Comments and Recommendations

Introduction

On September 7, 2022, in the Parliament of Georgia, the "Georgian Dream" MPs registered the draft law "On Broadcasting" with the amendments to the Broadcasting Law of Georgia. The news reached the public on September 13. The draft law was adopted by the Parliament on first reading on September 20.

Representatives of the civil sector and the media were concerned by both the content of the draft law as well as the fact that the Parliament took only the shortest possible time (7 days since the publication of the draft) to consider such a complicated and multi-faceted law on the first reading, with no prior consultations.

The formal reasoning behind this amendment was to bring Georgia's legislation into compliance with the EU's Directive on audio-visual media services (hereinafter the Directive).

According to the Constitution of Georgia, the constitutional bodies must do everything within their powers to ensure Georgia's full integration into the European Union and the North Atlantic Treaty Organization.[1]

GDI welcomes any form of exercise of public authority by the state aimed at harmonization with the *acquis communautaire*. However, it believes that the draft adopted by the Parliament on the first reading a) trespassed the Directive's objectives, b) contradicts the Article 7 of the European Commission Recommendation on granting Georgia the status of a candidate country of the European Union (hereinafter the Recommendation), c) strengthens the repressive elements in the context of media environment regulation, and d) imposes an unjustified legal burden on broadcasters.

With these points in mind, this document discusses major flaws GDI found in the draft law: 1. the norm establishing the rule of immediate execution of the decision of the National Communications Commission of Georgia (hereinafter GNCC or Commission) 2. Unjustified expansion of the mandate of the GNCC in the context of the right of reply 3. Legislative regulation of hate speech.

1. Local Context and the Question of Harmonization with the EU Directive

The Treaty "On the Functioning of the European Union" defines the typology of legal acts in the normative system of the European Union and the principle of their operation. According to Article 288 of the Treaty, the EU directive carries binding legal force inasmuch as the goal defined by the directive must be achieved, and the states have a wide discretion in determining the legal mechanisms, methods and forms necessary to achieve this goal. **Such an approach is based on the recognition that each jurisdiction is unique in its socio-political contexts and needs.**

Thus, harmonization with the Directive will gain substantive legitimacy in Georgia, only when the legislative body acts in an accountable manner and respects the contextual needs and challenges of the local media environment. Considering the current political and legal situation in Georgia, any exercise of public authority with the motive of adapting to the legal system of the European Union should take into account the Recommendation. These 12 points given in the Recommendation are prerequisites for Georgia to obtain the status of a candidate country of the European Union.

Paragraph 7 of the Recommendation clearly spells out the EU's vision regarding the challenges in the media environment of Georgia:

"Undertake stronger efforts to guarantee a free, professional, pluralistic and independent media environment, notably by ensuring that criminal procedures brought against media owners fulfil the highest legal standards, and by launching impartial, effective and timely investigations in cases of threats against safety of journalists and other media professionals;"

[1] Article 78 of the Constitution of Georgia

With the above-cited point, the European Commission focuses on the need to increase broadcasters' institutional freedom and independence. This means that any legislative change that restricts the broadcasters beyond the objectives defined by the Directive, cannot be justified by referring to harmonization of the legislation with the Directive.

The challenges surrounding the Georgian media environment and the freedom of broadcasters are documented in the annual report of the international media rights organization, "Reporters Without Borders" (RSF). Per their assessment, the quality of press freedom in Georgia deteriorated unprecedentedly in 2021-2022 - in the Global Press Freedom Index, Georgia moved down from 60th place to the 89th.

The organization specifically points out that "the year 2021 was unprecedented for Georgia in terms of the scale of verbal and physical attacks on journalists. Authorities, political appointees, are among the aggressors, especially during the election campaign. The official investigation suffers from a lack of transparency and effectiveness, which shows that those incriminated in acts against journalists often go unpunished."

