



**Report on Media Freedom in Georgia
as a submission for the thematic report of the Special Rapporteur
on freedom of opinion and expression and sustainable
development**

Georgian Democracy Initiative (GDI) is a local NGO focusing on civil and political rights (and their protection through strategic litigation), equality, judiciary, and civic education. It has been actively working on media freedom and representing journalists/media outlets/activists before administrative bodies and courts. The present report is primarily based on GDI's own experience and litigated cases.

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Introduction

The sustainable development goal N16 aims to provide access to justice for all and build effective, accountable, and inclusive institutions. Media plays an important role in achieving this goal. Journalists make an enormous contribution to access to justice and to the formation of effective, accountable, and inclusive institutions by imparting essential information about matters of public interest and enabling public discussion and participation in decision-making. However, the media often faces obstacles in performing these functions. In this regard, the media landscape in Georgia has experienced a noticeable deterioration, as can be observed from the present report. The report reviews the main challenges facing media representatives in disseminating critical information about governmental actions, including development policies, in Georgia. Thereby, the report seeks to answer the 6th question posed in the call for submissions to the thematic report of the Special Rapporteur on Freedom of Opinion and Expression to the UN HRC.¹ We hope that the information provided herein will be a helpful input for the Special Rapporteur.

1. SLAPP Cases

Strategic Lawsuits Against Public Participation (SLAPP) have become an alarming tendency in Georgia. Public and official figures (mostly representatives of or associated with the ruling political party the “Georgian Dream” (hereinafter GD)) are initiating SLAPP disputes to silence critical media and limit freedom of expression.

Although Georgian legislation sets fairly high standards for the protection of freedom of expression, SLAPP disputes have become increasingly common in Georgia. This is evident from the latest lawsuits filed in the national courts and respective decisions by the same courts.² This problem is mentioned in the HRW Report 2022.³

Most SLAPP cases are filed by high-ranking officials or persons allegedly affiliated with GD. Namely, there are disputes brought by Kakha Kaladze (Mayor of Tbilisi),⁴ Grigol Liluashvili (the head of the State Security Service),⁵ Nino Tsilosani (GD MP),⁶

¹ The call is available at: <https://bit.ly/3Xay4dz> [last accessed on 01.02.2023].

² GDI, Report on SLAPP cases in Georgia, September 2022, p.6, available at: <https://bit.ly/31cSsV> [last accessed on 03.02.2023].

³ Human Rights Watch Report, Events of 2022, Available at: <https://bit.ly/3DyDBUa> [last accessed on 01.02.2023].

⁴ Kaladze sues TV Pirveli and the host Maia Mamulashvili, available at: <https://bit.ly/3GKZxO9> [last accessed on 01.02.2023].

⁵ Tbilisi Court of Appeals upholds the Tbilisi City Courts' decision on Liluashvili's defamation claim. Available at: <https://bit.ly/3WWL2eK> [Last accessed on 01.02.2023].

⁶ Activists punished by the government for voicing critical opinions. Available at: <https://bit.ly/3JtvjAN> [Last accessed on 01.02.2023].

Ucha Mamatsashvili (cousin of the informal ruler of GD Bidzina Ivanishvili),⁷ etc. Altogether, there are 32 cases against critical media.⁸

The relevant legal standards are being ignored by national courts in SLAPP cases. Suspiciously, judges demonstrate a special interest in such lawsuits, that's why the latter are characterized by too short proceedings (approximately four months after submission of claims) in comparison with other non-SLAPP cases.⁹ Thus, in addition to the increase in the number of SLAPP cases, the problem also lies in the approach of national courts, which satisfy ungrounded SLAPP lawsuits. Moreover, plaintiffs often demand disproportionate monetary compensation, which indicates their real intention to create financial obstacles for critical media which already face financial barriers. Thus, the creation of additional barriers indicates the goal of the government to suppress critical opinions.¹⁰ SLAPP cases and the accompanying financial sanctions cause the "chilling effect", in contravention of the sustainable development goal N16.

2. Criminal prosecution of media managers

Besides SLAPP cases, there are several disputes that are perceived as pressure on critical media. In particular, these are politically motivated court decisions against the founders of critical TV broadcasters Nika Gvaramia and Davit Kezerashvili, and the father of another media founder, Avtandil Tsereteli.

