to fulfil the requirement regarding the media environment (in the 12 prerequisites of the European Union), it is important that justice is not used as a political tool in Kezerashvili's case.

6.4. The Cartographers' Case

In 2022, Tbilisi City Court resumed the so-called the Cartographers' Case,¹⁷⁶ one of the accused is Iveri Melashvili - former member of the Delimitation-Demarcation Commission and former head of the Border Relations Service of the Department of Neighboring Countries of the Ministry of Foreign Affairs of Georgia. Today, Iveri Melashvili is released on bail and is waiting for a decision. According to him, this process has dragged on for an unbearably long time.¹⁷⁷ Iveri Melashvili is still accused in the case in which local non-governmental organizations considered the administration of justice to be politically motivated.¹⁷⁸ According to the Public Defender's assessment, "the case clearly has a political or other motive, and these flaws outweigh the legal motive in the case."¹⁷⁹

¹⁷⁰ The court ordered compensation of €5,060,000 for Kezerashvili and the Ministry of Defense of Ninua, Available at: <https://bit.ly/3Y1j431> [Last accessed on 05.12.2022].

¹⁷¹ 2 months after Gharibashvili's threat, Tadumadze is considering Davit Kezerashvili's case in the Supreme Court. Available at: <https://formulanews.ge/News/56117> [Last accessed on 05.12.2022].

¹⁷² Gumbaridze: the renewal of the Kezerashvili case is politicized and connected to the "formula." Available at: <https://bit.ly/3P4va7K> [Last accessed on 05.12.2022].

¹⁷³ The Ombudsman suspects Kezerashvili's case is related to the context of "Formula." Available at: <https://bit.ly/3HcMzZQ> [Last accessed on 05.12.2022].

¹⁷⁴ Media Advocacy Coalition: The dispute against Davit Kezerashvili aims to influence the TV company "Formula." Available at: <https://bit.ly/3gUntV3> [Last accessed on 05.12.2022].

¹⁷⁵ Charter: We call on the government not to interfere with the activities of the TV company Formula. Available at: <https://bit.ly/3uoaj5B> [Last accessed on 05.12.2022].

¹⁷⁶ After a pause, discussion of the case of cartographers has been renewed. Available at: <https://bit.ly/3P2G5yA> [Last accessed on 06.12.2022].

¹⁷⁷ One year of conditional freedom of Iveri Melashvili, Available at: <https://bit.ly/3FtNZhq> [Last accessed on 06.12.2022].

¹⁷⁸ The case of cartographers - a politically motivated new investigation. Available at: <https://bit.ly/3FsRGDM> [Last accessed on 06.12.2022].

¹⁷⁹ Amicus Curiae of the Public Defender of Georgia on the case of cartographers. Available at: <https://bit.ly/3Bcsgb1> [Last accessed on 06.12.2022].

In the Cartographers' Case, the GDI represents the legal interests of Iveri Melashvili at the national courts and before the European Court.¹⁸⁰

6.5. Suspicious Personnel Changes in the Field of Culture

From March 2021, after the change of the Minister of Culture, Sports and Youth of Georgia, significant personnel changes have been taking place in various structural units of the Ministry.¹⁸¹ There are already over 100 employees fired from the National Agency for Cultural Heritage Protection and the National Museum of Georgia.¹⁸² The position of the dismissed employees calls into question the necessity and validity of personnel changes. In particular, "in the opinion of those who were fired, the only reason for their dismissal from the museum is the personnel policy of the new minister in the Ministry of Culture and the administrators appointed by her in these institutions. The reorganization is not based on qualification evaluation, but only in order to keep employees who are loyal to them."¹⁸³ It is also suspicious that almost all the signatories of the protest petition calling for saving the historical building of the National Museum, contesting the unfair personnel policy and challenging the non-release of public information were fired from the Museum and the National Agency for the Protection of Cultural Heritage.¹⁸⁴ In culture field, one could observe a personnel purge taking place against those who took a critical stance. Because tens of employees have already been dismissed, several cases are discussed in this sub-chapter as an illustration.