Problems characteristic to the Georgian media environment, such as the prosecution of journalists for their professional work, the ineffectiveness of the work of investigative agencies, the facts of verbal abuse perpetrated against media organizations by officials and other authorities, are also listed in the 2022 reports of the US State Department and Human Rights Watch.

Therefore, a good-faith, systematic interpretation of the Directive and the Recommendation clearly shows that if the minimum legal standard defined by the Directive is met, the balance between the accountability of the broadcaster and its institutional independence should tilt in favor of the latter. Any legislative amendment restricting the freedom of the broadcaster beyond the legal standards explicitly defined by the Directive, violates the Article 78 of the Constitution of Georgia and is not directed at promoting integration into the European Union.

Systemic analysis of the draft law has allowed GDI to conclude that the process of integration with the European Union is not facilitated, and is actually hindered in principle by legal norms which concern:

- Immediate entry into force of the GNCC's decisions despite the broadcaster's appeals to the court.
- The GNCC's mandate to oversee the right of reply
- Regulation of "hate speech".

2. Immediate Enforcement of Commission's Acts

Broadcasting is subjected by the state to a special legal regime, which should be based on the principle of maintaining a reasonable balance between public and private interests. Any legislative amendment, which changes this balance in favor of public interests, should be well-argued and contextually echo local socio-political realities.

According to the bill, if a broadcaster's appeals the GNCC's legal acts, they shall not be suspended. Such a regulation is a significant expansion of the repressive elements in the exercise of powers by the GNCC. And the burden of proving its expediency rests solely with the Parliament of Georgia.

The Directive does not mandate the contracting states to establish a similar legal regime - the immediate enforcement of the decision made by the regulatory body, while the broadcaster applies to the court to protect its rights, amounts to an intensive interference in the broadcaster's freedom.

According to the Law of Georgia On Broadcasting, the purpose of applying a sanction to a broadcaster by the GNCC should be to eliminate or prevent a violation.[2] This indicates that media regulation should be free from repressive elements. The purpose of using sanctions is not liability but to stimulate the broadcaster

[2] Clause 2, Article 71 of the Law

to return to lawful activities. However, the legislative change, which establishes a general rule of immediate entry into force of the GNCC's decisions, is incompatible with the objectives of the 7th point of the Recommendation and the constitutional standards of Georgia.

According to the Constitutional Court of Georgia: "Mass media is one of the central, large-scale and effective platforms for free reception and dissemination of information by society and individuals, and for forming views. Unhindered, autonomous, adequate and independent functioning of means of mass media brings about the practical, adequate and effective realization of the freedom of opinion and expression. Moreover, due to the possibility to display image and voice, audiovisual media has an important role in exercising the right to freedom of opinion and expression. Therefore, it is necessary to establish sufficient guarantees for carrying out activities by the mass media."[3] The systemic review of the Georgian legislation reveals that the legislative amendment threatens the "smooth" functioning and independence of the mass media as described by the Constitutional Court without pursuing a legitimate interest worthy of protection.

Paragraph 7 of Article 8 of the current version of the Law on Broadcasting provides for the possibility of appealing the GNCC's legal acts in court according to rules established by the law. However, it does not regulate suspension of the GNCC's act. Suspension of individual legal acts adopted by the administrative body in cases of appealing to the courts is regulated by Article 29 of the Administrative Procedure Code. According to the first paragraph of this article as a general rule, submission of a complaint to the court shall suspend an appealed individual administrative act. Section 2 of Article 29 of the Administrative Procedure Code lists exceptional cases when the effect of an individual administrative-legal act is not suspended despite a court appeal. Among them is a case of such a regulation not suspending the individual administrative-legal act, provided under another law different from Article 29, Paragraph 2 (Subparagraph "f" of Article 29, paragraph 2). In contrast to the current version of the Broadcasting Law, a judicial appeal against the GNCC's legal act will no longer automatically suspend the operation of the act according to the proposed amendments. This will mean that in case of such an appeal, the 2nd paragraph of Article 29 of the Administrative Procedure Code will apply.