2.1. Case of Nika Gvaramia

Nika Gvaramia, the former director of TV company Rustavi 2 and founder of TV company Mtavari Arkhi, 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.¹¹

The Tbilisi City Court found Gvaramia guilty in two episodes of the case: in one episode, ordered him to pay a fine (17000EUR), and in the other, sentenced him to imprisonment. Finally, he was sentenced to imprisonment for 3.5 years.¹² In the first episode, according to the verdict, Nika Gvaramia committed an act damaging the enterprise, by changing the terms of the contract related to the sale of advertising, when he was managing the company, so that the company would not receive more

⁷ The court rules in favor of Mamatsashvili in the defamation lawsuit, available at: <https://bit.ly/3R6MKIY> [Last accessed on 01.02.2023].

⁸ GDI Report, Human Rights in Georgia, 2022, p.6 Available at: <https://bit.ly/3XOA1wS> [Last accessed on 01.02.2023].

⁹ Supra note 2, p.10

¹⁰ Supra note 2, p.10

¹¹ September 6, 2019 briefing at the General Prosecutor's Office. Available at: <https://bit.ly/3heOZwo> [Last accessed on 03.02.2023]; the so-called court issued a verdict on the "Rustavi 2" case. Available at: <https://bit.ly/3UkYrfU> [Last accessed on 03.02.2023]

¹² The court issued a verdict on the so-called "Rustavi 2" case. Available at: <https://bit.ly/3UkYrfU> [Last accessed on 03.02.2023]; The judge sentenced Gvaramia to prison. Available at: <https://www.radiotavisupleba.ge/a/31852346.html> [Last accessed on 03.02.2023]

income.¹³ The second episode refers to the sale of Rustavi 2 TV commercials at a price lower than the market price for 3 months so that Gvaramia's wife would be given a car from the advertising company in exchange.¹⁴

Tbilisi Court of Appeals aggravated Gvaramia's sentence in one episode – instead of a fine, he was sentenced to imprisonment for 3.5 years, but because of the rule of absorption of sentences, the prison sentence remained the same.¹⁵

The proceedings against Gvaramia received reactions from local and international actors. Even before the verdict of the first instance court, the Public Defender and NGOs pointed out the baselessness of charges levied against Gvaramia.¹⁶ They strongly criticized the verdicts against Gvaramia.¹⁷ According to them, the decisions of the courts put pressure on the media and were aimed at disrupting the activities of a critical TV broadcaster.¹⁸ According to the Public Defender's assessment, there was a violation of Article 18 of the European Convention, i.e., the case has a political motive.¹⁹

The proceedings against Gvaramia were criticized by representatives of the international community.²⁰ According to the European parliamentarians, the judgment handed down without reliable evidence showed the deterioration of the rule

¹³ The results of the public defender's examination regarding the verdict of Gvaramia. Available at: <https://bit.ly/3WKqW8p> [Last accessed on 03.02.2023]

¹⁴ *ibid.*

¹⁵ *ibid.*

¹⁶ Amicus Curiae submitted by the public defender. Available at: <https://bit.ly/3GA19dq> [Last accessed on 03.02.2023]; Transparency International – Georgia, assessment of the criminal case against Gvaramia. Available at: <https://bit.ly/3tRzv4h> [Last accessed on 03.02.2022].

¹⁷ The public defender responds to the verdict of the Tbilisi Court of Appeal against Gvaramia. Available at: <https://bit.ly/3UhVMUw> [Last accessed on 03.02.2023]; Statement of public organizations about the imprisonment of Gvaramia. Available at: <https://bit.ly/3NLN1Q1> [Last accessed on 03.02.2023]; The coalition responds to the decision made in the case of Gvaramia. Available at: <https://bit.ly/3DPToyD> [Last accessed on 03.02.2023]; According to GYLA, the verdict in Gvaramia's case is unjustified. Available at: <https://bit.ly/3WCaSWi> [Last accessed on 03.02.2023]; 5 reasons why Gvaramia's sentence is unjustified. Available at: <https://bit.ly/3UIS2RI> [Last accessed on 03.02.2023].

¹⁸ The Coalition responds to the decision made in the case of Gvaramia. Available at: <https://bit.ly/3DPToyD> [Last accessed on 03.02.2023]; The Court of Appeals left Gvaramia in prison in a politically motivated case. Available at: <https://bit.ly/3NREESX> [Last accessed on 03.02.2023].

¹⁹ According to the Public Defender's assessment, political motivation is confirmed in Gvaramia's case. Available at: <https://bit.ly/3UHxWRs> [Last accessed on 03.02.2023].