6.5.1. Cases of the Selection Calls for Artistic Directors in Professional State Drama Theaters

The Office of the Public Defender of Georgia reviewed the applications of the participants (L. Ch. (Lasha Chkhvimiani), M. Ch. and G. S) of the competition for selecting the artistic directors of professional state drama theatres regarding the facts of discrimination based on difference in views/political views.¹⁸⁵ Lasha Chkhvimiani is the former artistic director of the Zinaida Kverenchkiladze Professional State Drama Theatre of Dmanisi, who applied to the selection competition for the same position after the expiration of his term in office.¹⁸⁶ Only one application was submitted within the competition.¹⁸⁷ By order of the Minister of Culture, Sports and Youth of Georgia, the competition was cancelled, and submission of the candidacy of Chkhvimiani to the selection committee was determined as

¹⁸⁰ "The case of the cartographers" was sent to Strasbourg. Available at: <https://bit.ly/3XWiEuN> [Last accessed on 06.12.2022].

¹⁸¹ A large-scale personnel purge in the field of culture continues. Available at: <https://bit.ly/3AtofzH> [Last accessed on 21.11.2022].

¹⁸² *ibid.*

¹⁸³ Fair Elections (ISFED), Center for Social Justice and GYLA will protect the interests of those dismissed as a result of the personnel purge in the field of culture conducted by Tea Tsulukiani <https://bit.ly/3UFPM15> [Last accessed on 21.11.2022].

¹⁸⁴ Fair Elections (ISFED), Center for Social Justice and SAIA will protect the interests of those dismissed because of the personnel purge in the field of culture conducted by Tea Tsulukiani <https://bit.ly/3UFPM15> [Last accessed on 21.11.2022].

¹⁸⁵ The general proposal of the Public Defender of Georgia to the Minister of Culture, Sports and Youth of Georgia, Mrs. Thea Tsulukiani, on the issue of preventing and fighting against discrimination, p. 1. Available at: <https://bit.ly/3UVUJ8S> [Last accessed on 21.11.2022].

¹⁸⁶ *ibid.*

¹⁸⁷ *ibid.*

inappropriate.¹⁸⁸ According to Chkhvimiani, the Minister's decision was caused by his political and other views. Similarly, G.S. applied for the artistic director selection¹⁸⁹ contests of Senaki Akaki Khorava Professional State Drama Theatre and Gori Giorgi Eristavi Professional Drama Theatre, which were canceled by order of the Minister.¹⁹⁰ G.S. linked this decision to the fact that he criticized the issues in culture field and was also the stage director of the play "Enemy of the People," which resulted in the displeasure of the Municipality of Dmanisi administration.¹⁹¹

The Public Defender reviewed the application of all three and stipulated that without the participation of experts of the field in choosing the artistic director of the theatre, "there are growing risks of creating a favorable ground for interference in the labor rights and the right to participation in cultural life, the freedom of thought and expression and creativity. And it gives rise to doubts about non-objective, biased, discriminatory treatment and interference in creative activities. A visible example of this is the cases under consideration, within which the assumption of discriminatory treatment towards the applicants was largely caused by the circumstance that the Minister did not consider it appropriate to present the candidates to the recommendation board and simply ordered the respective contests to be canceled".¹⁹² According to the Public Defender, the practice of selection of artistic directors "in the relevant period contributes to the creation of such conditions that may place specific candidates, because of their different views or other signs protected from discrimination, in comparison with other persons taking part in the competition or the staff appointed by the Minister at his own discretion in a disadvantaged position in enjoying their labor rights, the right to take part in cultural life and the freedom of opinion and expression and creativity and create direct discrimination".¹⁹³ That's why the Public Defender addressed the Minister of Culture, Sports and Youth with a general proposal and requested to adopt changes to support non-discriminatory decision-making in the selection process of artistic directors of professional state drama theatres.¹⁹⁴

6.5.2. The Case of the Winning Project in the Fundamental Studies Call Organized by the S. Rustaveli Scientific Foundation

On October 26, 2022, the Public Defender issued a recommendation on the elimination of direct discrimination based on a difference in views. The Public Defender was approached by applicants whose project, submitted on behalf of the National Museum, won the fundamental research competition organized by the Shota Rustaveli Scientific Foundation.¹⁹⁵

¹⁸⁸ *ibid.* p. 2.

¹⁸⁹ *ibid.* p. 3.

¹⁹⁰ *ibid.* p. 4-5.

¹⁹¹ *ibid.* p. 5.

¹⁹² *ibid.* p. 9-10.

¹⁹³ *ibid.* p. 13.