Thus, the general rule under the current legislation is that the individual acts of the GNCC are not suspended, unless there's an exception provided by the law. This provides an opportunity to adopt a case by case approach and to insure risks related to restriction of media freedom. In contrast to this regulation, the proposed amendment establishes a blanket, general rule for the immediate enforcement of the GNCC's decisions.

According to the Law on Broadcasting, the GNCC may issue a written warning, as well as impose a fine as a sanction on a broadcaster.[4] If the license holder violates the legislation of Georgia or the license conditions, and a written warning and a fine have already been applied to them as a sanction for this violation, the commission can consider suspending the validity of the license.[5] The commission can also revoke the license.[6] This means that appealing any of the aforesaid sanctions to the court, will not suspend the Commission's acts, even if the commission revokes the broadcaster's license. It should be noted that Article 29, paragraph 3 of the Administrative Procedure Code still gives broadcasters the opportunity to request the suspension of the Commission's acts despite the proposed amendments. Nevertheless, this opportunity is not enough to ensure fair balancing of legal interests.

As already pointed out, according to the current regulation, the acts of the commission are automatically suspended and not executed if they are appealed. However, paragraph 4 of Article 29 of the Administrative Procedure Code gives the Commission a right to petition the court and request the cancellation of the

---

[3] "Stereo+ LLC", Luka Severini, Lasha Zilfimiani, Robert Khakhalev and Davit Zilfimiani V. the Parliament of Georgia and the Minister of Justice of Georgia

[4] Article 71 of the Law of Georgia on Broadcasting.

[5] Paragraph 2 of Article 73 of the Law of Georgia on Broadcasting.

[6] Article 74 of the Law of Georgia on Broadcasting.

suspension of its act) if there is necessity for urgent execution of the individual administrative act or a part of it, related to a significant (essential) damage, or restricting legal rights and interests of the party. According to the proposed changes, the burden of proving a motion to suspend the act shifts from the GNCC to the broadcasters. Now, it is them who must prove that there is a reasonable doubt about the legality of the individual administrative legal act or that its urgent enforcement would cause substantial harm to the party or would just make it impossible to protect their legal rights or interests. Taking into account that administrative bodies represent the interests of the state and have access to public resources for administrative legal disputes, administrative bodies are considered as a stronger party. Legal relations of a repressive nature regulated by the Administrative Offenses Code of Georgia are subject to the general rule that the filing of a complaint by an interested party shall suspend the enforcement of a decision on imposing an administrative fine until the case is reviewed.[7]

Based on this analysis, transferring the burden of proof from the administrative body to the broadcaster constitutes an exception, and necessitates due justification. However, the explanatory note of the draft bill does not mention the circumstances that led to such a shift in the burden of proof. Therefore, shifting the burden of proof to broadcasters when motioning to suspend the Commission's acts deteriorates their rights and may amount to a significant burden in the event of a dispute with the Commission.

The joint opinion of the Venice Commission and the General Directorate of Human Rights and the Rule of Law of the Council of Europe of March 22, 2021 No. 1008 / 2020 considered a substantially identical issue.[8] It negatively assessed the non-suspension of the execution of the legal act of the Commission in case of appeal despite the opportunity/right granted to the broadcaster to apply to the court with a substantiated motion and to request suspension of the disputed act. The Venice Commission highlighted the length of the court process and the time it may take to reach a decision. The joint opinion reads that the Venice Commission indirectly considered the general state of affairs and context of administration of justice in Georgia and noted that the burden of proving suspensive effect should be reversed. In particular, the appeal against the GNCC's act to the court should lead to the automatic suspension of the act, and after that the court should consider whether it is necessary to immediately enforce the suspended decision.