²⁰ British Embassy: We are disappointed by the arrest of Gvaramia, Available at: <https://bit.ly/3DOxr1q> [Last accessed on 03.02.2023]; "The decision raises questions" – the French ambassador on Gvaramias arrest. Available at: <https://bit.ly/3zXVutB> [Last accessed on 03.02.2023];

of law in Georgia.²¹ The director of Amnesty International in Eastern Europe and Central Asia called the decision a politically motivated persecution.²²

2.2. Case of Davit Kezerashvili

The Supreme Court of Georgia found Davit Kezerashvili – the former Minister of Defense and the founder of Formula TV – guilty in the so-called “Training Case”. The lower courts had issued an acquittal verdict in the case.²³ Kezerashvili was accused of embezzlement of state funds.²⁴

There are serious doubts about the partiality and political overtones of lawsuits against Kezerashvili. The proceedings in the Supreme Court in the criminal case against Kezerashvili, which started six years ago, were resumed just one month before the 2021 elections.²⁵ And before resuming the case, Prime Minister Gharibashvili's stated: "As soon as I left [my previous Prime Ministerial tenure], you acquitted him. Now, it seems like they will take care of him."²⁶ The management of the TV Formula itself linked this renewed interest in the case to the critical editorial policy of the broadcaster.²⁷ The Public Defender found it problematic that the Supreme Court's guilty verdict was published without its reasoning part.²⁸ 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.²⁹

2.3. Case of Avtandil Tsereteli

Avtandil Tsereteli, the father of the founder of TV Pirveli – Vakhtang Tsereteli, became the addressee of the criminal prosecution. Avtandil Tsereteli was found guilty by the court but did not impose a sentence of imprisonment due to the expiration of the limitation period.³⁰

²¹ MEPs: the unjustified sentence against Gvaramia echoes the practice of intimidation. Available at: <https://bit.ly/3hq29GI> [Last accessed on 03.02.2023].

²² Amnesty International: Gvaramia's sentence is politically motivated suppression of a different voice, Available at: <https://bit.ly/3EcvbCG> [Last accessed on 03.02.2023].

²³ 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 03.02.2023].

²⁴ Ibid.; Davit Kezerashvili has not been convicted of any case. Available at: <https://bit.ly/3UwroXc> [Last accessed on 03.02.2023].

²⁵ 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 03.02.2023].

²⁶ 2 months after Gharibashvili's threat, Tadumadze is considering Kezerashvili's case in the Supreme Court. Available at: <https://formulanews.ge/News/56117> [Last accessed on 03.02.2023].

²⁷ The renewal of the Kezerashvili case is politicized and connected to the "formula." Available at: <https://bit.ly/3P4va7K> [Last accessed on 03.02.2023].

²⁸ The Ombudsman suspects Kezerashvili's case is related to the context of "Formula." Available at: <https://bit.ly/3HcMzZQ> [Last accessed on 03.02.2023].

²⁹ Media Advocacy Coalition: The dispute against Kezerashvili aims to influence the TV company "Formula." Available at: <https://bit.ly/3gUntV3> [Last accessed on 03.02.2023].

³⁰ <https://bit.ly/3jx5mWn> [Last accessed on 03.02.2023].

3. Physical and verbal attacks on media representatives

HRW³¹ and U.S. State Department reports³² emphasize physical attacks on the media. The most alarming case of aggression against media representatives is the violence of 5th July 2021. In particular, the local LGBT+ organization had planned to hold a “March for Dignity” on Rustaveli Avenue in Tbilisi, on July 5, 2021. However, the clergymen, pro-Russian and radical homophobic groups did not let the March take place as they physically and verbally abused citizens, the LGBTQI+ community, civil society activists, and media representatives who were present there to cover the events.³³ At least 53 members of the media were injured. Lekso Lashkarava, a cameraman of the Pirveli TV channel, died a few days after the physical assault. According to the Public Defender of Georgia, the authorities did not take effective preventive and responsive countermeasures against violent actions.³⁴ The Public Defender³⁵, Media Advocacy Coalition³⁶, and its member organizations³⁷ appealed on many occasions to the General Prosecutor's Office with the request to initiate criminal prosecution against the organizers of violence. However, the government has not ensured an effective administration of justice in response to the 5 July violence.³⁸

After the violence of 5th July 2021, there have been several verbal or physical attacks on journalists and other media representatives. For example, Irakli Kobakhidze (Head of the “GD”) gave the following answer to a journalist of Mtavari Arkhi: "You are no longer a woman... wash your mouth... you have a mouth like Saakashvili."³⁹ These kinds of statements, when coming from high-ranking politicians, clearly foster aggression in society toward journalists.⁴⁰ Moreover, a reporter of the TV company Mtavari Arkhi and her camera operator were physically assaulted by unknown persons near the office of the “Conservative Movement” (pro-Russian antiliberal political

³¹ HRW, Georgia, Events of 2021. Available at: <https://bit.ly/3DwOvcO> [Last accessed on 01.02.2023].