¹⁹⁴ Recommendation of the Public Defender to the Minister of Culture and the members of the Directorate of the National Museum of the Republic of Azerbaijan on discrimination based on different opinions, p. 2, Available at: <https://bit.ly/3tOydgM> [Last accessed on 21.11.2022].

¹⁹⁵ Recommendation of the Public Defender to the Minister of Culture and the members of the Directorate of the National Museum of the Republic of Azerbaijan on discrimination based on different opinions. p. 2. Available at: <https://bit.ly/3tOydgM> [Last accessed on 21.11.2022].

The Museum's Board of Directors refused to accept the funding.¹⁹⁶ In this case, the Public Defender explained that "after it became known that the applicants' project had won in the competition, the Minister created a mechanism for removing the applicants from the research project through the amendments to the regulations of the National Museum, and the directorate carried out her discriminatory intent."¹⁹⁷ The PDO pointed out that the applicants had criticized the new administration of the Art Museum and the Minister of Culture, Sports and Youth several times.¹⁹⁸ The Public Defender established that "the refusal to accept incoming funds of the winning project was due only to the views expressed by the applicants."¹⁹⁹ And "in relation to the applicant, the defendants interfered with the applicant's right to privacy and the right to free development because of the applicant's opinion which is protected by the right of freedom of expression."²⁰⁰ It should be noted that the recommendation focuses on the recent problems in culture field and existing doubts about the proper protection of labor rights of employees and the principle of equality in the Ministry's system, as well as attempts to impose censorship.²⁰¹

7. Political Processes and Human Rights

7.1. Prerequisites for EU Membership Candidate Status

On March 3, 2022, Georgia applied for EU membership.²⁰² And in April, Georgia received a self-assessment questionnaire, based on which the European Commission had to prepare an opinion on Georgia's application.²⁰³ The government submitted the first completed section of the questionnaire to the European Union on May 2, and the second part on May 10.²⁰⁴ On June 17, 2022, the European Commission published its opinion on Georgia's application, in which it defined 12 priorities for Georgia to be fulfilled in order to get the status of a candidate for the EU membership.²⁰⁵ On June 23, 2022, the European Council endorsed these 12 priorities and granted Georgia the "European Perspective."²⁰⁶ It should be noted that the 12 prerequisites established by the European Commission are closely related to the current situation in the country in terms of human rights and the rule of law and its improvement. The list included matters such as justice reform, independence, and accountability of state institutions, deoligarchization, anti-corruption measures, improvement of the media environment, protecting the rights of vulnerable groups, etc.²⁰⁷ With the argument of

¹⁹⁶ *ibid.*

¹⁹⁷ *ibid.* p. 14.

¹⁹⁸ *ibid.* p. 18.

¹⁹⁹ *ibid.* p. 19.

²⁰⁰ *ibid.*

²⁰¹ *ibid.* p. 14-15.

²⁰² Georgia applied for membership in the European Union. What happens next. Available at: <https://bit.ly/3GvewvC> [Last accessed on 21.11.2022].

²⁰³ The government has published the EU self-assessment questionnaire. Available at: <https://bit.ly/3GyMxuR> [Last accessed on 21.11.2022].

²⁰⁴ Georgia has submitted the second part of the EU questionnaire. Available at: <https://bit.ly/3GCpRtN> [Last accessed on 21.11.2022].

²⁰⁵ European perspective for Georgia. Available at: <https://bit.ly/3g46C1j> [Last accessed on 21.11.2022].

²⁰⁶ *ibid.*

²⁰⁷ Report card (memo): Georgia. Available at: <https://bit.ly/3G6MPZO> [Last accessed on 21.11.2022].

fulfilment of the 12 prerequisites, the Georgian authorities have taken certain steps. Some of these steps are discussed and evaluated in this subsection of this report.

7.1.1. Staffing of the Group Working on Election Issues

One of the 12 preconditions of the European Commission requires the improvement of the electoral legislative framework in Georgia.²⁰⁸ In order to fulfil this prerequisite, a working group was established in the Parliament. However, its staffing turned out to be problematic. According to the non-governmental organization "Fair Elections" (ISFED), the ruling party did not allow ISFED to join the working group.²⁰⁹ According to the non-governmental organizations' response assessment, the decision of the Georgian Dream was unfounded, contrary to the spirit of the EU's prerequisites for depolarization and involvement of civil organizations in decision-making processes.²¹⁰ The US embassy to Georgia and the EU Delegation to Georgia criticized this decision. According to the US Embassy, "the denial of ISFED raises questions about the sincerity of the parliamentary electoral reform process,"²¹¹ while the EU Delegation called on "all stakeholders in Georgia to ensure that all relevant non-governmental organizations are invited and given the opportunity to take part substantially in the activities of all working groups, including the group working on electoral reform."²¹²