It should also be considered that the immediate enforcement of the GNCC's acts is directed at broadcasters who receive and distribute mass information. If the Commission cancels the broadcaster's license, subject to immediate enforcement, not only the broadcaster shareholders but also to the right to freely receive public information will suffer significant damage before the expiration of the 3-day period for consideration of the motion provided for in Article 29, Paragraph 3. It should also be considered that the (regional) broadcasters operating in Georgia often suffer from financial instability, and the immediate implementation of the GNCC's decisions may even pose a threat to their existence.

Thus, the norm of the draft law introducing immediate execution of the GNCC's acts does not derive from the necessity to harmonize national legislation with the Directive. It unjustifiably limits the institutional independence of broadcasters by ignoring the principle of balancing public and private interests, constitutional standards, the conclusion of the Venice Commission and the 7th point of the Recommendation of the European Commission. Therefore, we believe this norm should not be introduced into the law and the Parliament should leave unchanged the current regulation.

3. Right of Reply

[7] The first paragraph of Article 275 of the Administrative Offenses Code

[8] 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, No. 1008 / 2020, 22 March 2021, accessible at: https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)011-e&fbclid=IwAR3JE7AXGh_K5gwfTahtMSgyop5GayFkSl50ZDW3uPs4ShRrSDzZRa49CeM

3.1. Moving from the Self-Regulation Mechanism into the Commission's Purview

According to the proposed draft law, "an interested party, whose legitimate interests have been violated by broadcasting incorrect facts in the broadcaster's program, shall have the right of reply according the rules established in this article." In this case it is problematic that the regulation of the right of reply is transferred from the self-regulatory mechanism of the broadcaster into the field of monitoring by the GNCC. In particular, Article 14(2) of the Law of Georgia on Broadcasting defines the issues response to which falls within the framework of the self-regulatory mechanism of the broadcaster. Among them is the response to violations of the principle of due accuracy of facts (Article 52 of the current version of the Law of Georgia on Broadcasting). As previously discussed, the proposed amendments regulate the right of reply in article 52^1, but the draft law does not change Article 14(2) of the Law of Georgia on Broadcasting in order to include 52^1 in the mechanism of self-regulation. In contrast, according to the proposed draft law, "the refusal of a broadcaster to correct or deny the inaccuracies aired in the original programming by equivalent means and form may be appealed to the Commission or the court."

3.2. The Rejecting Subject

According to the draft law, " within 10 days after making the initial statement, including the statement of the fact, the interested party has the right to request the relevant broadcaster to correct or deny the false fact stated in the initial statement with proportional means and form for the duration of the initial statement and approximately at that time when the initial statement was made." This provision can be read in such a way that the broadcaster itself is represented as the subject denying the false fact. According to Article 28, Paragraph 3 of the EU Directive, it is necessary to determine a sufficient time span allowing natural or legal persons to exercise the right of reply. The Directive does not require the broadcaster to deny false facts, therefore it is up to the discretion of the state to decide how to ensure the protection of the right of reply. One of the 12 recommendations of the European Commission means the creation of a free, professional, pluralistic and independent media environment. This includes an obligation by the state to regulate broadcasting legislation in a way that strikes a fair balance between protected and restricted interests by the least restrictive means. According to the draft law, the obligation to deny false facts rests with the broadcaster, although it would be less restrictive if the broadcasters were not the entities denying the false facts, but the broadcaster themselves determined how to ensure the denial of the statement containing the false fact–either by allocating the time for the interested person who would deny the false facts aired about them, or by itself denying this fact

3.3. **Was the Self-Regulatory Mechanism a Proportionate Means for Denying False Facts? Is It Appropriate for the Commission to Consider such Cases?**

As discussed above, the issue related to the denial of a false fact falls within the framework of the self-regulation mechanism of broadcasters under the current legislation on broadcasting. According to the draft law, this issue is not only subject to the self-regulation mechanism, and in the event of an appeal by an interested person, the GNCC may consider the broadcaster's refusal to deny the facts. Given that the Directive allows states to choose between the mechanism of the right of reply and the denial of false facts through proportionate measures ("or equivalent remedies"), it is necessary to evaluate whether the current legislation is a proportionate means for protecting the rights of the interested persons and whether the changes proposed by the Parliament are appropriate at all.