³² U.S. State Department report, Available at: <https://bit.ly/3jntSto> [Last accessed on 01.02.2023].

³³ GDI, “05.07.2021, March Without Dignity”, 2021, p.15 Available at: <https://bit.ly/3XLDCMI> [Last accessed on 01.02.2023].

³⁴ Public Defender of Georgia, On the Situation of Protection of Human Rights and Freedoms in Georgia, 2021, p.144, <https://bit.ly/3HpTptAf> [Last accessed on 01.02.2023].

³⁵ Public Defender Demands Criminal Prosecution of Two Persons for Organizing Group Violence and Calling for Violence on July 5, Available at: <https://bit.ly/3kqeKva> [Last accessed on 01.02.2023].

³⁶ Media Advocacy Coalition, Statement on the Large-Scale Violence against Journalists, Available at: <https://bit.ly/3CTUZ5h> [Last accessed on 01.02.2023].

³⁷ GYLA Applies to ECtHR on Behalf of July 5 2021 Victims, Available at: <https://bit.ly/3iMk9vZ> [Last accessed on 01.02.2023].

³⁸ Media Advocacy Coalition considers the Verdict of Tbilisi Court of Appeal in the July 5 case alarming, Available at: <https://bit.ly/3kAx7gK> [Last accessed on 01.02.2023].

³⁹ Irakli Kobakhidze's answer to the question of Mtavari Arkhi. Available at: <https://bit.ly/3Vxgssd> [Last accessed on 01.02.2023].

⁴⁰ Supra note 8, p. 11.

party).⁴¹ The Special Investigation Service launched an investigation into the incident,⁴² which resulted in the arrest of two individuals.⁴³ It is noteworthy, that Kakha Kaladze posted on Facebook⁴⁴ a photograph depicting three critical media outlets (Mtavari Arkhi, Formula TV, and TV Pirveli) as generators of lies. The post advertised a new initiative from the mayor of Tbilisi's office, "Truth Punch," a Facebook live series that was intended to combat disinformation in the media.⁴⁵

We believe that the true goal of all of these acts is to discredit critical media and limit their freedom of expression.

4. Activities of the National Communications Commission

The National Communications Commission of Georgia (hereinafter GNCC) is a constitutional body with a mandate to protect media pluralism, and freedom of speech, prevent monopolization of the media, and protect the rights of consumers and entrepreneurs in broadcasting and electronic communications. However, the GNCC has arbitrarily exercised its powers against critical media, prompting criticism from local and international stakeholders.⁴⁶

On August 23, 2022, the GNCC satisfied the application of the GD to declare three critical broadcasters – Formula, Mtavari Arkhi, and TV Pirveli – in breach of the law for airing a video clip of the campaign called "Back to Home - Europe."⁴⁷ The GNCC issued a "warning" as a sanction against TV Pirveli and Formula and imposed a substantial penalty (GEL 118,700) on Mtavari Arkhi.⁴⁸

The aforesaid disputed video was created to announce the pro-Western and anti-Russian rally on 24th June 2022. "GD" sued the aforementioned media organizations. According to their explanation, the video had pre-election/political content and served to incite negative attitudes towards the "GD" in society to hinder its electoral performance in future elections.

"Unfortunately, the GNCC did not consider the legally justified position of the broadcasters and the dangers attached to the illegal, unjustified restriction of media

⁴¹ Two attacks on journalists in two days in Georgia. Available at: <https://bit.ly/3Hnr2Mp> [Last accessed on 01.02.2023].

⁴² Statement of the Special Investigation Service of March 18, 2022. Available at: <https://bit.ly/3ioCGOg> [Last accessed on 01.02.2023].

⁴³ 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 01.02.2023].

⁴⁴ Tbilisi Mayor Campaigns to Counter "Fake News", Available at: <https://bit.ly/3wKkYco> [Last accessed on 01.02.2023].