7.1.2. Judicial Reform Strategy and Action Plan

One of the 12 preconditions of the European Commission requires that the Georgian authorities adopt a transparent and effective justice reform strategy and action plan for the period after 2021, based on broad, inclusive, and cross-party consultations.²¹³ To fulfil this request, a working group was created within the Legal Affairs Committee of the Parliament. The group developed a strategy and action plan for judicial reform.²¹⁴ This document was rebuked by the coalition of non-governmental organizations (Coalition for Independent and Transparent Justice). According to the Coalition's assessment, the document does not respond to the challenges the justice system is facing today. Unfortunately, this²¹⁵ is not surprising given that the working group and the parliamentary majority did not even consider the proposal of civil organizations to conduct a complete and in-depth analysis of the situation in the judicial system.²¹⁶ The vision presented in the document does not consider the key issues

²⁰⁸ *ibid.*

²⁰⁹ ISFED: Georgian Dream blocked our involvement in the parliamentary working group on election issues. Available at: <https://bit.ly/3Uwkm3c> [Last accessed on 05.12.2022].

²¹⁰ Before the admission of ISFED, he ceases to participate in all working groups created by 4 non-governmental dreams. Available at: <https://bit.ly/3FphnW0> [Last accessed on 05.12.2022].

²¹¹ US Embassy: Not allowing ISFED in the working group is contrary to the recommendation of the European Commission. Available at: <https://bit.ly/3VSbp5j> [Last accessed on 05.12.2022].

²¹² EU Representation: All relevant NGOs are given the opportunity to participate in the process. Available at: <https://bit.ly/3iyACn0> [Last accessed on 05.12.2022].

²¹³ Report card (memo): Georgia. Available at: <https://bit.ly/3G6MPZO> [Last accessed on 21.11.2022].

²¹⁴ Judicial reform strategy and action plan. Available at: <https://bit.ly/3Xk1rLD> [Last accessed on 21.11.2022].

²¹⁵ The judicial reform strategy and action plan developed by the management team do not address the real problems in justice. Available at: <https://bit.ly/3G6QEhC> [Last accessed on 21.11.2022].

²¹⁶ *ibid.*

that persist in the justice system in the form of concentration of power and informal influence. It also ignores the increasing criticism expressed by international and local organizations that have accumulated in recent years. And finally, the document arbitrarily selects only some issues to which the reform should be applied.²¹⁷In light of these considerations, the strategy and action plan prepared by the working group will not help Georgia's case, and will further hinder its European integration aspirations.

7.1.3. Draft Law on the Creation of the LEPL "Anti- Corruption Bureau"

According to one of the 12 preconditions of the European Commission, the Georgian authorities should “strengthen the independence of the anti-corruption agency, which will handle all key anti-corruption functions; In particular, to carefully solve high-level corruption cases.”²¹⁸ For this purpose, on October 26, 2022, the Legal Affairs Committee of the Parliament presented a draft law, which envisages the creation of a new institution "Anti-Corruption Bureau."²¹⁹ The draft bill was criticized by non-governmental organizations. According to their assessment, the draft law does not respond to the challenges related to corruption in the country, including the growth of high-level corruption and state capture.²²⁰ It "does not apply to those members of the families of those officials who today are not required to declare their property; it does not increase whistleblower protection guarantees; it does not regulate legal relations with whistleblowers; [The draft law] does not strengthen the system of monitoring of the declarations of the officials; Administrative capacities/mechanisms for supervision of financing of political parties are not strengthened; [The draft law] does not envisage the establishment of a specialized investigative body."²²¹ The draft law does not grant the Anti-Corruption Bureau the functions indicated in the European Commission's request and no substantial guarantees of independence are present either.²²² This body will not actually have any authority to influence the implementation of preventive or punitive anti-corruption measures.²²³ Therefore, according to the assessment of the non-governmental organizations, the draft law does not serve the purpose to fulfil the request of the European Commission.²²⁴

7.1.4. "Deoligarchization"

²¹⁷ *ibid.*

²¹⁸ Report card (memo): Georgia. Available at: <https://bit.ly/3G6MPZO> [Last accessed on 21.11.2022].