Article 52 of the Law on Broadcasting gives the interested person the right to apply to the broadcaster and demand from them to deny false facts stated in the initial statements. Within the framework of self-regulation, the broadcaster can decide to deny the facts or reject to do so. Although the Law on Broadcasting does not give the interested person the opportunity to appeal the negative decision of the broadcaster to the court, this right is enshrined in other legal acts. In particular, according to Article 18, Part 3 of the Civil Code, if an individual believes the facts disseminated by the broadcaster defame his/her honor, dignity, business reputation or privacy of a person she/he can apply to the court and request their rejection. And if

a person believes that the false facts aired by the broadcaster defame them, she/he can resort to the guarantees enshrined in the Law of Georgia on Freedom of Speech and Expression.

Thus, current legal framework already provides proportionate means to protect a person's rights if the broadcaster takes a negative decision regarding the denial of facts. It is not clear why it was necessary to subject such cases to the Commission's purview.

The consideration of complaints submitted by the interested person to the Commission gives the GNCC the opportunity to assess, within the framework of a simple administrative procedure, whether the broadcasters took all means to ensure the due accuracy of the facts in their programs and whether false facts were spread. Such an expansion of the GNCC's mandate is not required by the Directive. It increases the authority of the Commission to intervene in the editorial policy of the broadcaster and to assess the accuracy of the information disseminated by the broadcaster.

If one considers the aforementioned legislative change in conjunction with the immediate entry into force of the Commission's decisions discussed above, one finds that the draft law decreases the independence of broadcasters and also contradicts the 7th point of the European Commission's Recommendation by going beyond legitimate goals defined by the European Directive and neglecting the principle of reasonable balance between public and private interests.

We call upon the Parliament not to adopt the proposed amendments regarding the right of reply and to start consultations with experts/media and civil organizations working on media issues.

4. Regulation of Hate Speech

Paragraph 2 of Article 56 of the current version of the Law on Broadcasting prohibits "broadcasting of programs containing the apparent and direct threat of inciting racial, ethnic, religious or other hatred in any form and the threat of encouraging discrimination or violence toward any group". [9] Paragraph 3 of the same article prohibits "broadcasting of programs intended to abuse or discriminate against any person or group on the basis of disability, ethnic origin, religion, opinion, gender, sexual orientation or on the basis of any other feature or status, or which are intended to highlight this feature or status, are prohibited, except when this is necessary due to the content of a program and when it is targeted to illustrate existing hatred."[10] Violation of these norms, according to Article 14, paragraph 2 of the current version of the Law on Broadcasting cannot be appealed either to the GNCC or the court .[11] Thus, they fall within the framework of self-regulation of the media. In contrast to this regulation, the draft law plans to remove paragraphs 2 and 3 of Article 56 and introduce prohibition of programs and advertisements containing hate speech in Article 55^2.[12] The draft law does not include Article 55^2 among the norms, the violation of which cannot be appealed to the court or the commission and thus imposes state regulation of hate speech (instead of self-regulation). The aforementioned legislative change contains a serious risk of arbitrary restriction of freedom of expression, specifically the freedom of the media, because of the problematic nature of both the definition of hate speech and the regulation mechanism.

The introduction of the concept, definition and regulation of hate speech can be explained by the desire and purpose of protecting historically oppressed minority groups (after World War II).[13] This can be inferred, for example, from the preamble of General Policy Recommendation N15 on Combating Hate Speech by the European Commission against Racism and Intolerance (ECRI), according to which Europe derives from its history a duty of remembrance, vigilance and combat against the rise of racism, racial discrimination,

---

[9] Paragraph 2 of Article 56 of the Law of Georgia "On Broadcasting" (December 22, 2021 version).