⁴⁵ Kakhi Kaladze's "Punch of the Truth", Available at: <https://bit.ly/3YdFtJN> [Last accessed on 01.02.2023].

⁴⁶ GDI Report on Freedom of Media, 2022, p.7 Available at: <https://bit.ly/3kUSk5f> [Last accessed on 01.02.2023].

⁴⁷ 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 01.02.2023].

⁴⁸ Supra note 8, p. 9.

freedom. Neither did they consider the fact that the video in question qualifies as social advertising. Moreover, GNCC had no mandate to assess political advertising beyond/outside the pre-election period since political advertising itself is limited to the pre-election period.⁴⁹ As a result, GNCC overstepped its authority and gave itself the lawmaking function which belongs to the Parliament.”⁵⁰

All three broadcasters have appealed the decision of the GNCC to the court, but as of this moment, no hearing has been scheduled.⁵¹

All of the above-mentioned facts indicate that “GNCC is influenced by “GD”⁵² and its activities are biased to limit the freedom of expression of critical media.

5. Legislative Changes to the Law on Broadcasters

“GD” MPs sponsored legislative changes to the Law on Broadcasting, and the Parliament adopted them.⁵³ According to the explanatory note, the purpose of the amendment is to fulfill 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.⁵⁴ Among other norms, the adopted law provides for the immediate entry into force of the decisions of the GNCC, supervision of the right of reply by GNCC, and regulation of hate speech.⁵⁵

The alarming problem is that the amended law strengthens the repressive elements in the regulation of the media.⁵⁶ Namely, by introducing the immediate enforcement of GNCC’s decisions, the law does not correspond to the finding of the Venice Commission on an essentially similar matter. In particular, the Venice Commission negatively assessed the non-suspension of the enforcement of the GNCC’s legal acts while they were being appealed.⁵⁷ Moreover, the extension of GNCC’s authority over the regulation of hate speech through the amended law is not a direct requirement of the aforementioned Directive and creates a risk of abuse of newly granted powers in light of the GNCC’s past activities/decisions described above and doubts regarding its

⁴⁹ GNCC continues crusade against media freedoms. Available at: <https://bit.ly/3ERPtQM> [Last accessed on 01.02.2023]

⁵⁰ Supra note 8, p. 9.

⁵¹ Ibid.

⁵² 2021 Country Reports on Human Rights Practices: Georgia. Available at: <https://bit.ly/3JPct7t> [Last accessed on 01.02.2023].

⁵³ See the adopted amendments at: <https://bit.ly/3X5vOvI> [Last accessed on 03.02.2023].

⁵⁴ 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 01.02.2023].

⁵⁵ 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 01.02.2023].

⁵⁶ GDI Assessment about changes to the Law on Broadcasters. Available at: <https://bit.ly/3wwY5bZ> [Last accessed on 01.02.2023].

⁵⁷ 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 01.02.2023].

independence.⁵⁸ Moreover, the transfer of the right of reply from the mechanism of self-regulation to the GNCC's authority is unjustified. The aforesaid Directive 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").⁵⁹ After all, the 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.⁶⁰

Despite the criticism from different stakeholders (including from the Council of Europe's experts⁶¹), the Parliament of Georgia still adopted the law.

6. Alleged unlawful and secret eavesdropping/surveillance

In September 2021, information was disseminated/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.⁶² For example, the leaked files contained information about, inter alia, conversations of Nika Gvaramia (the former general director of "Mtavari Arkhi"). 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. The victims were not interviewed by the prosecutor's office. Targets of eavesdropping/surveillance were granted the status of the victim only after they or their colleagues applied to the ECHR.⁶³ There are still several gaps in the investigation process.⁶⁴

⁵⁸ Supra note 8, pages 13-14.

⁵⁹ 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 01.02.2023].

⁶⁰ Regulation of defamation by the Law "On Freedom of Speech and Expression" and Article 18 of the Civil Code of Georgia.

⁶¹ CoE, Initial Expert Opinion Information Society and Action against Crime Directorate Information Society Department prepared on the basis of the expertise by Council of Europe experts: Eve Salomon and Sally Broughton Micova <https://bit.ly/3DDexv5> [Last accessed on 01.02.2023].

⁶² Supra note 8, p. 19.

⁶³ The ombudsman asks the European Court to consider the "eavesdropping case" as a priority. Available at: <https://bit.ly/3gXs5tt> [Last accessed on 01.02.2023]; 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 01.02.2023].

⁶⁴ Supra note 8, p. 20.