²¹⁹ Statement regarding the creation of the Anti-Corruption Bureau. Available at: <https://bit.ly/3TtJya2> [Last accessed on 21.11.2022].

²²⁰ The draft law initiated on anti-corruption issues cannot meet the IV priority task of the European Union. Available at: <https://bit.ly/3UsiuJu> [Last accessed on 21.11.2022]; Statement regarding the creation of the Anti-Corruption Bureau. Available at: <https://bit.ly/3TtJya2> 2 [Last accessed on 21.11.2022].

²²¹ The draft law initiated on anti-corruption issues cannot meet the IV priority task of the European Union. Available at: <https://bit.ly/3UsiuJu> [Last accessed on 21.11.2022].

²²² there; Statement regarding the creation of the Anti-Corruption Bureau. Available at: <https://bit.ly/3TtJya2> [Last accessed on 21.11.2022].

²²³ The draft law initiated on anti-corruption issues cannot meet the IV priority task of the European Union. Available at: <https://bit.ly/3UsiuJu> [Last accessed on 21.11.2022].

²²⁴ Also, the statement regarding the creation of the anti-corruption bureau. Available at: <https://bit.ly/3TtJya2> [Last accessed on 21.11.2022].

One of the 12 preconditions set by the European Commission is commitment to the precondition of "deoligarchization", "which should be achieved by eliminating the excessive influence of private interests in economic, political and public life."²²⁵ To fulfil this request, the Parliament of Georgia adopted the Law on "Deoligarchization" with the first reading on November 3, 2022.²²⁶ According to representatives of the ruling GD party, "deoligarchization" will not extend to the founder of the party, Bidzina Ivanishvili.²²⁷ Bidzina Ivanishvili's exclusion from this draft law was criticized by MEPs, who consider Ivanishvili to be an oligarch.²²⁸ Indeed, according to both local civil organizations and the European Parliament, Bidzina Ivanishvili has excessive influence and control over the country's economy, governance and politics.²²⁹ In particular, according to the position of non-governmental organizations, Bidzina Ivanishvili is the informal ruler of the country and has committed state capture.²³⁰ The resolution of the European Parliament of June 9, 2022, directly mentions Bidzina Ivanishvili as the only oligarch who has a destructive role in the politics and economy of Georgia and control over the government and government decisions.²³¹ The resolution adopted at the meeting of the European Parliament's Foreign Relations Committee in November 2022 directly names Bidzina Ivanishvili in the context of deoligarchization.²³² In particular, according to the resolution, "[the European Parliament] emphasizes the need to eliminate the excessive influence of private interests in economic, political and public life as the priority defined by the European Commission, which must be resolved before granting Georgia the status of a candidate for the [EU] membership.[The

²²⁵ Report card (memo): Georgia. Available at: <https://bit.ly/3G6MPZO> [Last accessed on 21.11.2022].

²²⁶ Parliament adopted the law on de-oligarchization in the first reading, Available at: <https://bit.ly/3Erl2NN> [Last accessed on 21.11.2022].

²²⁷ Yonatanishvili on de-oligarchization: if it does not suit anyone, it is Ivanishvili. Available at: <https://bit.ly/3UVFsZy> [Last accessed on 21.11.2022]; Mdinardze on de-oligarchization: how can we adapt to Ivanishvili by force, when it does not fit objectively? See: <https://bit.ly/3UAAaTo> [Last accessed on 21.11.2022]; Okhanashvili: The de-oligarchization bill cannot be physically applied to Ivanishvili, Available at: <https://bit.ly/3OjhCox> [Last accessed on 21.11.2022].

²²⁸ Gregorova on de-oligarchization: if it does not affect Ivanishvili, it is not done properly. Available at: <https://bit.ly/3UFChoX> [Last accessed on 21.11.2022]; Yuknevichiene dream: de-oligarchization means Debizinizacija, Deivanishviliizacija. Available at: <https://bit.ly/3hDxV31> [Last accessed on 21.11.2022]; Kubilius: There is only one oligarch in Georgia and his name is Bidzina Ivanishvili. Available at: <https://bit.ly/3WYQP4D> [Last accessed on 21.11.2022].