[10] Paragraph 3 of Article 56 of the Law of Georgia "On Broadcasting" (December 22, 2021 version).

[11] Clause 2 of Article 14 of the Law of Georgia "On Broadcasting" (December 22, 2021 version).

[12] Paragraphs 25 and 26 of Article 1 of the draft law "Law of Georgia on Broadcasting", see:https://info.parliament.ge/file/1/BillReviewContent/306209 [Last accessed on 23.09.2022].

[13] Eric Heinze, Hate Speech and Democratic Citizenship, Oxford University Press, 2016, page 23.

gender based discrimination, sexism, homophobia, transphobia, xenophobia, antisemitism, islamophobia, anti-Gypsyism and intolerance, as well as of crimes of genocide, crimes against humanity or war crimes".[14] Thus, the essence and origin of the concept of hate speech is to protect traditionally oppressed minorities, and not letting the authorities use and abuse this concept to further repress these minorities and suppress critics in general. According to ECRI, "forms of expression that offend, shock or disturb will not on that account alone amount to hate speech and that action against the use of hate speech should serve to protect individuals and groups of persons rather than particular beliefs, ideologies or religions" and should not be "misused to silence minorities and to suppress criticism of official policies, political opposition or religious beliefs".[15] Therefore, the essence of introducing the concept of hate speech lies not in protection of the government or the state representatives and should not be a tool of repression under the pretext of fighting political hate speech,. Otherwise, fighting against hate speech will be used to defeat its own purpose, i.e. will lead to the opposite result which has already been seen in practice, particularly in the Post-Soviet space.[16] In our case the draft law submitted to the Parliament raises a reasonable suspicion that the definition and regulation of hate speech will be misused to suppress criticism, especially political criticism. This fear is substantiated by practice adopted by the Commission against critical media[17] and the general media environment in the country.

For example, the UN Human Rights Committee has expressed concern about reports of state pressure on the media through administrative, financial and judicial means, including changing the management or ownership of critical media organizations and starting criminal proceedings against them.[18] The Committee also noted political influence exerted on the Commission.[19]

Why State Regulation of Hate Speech is Problematic

As discussed above, per the draft law, a violation of the prohibition of hate speech is subject to appeal in court and the Commission. Hence, a model of state regulation of hate speech is (going to be) established. The explanatory note of the draft law justifies introduction of this framework by the obligation to approximate national legislation with the Euro Directive 2010/13/EU (hereinafter the Directive).[20] In particular, the explanatory note states that "according to paragraph 44 of the declaratory part of the European Directive 2010/13/EU, the self-regulatory mechanism can be an additional means of enforcement of the European Directive 2010/13/EU on audiovisual media services, but the self-regulatory mechanism cannot replace the state obligations arising from the Euro Directive. According to the same point, even if there is a co-regulatory mechanism in place, there still should be the possibility of state intervention if the objectives of the European Directive 2010/13/EU on audiovisual media services are not achieved".[21]

---

[14] European Commission against Racism and Intolerance, General Policy Recommendation N15 on Combating Hate Speech, page 3.

[15] European Commission against Racism and Intolerance, General Policy Recommendation N15 on Combating Hate Speech, pages 3-4.

[16] Eric Heinze, Hate Speech and Democratic Citizenship, Oxford University Press, 2016, page 187.

[17] GDI, Media Freedoms in Georgia, 2021-2022, p.8-15.

[18] Human Rights Committee, Concluding observations on the fifth periodic report of Georgia, 13 September 2022, CCPR/C/GEO/CO/5 § 43, see : https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&CountryID=65 [Last accessed on 23.09.2022].

[19] Human Rights Committee, Concluding observations on the fifth periodic report of Georgia, 13 September 2022, CCPR/C/GEO/CO/5 § 43, see : https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&CountryID=65 [Last accessed on 23.09.2022].