²²⁹ Appeal of civil society organizations of Georgia to the international community. Available at: <https://bit.ly/3fXCBR2> [Last accessed on 21.11.2022]; European Parliament resolution of 9 June 2022 on violations of media freedom and the safety of journalists in Georgia (2022/2702(RSP)). Available at: <https://bit.ly/3O1AzMc> [Last accessed on 21.11.2022]; What was recorded in the report of the Georgia-EU association agreement - the main summary. Available at: <https://bit.ly/3tqMxph> [Last accessed on 21.11.2022].

²³⁰ Appeal of civil society organizations of Georgia to the international community. Available at: <https://bit.ly/3fXCBR2> [Last accessed on 21.11.2022]; Extraordinary statement of non-governmental organizations <https://bit.ly/3E5Rzwe> [Last accessed on 21.11.2022]; Appeal of non-governmental organizations and civil activists to the "Socialist Party of Europe." Available at: <https://bit.ly/3Xd2nBB> [Last accessed on 21.11.2022].

²³¹ European Parliament resolution of 9 June 2022 on violations of media freedom and the safety of journalists in Georgia (2022/2702(RSP)). Available at: <https://bit.ly/3O1AzMc> [Last accessed on 21.11.2022].

²³² What was recorded in the Georgia-EU association agreement report - the main summary. Available at: <https://bit.ly/3tqMxph> [Last accessed on 21.11.2022]; Media, political persecution, Saakashvili and others - the European Parliament. Available at: adopted a compromise resolution on Georgia. Available at: <https://bit.ly/3E699jB> [Last accessed on 21.11.2022].

European Parliament] recommends solving the issue of the influence of excessive interests, especially with the former Prime Minister, Bidzina Ivanishvili, systematically, with structural and regulatory reforms, in various spheres of the country's political, economic and public life."²³³ Hence, the aforesaid precondition of the European Commission cannot actually be fulfilled, if deoligarchization does not affect and remove Bidzina Ivanishvili's influence in various fields of political, economic and public life.

8. Abolition of the State Inspector Service

On December 30, 2021, the Parliament of Georgia adopted legislative amendments in an accelerated procedure, by which the State Inspector Service was abolished from March 1, 2022, and the term of State Inspector and her deputies were terminated. In its place, two bodies - the Special Investigative Service and Personal Data Protection Service were created.²³⁴

The decision of the Parliament was strongly criticized by both local and international actors even before the adoption of the reform. According to non-governmental organizations, the activities of the State Inspector Service were positively evaluated at the local and international levels, and there was no need to abolish it, but to strengthen it.²³⁵ NGOs focused on the closed, non-inclusive and sped-up process of preparation and adoption of the draft law, which was extremely problematic given the public importance of the reform and it showed that the government's goal was to gain influence over an independent institution and it was not interested in discussing relevant issues in depth.²³⁶ Previous events also hinted at political retribution against the State Inspector- for fining of the Ministry of Justice and the Special Penitentiary Service due to unlawfully getting and disclosing Mikheil Saakashvili's personal data, studying the legality of the processing of Aleksandre Lashkarava's personal data and criticizing the alleged practice of covert surveillance .²³⁷ Similar to what the non-governmental organizations were saying, the Public Defender of Georgia also stated that the legislative changes were aimed at influencing the activities of an independent body considering the fact that the draft law was discussed in the parliament hastily, without prior consultation with the interested parties.²³⁸ The Public Defender negatively assessed the mandate of the newly created bodies, namely that "investigative jurisdiction is increased only meagrely. In terms of dependence on the Prosecutor's Office of Georgia, no innovation is proposed (which is one of the enormous challenges today). Contrary to this, according to the

²³³ What was recorded in the report of the Georgia-EU association agreement - the main summary. Available at: <https://bit.ly/3tqMxph> [Last accessed on 21.11.2022].

²³⁴ The Parliament approved the draft law on the abolition of the State Inspector Service in the third reading - the service will cease to work on March 1, 2022. Available at: <https://bit.ly/3EBQCxd> [Last accessed on 21.11.2022].

²³⁵ The statement of non-governmental organizations regarding the possible cancellation of the State Inspector's service. Available at: <https://bit.ly/3hGNR4B> [Last accessed on 21.11.2022].