[20] Explanatory note on the draft law of Georgia "On Broadcasting" regarding amendments to the law of Georgia, p.1, see : https://info.parliament.ge/file/1/BillReviewContent/306211 [Last accessed on 23.09.2022].

[21] Explanatory note on the draft law of Georgia "On Broadcasting" regarding amendments to the law of Georgia,p.8, see : https://info.parliament.ge/file/1/BillReviewContent/306211 [Last accessed on 23.09.2022].

Despite this, the Directive does not actually directly prescribe which model/mechanism of hate speech regulation should be applied. The Directive does not prohibit state regulatory bodies to regulate the prohibition of hate speech, but neither does it impose an obligation to do so. To the contrary, the Directive 2018/1808, which amended the directive 2010/13/EU, expressly states that the directive 2010/13/EU encourages self-regulation and co-regulation.[22] Thus, the obligation to harmonize national legislation with the EU legislation does not require the regulation of hate speech by a state regulatory body, and the use of another alternative mechanism/model of regulation is not a violation of it. Moreover, 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.[23] Contrary to this stipulation, the draft law creates a risk of abuse of the ban on hate speech and arbitrary restrictions on freedom of expression and media, this risk being based on the past activities of the Commission

The following negative trends have been observed in the work of the Commission: with the motive of protecting minors from harmful influences, the GNCC has limited t broadcasting of programs had artistic, historical, cognitive value and on this basis, imposed legal responsibility on broadcasters; the Commission has arbitrarily interpreted the concept of "political advertisement" and, in the absence of a clear ban on placing political advertisements in the non-election period, imposed liability on (mainly critical) broadcasters; the GNCC has arbitrarily appropriated the mandate of obscenity regulation, which is a type of content regulation of broadcasters; the Commission's decisions, sometimes, do not meet reasonable standards of justification, and sometimes, they even contradict the Commission's own practice/decisions .[24] Moreover, the independence and impartiality of the commission are also doubtful. As already mentioned, the UN Human Rights Committee mentioned political influence exerted on the Commission.[25] Also, the US State Department report stated plainly that the Commission was under the influence of the ruling party, i.e. Georgian Dream.[26] This questionable, inappropriate degree of independence of the Commission contradicts the Directive, according to which the national regulatory body must be functionally independent from the government and any other public or private institution and must exercise its powers impartially.[27]

In light of the analysis provided above, we believe that the aforesaid legislative changes related to hate speech should not be adopted by the Parliament and the work on this issue should be conducted in the

---

[22] DIRECTIVE (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, see : https://eur-lex.europa.eu/eli/dir/2018/1808/oj [Last accessed on 23.09.2022].

[23] DIRECTIVE (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 § 61, see : https://eur-lex.europa.eu/eli/dir/2018/1808/oj [Last accessed on 23.09.2022].

[24] GDI, Media Freedoms in Georgia, 2021-2022, p. 4-5, 8-15.

[25] Human Rights Committee, Concluding observations on the fifth periodic report of Georgia, 13 September 2022, CCPR/C/GEO/CO/5 § 43, see : https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&CountryID=65 [Last accessed on 23.09.2022].

[26] U.S. Department of State, Bureau of Democracy, Human Rights and Labor, Georgia 2021 Human Rights Report, page 35, see : https://www.state.gov/wp-content/uploads/2022/03/313615_GEORGIA-2021-HUMAN-RIGHTS-REPORT.pdf [Last accessed on 23.09.2022].

[27] 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 30, see : https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02010L0013-20181218 [Last accessed on 23.09.2022].

format of discussions held in advance with experts, representatives of the media and civil organizations working on media issues.

The document was prepared by GDI with the support of the USAID Rule of Law Program funded by the United States Agency for International Development (USAID) through the East-West Management Institute (EWMI). The views expressed in this document are the sole responsibility of the author and do not necessarily reflect the views of USAID and EWMI.

Authors: Shota Qobalia, Salome Gomarteli