²³⁶ *ibid.*

²³⁷ *ibid.*

²³⁸ The statement of the Public Defender of Georgia regarding the attempt to cancel the service of the State Inspector. Available at: <https://bit.ly/3GmNdni> [Last accessed on 21.11.2022].

draft law, the employees of the prosecutor's office will no longer fall under the investigative purview of the Service."²³⁹

The cancellation of the State Inspector's service was also criticized by the representatives of the international community. The Acting Head of the European Union Representation called the process of adoption and preparation of the draft law a high risk for Georgia's democracy.²⁴⁰ And after the adoption of the legislative changes, the (then) ambassador of the European Union stated that they could not see²⁴¹ any objective reasons for abolishing the Service of the State Inspector: "it was hasty decision arranged in a manner to ensure that all stakeholders would not be sufficiently involved in the process."²⁴² The US Embassy to Georgia complained about the bill and called on the chairs of the Legal Affairs and Human Rights committees to postpone its consideration.²⁴³ UN Human Rights Office called on the parliament "to take back the initiative and ensure the independence of the national human rights [protection] mechanism."²⁴⁴ The opinion on the legislative amendments was prepared by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) as well. According to their opinion, the implementation of legislative changes without prior consultations and in a sped-up process contrary to international standards posed a risk to the functioning of the rule of law and independent institutions in the country. They opined that the draft law could have a (negative) impact on protection against human rights violations committed by law - enforcement officers.²⁴⁵

It should be noted that the State Inspector and the Public Defender challenged the constitutionality of the legislative changes in the Constitutional Court and demanded the suspension of the controversial norms.²⁴⁶ Similarly, non-governmental organizations urged the Constitutional Court to consider the constitutional lawsuit of the State Inspector as a priority and to suspend the disputed norms.²⁴⁷ The Constitutional Court did not suspend the

²³⁹ *ibid.*

²⁴⁰ The representation of the European Union in the Parliament responds to the consideration of draft laws related to the state inspector's service and the judicial system in an accelerated manner. Available at: <https://bit.ly/3Ai95fq> [Last accessed on 21.11.2022].

²⁴¹ Hartzel: We still do not see the objective reasons for the hasty dissolution of the inspector's service. Available at: <https://bit.ly/3EBXZEU> [Last accessed on 21.11.2022].

²⁴² Hartzel: The state inspector's service was one of the conditions of visa liberalization. Available at: <https://bit.ly/3E9N1F7> [Last accessed on 21.11.2022].

²⁴³ "We expressed concern about the inspector, we call for postponement" - Degnan met with the MPs. Available at: <https://bit.ly/3tS7iKN>

²⁴⁴ United Nations: We call on the parliament to withdraw the initiative to abolish the state inspector. Available at: <https://bit.ly/3UXueUc> [Last accessed on 21.11.2022].

²⁴⁵ OSCE/ODIHR Opinion on the Legislative Amendments on the State Inspector's Service of Georgia, 18 February 2022, Warsaw, page 2. Available at: <https://bit.ly/3hADAqy> [Last accessed on 21.11.2022].

²⁴⁶ Why should the Constitutional Court hurry | Inspector's case, Available at: <https://netgazeti.ge/law/591836/> [Last accessed on 21.11.2022]; The Public Defender appealed to the Constitutional Court regarding the state inspector's service. Available at: <https://bit.ly/3GhA66l> [Last accessed on 21.11.2022].

²⁴⁷ We call on the Constitutional Court to consider Londa Toloraya's lawsuit in a timely manner. Available at: <https://bit.ly/3X7wCJP> [Last accessed on 21.11.2022].

contested regulation.²⁴⁸ However, on November 17, 2022, the Constitutional Court issued a decision that partially satisfied these lawsuits.²⁴⁹

Thus, an important body for protecting human rights - the State Inspector's Office - was abolished hastily, without proper and transparent discussion and evaluation of the constitutionality of this action.

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²⁴⁸ The decision of the Constitutional Council on canceling the service of the inspector. Available at: <https://civil.ge/ka/archives/476373> [Last accessed on 21.11.2022].

²⁴⁹ The Constitutional Court partially satisfied Toloraya's claim against the Parliament. Available at: <https://bit.ly/3EKpBqj> [Last accessed on 21.11.2022]; The Constitutional Court partially satisfied the constitutional lawsuits No. 1673 and No. 1681 ("Londa Toloraia and the Public Defender of Georgia v. the Parliament of Georgia"). Available at: <https://bit.ly/3XxsrYj> [Last accessed on 21.11.2022].